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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): June 21, 2023

Better Choice Company Inc.

(Exact name of Registrant as Specified in its Charter)

Delaware
(State or other Jurisdiction of Incorporation)

001-40477
(Commission File Number)

83-4284557
(IRS Employer Identification No.)

**12400 Race Track Road
Tampa, Florida 33626**
(Address of Principal Executive Offices) (Zip Code)

(Registrant's Telephone Number, Including Area Code): **(212) 896-1254**

N/A
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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, \$0.001 par value share	BTTR	NYSE American

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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. ☐

Item 1.01 Entry into a Material Definitive Agreement

Alpha Term Loan

On June 21, 2023, Better Choice Company Inc. (NYSE: BTTR) (the “Company”), a pet health and wellness company, entered into a term loan credit agreement (the “Term Loan Agreement”) with Alpha Inc. (“Alpha”), a leading custom manufacturer of super-premium pet food in the U.S. Pursuant to the Term Loan Agreement, Alpha made a term loan to the Company in the original principal amount of \$5,000,000 (the “Term Loan”). The Term Loan is also evidenced by that certain Term Note dated as of June 21, 2023 issued by the Company to Alpha (the “Term Note”). The proceeds of the Term Loan, together with a portion of the Company’s cash on hand, have been used to retire all of the outstanding obligations of Halo, Purely for Pets, Inc. (“Halo”), a wholly-owned subsidiary of the Company, under Halo’s long-term credit facility with Old Plank Trail Community Bank, N.A., an affiliate of Wintrust Bank, N.A. With the Term Loan facility, the Company also established a direct manufacturing relationship with Alpha to reduce manufacturing costs.

The Term Loan will bear interest at a rate of 10% per annum, compounded quarterly, and will mature on June 21, 2026. Accrued interest on the Term Loan is payable quarterly in cash or, at the election of the Company, in-kind by capitalizing such interest and adding it to the then-outstanding principal amount of the Term Loan. The Term Loan Agreement and Term Note provide for customary financial covenants and customary events of default, including, among others, those relating to failure to make payment, bankruptcy, breaches of representations and material adverse effects. The Company may prepay the principal of the Term Loan at any time upon written notice to Alpha and subject to a prepayment penalty if such prepayment occurs prior to June 21, 2025.

The Term Loan is secured by a general security interest on the assets, including the intellectual property, of the Company and Halo pursuant to (i) that certain Term Loan Security Agreement, dated June 21, 2023, made by the Company and Halo in favor of Alpha (the “Security Agreement”) and (ii) that certain Intellectual Property Security Agreement, dated as of June 21, 2023 of the Company and Halo in favor of Alpha (the “Intellectual Property Security Agreement”). The Company has also pledged all of the capital stock of Halo held by the Company as additional collateral for the Term Loan. The term loan is guaranteed by Halo pursuant to that certain Term Loan Guaranty, dated as of June 21, 2023, by and between Halo and Alpha (the “Term Loan Guaranty”).

In conjunction with the Term Loan, the Company issued to Alpha (i) a warrant (the “First Tranche Warrant”) to purchase 6,545,338.45 shares of the Company’s common stock, par value \$0.001 per share (“Common Stock”) at a price of \$0.26 per share, and (ii) a warrant (the “Second Tranche Warrant” and together with the First Tranche Warrant, the “Warrants”) to purchase 8,222,787 shares of Common Stock at a price of \$0.26 per share. Unless exercised, the Warrants expire on June 21, 2028. Alpha’s exercise of the Second Tranche Warrant is subject to the approval of the Company’s stockholders. The Warrants contain certain anti-dilution provisions in favor of Alpha in connection with any equity offering consummated by the Company prior to December 21, 2023 and equity issuances below the exercise price of the Warrants. The Warrants also contain a cashless exercise option at the election of Alpha.

Additionally, in conjunction with the Term Loan, the Company entered into a Side Letter Agreement with Alpha (the “Side Letter”) pursuant to which Alpha was granted a right of first refusal on any of the following relating to the Company or any of its subsidiaries and to the extent such transactions constitute a change of control: (i) any transfer, sale, lease or encumbrance of all or any portion of the capital stock or assets (other than the sale of inventory in the ordinary course of business), (ii) any merger, consolidation or other business combination, (iii) any recapitalization, reorganization or any other extraordinary business transaction, (iv) or any equity issuance or debt incurrence. Alpha’s right of first refusal is effective so long as the Term Loan remains outstanding and for a period of 12 months thereafter. The Side Letter also provides Alpha with certain Board observer rights.

The foregoing description of the Alpha Term Loan does not purport to be complete and is qualified in its entirety by reference to the full text of the Loan Agreement, Term Note, the Security Agreement, the Intellectual Property Security Agreement, the Term Loan Guaranty, the First Tranche Warrant, the Second Tranche Warrant and Side Letter being filed with this Form 8-K as Exhibits 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7 and 10.8, respectively, and incorporated herein by reference.

Wintrust Facility

On June 21, 2023, Halo entered into an account purchase agreement (the “AP Agreement”) with Wintrust Receivables Finance, a division of Wintrust Bank N.A. (“Wintrust”) pursuant to which Wintrust will purchase, at its discretion, up to eligible customer invoices and advance up to 75% of the face amount of all purchased invoices up to \$4,750,000 (the “Wintrust Facility”). Each advance under the AP Agreement will bear interest at a minimum rate of 5.5%. The AP Agreement has an initial term of two years and will automatically renew annually unless terminated by Halo on at least 60 days’ notice. The Wintrust Facility is secured by a general security interest in the assets of Halo and the Company. The proceeds of the Wintrust facility will be used for general working capital purposes.

The Wintrust Facility is guaranteed secured by the Company pursuant to that certain Unlimited Continuing Guaranty Agreement dated as of June 21, 2023 (the “Wintrust Guaranty Agreement”).

The foregoing description of the Wintrust Facility does not purport to be complete and is qualified in its entirety by reference to the full text of the AP Agreement and the Wintrust Guaranty Agreement being filed with this Form 8-K as Exhibits 10.9 and 10.10, respectively, and incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off Balance Sheet Arrangement of the Registrant

The disclosure in item 1.01 and Exhibits 10.1, 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9 and 10.10 of this report are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

bits	Description
	<u>Term Loan Credit Agreement, dated as of June 21, 2023, by and between Better Choice Company Inc. and Alpha Inc.</u>
	<u>Term Loan, dated as of June 21, 2023, issued by Better Choice Company Inc. to Alpha Inc.</u>
	<u>Term Loan Security Agreement, dated as of June 21, 2023, by and between Better Choice Company Inc., Halo, Purely for Pets, Inc. and Alpha Inc.</u>
	<u>Intellectual Property Security Agreement, dated as of June 21, 2023, by and between Better Choice Company Inc., Halo, Purely for Pets, Inc. and Alpha Inc.</u>
	<u>Term Loan Guaranty, dated as of June 21, 2023, by and between Halo, Purely for Pets, Inc. and Alpha Inc.</u>
	<u>First Tranche Warrant, dated as of June 21, 2023 issued Better Choice Company Inc. to Alpha Inc.</u>
	<u>Second Tranche Warrant, dated as of June 21, 2023 issued Better Choice Company Inc. to Alpha Inc.</u>
	<u>Side Letter Agreement, dated as of June 21, 2023, by and between Better Choice Company Inc. and Alpha Inc.</u>
	<u>Account Purchase Agreement, dated as of June 21, 2023, by and between Wintrust Receivables Finance, a division of Wintrust Bank N.A., and Halo, Purely for Pets, Inc.</u>
2	<u>Unlimited Continuing Guaranty Agreement, dated as of June 21, 2023, by and between Better Choice Company Inc. and Wintrust Receivables Finance, a division of Wintrust Bank N.A.</u>

SIGNATURE

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

Better Choice Company Inc.

By: /s/ Carolina Martinez
Name: Carolina Martinez
Title: Interim Chief Financial Officer

June 27, 2023

TERM LOAN CREDIT AGREEMENT

Dated as of June 21, 2023,

among

BETTER CHOICE COMPANY INC.,
as the Borrower

and

ALPHIA INC.,
as Lender,

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EXHIBITS

Form of

A	Committed Term Loan Notice
B	Prepayment Notice
C	Term Note
D	Compliance Certificate
E	Guaranty
F	Security Agreement
G	Solvency Certificate
H	Intercompany Subordination Agreement
I	ABL Intercreditor Agreement

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This TERM LOAN CREDIT AGREEMENT (this “Agreement”) is entered into as of June 21, 2023, between BETTER CHOICE COMPANY INC., a Delaware corporation (the “Borrower”) and ALPHIA INC. (the “Lender”).

PRELIMINARY STATEMENTS

WHEREAS, Halo, Purely for Pets, Inc., a Delaware corporation and wholly owned subsidiary of Borrower (“Halo”) is party to that Loan and Security Agreement, dated as of January 6, 2021, as amended by that certain First Amendment to Loan and Security Agreement dated as of August 13, 2021, that certain Second Amendment to Loan and Security Agreement dated as of March 25, 2022 and that certain Third Amendment to Loan and Security Agreement dated as of October 24, 2022 (the “Existing Credit Agreement”), with Old Plank Trail Community Bank, N.A. (“Wintrust”), pursuant to which Wintrust has made available to Halo a revolving credit facility in an aggregate principal amount of up to \$13,500,000;

WHEREAS, the Borrower has requested that, upon the satisfaction in full of the applicable conditions precedent set forth in Article IV below, the Lender makes term loans to the Borrower in an aggregate principal amount of \$5,000,000 on the Closing Date on the terms and subject to the conditions set forth in this Agreement, the proceeds of which shall be used (a) to consummate the Transactions, (b) to fund the Transaction Costs and (c) for general corporate and working capital purposes;

WHEREAS, Halo has entered into the ABL Credit Agreement and the ABL Loan Documents (each as defined below) pursuant to which Halo shall concurrently enter into a revolving credit facility (which may be styled as an account purchase agreement) with commitments in an aggregate amount equal to \$4,750,000 on the Closing Date, subject to the terms and conditions set forth in the ABL Credit Agreement and the ABL Loan Documents, the proceeds of which shall be used for general corporate and working capital purposes;

WHEREAS, each Loan Party desires to secure all of the Obligations under the Loan Documents by granting to the Lender, for the benefit of the Secured Parties, a first-priority security interest in and Lien upon substantially all of the property of such Loan Party, subject to the ABL Intercreditor Agreement and the limitations described herein and in the Collateral Documents; and

WHEREAS, the Lender is willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE I

Definitions and Accounting Terms

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

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“ABL Administrative Agent” means Wintrust Receivables Finance, a division of Wintrust Bank, N.A., in its capacity as party to the ABL Credit Agreement, and any applicable successors or assigns in such capacity.

“ABL Collateral Document” has the meaning specified in the ABL Intercreditor Agreement.

“ABL Credit Agreement” means the Account Purchase Agreement, dated as of the date hereof, by and among Halo and the ABL Administrative Agent, as the same may be amended, restated, supplemented, refinanced, replaced or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement.

“ABL Facility” means any facility or arrangement for making “Advances” under and as defined in the ABL Credit Agreement.

“ABL Intercreditor Agreement” means the intercreditor agreement, dated as of the date hereof, among the Lender and the ABL Administrative Agent, substantially in the form of Exhibit I hereto, as the same may be amended, restated, supplemented, refinanced, replaced or otherwise modified from time to time in accordance with its terms.

“ABL Loan Documents” means the ABL Credit Agreement and all security and other collateral or other documents related thereto or entered into in connection therewith that are deemed to be “Related Documents” under and as defined in the ABL Credit Agreement.

“ABL Obligations” means the “Obligations”, under and as defined in the ABL Credit Agreement.

“ABL Revolving Loans” means the “Advances”, under and as defined in the ABL Credit Agreement.

“Affiliate” means, 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.

“Aggregate Term Commitments” means all of the Term Commitments.

“Agreement” means this Term Loan Credit Agreement, including all amendments, restatements, amendments and restatements, modifications and supplements and any exhibits or schedules to any of the foregoing.

“Alpha Priority Collateral” has the meaning assigned thereto in the ABL Intercreditor Agreement.

“Anti-Corruption Laws” means the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act of 2010, the Corruption of Foreign Public Officials Act of Canada

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and any other similar laws or regulations concerning or relating to bribery or corruption applicable to the Loan Parties and their Subsidiaries.

“Anti-Money Laundering Laws” means the Bank Secrecy Act, as amended by the Patriot Act, and any other similar laws or regulations concerning or relating to terrorism financing or money laundering applicable to the Loan Parties and their Subsidiaries.

“Applicable Premium Event” means (a) any voluntary prepayment pursuant to Section 2.03 (or otherwise) by the Borrower or any other Loan Party of all, or any part, of the principal balance of any Term Loans whether before or after (i) the occurrence of a Default or (ii) the commencement of any proceeding under any Debtor Relief Law, and notwithstanding any acceleration (for any reason) of the Term Loans; (b) the acceleration of any or all of the Term Loans for any reason, including, but not limited to, acceleration in accordance with Article VIII hereof, including as a result of the commencement of a proceeding under any Debtor Relief Law; (c) the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Term Loans in any proceeding under any Debtor Relief Law, foreclosure (whether by power of judicial proceeding or otherwise) or deed in lieu of foreclosure or the making of a distribution of any kind in any proceeding under any Debtor Relief Law to the Lender (whether directly or indirectly, including through the Lender or any other distribution agent), in full or partial satisfaction of the Term Loans; (d) the termination of this Agreement for any reason (other than as a result of the payment in full in cash of the Obligations (other than contingent indemnity or reimbursement obligations for which no claim has been asserted) on the Maturity Date); and (e) any mandatory prepayments pursuant to Section 2.03(b)(ii) by the Borrower or any other Loan Party of all, or any part, of the principal balance of any Term Loans.

Solely for purposes of the definition of the term “Applicable Premium Amount”, if an Applicable Premium Event occurs under clause (c) or (d) above, the entire outstanding principal amount of the Term Loans shall be deemed to be subject to the Applicable Premium Event on the date on which such Applicable Premium Event occurs.

“Applicable Premium Amount” means with respect to any Term Loans subject to an Applicable Premium Event, an amount equal to:

- (i) if the Applicable Premium Event occurs on or after the Closing Date to (but excluding) the date of the first anniversary of the Closing Date, 10% of the principal amount prepaid,
- (ii) if the Applicable Premium Event occurs on or after the first anniversary of the Closing Date to (but excluding) the date of the second anniversary of the Closing Date, 5% of the principal amount prepaid and
- (iii) if the Applicable Premium Event occurs on or after the date of the second anniversary of the Closing Date, 0%.

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“Applicable Rate” means a percentage per annum equal to 10.0% per annum; provided, that from and after the occurrence of, and during the continuation of, a Warrant Failure Event, the Applicable Rate shall increase by 1.00% per annum on the 90th consecutive day that the Warrant Failure Event is continuing, and shall further increase by 1.00% per annum for each 30 consecutive days thereafter that the Warrant Failure Event is continuing (e.g., for the avoidance of doubt, on the 120th consecutive day that the Warrant Failure Event is continuing, the Applicable Rate shall increase to 12.00% per annum); *provided*, further that the Applicable Rate shall not exceed 15.00% per annum at any time.

“Approved Domestic Bank” has the meaning specified in clause (b) of the definition of “Cash Equivalents”.

“Borrower” has the meaning specified in the introductory paragraph to this Agreement.

“Budget” means the Initial Budget and the Updated Budgets, as applicable.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York.

“Capital Expenditures” means, for any period with respect to any Person and its Subsidiaries on a consolidated basis, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Leases) by such Person and its Subsidiaries on a consolidated basis during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of such Person and/or its Subsidiaries.

“Capitalized Lease Obligations” means, as applied to any Person, all obligations of such Person under leases of property that have been or should be, in accordance with GAAP, recorded as capitalized leases of such Person, in each case taken at the amount thereof accounted for as liabilities in accordance with GAAP; *provided* that any change in GAAP after the Closing Date will not cause any obligation that was not or would not have been a Capitalized Lease Obligation prior to such change to be deemed a Capitalized Lease Obligation following such change.

“Cash Equivalents” means any of the following types of Investments, to the extent owned by the Borrower or any of its Subsidiaries:

(a) (i) Dollars, (ii) readily marketable obligations issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof, in each case having maturities of not more than twelve (12) months from the date of acquisition thereof; *provided* that the full faith and credit of the United States is pledged in support thereof, (iii) securities issued or directly and fully guaranteed or insured by any State, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof,

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and rated at least A by S&P or P-1 by Moody's, in each case having maturities of not more than twelve (12) months from the date of acquisition thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is the Lender or (B) is organized under the laws of the United States, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated at least P-2 (or the then equivalent grade) by Moody's or at least A-2 (or the then equivalent grade) by S&P and (iii) has combined capital and surplus of at least \$250,000,000 (any such bank being an "Approved Domestic Bank"), in each case with maturities of not more than three hundred sixty-five (365) days from the date of acquisition thereof;

(c) commercial paper and variable or fixed rate notes issued by an Approved Domestic Bank (or by the parent company thereof) or any variable rate note issued by, or guaranteed by, a domestic corporation 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 maturities of not more than three hundred sixty-five (365) from the date of acquisition thereof;

(d) marketable short-term money market and similar funds (including such funds investing a portion of their assets in municipal securities) 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);

(e) repurchase agreements entered into by any Person with a bank or trust company or recognized securities dealer having capital and surplus in excess of \$250,000,000 for direct obligations issued by or fully guaranteed or insured by the United States government or any agency or instrumentality of the United States in which such Person shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a Fair Market Value of at least 100% of the amount of the repurchase obligations;

(f) Investments, classified in accordance with GAAP as Current Assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions having capital of at least \$250,000,000, and the portfolios of which are limited such that at least 95% of such investments are of the character, quality and maturity described in clauses (a) through (e) of this definition;

(g) investment funds investing at least 95% of their assets in securities of the types (including as to credit quality and maturity) described in clauses (a) through (f) above; and

(h) solely with respect to any Subsidiary that is a Foreign Subsidiary, (x) such local currencies in those countries in which such Foreign Subsidiary transacts business from time to time in the ordinary course of business and (y) investments of comparable tenor and credit

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quality to those described in the foregoing clauses (a) through (g) customarily utilized in countries in which such Foreign Subsidiary operates for short term cash management purposes.

“Casualty Event” means any event that gives rise to the receipt by the Borrower or any Subsidiary of any casualty insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace, restore or repair, or compensate for the loss of, such equipment, fixed assets or real property.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

“CERCLIS” means the Comprehensive Environmental Response, Compensation, and Liability Information System maintained by the U.S. Environmental Protection Agency.

“Change of Control” means that any person or group (within the meaning of Sections 13(d)(2) and 14(d)(2) of the Exchange Act) (other than Permitted Holders) is or becomes the beneficial owner, directly or indirectly, of (a) 35% or more of the aggregate voting power represented by the Voting Stock of the Borrower, or (b) more of the aggregate voting power represented by the Voting Stock than the Permitted Holders.

“Closing Date” means the date on or following the date of execution of this Agreement on which all of the conditions precedent in Section 4.01 are satisfied or waived in writing, in each case, in accordance with such Section 4.01 and the Term Loans have been advanced.

“Code” means the U.S. Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means all of the “Collateral” referred to in the Collateral Documents and all of the other property and assets that are or are required under the terms of the Collateral Documents to be subject to Liens in favor of the Lender for the benefit of the Secured Parties.

“Collateral Documents” means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Mortgages, security agreements, pledge agreements or other similar agreements delivered to the Lender pursuant to this Agreement, and each of the other agreements, instruments or documents that creates or purports to create or perfects or purports to perfect a Lien in favor of the Lender for the benefit of the Secured Parties securing all or a portion of the Obligations.

“Committed Term Loan Notice” means a notice of a Term Borrowing which shall be substantially in the form of Exhibit A.

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

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“Compliance Certificate” means a certificate substantially in the form of Exhibit D or such other form as may be agreed between the Borrower and the Lender.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated Adjusted Free Cash Flow” means, as of any date for the applicable period ending on such date with respect to any Person and its Subsidiaries on a consolidated basis, an amount equal to the result of:

- (a) Consolidated EBITDA for such period; *minus*
- (b) the amount of the increase, if any, in Consolidated Working Capital of such Person and its Subsidiaries on a consolidated basis over such period; *plus*
- (c) the amount of the decrease, if any, in Consolidated Working Capital of such Person and its Subsidiaries on a consolidated basis over such period; *minus*
- (d) the amount of Capital Expenditures of such Person and its Subsidiaries on a consolidated basis for such period.

“Consolidated Current Assets” means, with respect to any Person and its Subsidiaries on a consolidated basis, all assets that, in accordance with GAAP, would be classified as current assets on the balance sheet of a company conducting a business the same as or similar to that of such Person, after deducting appropriate and adequate reserves therefrom in each case in which a reserve is proper in accordance with GAAP, but excluding (i) cash, (ii) Cash Equivalents, (iii) Swap Contracts to the extent that the mark-to-market Swap Termination Value would be reflected as an asset on the consolidated balance sheet of such Person, (iv) deferred financing fees and (v) payment for deferred taxes (so long as the items described in clauses (iv) and (v) are noncash items).

“Consolidated Current Liabilities” means, with respect to any Person and its Subsidiaries on a consolidated basis, all liabilities in accordance with GAAP that would be classified as current liabilities on the consolidated balance sheet of such Person, but excluding (a) the current portion of Indebtedness (including the Swap Termination Value of any Swap Contracts) to the extent reflected as a liability on the consolidated balance sheet of such Person, (b) the current portion of interest, (c) accruals for current or deferred taxes based on income or profits, (d) accruals of any costs or expenses related to restructuring reserves, (e) deferred revenue, (f) escrow account balances and (g) any ABL Obligations.

“Consolidated EBITDA” means, as of any date for the applicable period ending on such date with respect to any Person and its Subsidiaries on a consolidated basis, an amount equal to the sum of:

- (a) Consolidated Net Income for such period; *plus*

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(b) to the extent deducted in determining Consolidated Net Income for such period, the sum, without duplication of:

- (i) Consolidated Interest Expense,
- (ii) any provision for Taxes based on income, profits or capital for such period, including state, foreign and franchise and similar Taxes and any tax distributions made during such period,
- (iii) depreciation expense, amortization expense (including without limitation amortization of financing leases), any impairment charges, any non-cash charges associated with goodwill and other intangible assets, any write off or write down of any assets, and any write off or write down of debt discount, debt issuance, warrant and other equity issuance discounts, redemption premium and other fees associated with any indebtedness (including agency fees (or similar fees) and commitment fees),
- (iv) non-cash share-based compensation to equity owners,
- (v) non-cash losses, charges, reserves and expenses reducing Consolidated Net Income for such period, and
- (vi) proceeds of business interruption insurance policies, if any, received in cash during such period in an amount representing the earnings for the applicable period that such proceeds are intended to replace, *minus*

(c) to the extent included in arriving at such Consolidated Net Income, the sum, without duplication, of:

- (i) non-cash gains (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period),
- (ii) net extraordinary, non-recurring or unusual gains,
- (iii) any net gain from closed, disposed, abandoned or discontinued operations or product lines, and
- (iv) cash payments during such period on account of accruals on or reserves added to Consolidated EBITDA pursuant to clause (b)(v) above;

provided, that, for purposes of determining Consolidated EBITDA in respect of any period, to the extent that during or after such period the Borrower or any Guarantor or Subsidiary shall have consummated any Investment permitted pursuant to Section 7.02 or any Disposition of any Person, business, property or assets permitted pursuant to Section 7.05, or any material incurrence or issuance of Indebtedness permitted pursuant to Section 7.03, Consolidated EBITDA shall be calculated on a pro forma basis with respect to such Person, business, property or assets so acquired

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or disposed of, or such Indebtedness so incurred or issued, including applicable adjustments as described above (and subject to the limitations set forth above).

Notwithstanding the foregoing, Consolidated EBITDA shall be deemed to be \$(1,959,642) for the fiscal quarter ending on or about March 31, 2023.

“Consolidated Interest Expense” means, as of any date for the applicable period ending on such date with respect to any Person and its Subsidiaries on a consolidated basis, total interest expense determined in accordance with GAAP (including, to the extent deducted and not added back in computing Consolidated Net Income, (A) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (B) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers’ acceptances, (C) noncash interest payments, (D) the interest component of Capitalized Lease Obligations, (E) net payments, if any, made (less net payments, if any, received) pursuant to interest rate Swap Contracts with respect to Indebtedness, (F) amortization or write off of deferred financing fees, debt issuance costs, commissions, fees and expenses, including commitment, letter of credit and administrative fees and charges with respect to the Term Facilities and with respect to other Indebtedness permitted to be incurred hereunder and (G) any expensing of bridge, commitment and other financing fees, but excluding total interest expense associated with Synthetic Lease Obligations) and, to the extent not reflected in such total interest expense, any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations, and costs of surety bonds in connection with financing activities (whether amortized or immediately expensed).

“Consolidated Net Income” means, as of any date for the applicable period ending on such date with respect to the Borrower and its Subsidiaries on a consolidated basis, net income (or loss) as determined in accordance with GAAP; *provided, however*, that the following shall be excluded (without duplication): (a) any amounts attributable to Investments in any Joint Venture to the extent that such amounts have not been distributed in cash to such Person and its Subsidiaries during such applicable period; (b) (i) any net unrealized gains and losses resulting from fair value accounting required by FASB ASC 815 and (ii) any net unrealized gains and losses relating to mark-to-market of amounts denominated in foreign currencies resulting from the application of FASB ASC 830, in each case, to the extent included in Consolidated Net Income, (c) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Borrower or is merged into or consolidated with the Borrower or any Subsidiary (except to the extent required for any calculation of Consolidated EBITDA on a Pro Forma Basis), (d) to the extent not already excluded or deducted as minority interest expense in accordance with GAAP, payments made in respect of minority interests of third parties in any non-wholly owned Subsidiary or Joint Venture in such period, including pursuant to dividends declared or paid on Equity Interests held by third parties in respect of such non-wholly owned Subsidiary or Joint Venture, (e) (i) any net loss attributable to the write-down or write-off of any asset or (ii) any increase in amortization or depreciation or any non-cash charge or loss resulting from any amortization, write-up, write-down or write-off of assets upon the application of recapitalization accounting or purchase accounting (including tangible and intangible assets, goodwill, deferred financing costs and inventory (including any adjustment reflected in the “cost of goods sold” or similar line item of the financial

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statements)) in connection with the Transactions or any acquisition, merger, consolidation or similar transaction not prohibited hereunder, (f) any net after-tax income or loss from discontinued operations (which shall not, unless the Borrower otherwise elects, include assets then held for sale) and any net after-tax gain or loss on disposal of such discontinued operations, (g) any net after-tax income or loss (less all fees and expenses or charged relating thereto) attributable to the early extinguishment of Indebtedness, (h) the cumulative effect of a change in accounting principles during such period, (i) any non-cash impairment charges resulting from the application of FASB ASC 350 and FASB ASC 360 and the amortization of intangibles arising pursuant to FASB ASC 805, and (j) the effect of mark-to-market accounting for derivatives contracts under FASB ASC 820.

“Consolidated Working Capital” means, with respect to any Person and its Subsidiaries on a consolidated basis, the result of (a) Consolidated Current Assets of such Person and its Subsidiaries on a consolidated basis *less* (b) Consolidated Current Liabilities of such Person and its Subsidiaries on a consolidated basis.

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

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

“Current Assets” means, with respect to any Person, all assets of such Person that, in accordance with GAAP, would be classified as current assets on the balance sheet of a company conducting a business the same as or similar to that of such Person, after deducting appropriate and adequate reserves therefrom in each case in which a reserve is proper in accordance with GAAP, but excluding (i) cash, (ii) Cash Equivalents, (iii) Swap Contracts to the extent that the mark-to-market Swap Termination Value would be reflected as an asset on the consolidated balance sheet of such Person, (iv) deferred financing fees and (v) payment for deferred taxes (so long as the items described in clauses (iv) and (v) are noncash items).

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

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

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“Default Rate” means an interest rate equal to (after, as well as before, judgment) the applicable interest rate *plus* 2.00% per annum, to the fullest extent permitted by applicable Laws.

“Designated Cash Amount” means, as of any date of determination, the amount of Unrestricted Cash and Cash Equivalents of the Borrower and its Subsidiaries on such date, provided that any amount maintained in accounts that are not in the United States or that are not subject to a Lien securing the Obligations on a first-priority basis (subject solely to the Lien securing the ABL Obligations) shall not be included in the Designated Cash Amount.

“Designated Pledged Debt” has the meaning specified in the Security Agreement.

“Designated Pledged Interests” has the meaning specified in the Security Agreement.

“Disposition” or “Dispose” means the sale, transfer, license, sublicense, lease or other disposition of any property by any Person (including any sale and leaseback transaction and any issuance of Equity Interests by a Subsidiary of such Person), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Equity Interests” means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Equity Interests that are not Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Term Loans and all other Obligations that are accrued and payable), (b) is redeemable at the option of the holder thereof (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Term Loans and all other Obligations that are accrued and payable), 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 Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is ninety-one (91) days after the Latest Term Loan Maturity Date in effect at the time of issuance of such Equity Interests; *provided* that if such Equity Interests are issued pursuant to a plan for the benefit of officers, directors or employees of the Borrower or any Subsidiary or by any such plan to any such Person, then such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or a Subsidiary or any other Person in order to satisfy applicable statutory or regulatory obligations or as a result of such Person’s termination, death or disability.

“Dollar” and “\$” mean lawful money of the United States.

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“Domestic Subsidiary” means any Subsidiary of the Borrower that is not a Foreign Subsidiary.

“Environmental Laws” means any and all federal, state, local and foreign statutes, laws, including applicable common law, regulations, ordinances, rules, judgments, orders, decrees or governmental restrictions relating to pollution, the protection of the environment, the release of Hazardous Materials into the environment and human exposure to Hazardous Materials, including those related to the treatment, transport, storage and disposal of Hazardous Materials, air emissions and discharges to public wastewater treatment systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, monitoring or oversight by a Governmental Authority, fines, or penalties), of the Borrower, any other Loan Party or their respective Subsidiaries directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) human exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other binding consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Contribution” has the meaning given to such term in the definition of “Transactions”.

“Equity Interests” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

“Equity Issuance” means any issuance for cash by any Person to any other Person of (a) its Equity Interests, (b) any of its Equity Interests pursuant to the exercise of options or warrants, (c) any of its Equity Interests pursuant to the conversion of any debt securities to equity or (d) any options or warrants relating to its Equity Interests; *provided* that any instrument evidencing Indebtedness convertible into or exchangeable for any of the foregoing shall not be deemed Equity Interests unless and until any such instruments are so converted or exchanged.

“ERISA” means the Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder, each as amended or modified from time to time.

“ERISA Affiliate” means any Person who together with any Loan Party is treated as a single employer within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

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“ERISA Event” means (a) a Reportable Event with respect to a Plan; (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is insolvent (within the meaning of Section 4245 of ERISA); (d) the filing of a notice of intent to terminate or the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, respectively, (e) the institution by the PBGC of proceedings to terminate a Plan or Multiemployer Plan; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan; (g) the determination that any Plan is considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA; (h) the determination that any Multiemployer Plan is considered a plan in endangered or critical status within the meaning of Sections 431 and 432 of the Code or Sections 304 and 305 of ERISA; (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate; (j) the conditions for the imposition of a lien under Section 430(k) of the Code or Section 303(k) of ERISA shall have been met with respect to any Plan; or (k) any other event or condition with respect to a Plan or Multiemployer Plan that could result in liability of the Borrower or any Subsidiary, other than in the usual course.

“Event of Default” has the meaning specified in Section 8.01.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Assets” has the meaning specified in the Security Agreement.

“Excluded Subsidiary” means any Subsidiary that is (a) a Subsidiary that is expressly prohibited by applicable Law from guaranteeing the Term Facilities, or which would require governmental (including regulatory) consent, approval, license or authorization to provide a guarantee (which, consent, approval, license or authorization cannot be obtained after the Borrower’s use of commercially reasonable efforts) unless, such consent, approval, license or authorization has been received or the requirement for such consent was established in order to avoid becoming a Guarantor, (b) in each case for this clause (b) only to the extent that such Subsidiary has no operations, conducts no business activities and has no more than *de minimis* assets, (i) Bona Vida, Inc. or (ii) Wamore Corporation S.A., or (c) any Subsidiary to the extent the cost of providing such guarantee is excessive in relation to the value afforded thereby as reasonably determined by the Lender; *provided* that it is understood and agreed that, notwithstanding the above, if a Subsidiary executes the Guaranty as a “Guarantor” then it shall not constitute an “Excluded Subsidiary” (unless released from its obligations under the Guaranty as “Guarantor” in accordance with the terms hereof and thereof); *provided, further*, that no Subsidiary of the Borrower shall be an Excluded Subsidiary if such Subsidiary guarantees or is a primary obligor of obligations in respect of the ABL Facility or any other Indebtedness of a Loan Party, in each case, with an aggregate outstanding principal amount in excess of \$50,000.

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“Excluded Taxes” means any of the following Taxes imposed on or with respect to the Lender, or required to be withheld or deducted from a payment to the Lender, as applicable, (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 the Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of the Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of the Lender with respect to an applicable interest in a Term Loan or Term Commitment pursuant to a law in effect on the date on which (i) the Lender acquires such interest in the Term Loan or Term Commitment or (ii) the Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.01, amounts with respect to such Taxes were payable either to the Lender’s assignor immediately before the Lender became a party hereto or to the Lender immediately before it changed its lending office and (c) any withholding Taxes imposed under FATCA.

“Existing Credit Agreement” has the meaning specified in the preliminary statements to this Agreement.

“Fair Market Value” means, with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm’s length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as reasonably determined by the Borrower in good faith (which shall be conclusive if reasonably determined in good faith).

“FATCA” means Sections 1471 through 1474 of the Code (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future Treasury Regulations promulgated thereunder or official interpretation thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreement entered into in connection with any of the foregoing and any fiscal or regulatory legislation, rules or practices adopted pursuant to any such intergovernmental agreement.

“First Tranche Warrant” means that certain Warrant, dated as of the date hereof, by and between the Borrower and the Lender, providing for, among other things, Lender’s right to purchase 6,545,338.45 shares of common stock, par value \$0.001 per share, of the Borrower.

“Foreign Pension Plan” means a registered pension plan which is subject to applicable pension legislation other than ERISA or the Code, which a Loan Party or Subsidiary sponsors or maintains, or to which it makes or is obligated to make contributions.

“Foreign Plan” means each Foreign Pension Plan, “employee benefit plan” (within the meaning of Section 3(3) of ERISA), deferred compensation or other retirement or superannuation plan, fund, program, agreement, commitment or arrangement whether oral or written, funded or unfunded, sponsored, established, maintained or contributed to, or required to

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be contributed to, or with respect to which any liability is borne, outside the United States of America, by any Loan Party or Subsidiary, other than any such plan, fund, program, agreement or arrangement sponsored by a Governmental Authority.

“Foreign Subsidiary” means (i) any direct or indirect Subsidiary of the Borrower that is organized under the laws of a jurisdiction other than one of the fifty states of the United States or the District of Columbia or (ii) any Subsidiary of a Person described in clause (i) or (ii).

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

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, as in effect from time to time.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank, supra national authority or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any such obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary or reasonable indemnity obligations in effect on the Closing Date, or entered into in connection with any acquisition or Disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable

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amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"Guarantors" means, on a joint and several basis, the Borrower's direct and indirect Subsidiaries listed on Schedule 1 (such Subsidiaries of the Borrower not to include any Excluded Subsidiary), and each other Subsidiary of the Borrower that shall be required to execute and deliver a guaranty or guaranty supplement pursuant to Section 6.12.

"Guaranty" means the Guaranty made by the Guarantors in favor of the Lender on behalf of the Secured Parties, substantially in the form of Exhibit E, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.12.

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

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

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount (after giving effect to any prior drawings or reductions which have been reimbursed) of (i) all letters of credit (including standby and commercial), bankers' acceptances, bank guaranties and (ii) 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 Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property (other than (w) trade accounts payable in the ordinary course of business and not more than 365 days overdue, (x) any earn-out obligation until such obligation is not paid after becoming due and payable, (y) expenses accrued in the ordinary course of business and (z) obligations resulting from take-or pay contracts entered into in the ordinary course of business);
- (e) Indebtedness (excluding prepaid interest thereon) of another Person 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;

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- (f) all Capitalized Lease Obligations;
- (g) all obligations of such Person with respect to redemption, repayment or other repurchase (excluding accrued dividends to the extent not increasing liquidation preference) in respect of Disqualified Equity Interests; and
- (h) all Guarantees of such Person in respect of any of the foregoing;

provided that Indebtedness shall not include (i) prepaid or deferred revenue arising in the ordinary course of business and (ii) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy warranties or other unperformed obligations of the seller of such asset.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company or the foreign equivalent thereof) in which such Person is a general partner or a joint venturer, except to the extent the holders of such Indebtedness do not have recourse to such Person. The amount of any net obligation owed by such Person under any Swap Contract 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) above shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the Fair Market Value of the property encumbered thereby as determined by such Person in good faith.

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

“Indemnitees” has the meaning specified in Section 10.05.

“Initial Budget” means a budget that reflects on a line item basis the projected consolidated receipts and expenditures of the Loan Parties and their Subsidiaries, (1) on a weekly basis, from the Closing Date through the end of the 13-week period following the Closing Date, and (2) on a monthly basis through the end of fiscal year 2023.

“Intellectual Property Security Agreement” means, collectively, the intellectual property security agreement, substantially in the form of Exhibit B to the Security Agreement, together with each intellectual property security agreement supplement executed and delivered pursuant to Section 6.12.

“Intercompany Subordination Agreement” means an intercompany subordination agreement, in substantially the form of Exhibit H hereto, or otherwise in form and substance reasonably satisfactory to the Lender.

“Interest Payment Date” means, the last Business Day of each March, June, September and December and the Maturity Date of the Term Facility under which such Term Loan was made.

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“Investment” means, as to any Person, any direct or indirect investment by such Person, by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor incurs debt of the type referred to in clause (h) of the definition of “Indebtedness” in respect of such Person or (c) the purchase or other acquisition (in one transaction or a series of transactions) 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 other Person; *provided, however*, that Swap Contracts entered into and investments made by the Borrower or any of its Subsidiaries at the direction of an employee thereof under any deferred compensation plan or a “rabbi trust” formed in connection with such plans shall not constitute “Investments” for purposes of this Agreement. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested (measured at the time made), without adjustment for subsequent increases or decreases in the value of such Investment.

“IP Rights” has the meaning specified in Section 5.08(b).

“IP Security Agreement Supplement” has the meaning specified in the Security Agreement.

“IRS” means the United States Internal Revenue Service.

“Joint Venture” means (a) any Person which would constitute an “equity method investee” of the Borrower or any of its Subsidiaries and (b) any Person in whom the Borrower or any of its Subsidiaries beneficially owns any Equity Interest that is not a Subsidiary.

“Judgment Currency” has the meaning specified in Section 10.20(a).

“Judgment Currency Conversion Date” has the meaning specified in Section 10.20(a).

“Junior Financing” means any Indebtedness that is (a) expressly subordinated in right of payment to the Obligations (other than intercompany Indebtedness), (b) secured on a junior priority basis relative to the Term Facilities by some or all of the Collateral or (c) unsecured and has a principal amount outstanding in excess of \$50,000 (other than intercompany Indebtedness); *provided*, in any event, that ABL Obligations shall not constitute Junior Financing.

“Junior Financing Documentation” means any documentation governing any Junior Financing.

“Latest Term Loan Maturity Date” means, at any date of determination, the latest maturity date applicable to the Term Loans hereunder at such time, as extended in accordance with this Agreement from time to time.

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“Laws” means, collectively, all applicable 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.

“Lender” has the meaning specified in the introductory paragraph to this Agreement.

“Lending Office” means the office or offices of the Lender as set forth herein, or such other office or offices as the Lender may from time to time notify the Borrower.

“Lien” means any mortgage, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority 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 leases evidencing Capitalized Lease Obligations having substantially the same economic effect as any of the foregoing).

“Liquidity Amount” shall mean, on any date of determination, the sum of (i) Unrestricted Cash and Cash Equivalents included on the consolidated balance sheet of the Borrower and its Subsidiaries as of the close of business on such day constituting the Designated Cash Amount, plus (ii) the maximum amount available (after giving effect to the borrowing base, including all reserves, and any other applicable constraints) on such day for borrowing ABL Revolving Loans under the ABL Facility.

“Loan Documents” means, collectively, (i) this Agreement, (ii) the Term Notes, (iii) the Guaranty, (iv) the Collateral Documents and (v) any ABL Intercreditor Agreement.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“Manufacturing Agreement” means the Manufacturing Agreement, dated April 12, 2023, by and between Alpha and Halo.

“Marketing Spend Ratio” means, with respect to any Test Period, the ratio, expressed as a percentage, of (a) the sum of (i) total sales-team initiated trade, promotion and discretionary customer spending and (ii) general marketing and advertising expenses, in each case by or of the Loan Parties on a consolidated basis during such Test Period to (b) total revenues of the Loan Parties on a consolidated basis during such Test Period.

“Material Adverse Effect” means (a) a material adverse effect on (i) the business, assets, liabilities (actual or contingent), financial condition or results of operations of the Borrower and the Subsidiaries, taken as a whole, or (ii) the Transactions, (b) a material adverse effect on the ability of the Loan Parties (taken as a whole) to perform their respective payment obligations under the Loan Documents, (c) a material adverse effect on the legality, validity or enforceability of the

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Loan Documents or (d) a material adverse effect on the rights and remedies of the Lender under the Loan Documents.

“Maturity Date” means the earliest of (i) June 21, 2026 and (ii) the date that the Term Loans are declared due and payable pursuant to Section 8.02; *provided*, in each case, that if such day is not a Business Day, then the applicable Maturity Date shall be the Business Day immediately preceding such day.

“Maximum ABL Principal Amount” means the greater of (i) the borrowing base, calculated in accordance with the advance rates, reserves and other formula elements set forth in the ABL Credit Agreement as in effect on the date hereof, with respect to the eligible inventory of the Borrower and Halo, as determined pursuant to the eligibility criteria set forth in the ABL Credit Agreement as in effect on the date hereof, or (ii) \$5,000,000.

“Maximum Rate” has the meaning specified in Section 10.09.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgage” means, collectively, the deeds of trust, trust deeds and mortgages made by the Loan Parties in favor or for the benefit of the Lender in form and substance reasonably satisfactory to the Lender.

“Mortgaged Properties” means any real property interest with respect to which a Mortgage is required pursuant to Section 6.12.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA, to which any Loan Party, any Subsidiary or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding six years, has made or been obligated to make contributions.

“Net Cash Proceeds” means an amount equal to, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such Casualty Event and attributable to the assets or business of the Borrower or such Subsidiary that is subject to such Casualty Event (including any insurance proceeds or condemnation awards in respect of such Casualty Event received by or paid to or for the account of the Borrower or any Subsidiary) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the asset subject to such Casualty Event and that is required to be repaid in connection with such Casualty Event (other than Indebtedness under the Loan Documents and, if such asset constitutes Collateral, any Indebtedness secured by such asset with a Lien ranking junior to the Lien securing the Obligations), (B) the out-of-pocket expenses incurred by the Borrower or such Subsidiary in connection with such Casualty Event (including attorneys’ fees, accountants’ fees, investment banking fees, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and brokerage, consultant and other customary or reasonable fees actually incurred in connection therewith), (C) taxes paid or reasonably estimated to be payable in connection with such Casualty Event and any repatriation costs associated with receipt by the applicable taxpayer of such proceeds, and (D) the pro rata portion of the net cash

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proceeds of any Casualty Event by any non-wholly owned Subsidiary (calculated without regard to this clause (D)) attributable to minority interests and not available for distribution to or for the account of the Borrower or a wholly owned Subsidiary as a result thereof.

For the avoidance of doubt, Net Cash Proceeds shall not include cash receipts from proceeds of insurance or indemnity payments to the extent that such proceeds, awards or payments are received by the Borrower or any Subsidiary (i) in respect of any third party claim against the Borrower or such Subsidiary, as applicable, and applied to pay (or to reimburse the Borrower or such Subsidiary, as applicable, for its prior payment of) such claim and the costs and expenses of the Borrower or such Subsidiary, as applicable, with respect thereto, or (ii) with respect to Wintrust Priority Collateral.

“NPL” means the National Priorities List under CERCLA.

“Obligation Currency” has the meaning specified in Section 10.20(a).

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Term Loan (including the Applicable Premium Amount), in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents include (a) the obligation to pay principal, interest, premiums (including the Applicable Premium Amount), if any, charges, expenses, fees, indemnities and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing that the Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

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

“Organization Documents” means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction) and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture, trust or other applicable agreement of formation or organization and, if applicable, any agreement or instrument 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.

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“Other Connection Taxes” means Taxes imposed on Lender as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than connections arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Term Loan or Loan Document).

“Other Taxes” has the meaning specified in Section 3.01(b).

“Outstanding Amount” means with respect to the Term Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Term Loans occurring on such date.

“PATRIOT Act” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56. (signed into law October 26, 2001)), as amended or modified from time to time.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Plans and set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Perfection Exceptions” has the meaning specified in the Security Agreement.

“Permitted Holders” mean Alpha and its Affiliates.

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal, replacement, redemption, repurchase, defeasance, exchange and/or extension (collectively to “Refinance” or a “Refinancing” or “Refinanced”) of any Indebtedness (any such Indebtedness as so modified, refinanced, refunded, renewed, replaced, redeemed, repurchased, defeased, exchanged and/or extended, “Refinancing Indebtedness”) of such Person; *provided* that (a) the principal amount (or, if issued with original issue discount, the aggregate issue price) of such Refinancing Indebtedness does not exceed the principal amount of the Indebtedness so Refinanced except by an amount equal to unpaid accrued interest, fees and premium (including tender premium) and penalties (if any) thereon, *plus* upfront fees and OID thereon, *plus* other reasonable and customary fees and expenses incurred or paid in connection with such Refinancing, *plus* an amount equal to any existing commitment unutilized and letters of credit undrawn thereunder; (b) such Refinancing Indebtedness has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being Refinanced; (c) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations arising under the Loan Documents and was required to be subordinated when initially incurred, such Refinancing Indebtedness is subordinated in right of payment to the Obligations arising under the Loan Documents on terms, taken as a whole, not materially less favorable to the Lender as those contained in the documentation governing the Indebtedness being Refinanced; (d)(1) if the

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Indebtedness being Refinanced is secured by a security interest in the Collateral that is junior in priority to the security interest in the Collateral securing the Obligations and/or subject to any intercreditor arrangements for the benefit of the Lender and was required to be subject to such intercreditor arrangements when initially incurred, such Refinancing Indebtedness is secured and subject to intercreditor arrangements on terms, taken as a whole, not materially less favorable to the Lender as those contained in the documentation governing the Indebtedness being Refinanced and (2) if the Indebtedness being Refinanced is unsecured, such Refinancing Indebtedness is unsecured (unless the Liens securing such Refinancing Indebtedness are otherwise permitted hereunder); (e) to the extent the Indebtedness being Refinanced constitutes Permitted Junior Refinancing Debt, the terms and conditions of the Refinancing Indebtedness (excluding, for the avoidance of doubt, interest rates (including through fixed interest rates), interest margins, rate floors, fees, funding discounts, original issue discounts and prepayment or redemption premiums) are, when taken as a whole, (x) substantially identical to or (y) not materially more favorable to the Lender or holders providing such Refinancing Indebtedness than those applicable to the Indebtedness being Refinanced, when taken as a whole, (other than covenants (including financial maintenance covenants) or other provisions applicable only to periods after the maturity date of the Indebtedness being Refinanced at the time of such Refinancing) (*provided* that a certificate of a Responsible Officer of the Borrower delivered to the Lender at least five (5) Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement of this clause (e)(y) shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Lender notifies the Borrower within such five (5) Business Day period that it disagrees with such determination (including a reasonable description of the basis for such disagreement)) or are otherwise reasonably acceptable to the Lender and (f) such Refinancing Indebtedness is incurred by the Person who is or would have been permitted to be the obligor or guarantor (or any successor thereto) on the Indebtedness being Refinanced.

“PIK Interest” has the meaning specified in Section 2.08(a).

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

“Plan” means any “employee benefit plan” (other than a Multiemployer Plan) within the meaning of Section 3(3) of ERISA that is or within the last six years has been maintained, contributed to or required to be contributed to by a Loan Party, Subsidiary or any ERISA Affiliate and is subject to Title IV of ERISA or the minimum funding standards under Section 412 of the Code or Section 302 of ERISA.

“Plan EBITDA” means, for any period, the expected Consolidated EBITDA for such period, as presented in reasonable detail in an Updated Budget, with such changes as may be approved by Lender, in its sole discretion.

“Prepayment Amount” has the meaning specified in Section 2.03(c).

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“Prepayment Date” has the meaning specified in Section 2.03(c).

“Pro Forma Basis,” “Pro Forma Compliance” and “Pro Forma Effect” means, in respect of a Specified Transaction, that such Specified Transaction and the following transactions in connection therewith (to the extent applicable) shall be deemed to have occurred as of the first day of the applicable period of measurement for the applicable covenant or requirement: (a) historical income statement items (whether positive or negative) attributable to the property or Person, if any, subject to such Specified Transaction, (i) in the case of a Disposition or other disposition of all or substantially all Equity Interests in any Subsidiary of the Borrower or any division, product line, or facility used for operations of the Borrower or any of its Subsidiaries shall be excluded, and (ii) in the case of any purchase or other acquisition of all or substantially all of the property and assets or business of any Person, or of assets constituting a business unit, a line of business or division of such Person, or of all or substantially all of the Equity Interests in a Person or a designation of a Subsidiary as a Subsidiary, shall be included, (b) any repayment, retirement, redemption, satisfaction, and discharge or defeasance of Indebtedness or Disqualified Equity Interests, and (c) any Indebtedness incurred or assumed by the Borrower or any of its Subsidiaries in connection therewith, and if such Indebtedness has a floating or formula rate, such Indebtedness shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as at the relevant date of determination (taking into account any hedging obligations applicable to such Indebtedness if such hedging obligation has a remaining term in excess of twelve (12) months); *provided* that “Pro Forma Basis,” “Pro Forma Compliance” and “Pro Forma Effect” in respect of any Specified Transaction shall be calculated in a reasonable and factually supportable manner and certified by a Responsible Officer of the Borrower.

“Refinance,” “Refinancing” and “Refinanced” has the meaning given to such terms in the definition of “Permitted Refinancing”.

“Regulation T” means Regulation T of the FRB as in effect from time to time.

“Regulation U” means Regulation U of the FRB as in effect from time to time.

“Regulation X” means Regulation X of the FRB as in effect from time to time.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, members, directors, officers, employees, agents, attorneys-in-fact, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Relevant Governmental Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

“Relevant Transaction” has the meaning specified in Section 2.03(b)(i)(A).

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

“Responsible Officer” means the chief executive officer, director, president, vice president, executive vice president, chief financial officer, treasurer or assistant treasurer or other similar officer of a Loan Party and, as to any document delivered on the Closing Date (except as otherwise expressly set forth in Section 4.01), any secretary or assistant secretary. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of any Person, 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 Equity Interest, or on account of any return of capital to such Person’s stockholders, partners or members (or the equivalent Persons thereof).

“S&P” means Standard & Poor’s Financial Services LLC, a wholly owned subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

“Sanctioned Country” means a country or territory that is the subject of country-wide or territory-wide Sanctions broadly restricting or prohibiting dealings with such country or territory.

“Sanctioned Person” means any Person: (a) identified on a Sanctions List; (b) domiciled, organized or resident in, or the government or any agency or instrumentality of the government of, any Sanctioned Country; (c) that is, in the aggregate, 50% or more owned or controlled by one or more Persons described in the foregoing clauses (a) or (b); or (d) otherwise the subject or target of Sanctions.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered, or enforced from time to time by any Sanctions Authority.

“Sanctions Authority” means: (a) the U.S. government, including OFAC and the U.S. Department of State; (b) the United Nations Security Council; (c) the European Union and each of its member states; and (d) the United Kingdom, including His Majesty’s Treasury.

“Sanctions List” means any Sanctions-related list of designated Persons maintained by any Sanctions Authority, including, without limitation, the Specially Designated Nationals and Blocked Persons List maintained by OFAC.

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

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“Second Tranche Warrant” means that certain Warrant, dated as of the date hereof, by and between the Borrower and the Lender, providing for, among other things, Lender’s right to purchase 8,222,787 shares of common stock, par value \$0.001 per share, of the Borrower.

“Section 6.01 Financials” means the financial statements delivered, or required to be delivered, pursuant to Section 6.01(a) or 6.01(b) together with the accompanying officer’s certificate delivered, or required to be delivered, pursuant to Section 6.02(a).

“Secured Parties” means, collectively, the Lender and the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document.

“Security Agreement” means, collectively, the Security Agreement dated as of the date hereof, executed by the Loan Parties, substantially in the form of Exhibit E, together with each other security agreement and security agreement supplement executed and delivered pursuant to Section 6.12.

“Security Agreement Supplement” has the meaning specified in the Security Agreement.

“Semi-Annual Period” means, as of the date of any determination under this Agreement, the two (2) consecutive fiscal quarters of the Borrower then last ended.

“Senior Representative” means, with respect to any series of Indebtedness, the trustee, Lender, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“Solvent” means, with respect to the Borrower and its Subsidiaries on a consolidated basis on any date of determination, that on such date (it being agreed that any such determination on the Closing Date shall be after giving effect to the Transactions) (a) the fair value of the assets of the Borrower and its Subsidiaries on a consolidated basis, exceeds the debts and liabilities, direct, subordinated, contingent or otherwise, of the Borrower and its Subsidiaries on a consolidated basis; (b) the present fair saleable value of the property of the Borrower and its Subsidiaries on a consolidated basis will be greater than the amount that will be required to pay the probable liability of the Borrower and its Subsidiaries on a consolidated basis on their debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) the Borrower and its Subsidiaries on a consolidated basis will be able to pay their debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) the Borrower and its Subsidiaries on a consolidated basis will not have unreasonably small capital with which to conduct the businesses in which they are engaged as such businesses are now conducted and are proposed to be conducted following the Closing Date.

“Specified Transaction” means any incurrence or repayment, retirement, redemption, satisfaction and discharge or defeasance of Indebtedness (excluding Indebtedness incurred for working capital purposes other than pursuant to this Agreement) or Disqualified

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Equity Interests, any acquisition or Investment that results in a Person becoming a Subsidiary, or any Disposition or other disposition that results in a Subsidiary ceasing to be a Subsidiary of the Borrower, any investment constituting an acquisition of assets constituting a business unit, line of business or division of another Person, any Disposition or other disposition of a business unit, line of business or division of the Borrower or a Subsidiary, the cessation of the operations of a business unit, line of business or division of the Borrower or a Subsidiary or any operational change not in the ordinary course of business, in each case (other than in connection with any operating change) whether by merger, consolidation, amalgamation or otherwise or any material restructuring of the Borrower or implementation of any initiative not in the ordinary course of business.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (a) of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned or (b) the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person and, in the case of this clause (b), which is treated as a consolidated subsidiary for accounting purposes. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Subsidiary Guarantor” means, collectively, the Subsidiaries of the Borrower that are Guarantors.

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

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

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b)

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for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer (other than a counterparty to any such Swap Contracts) in such Swap Contracts (which may include the Lender or any Affiliate of the Lender).

“Synthetic Lease Obligation” means the monetary obligation of a Person under a so- called synthetic, off-balance sheet or tax retention lease.

“Taxes” means all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges imposed by any Governmental Authority, including any additions to tax, penalties and interest with respect thereto.

“Term Borrowing” means a borrowing consisting of Term Loans made the Lender pursuant to Section 2.01.

“Term Commitment” means \$5,000,000.

“Term Facility” means the aggregate Term Commitments at such time.

“Term Loan” means an extension of credit by the Lender to the Borrower under Article II.

“Term Note” means a promissory note of the Borrower payable to the Lender, in substantially the form of Exhibit C hereto, evidencing the indebtedness of the Borrower to the Lender resulting from the Term Loans made or held by the Lender.

“Test Period” means, as of the date of any determination under this Agreement, the four (4) consecutive fiscal quarters of the Borrower then last ended and for which Section 6.01 Financials have been, or were required to have been, delivered to the Lender.

“Threshold Amount” means \$200,000.

“Total Outstandings” means the aggregate Outstanding Amount of all Term Loans.

“Transaction Costs” has the meaning given to such term in the definition of the “Transactions”.

“Transactions” means, collectively, the following:

(a) the entry into this Agreement by the parties hereto and the borrowing of the Term Loans on the Closing Date;

(b) the entry into of the ABL Credit Agreement by the parties thereto on the Closing Date;

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(c) the repayment and discharge in full of all existing Indebtedness for borrowed money of the Borrower and its Subsidiaries and the release of all Liens related thereto under the Existing Credit Agreement; and

(d) the entry into of the Manufacturing Agreement on or prior to the Closing Date; and

(e) the payment of all fees, costs and expenses incurred in connection with the transactions described in the foregoing provisions of this definition (the “Transaction Costs”).

“Uniform Commercial Code” or “UCC” means 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 jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“United States” and “U.S.” mean the United States of America.

“Unrestricted Cash and Cash Equivalents” means cash and Cash Equivalents of the Borrower and its Subsidiaries, other than cash or Cash Equivalents which are or should be listed as “restricted” on the consolidated balance sheet of the Borrower and the Subsidiaries as of such date; *provided* that cash and Cash Equivalents of the Borrower and its Subsidiaries that are subject to a Lien securing the Obligations or the ABL Obligations shall be deemed Unrestricted Cash and Cash Equivalents.

“Updated Budget” has the meaning specified in Section 6.01(c).

“Voting Stock” means, with respect to any Person, the capital stock of any class or classes or other equity interests (however designated) having ordinary voting power for the election of directors or similar governing body of such Person, other than stock or other equity interests having such power only by reason of the happening of a contingency.

“Warrant Failure Event” means, at any time, the Borrower has not obtained the Stockholder Approval (as defined in the Second Tranche Warrant) as of such time; *provided*, however, that a Warrant Failure Event shall be deemed to have been cured upon the Borrower’s receipt of the Stockholder Approval.

“Warrants” means the First Tranche Warrants and the Second Tranche Warrants.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years (and/or portion thereof) obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

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“Wintrust Priority Collateral” has the meaning specified in the ABL Intercreditor Agreement.

“wholly owned” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (x) director’s qualifying shares and (y) shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

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

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words “herein,” “hereto,” “hereof” 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 thereof.

(i) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(ii) The term “including” is by way of example and not limitation and is deemed to mean “including, without limitation,”.

(iii) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(iv) Any reference herein to any Person shall be construed to include such Person’s successors and assigns.

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

(e) Unless the context requires otherwise, any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or therein) and shall include any appendices, schedules, exhibits, clarification letters, side letters and disclosure letters executed in connection therewith.

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Section 1.03 Accounting Terms.

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, as in effect from time to time, applied in a manner consistent with that used in preparing the audited Section 6.01 Financials, except as otherwise specifically prescribed herein.

(b) If at any time any change in GAAP or the application thereof would affect the computation or interpretation of any financial ratio, basket, requirement or other provision set forth in any Loan Document, and either the Borrower or the Lender shall so request, the Lender and the Borrower shall negotiate in good faith to amend such ratio, basket, requirement or other provision to preserve the original intent thereof in light of such change in GAAP or the application thereof (subject to the approval of the Lender not to be unreasonably withheld, conditioned or delayed); *provided* that, until so amended, (A) such ratio, basket, requirement or other provision shall continue to be computed or interpreted in accordance with GAAP or the application thereof prior to such change therein and (B) in the case of any relevant calculation, the Borrower shall provide to the Lender a written reconciliation in form and substance reasonably satisfactory to the Lender, between calculations of such ratio, basket, requirement or other provision made before and after giving effect to such change in GAAP or the application thereof.

(c) Notwithstanding anything to the contrary contained herein, all financial covenants, basket amounts and ratios contained herein or in any other Loan Document shall be calculated (i) without giving effect to any election under FASB ASC 825 (or any similar accounting principle) permitting a Person to value its financial liabilities at the fair value thereof and (ii) without giving effect to any changes in GAAP after the Closing Date that would require lease obligations that were treated as operating leases under GAAP as in effect on the Closing Date to be classified and accounted for as capital leases or otherwise reflected as Indebtedness on the Borrower's consolidated balance sheet.

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

Section 1.05 References to Agreements and Laws. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by any Loan Document and (b) references to any Law shall include all statutory and

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regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

Section 1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight savings or standard, as applicable).

Section 1.07 Timing of Payment or Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as specifically provided in Section 2.10) or performance shall extend to the immediately succeeding Business Day.

Section 1.08 Divisions. Any reference herein to a merger, consolidation, amalgamation, liquidation, winding up, dissolution, assignment, sale, investment, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, limited partnership or trust, or an allocation of assets to a series of limited liability companies, limited partnerships or trusts (or the unwinding of such a division or allocation), as if it were a merger, consolidation, amalgamation, assignment, sale, investment, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company, limited partnership or trust shall constitute a separate Person hereunder (and each division of any limited liability company, limited partnership or trust that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

Section 1.09 Pro Forma Calculations. Notwithstanding anything to the contrary herein, for purposes of determining compliance with any test or covenant contained in this Agreement, the Consolidated EBITDA shall be calculated on a Pro Forma Basis with respect to each Specified Transaction occurring during the applicable four (4) quarter period to which such calculation relates, and subsequent to the end of such four-quarter period but not later than the date of such calculation (notwithstanding that such measure or ratio may be said to be determined as of the end of a Test Period); provided that, notwithstanding the foregoing, when calculating the Consolidated EBITDA for purposes of determining actual compliance (and not Pro Forma Compliance or compliance on a Pro Forma Basis) with the financial covenant set forth in Section 7.10, any Specified Transaction and any related adjustment contemplated in the definition of "Consolidated EBITDA" that occurred subsequent to the end of the applicable four (4) quarter period shall not be given Pro Forma Effect.

ARTICLE II The Term Commitments and Term Borrowings

Section 2.01 The Term Loans. Subject to the terms and conditions set forth herein, the Lender agrees to make a single loan denominated in Dollars to the Borrower on the Closing Date in an aggregate amount not to exceed the Term Commitment (the "Term Loan"). Amounts borrowed under this Section 2.01 and subsequently repaid or prepaid may not be reborrowed.

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Section 2.02 Term Borrowings. (a) Each Term Borrowing shall be made upon the Borrower's irrevocable written notice to the Lender. Each such notice must be received by the Lender not later than (i) 1:00 p.m. (New York City time) three (3) Business Days prior to the requested date of any Term Borrowing. Each written notice by the Borrower pursuant to this Section 2.02(a) shall be delivered by the Borrower to the Lender in the form of a Committed Term Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Committed Term Loan Notice shall specify the requested date of the Term Borrowing (which shall be a Business Day), (iii) the principal amount of Term Loans to be borrowed and (iv) if applicable, the wire instructions for where the funds should be sent.

(b) Following receipt of a Committed Term Loan Notice, the Lender shall make the amount of its Term Loan available in immediately available funds at the Lender's Office not later than 1:00 p.m. (New York City time) on the Business Day specified in the applicable Committed Term Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.01, the Lender shall make all funds available to the Borrower by wire transfer, in each case in accordance with instructions provided to (and reasonably acceptable to) the Lender by the Borrower in the Committed Term Loan Notice.

Section 2.03 Prepayments. (a) Optional. (i) The Borrower may, upon written notice to the Lender in substantially the form of Exhibit B, at any time or from time to time voluntarily prepay Term Loans in whole or in part without premium or penalty; *provided* that (1) such notice must be received by the Lender not later than 11:00 a.m. (New York City time) thirty (30) calendar days prior to any date of prepayment (2) any prepayment shall be in a principal amount of \$1,000,000 or a whole multiple of \$250,000 in excess thereof, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Term Loan shall be accompanied by all accrued interest thereon. Each prepayment of outstanding Term Loans pursuant to this Section 2.03(a) shall be applied to the outstanding principal amount of the Term Loans and accrued interest thereon.

(ii) If the Borrower makes a voluntary prepayment of any Term Loans pursuant to this Section 2.03(a), the Borrower shall pay to the Lender a prepayment premium in an amount equal to the Applicable Premium Amount.

(b) Mandatory.

(i) (A) Upon the occurrence of any Casualty Events (each such Casualty Event, a "Relevant Transaction"), the Borrower shall (1) give written notice to the Lender thereof promptly after the date of receipt of any Net Cash Proceeds resulting from such Relevant Transaction and (2) except to the extent the Borrower elects in such notice (as determined by the Borrower in its sole discretion) to reinvest all or a portion of such Net Cash Proceeds in accordance with Section 2.03(b)(i)(B), the Borrower shall, prepay an aggregate principal amount of Term

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Loans in an amount equal to the Net Cash Proceeds received from such Relevant Transaction within ten (10) Business Days of receipt thereof by the Borrower or such Subsidiary.

(B) With respect to any Net Cash Proceeds realized or received with respect to any Relevant Transaction, at the option of the Borrower, the Borrower may reinvest all or any portion of such Net Cash Proceeds (i) in assets that replace the assets subject to the Relevant Transaction, or (ii) in long-term assets that are not classified as current assets under GAAP and that are used or useful in the business of the Borrower and its Subsidiaries within one hundred thirty-five (135) days following receipt of such Net Cash Proceeds; *provided, however*, that if any of such Net Cash Proceeds are no longer intended to be so reinvested at any time after the occurrence of the Relevant Transaction, then an amount equal to any such Net Cash Proceeds shall be promptly applied to the prepayment of the Term Loans as set forth in Section 2.03(b)(i)(A); *provided, further*, that, to the extent the assets subject to the Relevant Transaction were Alpha Priority Collateral, the Net Cash Proceeds thereof reinvested pursuant to this clause (B) shall be invested in assets constituting Collateral that is Alpha Priority Collateral.

(ii) Upon the incurrence or issuance by the Borrower or any Subsidiary of any Indebtedness not expressly permitted to be incurred or issued pursuant to Section 7.03, the Borrower shall prepay the Term Loans, in each case in an amount equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by the Borrower or such Subsidiary.

(c) All prepayments under this Section 2.03 shall be made together with accrued interest thereon and, solely in the case of a prepayment under Section 2.03(a) or Section 2.03(b)(i) or (ii), shall be made together with the Applicable Premium Amount. Upon the occurrence and during the continuance of any Event of Default, the Lender shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Term Loans in accordance with the relevant provisions of this Section 2.03.

(d) All payments or repayments of Term Loans made pursuant to this Section 2.03 shall be made in Dollars.

Section 2.04 Termination or Reduction of Term Commitments. The Aggregate Term Commitments in respect of the Term Loans shall be automatically and permanently reduced to zero (0) on the date of the Term Borrowing of the Term Loans.

Section 2.05 Repayment of Term Loans. All Term Loans outstanding shall be due and payable on the Maturity Date together with accrued and unpaid interest on the principal amount to be paid to but excluding the date of payment.

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Section 2.06 Interest. (a) Subject to the provisions of Section 2.06(b), (i) the Term Loans shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days at all times and calculated from and including the Closing Date to but excluding the date of repayment thereof) on the outstanding principal amount at a rate per annum equal to the Applicable Rate, compounded quarterly. Interest on the Term Loans shall be payable in cash on the last Business Day of each Interest Payment Date. Notwithstanding the forgoing, so long as no Event of Default has occurred and is continuing, the Borrower shall have the option to either (x) pay up to all of the accrued interest due on the Term Loans on an Interest Payment Date in cash at the Applicable Rate per annum or (y) pay all of the accrued interest due on the Term Loans on such Interest Payment Date in-kind by capitalizing such interest and adding it to the then-outstanding principal amount of the Term Loans, with such amount of capitalized interest to be deemed added to the outstanding principal amount of the Term Loans for all purposes of the Loan Documents (any such amount so paid-in-kind and added as principal to the Term Loans, "PIK Interest"). Unless Borrower shall pay such interest in cash on an Interest Payment Date, it shall be deemed to be PIK Interest.

(b) The Borrower shall pay interest on all overdue Obligations hereunder, which shall include all Obligations following an acceleration pursuant to Section 8.02 (including an automatic acceleration) at an interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) In the event of any repayment or prepayment of any Term Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(d) All interest paid or payable pursuant to this Section 2.06 shall be paid in Dollars.

Section 2.07 Payments. Notwithstanding anything to the contrary contained herein (and without affecting any other provision hereof), the Term Loans to be funded in cash on the Closing Date shall be in an amount equal to the aggregate principal amount of Term Loan on the Closing Date.

Section 2.08 Computation of Interest and Fees. All computations of interest and other fees for the Term Loans shall be made on the basis of a year of three hundred sixty (360) and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a three hundred sixty-five (365)-day year). Interest shall accrue on each Term Loan for the day on which the Term Loan is made, and shall not accrue on a Term Loan, or any portion thereof, for the day on which the Term Loan or such portion is paid; *provided* that any Term Loan that is repaid on the same day on which it is made shall bear interest for one day. Each determination by the Lender of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

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Section 2.09 Evidence of Indebtedness. (a) The Term Loans made by the Lender shall be evidenced by one or more accounts or records maintained by the Lender and evidenced by one or more entries in the Register maintained by the Lender, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as a non-fiduciary agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Lender shall be prima facie evidence absent manifest error of the amount of the Term Loans made by the Lender to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by the Lender and the accounts and records of the Lender in respect of such matters, the accounts and records of the Lender shall control in the absence of manifest error. Upon the request of the Lender, the Borrower shall execute and deliver to the Lender a Term Note payable to the Lender, which shall evidence the Lender's Term Loans in addition to such accounts or records. The Lender may attach schedules to its Term Note and endorse thereon the date, amount and maturity of its Term Loans and payments with respect thereto.

(b) Entries made in good faith by the Lender in the Register pursuant to Section 2.09(a) shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, the Lender under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Lender to make an entry, or any finding that an entry is incorrect, in the Register or such accounts or records shall not limit the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.10 Payments Generally. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Lender, at the Lender's Office in Dollars and in immediately available funds not later than 2:00 p.m. (New York City time) on the date specified herein. All payments received by the Lender after 2:00 p.m. (New York City time) may be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. Except as otherwise expressly provided herein, if any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

ARTICLE III

Taxes, Increased Costs Protection and Illegality

Section 3.01 Taxes. (a) Any and all payments by the Borrower and any other Loan Party to or for the account of the Lender under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, unless otherwise required by applicable Laws. If any Loan Party shall be required by any Laws (as determined in the good faith discretion of an applicable Loan Party) to deduct any Taxes from or in respect of any sum payable under any Loan Document to the Lender, (i) if such Tax is an Indemnified Tax, the sum payable

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shall be increased as necessary so that after making all required deductions for Indemnified Taxes (including deductions for Indemnified Taxes applicable to additional sums payable under this Section 3.01), the Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Loan Party shall make such deductions and (iii) the Loan Party shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Laws. As soon as practicable after any payment of Taxes to a Governmental Authority, the Loan Party shall furnish to such the Lender the original or a certified copy of a receipt evidencing payment thereof to the extent such a receipt is issued therefor, a copy of the return reporting such payment or other written proof of payment thereof that is reasonably satisfactory to the Lender.

(b) In addition but without duplication, the Borrower shall pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Lender timely reimburse it for the payment of, any and all present or future stamp, court, documentary, intangible, excise, recording, filing or similar Taxes which arise 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, any Loan Document except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (hereinafter referred to as “Other Taxes”).

(c) The Borrower agrees to indemnify the Lender for (i) the full amount of Indemnified Taxes and Other Taxes (including any Indemnified Taxes or Other Taxes imposed or asserted by any Governmental Authority on amounts payable under this Section 3.01) paid by the Lender and (ii) any reasonable expenses arising therefrom or with respect thereto, in each case whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The Lender agrees to provide the Borrower with a certificate or other evidence reasonably acceptable to the Borrower setting forth in reasonable detail the basis and calculation of such amounts, which shall be conclusive absent manifest error. Payment under this Section 3.01(c) shall be made within thirty (30) days after the date the Lender makes a written demand therefor.

(d) If the Lender determines in its sole discretion exercised in good faith that it has received a refund in respect of any Indemnified Taxes or Other Taxes as to which indemnification or additional amounts have been paid to it by the Borrower pursuant to this Section 3.01, it shall promptly remit such refund (including any interest included in such refund paid by the relevant Governmental Authority) to the Borrower, net of all reasonable out-of-pocket expenses of the Lender; *provided, however*, that the Borrower, upon the request of the Lender, agrees promptly to return such refund (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such party in the event such party is required to repay such refund to the relevant Governmental Authority. Nothing contained in this Section 3.01(d) shall interfere with the right of the Lender to arrange its tax affairs in whatever manner it thinks fit nor oblige the Lender to claim any Tax refund or to disclose any information relating to its tax affairs or any computations in respect thereof or require the Lender to do anything that would prejudice

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its ability to benefit from any other refunds, credits, reliefs, remissions or repayments to which it may be entitled. Notwithstanding anything to the contrary in this clause (d), in no event will the Lender be required to pay any amount to the Borrower pursuant to this clause (d) the payment of which would place the Lender in a less favorable net after-Tax position than the 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 paragraph shall not be construed to require the 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.

(e) If a payment made to the Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if the 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), the Lender shall deliver to the Borrower and the Lender at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower or the Lender such documentation and information prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation and information reasonably requested by the Borrower or the Lender as may be necessary for the Borrower and the Lender to comply with their obligations under FATCA and to determine that the Lender has complied with the Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 3.01(e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Lender will deliver to Borrower on the date of this Agreement (and from time to time thereafter upon the reasonable request of Borrower), an executed copy of IRS Form W-9 certifying that the Lender is exempt from U.S. federal backup withholding tax.

(g) Each party's obligations under this Section shall survive the assignment of rights by the Lender and repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 3.02 Intentionally Omitted

Section 3.03 Matters Applicable to All Requests for Compensation. If the Lender claims compensation under this Article III it shall deliver a certificate to the Borrower contemporaneously with the demand for payment, setting forth in reasonable detail a calculation of the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, the Lender may use any reasonable averaging and attribution methods.

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Section 3.04 Survival. All of the Borrower's obligations under this Article III and the Lender's obligations under Section 3.01 shall survive termination of the Aggregate Term Commitments and repayment of all other Obligations hereunder.

ARTICLE IV Conditions Precedent to Term Borrowings

Section 4.01 Conditions to Closing Date. The Lender's Term Commitments hereunder shall become effective, on the terms and subject to the other conditions set forth herein, upon the satisfaction or waiver (in accordance with Section 10.01) of the following conditions precedent:

(a) The Lender shall have received all of the following, each dated as of the Closing Date (or, in the case of certificates of governmental officials, as of a recent date before the Closing Date), each in form and substance reasonably satisfactory to the Lender, and each accompanied by their respective required schedules and other attachments:

(i) executed counterparts from each party thereto of this Agreement;

(ii) the Security Agreement, together with (subject to the last paragraph of this Section 4.01):

(A) certificates, if any, representing the Equity Interests in all Designated Pledged Interests referenced in the Security Agreement accompanied by undated stock powers executed in blank,

(B) copies of proper financing statements, filed or duly prepared for filing under the Uniform Commercial Code in all jurisdictions that the Lender may deem reasonably necessary in order to perfect the Liens on assets of each of the Loan Parties created under the Security Agreement, covering the Collateral described in the Security Agreement, and

(C) evidence that all other actions, recordings and filings of or with respect to the Security Agreement that the Lender may deem reasonably necessary in order to perfect the Liens created thereby shall have been taken, completed or otherwise provided for in a manner reasonably satisfactory to the Lender (including receipt of duly executed payoff letters, customary UCC, tax and judgment searches and copies of UCC-3 termination statements duly prepared for filing);

(iii) an Intellectual Property Security Agreement (in the form of Exhibit B to the Security Agreement), duly executed by each Loan Party that owns Registered Intellectual Property Collateral (as defined in the Security Agreement) that is required to be pledged in accordance with the Security Agreement;

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(iv) such customary certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Lender may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(v) such documents and certifications (including Organization Documents and, if applicable, good standing certificates in the jurisdiction of organization of the applicable Loan Party) as the Lender may reasonably require to evidence that each Loan Party is duly organized or formed, and that each of them is validly existing and in good standing; and

(vi) an opinion of Meister Seelig & Fein PLLC, counsel to the Loan Parties, addressed to the Lender on the Closing Date, in form reasonably satisfactory to the Lender.

(b) There shall not have occurred any change, event, circumstance or development that, individually or in the aggregate, has had, or is reasonably expected to have, a Material Adverse Effect.

(c) Each Loan Party shall have provided the documentation and other information reasonably requested in writing at least three (3) Business Days prior to the Closing Date by the Lender in connection with satisfactory compliance clearing, including, without limitation, in respect of applicable “know your customer” and anti-money-laundering rules and regulations and the PATRIOT Act, in each case at least three (3) Business Days prior to the Closing Date.

(d) All actions necessary to establish that the Lender will have a perfected first-priority security interest (subject to no Liens other than the Liens permitted under Section 7.01) in the Collateral shall have been taken, in each case, to the extent such Collateral (including the creation or perfection of any security interest) has been mutually agreed.

(e) The Lender shall have received a Term Note executed by the Borrower, if so requested, reasonably in advance of the Closing Date.

(f) The Lender shall have received a Committed Term Loan Notice relating to the Term Borrowing.

(g) The Lender shall have received a solvency certificate from the chief financial officer or other officer with equivalent duties of the Borrower (after giving effect to the consummation of the Transactions) substantially in the form attached hereto as Exhibit G.

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(h) The Lender shall have received a copy of the ABL Credit Agreement and the other ABL Loan Documents, which shall be in form and substance acceptable to the Lender.

(i) The Lender shall have received a copy of the ABL Intercreditor Agreement, each of which shall be in form and substance acceptable to the Lender.

(j) The Lender shall have received (i) at least 15 Business Days prior to the Closing Date, audited financial statements of the Borrower and its Subsidiaries for each of the two fiscal years ended December 31, 2021 and December 31, 2022; and (ii) unaudited financial statements for any interim quarterly period or periods of the Borrower and its Subsidiaries ended after the date of the most recent audited financial statements and more than 45 days prior to the Closing Date.

(k) The Lender shall have received evidence reasonably satisfactory to it that (i) all loans and other obligations under, and the agreements in respect of, the Existing Credit Agreement, in each case, are being repaid or otherwise satisfied in full and terminated and (ii) the Liens securing the Existing Credit Agreement have been released, in each case, substantially contemporaneously with the Closing Date.

(l) All costs, fees, expenses (including, without limitation, legal fees and expenses) and other compensation contemplated by this Agreement payable to the Lender shall have been paid to the extent due, including, without limitation, the reasonable and documented out-of-pocket fees and expenses of Gibson, Dunn & Crutcher LLP, as counsel to the Lender, reimbursement of such legal expense not to exceed \$100,000 (and, in the case of expenses, to the extent invoiced in reasonable detail at least one (1) Business Day prior to the Closing Date).

(m) The Lender shall have received the Initial Budget, which shall be in form and substance acceptable to the Lender.

(n) The Lender shall have received a funds flow memorandum executed by the Borrower dated as of the Closing Date.

ARTICLE V

Representations and Warranties

The Borrower represents and warrants to the Lender that, as of the Closing Date:

Section 5.01 Existence, Qualification and Power; Compliance with Laws. The Borrower and each Subsidiary (a) is a Person duly organized or formed, validly existing and in good standing (to the extent such concept is applicable in the relevant jurisdiction) under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and in good standing (to the extent such concept is applicable in the relevant jurisdiction) under the Laws of

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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 applicable Laws in all material respects and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted.

Section 5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party, and the consummation of the Transactions, are within such Loan Party's corporate or other organizational powers, have been duly authorized by all necessary corporate or other organizational action and do not (a) contravene the terms of any of such Person's Organization Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.01), or require any payment (other than for Indebtedness to be repaid on the Closing Date in connection with the Transactions) to be made under (i) any Contractual Obligation to which such Person is a party or the properties of such Person or any of its Subsidiaries or (ii) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject or (c) violate any Law.

Section 5.03 Governmental Authorization. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for (i) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties, filings in the United States Patent and Trademark Office and the United States Copyright Office, and (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.

Section 5.04 Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party thereto. This Agreement and each other Loan Document constitutes, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other Laws affecting creditors' rights generally of the United States or other applicable jurisdictions from time to time in effect and by general principles of equity.

Section 5.05 Financial Statements; No Material Adverse Effect. (a) The financial statements delivered pursuant to Section 4.01(j) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The consolidated forecasted balance sheets, statements of income and statements of cash flows of the Borrower and its Subsidiaries delivered pursuant to Section 4.01(j) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed by the management of the Borrower to be reasonable as of the date of delivery thereof; it being recognized by the Lender that such projections are

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as to future events and are not to be viewed as facts, the projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower and the Subsidiaries, that no assurance can be given that any particular projections will be realized and that actual results during the period or periods covered by any such projections may differ from the projected results and such differences may be material.

(c) There has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have, since the dates of the financial statements delivered pursuant to Section 4.01(f), a Material Adverse Effect.

Section 5.06 Litigation. Except as specified in Schedule 5.06, 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 any Subsidiary, that either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.07 No Event of Default. No Event of Default has occurred and is continuing under this Agreement.

Section 5.08 Ownership of Property; Intellectual Property.

(a) Each of the Borrower and its Subsidiaries has good and valid title to, or valid leasehold interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Liens permitted by Section 7.01.

(b) The Borrower and each Subsidiary owns, licenses or possesses the right to use, all of the trademarks, service marks, trade names, copyrights, patents, franchises, licenses and other intellectual property rights (collectively, "IP Rights") that are reasonably necessary for the operation of its respective business, as currently conducted, and to the knowledge of the Borrower the use of such IP Rights in the conduct of its respective business as currently conducted does not infringe upon any IP Rights of any other Person. Set forth on Schedule 5.08 is a complete and accurate list of all registered or applications to register IP Rights owned or exclusively licensed by the Borrower and the Subsidiaries as of the Closing Date, after giving effect to the Transactions. The conduct of the business of the Borrower or any Subsidiary as currently conducted or as contemplated to be conducted to the knowledge of the Borrower, does not infringe upon or violate any rights held by any other Person. No claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened in writing.

Section 5.09 Environmental Compliance. Except as disclosed in Schedule 5.09 hereto:

(a) None of the Borrower or any of its Subsidiaries is subject to any material Environmental Liability.

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(b) As of the Closing Date, (i) none of the properties currently, or to the knowledge of the Borrower, formerly owned or operated by the Borrower or any of its Subsidiaries is listed on the NPL or on the CERCLIS or, to the knowledge of the Borrower, is proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list, (ii) to the knowledge of the Borrower, there are no underground storage or aboveground tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by the Borrower or, to the knowledge of the Borrower, on any property formerly owned or operated by the Borrower or any of its Subsidiaries, in each case which are required to be, upgraded, replaced, closed, or removed and for which the Borrower or any of its Subsidiaries would be responsible for the associated costs of investigation, abatement, or remediation, (iii) there is no asbestos or asbestos-containing material on any property currently owned or operated by the Borrower requiring investigation, remediation, mitigation, removal, assessment, remedial or corrective action, or other response by the Borrower, pursuant to any Environmental Law and (iv) to the knowledge of the Borrower, Hazardous Materials have not been released, discharged or disposed of by the Borrower on any property currently or, to the knowledge of the Borrower, formerly owned or operated by the Borrower or any of its Subsidiaries, except for such releases, discharges and disposals that were in compliance in all material respects with Environmental Laws.

(c) None of the real properties contain any Hazardous Materials in amounts or in concentrations which constitute a violation of, or require remedial action under, Environmental Laws and could reasonably be expected to give rise to a material Environmental Liability.

(d) None of the Borrower or any of its Subsidiaries is undertaking, and none has completed, either individually or together with other potentially responsible parties, any investigation, assessment, remediation, mitigation, removal, remedial response or corrective action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law.

Section 5.10 Taxes. Each of the Borrower and its Subsidiaries have filed all federal, state, local, foreign and other Tax returns and reports required to be filed, and have paid all federal, state, local, foreign and other Taxes, levied or imposed upon them or their properties, income or assets that have become due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP.

Section 5.11 Employee Benefits Plans; Labor Matters. (a) As of the Closing Date, (i) each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other applicable federal and state laws and (ii) each Plan that is intended to be a qualified plan under Section 401(a) of the Code may rely upon an opinion letter for a prototype plan or has received a favorable determination letter from the IRS to the effect that the form of

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such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS, and to the knowledge of any Loan Party, nothing has occurred that would prevent, or cause the loss of, such tax-qualified status.

(b) There are no pending or, to the knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan. There has been no “prohibited transaction” within the meaning of Section 4975 of the Code or Section 406 or 407 of ERISA (and not otherwise exempt under Section 408 of ERISA) with respect to any Plan.

(c) (i) No ERISA Event has occurred and neither any Loan Party nor, to the knowledge of any Loan Party, any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Plan, (ii) each Loan Party and each ERISA Affiliate has met all applicable material requirements under the Pension Funding Rules in respect of each Plan, and no waiver of the minimum funding standards under such Pension Funding Rules has been applied for or obtained, (iii) neither any Loan Party nor, to the knowledge of any Loan Party, any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) for any Plan, if applicable, to drop below 80% as of the most recent valuation date, (iv) neither any Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid, (v) neither any Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212I of ERISA and (vi) no Plan has been terminated by the plan administrator thereof or by the PBGC and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Plan or Multiemployer Plan.

(d) With respect to each Foreign Plan, none of the following events or conditions exists and is continuing: (i) substantial non-compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders; (ii) failure to be maintained, where required, in good standing with applicable regulatory authorities; (iii) any obligation of a Loan Party or its Subsidiaries in connection with the termination or partial termination of, or withdrawal from, any Foreign Plan; (iv) any Lien on the property of a Loan Party or its Subsidiaries in favor of a Governmental Authority as a result of any action or inaction regarding a Foreign Plan; (v) for each Foreign Plan that is a funded or insured plan, failure to be funded or insured on an ongoing basis to the extent required by applicable non-U.S. law (using actuarial methods and assumptions which are consistent with the valuations last filed with the applicable Governmental Authorities); (vi) any facts that, to the best knowledge of the Loan Party or any of its Subsidiaries, exist that would reasonably be expected to give rise to a dispute and any pending or threatened disputes that, to the best knowledge of the Loan Party or any of its Subsidiaries, would

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reasonably be expected to result in a material liability to the Loan Party or any of its Subsidiaries concerning the assets of any Foreign Plan (other than individual claims for the payment of benefits); and (vii) failure to make all contributions in a timely manner to the extent required by applicable non-U.S. law (each of the events described in clauses (i) through (vii) hereof are hereinafter referred to as a “Foreign Plan Event”).

(e) As of the Closing Date: (a) there are no strikes or other labor disputes against the Borrower or any of its Subsidiaries pending or, to the knowledge of the Borrower, threatened; (b) to Borrower’s knowledge, hours worked by, and payments made based on hours worked by, employees of the Borrower and its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Laws dealing with wage and hour matters; and (c) to Borrower’s knowledge, all payments due from Borrower or any of its Subsidiaries on account of employee health and welfare insurance have been paid or accrued as a liability on the books of the relevant party.

Section 5.12 Subsidiaries; Equity Interests. As of the Closing Date, after giving effect to the Transactions, the Borrower has no Subsidiaries other than those specifically disclosed in Schedule 5.12, and all of the outstanding Equity Interests in such Subsidiaries that are owned by a Loan Party are owned free and clear of all Liens except (i) those created under the Collateral Documents, (ii) those created under the ABL Loan Documents and (ii) any Lien that is permitted under Section 7.01.

Section 5.13 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 (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock and no proceeds of any Term Borrowings will be used for any purpose that violates Regulation T, Regulation U or Regulation X of the FRB.

(b) None of the Loan Parties is required to be registered as an “investment company” under the Investment Company Act of 1940.

Section 5.14 Disclosure. As of the Closing Date, no report, financial statement, certificate or other written information furnished by or on behalf of any Loan Party (other than projected financial information, pro forma financial information and information of a general economic or industry nature) to the Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished), when taken as a whole, contains, when furnished, any material misstatement of fact or omits to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not materially misleading; *provided* that, with respect to projected and pro forma financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time made; it being understood (A) that such projections and forecasts are as to future events and are not to be viewed as facts, that such projections are subject to significant

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uncertainties and contingencies, many of which are beyond the control of the Borrower and its Subsidiaries, that no assurance can be given that any particular projection or forecast will be realized and that actual results during the period or periods covered by any such projections or forecasts may differ significantly from the projected results and such differences may be material and that such projections and forecast are not a guarantee of future financial performance and (B) that no representation is made with respect to information of a general economic or general industry nature.

Section 5.15 Compliance with Laws. Each of the Borrower and its Subsidiary is in material compliance with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties.

Section 5.16 Brokerage Fees. None of the Borrower or any of its Subsidiary has utilized the service of any broker or finder in connection with obtaining financing from the Lender under this Agreement and no brokerage commission or finder's fee is payable by the Borrower or its Subsidiaries in connection herewith.

Section 5.17 Solvency. As of the Closing Date after giving effect to the consummation of the Transactions, including the making of the Term Loans under this Agreement and the incurrence by the Borrower of the other Indebtedness incurred by them on the Closing Date, and after giving effect to the application of the proceeds of such Term Loans and such other Indebtedness, the Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

Section 5.18 Status of the Term Facilities as Senior Indebtedness. the obligations under the Term Facilities constitute "senior debt," "senior indebtedness," "guarantor senior debt," "senior secured financing" and "designated senior indebtedness" (or any comparable term) under the documentation for all Indebtedness that is subordinated in right of payment to the Obligations (if applicable).

Section 5.19 Perfection, Etc. Each Collateral Document delivered pursuant to this Agreement will, upon execution and delivery thereof, be effective to create (to the extent described therein) in favor of the Lender for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, the Collateral described therein to the extent intended to be created thereby and required to be perfected therein (after giving effect to any Perfection Exceptions contained therein), except as to enforcement, as may be limited by applicable domestic or foreign bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and (a) when financing statements and other filings in appropriate form are filed in the offices of the Secretary of State (or other appropriate filing office) of each Loan Party's jurisdiction of organization or formation and applicable documents are filed and recorded in the United States Copyright Office or the United States Patent and Trademark Office and (b) upon the taking of possession or control by the Lender of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Lender to the extent possession or control by the Lender is required by the Security Agreement, subject to the ABL

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Intercreditor Agreement), the Liens created by the Collateral Documents shall constitute fully perfected Liens so far as possible under relevant Law on, and security interests in (to the extent intended to be created thereby and required to be perfected under the Loan Documents), all right, title and interest of the grantors in such Collateral in each case free and clear of any Liens other than Liens permitted hereunder.

Section 5.20 Anti-Money Laundering Laws.

(a) To the extent applicable, each of the Loan Parties and their respective Subsidiaries are in compliance, in all material respects, with applicable Anti-Money Laundering Laws.

(b) The Borrower has implemented and maintains in effect policies and procedures designed to promote and achieve compliance by the Borrower and its Subsidiaries with applicable Anti-Money Laundering Laws.

Section 5.21 Anti-Corruption Laws.

(a) None of the Loan Parties or any Subsidiary of the Loan Parties, or any of their respective directors or officers or, to the knowledge of the Borrower, agents, employees or (to the extent such Person is Controlled by the Loan Parties or their Subsidiaries) Affiliates has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any “government official” (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage in any manner that would constitute or give rise to a violation of applicable Anti-Corruption Laws.

(b) The Borrower will not use any part of the proceeds of the Term Loans in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any “government official” (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage in any manner that would constitute or give rise to a violation of applicable Anti-Corruption Laws.

(c) The Borrower has implemented and maintains in effect policies and procedures designed to promote and achieve compliance by the Borrower and its Subsidiaries with applicable Anti-Corruption Laws.

Section 5.22 Sanctioned Persons.

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(a) None of the Loan Parties or any Subsidiary of the Loan Parties, or any of their respective directors or officers or, to the knowledge of the Borrower, agents, employees or (to the extent such Person is Controlled by the Loan Parties or their Subsidiaries) Affiliates is a Sanctioned Person.

(b) The Borrower will not use any part of the proceeds of the Term Loans or lend, contribute or otherwise make available such proceeds: (i) to fund or facilitate any activities or business of, with or materially involving any Sanctioned Person; or (ii) in any other manner that would constitute or give rise to a violation of Sanctions by any Person, including the Lender.

(c) The Borrower has implemented and maintains in effect policies and procedures designed to promote and achieve compliance by the Borrower and its Subsidiaries with applicable Sanctions.

Section 5.23 Budgets. Each Budget is based upon good faith estimates and assumptions believed by management of the Borrower to be reasonable at the time made, in light of the circumstances under which they were made, it being recognized by the Lender 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.

Section 5.24 Use of Proceeds. All proceeds of the Term Loans will be used by the Borrower on the Closing Date to finance the Transactions and pay the Transaction Costs.

ARTICLE VI

Affirmative Covenants

So long as the Lender shall have any Term Commitment hereunder, any Term Loan or other Obligation (other than contingent indemnification or other contingent obligations as to which no claim has been asserted) hereunder shall remain unpaid or unsatisfied, the Borrower shall, and (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03, 6.06, 6.07, 6.13 and 6.15) shall cause each of its Subsidiaries to:

Section 6.01 Financial Statements. Deliver to the Lender:

(a) as soon as available, but in any event within one hundred twenty (120) days after the end of each fiscal year of the Borrower ending after the date hereof, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of BDO USA, 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" or like qualification, exception or explanatory

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paragraph or any qualification, exception or explanatory paragraph as to the scope of such audit (other than any such exception or explanatory paragraph, but not a qualification, that is expressly solely with respect to, or expressly resulting solely from, an upcoming maturity date under the Term Facility, Indebtedness under the ABL Loan Documents (or any Permitted Refinancing in respect thereof (or successive Permitted Refinancings thereof)), as applicable, that is scheduled to occur within one year from the time such report and opinion are delivered), together with customary “management discussion and analysis” with respect to the financial information delivered pursuant to this Section 6.01(a);

(b) as soon as available, but in any event forty-five (45) days after the end of each of the fiscal quarters of each fiscal year of the Borrower commencing with the fiscal quarter ended on or around June 30, 2023, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations and cash flows for such fiscal quarter and for the portion of the fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year and the figures for the corresponding fiscal quarter in the budget most recently delivered pursuant to Section 6.01(c), all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes, together with customary “management discussion and analysis” with respect to the financial information delivered pursuant to this Section 6.01(b);

(c) as soon as available for each year, but in any event by November 15 of the preceding year, a customary budget (each, an “Updated Budget”) for such year (commencing with a budget for the year 2024, to be delivered by November 15, 2023), which (i) has been approved by the board of directors of the Borrower, (ii) includes financial information presented on a quarterly basis, and (iii) includes Plan EBITDA for each Test Period ending during the applicable year;

(d) as soon as available, but in any event 30 days after the end of each month of each fiscal quarter of the Borrower, commencing with June 30, 2023, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such month, and the related consolidated statements of income or operations and cash flows for such month, all in reasonable detail and certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries;

(e) monthly, for the first twelve months following the Closing Date (and then quarterly thereafter), at a time mutually agreed with the Lender that is promptly after the delivery of the information required pursuant to Section 6.01(d) above, participate in a conference call for the Lender (which shall include senior management of the Borrower, including one of the chief executive officer or the chief financial officer), in each case upon

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reasonable prior notice, during normal business hours, to discuss the financial condition and results of operations of the Borrower and its Subsidiaries for the most recently ended month or quarter, as applicable, the Borrower's current and projected operational performance, and any related financial matters. The Borrower shall provide notice to the Lender no later than five (5) Business Days prior to the date of each such teleconference call, which notice shall include instructions for accessing such teleconference call;

(f) concurrently with the delivery of the quarterly and monthly financials required pursuant to Sections 6.01(b) and (d) (each such delivery date, an "Interim Financial Delivery Date"), a rolling thirteen (13) week consolidated cash flow forecast (substantially in the form attached hereto as Annex A) for the period beginning with the last week to end at least three (3) Business Days prior to the applicable Interim Financial Delivery Date (which shall be the first of the thirteen weeks in such period); and

(g) as soon as available, but in any event within five (5) Business Days after the end of each fiscal quarter, a certificate of a Responsible Officer of the Borrower providing the calculation, in reasonable detail, of the Liquidity Amount as of the last day of such fiscal quarter and certifying compliance with Section 7.10(d) for such fiscal quarter.

Section 6.02 Certificates; Other Information. Deliver to the Lender:

(a) No later than five (5) days after delivery of the financial statements referred to in Section 6.01(a) and (b), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower (which delivery may be by electronic communication including fax or e-mail and shall be deemed to be an original authentic counterpart thereof for all purposes);

(b) promptly after the same are publicly available, copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any Governmental Authority that may be substituted therefor, or with any national securities exchange, and in any case not otherwise required to be delivered to the Lender pursuant hereto;

(c) Other than as set forth in Section 6.03(e), promptly after the furnishing thereof, copies of any requests or notices received by any Loan Party (other than in the ordinary course of business) and copies of any statement or report furnished to any holder of debt of any Loan Party or of any of its Subsidiaries, in each case pursuant to the terms of the ABL Credit Agreement (including, without limitation, the statements and reports required under Section 4.03 of, and Annex B to, the ABL Credit Agreement) or any Junior Financing Documentation in a principal amount greater than the Threshold Amount and not otherwise required to be furnished to the Lender pursuant to any other clause of this Section 6.02;

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(d) promptly after the assertion or occurrence thereof, notice of any action arising under any Environmental Law against, or of any noncompliance by, any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could reasonably be expected to have a Material Adverse Effect;

(e) promptly after a Loan Party obtaining knowledge of the assertion or occurrence thereof, notice of any material action, proceeding, litigation, claim or investigation with regard to any actual or alleged material violation of Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws against any Loan Party or any of its Subsidiaries;

(f) together with the delivery of each Compliance Certificate pursuant to Section 6.02(a), a report supplementing Schedule 5.12 hereto to the extent there are any changes that have occurred with respect to the information contained therein so that the related representation and warranty would be true and correct in all material respects if made as of the date of such Compliance Certificate; and

(g) promptly, such additional information regarding the business, legal, financial or corporate affairs of the Borrower or any of its Subsidiaries thereof, or compliance with the terms of the Loan Documents, as the Lender may from time to time reasonably request.

Section 6.03 Notices. Notify the Lender:

(a) promptly, but in any event within five (5) Business Days after a Responsible Officer of the Borrower or any Guarantor has obtained knowledge thereof, of the occurrence of any Default;

(b) promptly after a Responsible Officer of the Borrower or any Guarantor has obtained knowledge of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) other than as set forth in Section 6.02(e), promptly after a Responsible Officer of the Borrower or any Guarantor has obtained knowledge of the institution of any material, non-frivolous, litigation not previously disclosed by the Borrower to the Lender, or any material development in any material litigation in each case that is reasonably likely to be adversely determined and could, if adversely determined be reasonably expected to have a Material Adverse Effect, or that seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated herein;

(d) promptly after a Responsible Officer of the Borrower or any Guarantor has obtained knowledge of the occurrence of any ERISA Event or Foreign Plan Event, where there is any potential material liability to any Loan Party as a result thereof; and

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(e) promptly, but in any event within five (5) Business Days after a Responsible Officer of the Borrower or any Guarantor has obtained knowledge thereof, any default or event of default under the ABL Credit Agreement or any delivery to the Borrower by the ABL Administrative Agent, or the receipt by the ABL Administrative Agent from the Borrower, of any notice of a default or event of default thereunder.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

Section 6.04 Payment of Taxes. Pay, discharge or otherwise satisfy as the same shall become due and payable, all of its Tax liabilities and assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary.

Section 6.05 Preservation of Existence. (a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05 and (b) take all reasonable action to maintain all rights, privileges (including its good standing, if such concept is applicable in its jurisdiction of organization), permits, licenses and franchises necessary or desirable in the normal conduct of its business, except as otherwise permitted hereunder.

Section 6.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its properties and equipment necessary in the operation of its business in good working order, repair and condition (ordinary wear and tear excepted and casualty or condemnation excepted) and preserve or renew all of its preservable or renewable, as applicable, United States registered patents, trademarks, trade names and service marks to the extent permitted by applicable Laws of the United States.

Section 6.07 Maintenance of Insurance. (a) Maintain, with financially sound and reputable insurance companies, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and its Subsidiaries) as are customarily carried under similar circumstances by such other Persons, and will furnish to the Lender, upon reasonable written request from the Lender, information presented in reasonable detail as to the insurance so carried. Each such policy of insurance (excluding business interruption insurance) maintained in the United States shall, as appropriate, (i) name the Lender, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear and/or (ii) in the case of each casualty insurance policy, contain a loss payable clause or endorsement that names the Lender, on behalf of the Secured Parties, as the loss payee thereunder.

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(b) If at any time the area in which the Premises (as defined in the Mortgages, if any) are located is designated (i) a “flood hazard area” in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance in such total amount as the Lender may from time to time reasonably require in respect of compliance with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as it may be amended from time to time, or (ii) a “Zone 1” area, obtain earthquake insurance in such total amount as customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Subsidiaries.

Section 6.08 Compliance with Law; Sanctions, Anti-Corruption Laws, Anti-Money Laundering Laws.

(a) Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions, decrees and judgments applicable to it or to its business or property.

(b) Continue to maintain in effect policies and procedures designed to promote and achieve compliance by it and its Subsidiaries with applicable Anti-Corruption Laws, applicable Anti-Money Laundering Laws and applicable Sanctions.

(c) Use only funds or properties of the Borrower or any of its Subsidiaries to repay the Term Loans that do not, directly or indirectly, to the knowledge of the Borrower, involve proceeds derived from any activity or business of, with or involving any Sanctioned Person, in each case that would result in any party hereto being in violation of applicable Sanctions.

Section 6.09 Books and Records. Maintain proper books of record and account, in a manner to allow financial statements to be prepared in conformity with GAAP consistently applied in respect of all material financial transactions and matters involving the assets and business of the Borrower or such Subsidiary, as the case may be (it being understood and agreed that Foreign Subsidiaries may maintain individual books and records in a manner to allow financial statements to be prepared in conformity with generally accepted accounting principles that are applicable in their respective jurisdiction of organization).

Section 6.10 Inspection Rights. Permit representatives of the Lender and, during the continuance of any Event of Default, to visit and inspect any of its properties (to the extent it is within such Person’s control to permit such inspection), 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 and officers, 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 written notice to the Borrower.

Section 6.11 Use of Proceeds. Use the proceeds of the Term Borrowings made on the Closing Date, to finance the Transactions and pay the Transactions Costs.

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Section 6.12 Covenant to Guarantee Obligations and Give Security. (a) Upon the formation or acquisition of any new Subsidiaries by any Loan Party (*provided* that any Excluded Subsidiary ceasing to be an Excluded Subsidiary but remaining a Subsidiary shall be deemed to constitute the acquisition of a Subsidiary for all purposes of this Section 6.12), and upon the acquisition of any property (other than Excluded Assets (as defined in the Security Agreement)) by any Loan Party, which property, in the reasonable judgment of the Lender, is not already subject to a perfected Lien in favor of the Lender for the benefit of the Secured Parties (and where such a perfected Lien would be required in accordance with the terms of the Collateral Documents), the Borrower shall, in each case at the Borrower's expense:

(i) in connection with the formation or acquisition of a Subsidiary, within fifteen (15) days after such formation or acquisition (or such longer period as the Lender may agree in its sole discretion), (A) cause each such Subsidiary that is not an Excluded Subsidiary to duly execute and deliver to the Lender a supplement to the Guaranty, substantially in the form of Annex B thereto or a guaranty or a guaranty supplement in such other form reasonably satisfactory to the Lender, guaranteeing the Borrower's obligations under the Loan Documents and (B) (if not already so delivered) deliver certificates representing the Designated Pledged Interests of each such Subsidiary (if any) accompanied by undated stock powers or other appropriate instruments of transfer executed in blank and instruments evidencing the Designated Pledged Debt (if any) of such Subsidiary indorsed in blank to the Lender, together with, if requested by the Lender, supplements to the Security Agreement substantially in the form of Annex A thereto or pledge or security agreement in such other form reasonably satisfactory to the Lender,

(ii) in connection with the formation or acquisition of a Subsidiary, within fifteen (15) days after such formation or acquisition (or such longer period as the Lender may agree in its sole discretion), furnish to the Lender a description of the owned real and personal properties of each such Subsidiary and their respective Subsidiaries (other than Excluded Subsidiaries) in detail reasonably satisfactory to the Lender,

(iii) within fifteen (15) days after such formation or acquisition or any request therefor by the Lender (or such longer period as the Lender may agree in its sole discretion) duly execute and deliver, and cause each such Subsidiary that is not an Excluded Subsidiary to duly execute and deliver, to the Lender one or more Mortgages, supplements to the Security Agreement (in the form of Annex A thereto or such other form reasonably satisfactory to the Lender), IP Security Agreement Supplements and other security agreements, as specified by and in form and substance reasonably satisfactory to the Lender (consistent with the Security Agreement, IP Security Agreement and Mortgages), securing payment of all the Obligations of the applicable Loan Party or such Subsidiary, as the case may be, under the Loan Documents and establishing Liens on all such properties,

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(iv) within fifteen (15) days after such request, formation or acquisition, (or such longer period as the Lender may agree in its sole discretion), take, and cause such Subsidiary that is not an Excluded Subsidiary to take, whatever action (including the recording of Mortgages, the filing of Uniform Commercial Code financing statements, the giving of notices and delivery of stock and membership interest certificates) as specified by the Lender as may be necessary or advisable in the reasonable opinion of the Lender to vest in the Lender (or in any representative of the Lender designated by it) valid and subsisting Liens on the properties purported to be subject to the Mortgages, supplements to the Security Agreement, IP Security Agreement Supplements and security agreements delivered pursuant to this Section 6.12, in each case to the extent required under the Loan Documents and subject to the Perfection Exceptions, enforceable against all third parties in accordance with their terms,

(v) in connection with the formation or acquisition of a Subsidiary which will be a Subsidiary Guarantor, within fifteen (15) days after the request of the Lender, (or such longer period as the Lender may agree in its sole discretion), deliver to the Lender, a signed copy of one or more opinions, addressed to the Lender and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Lender as to such matters as the Lender may reasonably request,

(vi) in connection with the formation or acquisition of a Subsidiary (other than an Excluded Subsidiary), as promptly as practicable after the request of the Lender, deliver to the Lender with respect to any real property owned in fee by a Subsidiary that is the subject of such request, (1) title reports, (2) fully paid American Land Title Association Lender's Extended Coverage title insurance policies or the equivalent or other form available in the applicable jurisdiction in form and substance, with endorsements and in an amount reasonably acceptable to the Lender, and (3) if required by the title company based upon local practice, a survey in conformity with the American Land Title Association/American Congress on Surveying and Mapping minimum standard detail requirements, and

(vii) at any time and from time to time, promptly execute and deliver any and all further instruments and documents and take all such other action as the Lender in its reasonable judgment may deem necessary or desirable in obtaining the full benefits of, or in perfecting and preserving the Liens of, such guaranties, Mortgages, supplements to the Security Agreement, IP Security Agreement Supplements and security agreements.

(b) The foregoing shall, in each case, be subject to the Perfection Exceptions.

(c) Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document and without limiting Article VII, no Subsidiary

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shall be excluded as a “Guarantor” if such Subsidiary enters into, or is required to enter into, a guarantee of (or becomes, or is required to become, a borrower or other obligor under) any obligations of the Borrower or any Subsidiary of the Borrower under the ABL Facility, or any Permitted Refinancing of any of the foregoing (or successive Permitted Refinancings thereof), in each case, with an aggregate outstanding amount in excess of \$50,000.

(d) Notwithstanding any provision of this Section 6.12 or Section 6.14 to the contrary, delivery of possessory Collateral to the ABL Administrative Agent in accordance with the ABL Intercreditor Agreement shall satisfy any requirement hereunder to deliver such possessory Collateral to the Lender.

Section 6.13 Compliance with Environmental Laws. (i) Comply, and make all reasonable efforts to cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits and obtain and renew all Environmental Permits necessary for its operations and properties and (ii) to the extent required under Environmental Laws, conduct any investigation, mitigation, study, sampling and testing, and undertake any cleanup or removal, remedial, corrective or other action necessary to respond to and remove all Hazardous Materials from any of its properties, if required by and in accordance with the requirements of applicable Environmental Laws, unless liability for such actions is being contested in good faith.

Section 6.14 Further Assurances. Promptly upon reasonable request by the Lender, and subject to the limitations described in Section 6.12, (i) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Loan 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 Lender may reasonably require from time to time in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the Collateral Documents.

Section 6.15 Certain Post-Closing Obligations. The Borrower shall, and shall cause each of the Subsidiaries to (as applicable), take the actions set forth on Schedule 6.15 within the time periods set forth therein or such longer period as the Lender may reasonably agree in its sole discretion.

ARTICLE VII Negative Covenants

So long as the Lender shall have any Term Commitment hereunder, any Term Loan or other Obligation (other than contingent indemnification or other contingent obligations as to which no claim has been asserted) hereunder shall remain unpaid or unsatisfied, the Borrower shall not, and shall cause each of its Subsidiaries not to:

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Section 7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens pursuant to any Loan Document;
- (b) Liens existing on the Closing Date and listed on Schedule 7.01 hereto;
- (c) Liens for Taxes, assessments or governmental charges which are not overdue for a period of more than thirty (30) days or are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP (or, for Foreign Subsidiaries, in conformity with generally accepted accounting principles that are applicable in their respective jurisdiction of organization);
- (d) Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other customary Liens (so long as such Liens do not secure Indebtedness) arising in the ordinary course of business and consistent with past practice, which secure amounts not overdue for a period of more than thirty (30) days and if overdue, are unfiled and no other action has been taken to enforce such Lien;
- (e) Liens, pledges or deposits in the ordinary course of business and consistent with past practice (i) in connection with workers' compensation, unemployment insurance and other social security legislation, (ii) securing liability for reimbursement or indemnification obligations of (including bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Subsidiary or (iii) securing obligations in respect of letters of credit that have been posted by the Borrower or any of its Subsidiaries to support the payment of items set forth in clauses (i) and (ii);
- (f) Liens to secure the performance of tenders, statutory obligations, bids, trade contracts, governmental contracts, leases and other contracts (other than Indebtedness for borrowed money), statutory obligations, licenses, surety, stay, customs and appeal bonds, performance and return-of-money bonds, performance and completion guarantees and other obligations of a like nature (including (i) those to secure health, safety and environmental obligations, (ii) those required or requested by any Governmental Authority and (iii) letters of credit issued in lieu of any such bonds or to support issuance thereof) and other Liens in favor of providers of performance or surety bonds pursuant to customary indemnity and other similar arrangements entered into in connection therewith incurred in the ordinary course of business and consistent with past practice;
- (g) (i) easements (including reciprocal easement arrangements), reservations, rights-of-way, restrictions (including building, zoning and similar restrictions), utility agreements, covenants, reservations, encroachments, protrusions,

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changes and other similar encumbrances and title defects affecting real property which, in the aggregate, do not in any case adversely interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries on the properties subject thereto, (ii) mortgages, liens, security interests, restrictions, encumbrances or any other matter of record that have been placed by any developer, landlord or other third party on property over which the Borrower or any of its Subsidiaries has easement rights or a leasehold, and subordination or similar agreements relating thereto, (iii) ground leases (including with respect to the Mortgaged Properties if there is an applicable leasehold Mortgage on the ground lessee's interest) in the ordinary course in respect of real property on which facilities owned or leased by the Loan Parties or any of their Subsidiaries are located and (iv) Liens arising on any real property as a result of any eminent domain, condemnation or similar proceeding being commenced with respect to such real property;

(h) Liens securing Indebtedness permitted under Section 7.03(f) (including Liens securing Permitted Refinancing of the Indebtedness secured by such Lien); *provided* that (i) such Liens attach prior to, concurrently with or within one hundred twenty (120) days after the acquisition, repair, replacement, construction or improvement (as applicable) of the property subject to such Liens, (ii) such Liens do not at any time encumber any property (except for replacements, additions and accessions to such property) other than the property financed by such Indebtedness and the proceeds and the products thereof and accessories thereto and (iii) with respect to leases evidencing Capitalized Lease Obligations, such Liens do not at any time extend to or cover any assets other than the assets subject to such leases and the proceeds and products thereof, additions and accessions thereto, and customary security deposits;

(i) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business and consistent with past practice and not interfering in any material respect with the business of the Borrower or any Subsidiary; provided, that all leases, licenses, subleases or sublicenses shall be non-exclusive;

(j) Liens (i) in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods or (ii) on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person, or supporting trade payables, warehouse receipts or similar facilities entered into, to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business and consistent with past practice;

(k) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and consistent with past practice; and (iii) in favor of a banking or other financial institution arising as a matter of Law or under customary general terms and

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conditions encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(l) Liens (i) on cash or Cash Equivalents advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to Section 7.02 to be applied against the purchase price for such Investment, (ii) arising out of conditional sale, title retention, consignment or similar arrangements for the purchase or sale of goods entered into by the Borrower or any Subsidiary in the ordinary course of business and consistent with past practice, (iii) solely on any cash earnest money deposits made by the Borrower or any Subsidiary in connection with any letter of intent or purchase agreement permitted hereunder or (iv) consisting of an agreement to Dispose of any property in a Disposition permitted under Section 7.05 (or, to dispose of any property in a transaction not constituting a Disposition hereunder);

(m) Liens in favor of the Borrower or any Subsidiary (other than Liens granted by the Borrower or a Guarantor in favor of a Subsidiary that is not the Borrower or a Guarantor);

(n) any interest or title of a lessor, sublessor, licensee, sublicensee, licensor or sublicensor under any lease, sublease, license (or other grants of rights to use or exploit) or sublicense agreement or secured by a lessor's, sublessor's, licensee's, sublicensee's, licensor's or sublicensor's interest under any lease, sublease, license or sublicense permitted by this Agreement (including software and other technology licenses), and any Lien deemed to exist in connection with software escrow arrangements entered into by the Borrower or any Subsidiary with third parties in the ordinary course of business and consistent with past practice;

(o) Liens that are customary contractual rights of setoff (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the incurrence of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Subsidiary and consistent with past practice or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any Subsidiary in the ordinary course of business and consistent with past practice;

(p) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business of the Borrower and the Subsidiaries complies in all material respects, and (ii) any zoning or similar Law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Borrower or any Subsidiary taken as a whole;

(q) (i) deposits made in the ordinary course of business and consistent with past practice to secure liability to insurance carriers and (ii) Liens on insurance

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policies and the proceeds thereof securing the financing of insurance premiums with respect thereto;

(r) receipt of progress payments and advances from customers in the ordinary course of business and consistent with past practice to the extent the same creates a Lien;

(s) Liens on property constituting Collateral securing obligations incurred under Section 7.03(a), or (to the extent not constituting Indebtedness) other ABL Obligations, and any Guarantees thereof permitted under Section 7.03(d), in each case, to the extent subject to the ABL Intercreditor Agreement;

(t) (i) customary rights of set-off, revocation, refund or chargeback under deposit agreements or under the Uniform Commercial Code or common law of banks or other financial institutions where the Borrower or any of its Subsidiaries maintains deposits (other than deposits intended as cash collateral) in the ordinary course of business and consistent with past practice and (ii) utility deposits in the ordinary course of business and consistent with past practice; and

(u) other Liens securing obligations (other than Indebtedness for borrowed money) outstanding in an aggregate principal amount not to exceed \$50,000.

Any Lien permitted under this Section 7.01 may extend to the proceeds and products of the collateral subject to such Lien.

Section 7.02 Investments. Make or hold any Investments, except:

(a) Investments held by the Borrower or any Subsidiary in the form of Cash Equivalents when such Investment was made;

(b) Investments (i) by the Borrower or any Subsidiary in any Loan Party, (ii) by any Subsidiary that is not a Loan Party in any other Subsidiary that is also not a Loan Party, (iii) by Loan Parties in any Subsidiary that is not a Loan Party so long as such Investment is part of a series of simultaneous Investments by Subsidiaries in other Subsidiaries that result in the proceeds of the initial Investment being invested in one or more Loan Parties, and (iv) constituting Guarantees of obligations of the Borrower and its Subsidiaries other than Indebtedness, incurred in the ordinary course of business and consistent with past practice;

(c) Investments (i) consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business and consistent with past practice (including advances made to distributors), Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors, Investments made in the ordinary course of business and consistent with past practice in connection with obtaining, maintaining or renewing client contacts, and Investments consisting of prepayments to suppliers, licensors and

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licensees in the ordinary course of business and consistent with past practice and (ii) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business and consistent with past practice and upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(d) to the extent constituting Investments, transactions expressly permitted under Sections 7.01, 7.03, 7.04, 7.05 (including the receipt of noncash consideration for the Dispositions of assets permitted thereunder), 7.06 and 7.12, in each case, other than any provision in any of the foregoing Sections generally permitting transactions permitted by this Section 7.02;

(e) Investments in existence on, or that are made pursuant to legally binding written commitments that are in existence on, the Closing Date and are, in each case, set forth on Schedule 7.02;

(f) Investments in Swap Contracts permitted under Section 7.03;

(g) the Transactions;

(h) Investments in the ordinary course of business and consistent with past practice, consisting of (i) endorsements for collection or deposit, (ii) customary trade arrangements with customers, (iii) loans or advances made to distributors, (iv) advances of payroll payments to employees or other advances of salaries or compensation (including advances against commissions) to employees and sales representatives and (v) Investments maintained in connection with any Loan Party's deferred compensation plan;

(i) other bona fide Investments not exceeding \$100,000, in the aggregate, at any time outstanding;

(j) to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials or equipment or purchases, acquisitions, licenses (or other grants or rights to use or exploit) or leases of other assets, intellectual property, or other rights, in each case in the ordinary course of business and consistent with past practice; and

(k) Investments consisting of operating deposit accounts maintained in the ordinary course of business and consistent with past practice.

Section 7.03 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) any (i) Indebtedness of the Loan Parties constituting ABL Obligations, *provided* that any ABL Revolving Loans shall be in an aggregate principal amount, when taken together with the aggregate principal amount of Permitted

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Refinancings of such ABL Revolving Loans outstanding pursuant to clause (ii) below, not to exceed the Maximum ABL Principal Amount and (ii) any Permitted Refinancing thereof (or successive Permitted Refinancings thereof); *provided* that the Loan Parties shall not incur any “second-out” or FILO Indebtedness under the ABL Facility (or any replacement or refinancing thereof) pursuant to this clause (a) and shall not directly or indirectly modify the borrowing base or effective advance rates under the ABL Credit Agreement, including without limitation by modifying reserves or eligibility criteria, to the extent that any such change results in more credit being made available to the debtor thereunder;

(b) Indebtedness of the Loan Parties under the Loan Documents;

(c) Indebtedness outstanding or committed to be incurred on the Closing Date and listed on Schedule 7.03;

(d) Guarantees incurred by the Borrower or any Subsidiary in respect of Indebtedness of the Borrower or any other Subsidiary that is permitted to be incurred under this Agreement; *provided* that (i) any such Guarantees by the Borrower or its Subsidiaries shall be subject to Section 7.02 and (ii) if the Indebtedness being guaranteed is subordinated to the Obligations, such Guarantee shall be subordinated to the Guarantee of the Obligations on terms at least as favorable to the Lender as those contained in the subordination of such Indebtedness;

(e) Indebtedness of (i) any Loan Party owing to any other Loan Party, (ii) any Subsidiary that is not a Loan Party owed to (x) any other Subsidiary that is not a Loan Party or (y) any Loan Party and (iii) any Loan Party owed to any Subsidiary which is not a Loan Party; *provided* that any Indebtedness incurred pursuant to this clause (e)(ii) shall constitute an Investment made by the obligee of such Indebtedness and shall be required to be in compliance with Section 7.02; *provided, further*, that all such Indebtedness of any Loan Party under this clause (e)(iii) must be expressly subordinated to the Obligations on the terms of the Intercompany Subordination Agreement or subject to subordination terms substantially identical to the subordination terms set forth in Exhibit H;

(f) (i) Capitalized Lease Obligations and purchase money obligations (including obligations in respect of mortgage, industrial revenue bond, industrial development bond and similar financings) to finance the purchase, construction, lease, repair or improvement of fixed or capital assets; *provided, however*, that the aggregate principal amount of all such Indebtedness at any one time outstanding, together with the aggregate principal amount of Permitted Refinancings outstanding pursuant to clause (ii) below and Indebtedness outstanding under Section 7.03(i) shall not exceed \$200,000 and (ii) any Permitted Refinancing thereof (or successive Permitted Refinancings thereof);

(g) Indebtedness in respect of Swap Contracts incurred in the ordinary course of business and consistent with past practice and not for speculative purposes;

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(h) Indebtedness in respect of cash management obligations and netting services, overdraft protections, employee credit card programs, automatic clearinghouse arrangements and similar arrangements in each case in connection with deposit accounts and Indebtedness arising from the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds, in each case incurred in the ordinary course of business and consistent with past practice;

(i) Indebtedness in an aggregate principal amount not to exceed \$250,000, at any time outstanding;

(j) Indebtedness incurred by the Borrower or any Subsidiary in respect of any banker's acceptances, bank guarantees, letters of credit, warehouse receipts or similar instruments entered into in the ordinary course of business and consistent with past practice, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, or other Indebtedness with respect to reimbursement type obligations regarding workers compensation claims;

(k) (i) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any Subsidiary and (ii) Indebtedness consisting of (x) the financing of insurance premiums or (y) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business and consistent with past practice;

(l) Indebtedness of the Borrower or any Subsidiary as an account party in respect of trade letters of credit issued in the ordinary course of business and consistent with past practice; and

(m) all premiums (if any), interest (including post-petition interest), fees, expenses, defeasance costs, charges and additional or contingent interest on obligations described in this Section 7.03.

The accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 7.03.

Notwithstanding anything else to the contrary contained herein, no Loan Party shall create, incur, assume or suffer to exist any Indebtedness that is subordinated in right of payment to the ABL Facility unless such Indebtedness shall be subordinated in right of payment to the Obligations on reasonably equivalent terms.

Section 7.04 Fundamental Changes. Merge, dissolve, liquidate, amalgamate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, without the written consent of the Lender (in its sole discretion), except that:

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(a) any Subsidiary (or any other Person) may merge, amalgamate or consolidate with (i) the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction in any State of the United States of America); *provided* that the Borrower shall be the continuing or surviving Person or (ii) any one or more other Subsidiaries; *provided, further*, that when any Guarantor is merging or amalgamating with another Subsidiary that is not a Loan Party the Guarantor shall be the continuing or surviving Person or the continuing or surviving Person shall assume such Guarantor's obligations under the Loan Documents;

(b) (i) any Subsidiary that is not a Loan Party may merge, amalgamate or consolidate with or into any other Subsidiary that is not a Loan Party and (ii) any Subsidiary may liquidate or dissolve, or any Subsidiary may (if the validity, perfection and priority of the Liens securing the Obligations is not adversely affected thereby) change its legal form if the Borrower determines in good faith that such action is in the best interest of the Borrower and its Subsidiaries taken as a whole and is not disadvantageous to the Lender in any material respect (it being understood that in the case of any liquidation or dissolution of a Subsidiary that is a Guarantor, such Subsidiary shall at or before the time of such liquidation or dissolution transfer its assets to another Subsidiary that is a Loan Party unless such Disposition of assets is permitted hereunder; and in the case of any change in legal form, a Subsidiary that is a Loan Party will remain a Loan Party unless such Loan Party is otherwise permitted to cease being a Loan Party hereunder and a Domestic Subsidiary shall remain a Domestic Subsidiary);

(c) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to any Subsidiary; *provided* that if the transferor in such transaction is a Guarantor, then (i) the transferee must be a Loan Party and (ii) to the extent constituting an Investment, such Investment must be permitted by Section 7.02 (other than Section 7.02(d));

(d) the Borrower and the other Subsidiaries may consummate the Transactions;

(e) so long as no Default or Event of Default exists or would result therefrom, any Subsidiary may merge, dissolve, liquidate, amalgamate, consolidate with or into another Person or Dispose of all or substantially all of its assets in order to effect a Disposition permitted pursuant to Section 7.05; and

(f) so long as no Default or Event of Default exists or would result therefrom, any Investment permitted by Section 7.02 (other than Section 7.02(d)) may be structured as a merger, consolidation or amalgamation.

Section 7.05 Dispositions. Make any Disposition, except:

(a) Dispositions of obsolete, uneconomic, surplus or worn out property, whether now owned or hereafter acquired, in the ordinary course of business and consistent

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with past practice and Dispositions of property no longer useful or economically practicable to maintain in the conduct of the business of the Borrower and its Subsidiaries (including allowing any registrations or any applications for registration of any intellectual property to lapse or go abandoned);

(b) Dispositions of (i) inventory, (ii) equipment and (iii) goods held for sale, in each case in the ordinary course of business and consistent with past practice;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) an amount equal to the net proceeds of such Disposition is promptly applied to the purchase price of such replacement property;

(d) to the extent constituting a Disposition, (i) Investments permitted by Section 7.02 and (ii) Restricted Payments permitted by Section 7.06, in each case excluding any provision of such applicable Section generally permitting transactions permitted by this Section 7.05;

(e) Dispositions of cash and Cash Equivalents;

(f) (i) Dispositions of accounts receivable in connection with the collection or compromise thereof, (ii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or other litigation claims, in each case in the ordinary course of business and consistent with past practice, (iii) sale of accounts receivable under, and pledge of all Wintrust Priority Collateral to the ABL Administrative Agent as security for, the ABL Facility, in each case in accordance with the terms thereof;

(g) licensing or sublicensing (or other grants of rights to use or exploit) of IP Rights in the ordinary course of business and consistent with past practice; provided, that all licenses or subleases shall be non-exclusive unless with Lender's consent (in its sole discretion);

(h) sales, Disposition or contributions of property (including IP Rights) (A) between Loan Parties, (B) between Subsidiaries (other than Loan Parties), (C) by Subsidiaries that are not Loan Parties to the Loan Parties or (D) by Loan Parties to any Subsidiary that is not a Loan Party; *provided* that such Dispositions made pursuant to this clause (D) shall be deemed Investments subject to Section 7.02;

(i) leases, subleases, licenses, sublicenses, occupancy agreements or assignment of property in the ordinary course of business and consistent with past practice; provided, that all leases, subleases, licenses, sublicenses, occupancy agreements and related agreements shall be non-exclusive unless with Lender's consent (in its sole discretion);

(j) transfers of (i) property subject to Casualty Events, (ii) condemned property as a result of the exercise of "eminent domain" or other similar powers to the

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respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise) and (iii) property arising from foreclosure or similar action or that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement;

(k) the unwinding or termination of Swap Contracts permitted hereunder pursuant to their terms;

(l) the Disposition of assets acquired pursuant to or in order to effectuate an Investment permitted pursuant to Section 7.02, which assets are not used or useful to the core or principal business of the Borrower and the Subsidiaries; *provided* that such Dispositions shall be made for Fair Market Value;

(m) Dispositions of (i) Cash Equivalents in the ordinary course of business and consistent with past practice and (ii) accounts receivable in the ordinary course of business and consistent with past practice in connection with the collection or compromise thereof; and

(n) Dispositions of property not otherwise provided for above, the aggregate Fair Market Value of which does not exceed \$250,000 at any time; provided, that at the time of any Disposition pursuant to this clause (s), no Default or Event of Default shall exist or shall result from such Disposition.

Notwithstanding anything else to the contrary contained in this Agreement or in any other Loan Document, in no event shall the Borrower or any Subsidiary Dispose of any intellectual property to any Person other than (i) to a Loan Party (or from a Subsidiary that is not a Loan Party to another Subsidiary that is not a Loan Party), and (ii) non-exclusive licenses of intellectual property made in the ordinary course of business and consistent with past practice to non-Affiliates (other than any Subsidiary of the Borrower).

Section 7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, except:

(a) each Subsidiary may make Restricted Payments to the Borrower and to other Subsidiaries that directly or indirectly own Equity Interests of such Subsidiary (and, in the case of a Restricted Payment by a non-wholly owned Subsidiary, to the Borrower and any such other Subsidiary and to each other owner of Equity Interests of such Subsidiary based on their relative ownership interests, it being understood, however, that any such Subsidiary may exclude one or more classes of equity holders from any such Restricted Payment so long as the class or classes of equity interests owned by any Loan Party or any Subsidiary are not excluded from any such Restricted Payment); and

(b) the Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the Equity Interests (other than Disqualified Equity Interests) of such Person.

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Section 7.07 Change in Nature of Business; Conduct of Business. Engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Subsidiaries on the date hereof or any business reasonably related or ancillary thereto.

Section 7.08 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than:

- (a) transactions among Loan Parties,
- (b) transactions between one or more Subsidiaries, so long as no such Subsidiary is a Loan Party,
- (c) on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate,
- (d) the Transactions and the payment of fees and expenses in connection with the consummation of the Transactions,
- (e) customary fees and indemnities may be paid to, and customary indemnification agreements (or similar arrangement) may be made with, any directors, officers, employees or members of management of the Borrower and its Subsidiaries and reasonable out-of-pocket costs of such Persons may be reimbursed,
- (f) employment, compensation, bonus, incentive, retention and severance arrangements and health, disability and similar insurance or benefit plans or other benefit arrangements between the Borrower or any Subsidiary thereof and their respective directors, officers, employees or managers (including management and employee benefit plans or agreements, retirement or savings plans, vacation plans, subscription agreements or similar agreements pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with current or former employees, officers, directors, managers, consultants or independent contractors and stock option or incentive plans and other compensation arrangements) in the ordinary course of business and consistent with past practice,
- (g) the issuance of Equity Interests (x) in connection with employment arrangements, stock options and stock ownership plans approved by the board of directors (or equivalent governing body) of the Borrower or any Subsidiary thereof or (y) to any other Person in connection with any Investment permitted hereunder,
- (h) transactions with wholly owned Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the ordinary course of business and consistent with past practice, and

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(i) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business and consistent with past practice.

Section 7.09 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that limits the ability (a) of any Subsidiary that is not a Loan Party to make Restricted Payments to Borrower or any Guarantor; or (b) of the Borrower or any Subsidiary Guarantor to create, incur, assume or suffer to exist Liens on property of such Person for the benefit of the Lender with respect to the Term Facilities and the Obligations or under the Loan Documents except for (i) customary restrictions that arise in connection with (x) any Lien permitted by Section 7.01 on any asset or property that is not, and is not required to be, Collateral that relates to the property subject to such Lien or (y) any Disposition permitted by Sections 7.04 or 7.05 and relate solely to the assets or Person subject to such Disposition, (ii) negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under Sections 7.03(g), but solely to the extent any negative pledge relates to the property financed by or the subject of such Indebtedness and proceeds and products thereof, (iii) customary restrictions in leases, subleases, licenses, sublicenses or asset sale agreements otherwise permitted hereby so long as such restrictions relate to the assets subject thereto, (iv) customary or reasonable restrictions contained in agreements and instruments relating to the ABL Credit Agreement; *provided* that in each case that such restrictions do not restrict the Liens securing the Obligations or the senior priority status thereof (except as set forth in the ABL Intercreditor Agreement), and (v) restrictions arising (1) in connection with cash or other deposits permitted under Sections 7.01 or 7.02 and limited to such cash or deposit, or (2) in respect of cash collateral so long as the Lien in respect of such cash collateral is permitted hereunder.

Section 7.10 Financial Covenant.

(a) The Borrower shall not permit the Consolidated EBITDA of the Borrower and its Subsidiaries on a consolidated basis for the Test Period ending on or around December 31, 2023 to be less than \$(4,500,000).

(b) The Borrower (i) shall not permit the Consolidated Adjusted Free Cash Flow of the Borrower and its Subsidiaries on a consolidated basis for any Semi-Annual Period ending on or around June 30 of any year (commencing with June 30, 2024) to be less than \$(2,500,000), and (ii) shall not permit the Consolidated Adjusted Free Cash Flow of the Borrower and its Subsidiaries on a consolidated basis for any Semi-Annual Period ending on or around December 31 of any year (commencing with December 31, 2024) to be less than \$1,000,000.

(c) The Borrower shall not permit the Marketing Spend Ratio for a Test Period ending on or around the last day of any fiscal year (commencing with the fiscal year ending on or around December 31, 2023) to be more than (i) 30.0%, in the case of the fiscal year ending on or around December 31, 2023, and (ii) 25.0%, in the case of each fiscal year thereafter.

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(d) The Borrower (i) shall not permit the Liquidity Amount as of the last Business Day of any fiscal quarter to be less than \$3,000,000, and (ii) shall not permit the Liquidity Amount as of any ten consecutive Business Days to be less than \$2,000,000 during each such Business Day.

Section 7.11 Accounting Changes. Make any change in the fiscal year of the Borrower; *provided, however*, that the Borrower may, with written consent of the Lender (in its sole discretion), change its fiscal year to any other fiscal year reasonably acceptable to the Lender, in which case, the Borrower and the Lender will make any amendments to this Agreement that are necessary, in the reasonable judgment of the Lender and the Borrower, to reflect such change in fiscal year.

Section 7.12 Prepayments, Etc. of Indebtedness; Amendments. (a) Make, directly or indirectly, any voluntary prepayment or other voluntary distribution (whether in cash, securities or property), prior to the scheduled due date thereof, of or in respect of principal of or interest on Junior Financing, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of such Junior Financing in respect thereof, except (i) payments of regularly scheduled interest and fees and payments of indemnities and expense reimbursement, (ii) [reserved], (iii) the conversion of any Junior Financing to Equity Interests (other than Disqualified Equity Interests), (iv) the prepayment, redemption, purchase, defeasance or other satisfaction of any Junior Financing with any Permitted Refinancing thereof, (v) [reserved] and (vi) payments of interest in the form of payments in kind, accretion or similar payments; or (b) amend, modify or change any term or condition of any Junior Financing Documentation or any of its Organization Documents in any manner that is (I) taken as a whole, materially adverse to the interests of the Lender (*provided* that the Borrower shall provide copies of such Organization Documents promptly following such amendment or modification) or (II) in the case of any Junior Financing Documentation in respect of Junior Financing that is subject to an intercreditor agreement to which the Lender is a party, prohibited by such intercreditor agreement.

ARTICLE VIII

Events of Default and Remedies

Section 8.01 Events of Default. Any of the following shall constitute an “Event of Default”:

(a) Non-Payment. The Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Term Loan when due, (ii) within five (5) Business Days after the same becomes due, any interest on any Term Loan, or (iii) within five (5) Business Days of any fee due hereunder, or any other amount payable hereunder or with respect to any other Loan Document; or

(b) Specific Covenants. The Borrower or any Subsidiary fails to perform or observe any term, covenant or agreement contained in any of Sections 6.03(a)

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and (b), 6.05(a) (solely with respect to the Borrower and the other Loan Parties), 6.07, 6.11 or in any Section of Article VII (subject to, in the case of the financial covenant contained in Section 7.10); or

(c) Other Defaults. The Borrower or any Subsidiary fails to perform or observe any covenant or agreement (other than those specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for fifteen (15) days after the earlier of (i) notice thereof by the Lender to the Borrower and (ii) the Borrower having knowledge thereof; or

(d) Representations and Warranties. Any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary herein, in any other Loan Document, or in any document required to be delivered pursuant hereto or thereto shall be incorrect in any material respect when made or deemed made (or in any respect if any such representation or warranty is already qualified by materiality); or

(e) Cross-Default. Any Loan Party or any Subsidiary (i) fails to make any payment of principal, premium or interest beyond the applicable grace period with respect thereto, if any (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise), in respect of any Indebtedness (other than Indebtedness hereunder and Indebtedness owed by any Loan Party to any Subsidiary or owed by any Subsidiary to any Loan Party or any other Subsidiary) having an aggregate outstanding principal amount of more than the Threshold Amount or (ii) fails to observe or perform any other agreement or condition relating to any such Indebtedness (other than Indebtedness hereunder and Indebtedness owed by a Loan Party to another Loan Party) having an aggregate outstanding principal amount of more than the Threshold Amount, or any other event occurs (and such failure or event continues past any applicable grace period), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; or

(f) Insolvency Proceedings, Etc. Any Loan Party or any Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes a general assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or substantially all of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged and unstayed for ninety (90) days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or substantially all of its property is instituted without the consent of such Person and continues undismissed and unstayed for ninety (90) days, or an order for relief with respect to any material portion of the Collateral is entered in any such proceeding; or

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(g) Inability to Pay Debts; Attachment. (i) Any Loan Party or any Subsidiary admits in writing its inability or fails generally to pay its debts as they become due or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or substantially all of the property of any such Person, with respect to an assessed obligation in excess of the Threshold Amount and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party or any Subsidiary a final judgment or order for the payment of money in an aggregate amount exceeding the Threshold Amount and there is a period of sixty (60) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event or Foreign Plan Event occurs which results or would reasonably be expected to result in liability of any Loan Party in an aggregate amount (determined as of the date of occurrence of such ERISA Event) which would reasonably be expected to result in a Material Adverse Effect or (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under any Multiemployer Plan which has resulted or would reasonably be expected to result in liability of any Loan Party in an aggregate amount which would reasonably be expected to result in a Material Adverse Effect; or

(j) Invalidity of Loan Documents. Any material provision of the Guaranty or any material provision of any Collateral Document, at any time after its execution and delivery and for any reason other than (x) as expressly permitted hereunder or thereunder (including such express permission as a result of a transaction permitted under Section 7.04 or 7.05, or satisfaction in full of all the Obligations then due and owing (other than contingent indemnification or other obligations as to which no claim has been asserted)) or (y) as a result of the acts or omissions of the Lender, ceases to be in full force and effect; or any Loan Party denies in writing that it has any or further liability or obligation under the Guaranty or any Collateral Document (other than as a result of repayment in full of the Obligations then due and owing (other than contingent indemnification or other obligations as to which no claim has been asserted) and termination of the Aggregate Term Commitments, or as a result of a transaction permitted hereunder or thereunder (including as a result of a transaction permitted under Section 7.04 or 7.05)); or

(k) Change of Control. There occurs any Change of Control; or

(l) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 4.01 or 6.12 shall for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction permitted under Section 7.04 or 7.05) cease to create a valid and perfected first priority lien on and security interest in a material portion of Collateral covered by the Collateral Documents as a whole, subject to

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Liens permitted under Section 7.01, and failure of such lien to be perfected and enforceable with such priority shall have continued unremedied for a period of ten (10) Business Days, except (i) to the extent that any such perfection or priority is not required pursuant to Section 4.01, Section 6.12 or Section 6.14, or the provisions of the applicable Collateral Document, or results from the failure of the Lender or the ABL Administrative Agent to maintain possession of possessory collateral actually delivered to it or filing applicable documents or statements to the extent solely within its control, (ii) as to Collateral consisting of real property, to the extent that such losses are covered by a lender's title insurance policy and such insurers have not denied or failed to acknowledge coverage, or (iii) upon satisfaction in full of all the Obligations then due and owing (other than the contingent indemnification or other obligations as to which no claim has been asserted); or

(m) Intercreditor Agreement. (A) Any Loan Party shall assert in writing that any of the ABL Intercreditor Agreement (after execution and delivery thereof) or other applicable subordination agreement (after execution and delivery thereof) shall have ceased for any reason to be in full force and effect (other than pursuant to the terms hereof or thereof) or shall knowingly contest, or knowingly support another Person in any action that seeks to contest, the validity or effectiveness of any such intercreditor or subordination agreement (other than pursuant to the terms hereof or thereof) or (B) the lien priority or payment priority provisions of the ABL Intercreditor Agreement (after execution and delivery thereof) or the payment or lien subordination provisions of any other applicable subordination agreement (after execution and delivery thereof), in each case, with respect to Indebtedness having an outstanding principal amount in excess of the Threshold Amount, shall terminate, cease to be effective or cease to be legally valid, binding and enforceable against any party thereto except as otherwise permitted hereunder or in accordance with its terms (as in effect when such document is consented to by the Borrower); or

(n) Manufacturing Agreement. Any Loan Party or any Subsidiary fails to observe or perform, any provision, agreement or condition relating to, or any other circumstance occurs constituting a breach, violation or default (on the part of a Loan Party or Subsidiary) under, the Manufacturing Agreement.

Section 8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Lender may take any or all of the following actions:

(a) declare the Term Commitments (if any) to be terminated, whereupon such Term Commitments shall be terminated;

(b) declare the unpaid principal amount of all outstanding Term Loans, all interest accrued and unpaid thereon, all premiums accrued and unpaid thereon, if any, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

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(c) exercise all rights and remedies available to it, under the Loan Documents and any document evidencing Indebtedness in respect of which the Term Facilities have been designated as “Designated Senior Debt” (or any comparable term) and/or under applicable Law;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under any Debtor Relief Law, the obligation of the Lender to make Term Loans shall automatically terminate and the unpaid principal amount of all outstanding Term Loans and all interest, premiums, if any, and other amounts as aforesaid shall automatically become due and payable, in each case without further act of the Lender.

If at any time following the Closing Date, any Applicable Premium Event occurs, the Borrower shall pay to the Lender the Applicable Premium Amount (such amount being due and payable upon the occurrence of the Applicable Premium Event). Payment of any Applicable Premium Amount hereunder constitutes liquidated damages, not unmatured interest or a penalty, as the actual amount of damages to the Lender as a result of the relevant Applicable Premium Event would be impracticable and extremely difficult to ascertain. Accordingly, the Applicable Premium Amount hereunder is provided by mutual agreement of the Borrower and the Lender as a reasonable estimation and calculation of such actual lost profits and other actual damages of the Lender. Without limiting the generality of the foregoing, it is understood and agreed that upon the occurrence of any Applicable Premium Event, the Applicable Premium Amount shall be automatically and immediately due and payable as though any Term Loan subject to an Applicable Premium Event were voluntarily prepaid as of such date and shall constitute part of the Obligations secured by the Collateral. The Applicable Premium Amount shall also be automatically and immediately due and payable if the Term Loans are satisfied or released by foreclosure (whether by power of judicial proceeding or otherwise), deed in lieu of foreclosure or by any other means. THE BORROWER HEREBY EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR OTHER LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING APPLICABLE PREMIUM AMOUNT IN CONNECTION WITH ANY SUCH EVENTS. The Borrower and the other Loan Parties expressly agree (to the fullest extent it and they may lawfully do so) that with respect to the Applicable Premium Amount payable under the terms of this Agreement: (i) the Applicable Premium Amount is reasonable and is the product of an arm’s length transaction between sophisticated business parties, ably represented by counsel; (ii) the Applicable Premium Amount shall be payable notwithstanding the then-prevailing market rates at the time payment is made; (iii) there has been a course of conduct between the Lender and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Applicable Premium Amount; and (iv) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this paragraph. The Loan Parties expressly acknowledge that their agreement to pay the Applicable Premium Amount as herein described is a material inducement to the Lender to provide the Term Commitments and make the Loans.

Section 8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after an actual or deemed entry of an order for relief with respect to the Borrower under any Debtor Relief Law), any amounts received on account of the Obligations shall

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be applied by the Lender in the following order, subject to any contrary provisions expressly set forth in the ABL Intercreditor Agreement:

(a) first, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, disbursements and other charges of counsel payable under Section 10.04 and amounts payable under Article III) payable to the Lender;

(b) second, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest) payable to the Lender (including fees, disbursements and other charges of counsel payable under Section 10.05) arising under the Loan Documents and amounts payable under Article III;

(c) third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Term Loans,;

(d) fourth, to payment of that portion of the Obligations constituting unpaid principal of and premiums (including the Applicable Premium Amount), if any, payable on the Term Loans in proportion to the respective amounts described in this clause (d) held by them;

(e) fifth, to the payment of all other Obligations of the Loan Parties owing under or in respect of the Loan Documents that are then due and payable to the Lender and the other Secured Parties; and

(f) last, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

ARTICLE IX Intentionally Omitted

ARTICLE X Miscellaneous

Section 10.01 Amendments, Etc. Except as otherwise expressly set forth in this Agreement, no amendment, waiver or consent of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Lender and the Borrower (or the applicable Loan Party), and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that no such amendment, waiver or consent shall:

(a) extend or increase the Term Commitment of the Lender, or reinstate the Term Commitment of the Lender after the termination of such Term Commitment pursuant to Section 8.02, in each case without the written consent of the Lender;

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(b) postpone any date scheduled for any payment of principal of, or interest on, any Term Loan, or any fees or other premium payable hereunder, without the written consent of the Lender (and subject to such further requirements as may be applicable thereto under the last two (2) paragraphs of this Section 10.01), it being understood that the waiver of any obligation to pay interest at the Default Rate, and the amendment or waiver of any mandatory prepayment of Term Loans under the Term Facility (or any component in calculation of the amount of such prepayment) shall not constitute a postponement of any date scheduled for the payment of principal, interest or fees;

(c) reduce the principal of, or the rate of interest specified herein on, any Term Loan, or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of the Lender;

(d) modify Section 2.03(c) or 8.03 without the written consent of the Lender;

(e) change any provision of this Section 10.01 (other than the last two (2) paragraphs of this Section 10.01), without the written consent of the Lender;

(f) other than in a transaction permitted under Section 7.04 or 7.05, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of the Lender;

(g) other than in a transaction permitted under Section 7.04 or 7.05, release all or substantially all of the value of the aggregate Guaranty, without the written consent of the Lender; or

(h) (i) subordinate any Term Loan hereunder to any other Indebtedness in right of payment (including, without limitation, structural subordination), including (but not limited to) subordination with respect to right of payment achieved by way of amendment to this Agreement or any other Loan Document to permit, or that has the effect of permitting, directly or indirectly, the incurrence of other material Indebtedness (or Indebtedness that would be material if aggregated with all other such Indebtedness permitted by such amendment or series of amendments and incurred after the date hereof) that would be senior in right of payment or structurally senior to the Term Loans hereunder, or (ii) except as provided by operation of applicable Laws, subordinate the Liens securing the Term Loans with respect to any material portion of the Collateral (in the aggregate with all other such Liens on Collateral to which the Term Loans are so subordinated after the date hereof) to any other Lien (except as expressly contemplated by the Loan Documents), in either case, without the written consent of the Lender;

Notwithstanding anything herein to the contrary, no Lender consent is required to effect any amendment or supplement to the ABL Intercreditor Agreement or intercreditor arrangement permitted under this Agreement (i) that is for the purpose of, in connection with the

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incurrence by any Loan Party of any Indebtedness of such Loan Party that is permitted to be secured by the Collateral pursuant to Sections 7.01 and 7.03 of this Agreement, (x) adding the holders thereof (or a Senior Representative with respect thereto) as parties thereto, as expressly contemplated by the terms of any such intercreditor agreement or other arrangement permitted under this Agreement, as applicable, and/or (y) causing such Indebtedness to be secured by a valid, perfected Lien (with such priority as may be designated by such Loan Party, to the extent such priority is permitted by the Loan Documents) (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement or other arrangement as, in the good faith determination of the Lender, are required to effectuate the foregoing; *provided* that such other changes are not adverse, in any material respect, to the interests of the Lender) or (ii) that is expressly contemplated by any such intercreditor agreement or other intercreditor arrangement permitted under this Agreement; *provided, further*, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Lender hereunder or under any other Loan Document without the prior written consent of the Lender.

This Section 10.01 shall be subject to any contrary provision of Sections 1.03 and 7.11. Notwithstanding anything else to the contrary contained in this Section 10.01, (a) if the Lender and the Borrower shall have jointly identified an obvious error or any error, omission or defect of a technical nature, in each case, in any provision of the Loan Documents, then the Lender and the Borrower shall be permitted to amend such provision and (b) the Lender and the Borrower shall be permitted to amend any provision of any Collateral Document to better implement the intentions of this Agreement and the other Loan Documents, and in each case, such amendments shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Lender within five (5) Business Days following receipt of notice thereof.

The Borrower shall provide the Lender with a copy of any amendment, supplement, modification or waiver executed pursuant to this Section 10.01, unless such amendment, supplement, modification or waiver was executed by the Lender; *provided* that the failure to so deliver a copy shall not affect the validity thereof, and the Lender shall not be deemed to have knowledge of any such amendment, supplement, modification or waiver until it shall have received such notice.

Section 10.02 Notices; Electronic Communications. (a) General. Unless otherwise expressly provided herein, all notices and other communications provided for herein shall be in writing (including by facsimile transmission or electronic mail) and shall be mailed, faxed, emailed or delivered to the applicable address, facsimile number or electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone or electronic mail shall be made to the applicable telephone number or electronic mail address, as the case may be, if to the Borrower, or to the Lender, to the address, fax number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other address, fax number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties hereto, as provided in Section 10.02(c).

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Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax 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 subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lender may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Lender. The Lender 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 Lender otherwise prescribes (with the Borrower's consent), (i) any other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, then such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, Etc. Each of the Borrower and the Lender may change its address, fax, telephone number or electronic mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, fax, telephone number or electronic mail address for notices and other communications hereunder by notice to the Borrower and the Lender.

(d) Reliance by Lender. The Lender shall be entitled to rely and act upon any notices (including telephonic Committed Term Loan 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 reasonably understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Lender and the Lender's Related Parties from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower to the extent required by Section 10.05. All telephonic notices to and other telephonic communications with the Lender may be recorded by the Lender, and each of the parties hereto hereby consents to such recording.

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Section 10.03 No Waiver; Cumulative Remedies; Enforcement. No failure by the Lender or any Loan Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided hereunder and under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Lender in accordance with Section 8.02; *provided, however*, that the foregoing shall not prohibit (a) the Lender from exercising on its own behalf the rights and remedies that inure to its benefit hereunder and under the other Loan Documents, (b) [reserved], (c) the Lender from exercising setoff rights in accordance with Section 10.08, or (d) the Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law.

Section 10.04 Expenses. The Borrower agrees (a) to pay or reimburse the Lender for all reasonable and documented or invoiced out-of-pocket costs and expenses incurred in connection with the preparation, negotiation, syndication and execution of this Agreement and the other Loan Documents (including reasonable expenses incurred in connection with due diligence and travel, courier, reproduction, printing and delivery expenses), and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including the reasonable and documented out-of-pocket fees, disbursements and other charges of counsel (limited to (x) the reasonable and documented out-of-pocket fees, disbursements and other charges of one primary external counsel to the Lender, and, if reasonably necessary, one local counsel in each relevant material jurisdiction to the Lender and (y) the reasonable and documented out-of-pocket fees, disbursements and other charges of one primary external counsel to the Lender and, if reasonably necessary, one local counsel in each relevant material jurisdiction to the Lender) and (b) to pay or reimburse the Lender for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including, without duplication of Taxes or Other Taxes paid or indemnified pursuant to Sections 3.01 and 3.04, any proceeding under any Debtor Relief Law or in connection with any workout or restructuring and all documentary Taxes associated with the Term Facilities), including the reasonable and documented out-of-pocket fees, disbursements and other charges of counsel (limited to (x) the reasonable and documented out-of-pocket fees, disbursements and other charges of one primary external counsel to the Lender, and, if reasonably necessary, one local counsel in each relevant material jurisdiction to the Lender and (y) the reasonable and documented out-of-pocket fees, disbursements and other charges of one primary external counsel to the Lender, and, if reasonably necessary, one local counsel in each relevant material jurisdiction to the Lender, in each case without duplication for any amounts paid (or indemnified) under Sections 3.01 and 3.04. The

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foregoing costs and expenses shall include, without duplication of Taxes or Other Taxes paid or indemnified pursuant to Sections 3.01 and 3.04, all reasonable search, filing, recording, title insurance and appraisal charges and fees and Taxes related thereto, and other out-of-pocket expenses incurred by the Lender. All amounts due under this shall be paid within thirty (30) days after invoiced or demand therefor (with a reasonably detailed invoice with respect thereto) (except for any such costs and expenses incurred prior to the Closing Date, which shall be paid on the Closing Date to the extent invoiced at least one (1) Business Day prior to the Closing Date (or such shorter period reasonably agreed by the Borrower)). The agreements in this Section 10.04 shall survive the termination of the Aggregate Term Commitments and repayment of all other Obligations.

Section 10.05 Indemnification by the Borrower. The Borrower shall indemnify and hold harmless the Lender, each of their respective Affiliates and each of their respective officers, directors, employees, partners, trustees, advisors, shareholders, agents, controlling persons and other representatives (collectively, the “Indemnitees”) from and against (and will reimburse each Indemnatee, as and when incurred, for) any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs (including settlement costs), disbursements, and reasonable and documented or invoiced out-of-pocket fees and expenses (including the reasonable and documented out-of-pocket fees, disbursements and other charges of counsel (limited to (x) the reasonable and documented out-of-pocket fees, disbursements and other charges of one primary external counsel to the Lender’s related Indemnitees (other than the Lender), and, if reasonably necessary, of one local counsel in each relevant jurisdiction to such Indemnitees, (y) the reasonable and documented out-of-pocket fees, disbursements and other charges of one primary external counsel to the Lender’s related Indemnitees (other than the Lender) (which shall be selected by the Lender), and, if reasonably necessary, one local counsel in each relevant jurisdiction to the Lender or such Indemnitees and (z) special counsel for each relevant specialty and, in the event of any actual or perceived conflict of interest where the Indemnatee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, one additional counsel in each relevant jurisdiction for each group of affected Indemnitees similarly situated taken as a whole) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted or awarded against any such Indemnatee in any way relating to or arising out of or in connection with or by reason of (x) the transactions contemplated hereby, the Term Facilities or the use or proposed use thereof, or any actual or prospective claim, dispute, litigation, investigation or proceeding in any way relating to, arising out of, in connection with or by reason of any of the following, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding): (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby or (b) any Term Commitment, Term Loan or the use or proposed use of the proceeds therefrom; *provided* that such indemnity shall not, as to any Indemnatee (or any of its Affiliates, or any of its or their respective officers, directors, employees, partners, trustees, advisors, shareholders, agents, controlling persons or other representatives), be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, disbursements, fees or expenses are determined by a

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court of competent jurisdiction in a final and non-appealable judgment to have resulted from (A) the bad faith, gross negligence or willful misconduct of such Indemnatee or (i) any controlling Person or controlled Affiliate of such Indemnatee, (ii) the respective directors, officers or employees of such Indemnatee or any of its controlling Persons or controlled Affiliates and (iii) the respective agents or representatives of such Indemnatee or any of its controlling Persons or controlled Affiliates (in the case of this clause (iii), acting on behalf of or at the instruction of such Indemnatee, controlling Person or such controlled Affiliate) (*provided* that each reference to a controlled Affiliate in this clause (iii), pertains to a controlled Affiliate involved in the negotiation of this Agreement and/or the administration of this Agreement and the Term Facilities) as determined by a court of competent jurisdiction in a final and non-appealable judgment, or (B) any dispute that is solely among Indemnitees (other than any dispute involving claims against the Lender or any other Agent, in each case in their respective capacities as such or arising out of any act or omission on the part of the Borrower or any of its respective Subsidiaries or Affiliates) that a court of competent jurisdiction has determined in a final and non-appealable judgment did not involve actions or omissions of any direct or indirect parent or controlling person of the Borrower or its Subsidiaries or (y) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by the Borrower or any Subsidiary, or any Environmental Liability related in any way to the Borrower or any Subsidiary in all cases, regardless of whether such Indemnatee is a party thereto, and whether or not such proceedings are brought by any Borrower, its equity holders, its Affiliates, creditors or any other third person. No Indemnatee shall be liable for any damages arising from the use by unintended recipients of any information or other materials (including electronic telecommunications) in connection with this Agreement unless determined by a court of competent jurisdiction in a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnatee or any such Indemnatee's Affiliates or any of its or their respective officers, directors, employees, agents, advisors, controlling persons or other representatives, nor shall any Indemnatee or the Borrower (or the Subsidiaries or Affiliates of the Borrower) have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date); *provided* that such waiver of special, punitive, indirect or consequential damages shall not limit the indemnification obligations of the Loan Parties to the extent such special, punitive, indirect or consequential damages are included in any third party claim with respect to which the applicable Indemnatee is entitled to indemnification under this Section 10.05. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, shareholders or creditors or an Indemnatee or any other Person, and whether or not any Indemnatee is otherwise a party thereto. Should any investigation, litigation or proceeding be settled, or if there is a judgment against an Indemnatee in any such investigation, litigation or proceeding, the Borrower shall indemnify and hold harmless each Indemnatee in the manner set forth above. Each Indemnatee shall promptly notify the Borrower upon receipt of written notice of any claim or threat to institute a claim; *provided* that any failure by any indemnified person to give such notice shall not relieve the Borrower from the obligation to indemnify such Indemnatee, except to the extent of any loss caused by such failure to give notice. All amounts due under this Section 10.05 shall be payable within thirty (30) days after demand therefor. The agreements in this Section 10.05 shall survive the termination of the

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Aggregate Term Commitments and the repayment, satisfaction or discharge of all the other Obligations. For the avoidance of doubt, Section 10.05 shall not apply to Taxes that are governed by Section 3.01.

Section 10.06 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Lender, or the Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the 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 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.

Section 10.07 Successors and Assigns. 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 (1) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender (other than as a result of a transaction consummated in accordance with Section 7.04) and (2) the Lender may not assign or otherwise transfer any of its rights or obligations hereunder without the prior consent of Borrower, other than to its Affiliates; *provided* that, such consent of the Borrower shall (a) not be required after the occurrence and during the continuance of a Default, and (b) not be unreasonably withheld, conditional or delayed, and shall be deemed granted within ten (10) Business Days of notice from the Lender to the Borrower of the request therefor unless the Borrower has rejected the request in writing during such period. Any attempted or purported sale, assignment or other transfer by any party hereto of its rights and obligations in contravention of this Section 10.07 shall be null and void.

Section 10.08 Setoff. In addition to any rights and remedies of the Lender provided by Law, upon the occurrence and during the continuance of any Event of Default, each Secured Party and each of its Affiliates is authorized at any time and from time to time without prior notice to the Borrower or any other Loan Party, any such notice being waived by the Borrower (on its own behalf and on behalf of each Loan Party) 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), other than deposits in fiduciary accounts as to which a Loan Party is acting as fiduciary for another Person who is not a Loan Party, at any time held by, and other Indebtedness at any time owing by, such Secured Party or Affiliate to or for the credit or the account of the respective Loan Parties against any and all Obligations owing to such Secured Party hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Secured Party or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness. The rights of the Lender and each Secured Party and Affiliate thereof under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that the Lender and such Secured Party and Affiliate thereof may have.

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Section 10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Term Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.10 Counterparts. This Agreement and each other Loan Document may be executed in one or more counterparts (and by different parties hereto in different counterparts), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery by fax or other electronic transmission of an executed counterpart of a signature page to this Agreement and each other Loan Document shall be effective as delivery of an original executed counterpart of this Agreement and such other Loan Document. The Lender may also require that any such documents and signatures delivered by fax or other electronic transmission be confirmed by a manually-signed original thereof; *provided* that the failure to request or deliver the same shall not limit the effectiveness of any document or signature delivered by fax or other electronic transmission.

Section 10.11 Integration; Effectiveness. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided* that the inclusion of supplemental rights or remedies in favor of the Lender in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof. Without limiting Section 4.01, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto.

Section 10.12 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Lender, regardless of any investigation made by the Lender and notwithstanding that the Lender may have had notice or knowledge of any Default at the time of any Term Borrowing, and shall continue in full force and effect as long as any Term Loan or any other Obligation (other than contingent indemnification or other obligations as to which no claim has been asserted) hereunder shall remain unpaid or unsatisfied.

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Section 10.13 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.14 Governing Law; Jurisdiction; Etc. (a) GOVERNING LAW. THIS AGREEMENT AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS TO WHICH IT IS A PARTY TO THE EXCLUSIVE GENERAL JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE COUNTY OF NEW YORK (THE "NEW YORK SUPREME COURT"), AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (THE "FEDERAL DISTRICT COURT," AND TOGETHER WITH THE NEW YORK SUPREME COURT, THE "NEW YORK COURTS") AND APPELLATE COURTS FROM EITHER OF THEM; *PROVIDED* THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE (I) THE LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS (IN WHICH CASE ANY PARTY SHALL BE ENTITLED TO ASSERT ANY CLAIM OR DEFENSE, INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 10.14 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW YORK COURT), OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE LENDER, (II) ANY PARTY FROM BRINGING ANY LEGAL ACTION OR PROCEEDING IN ANY JURISDICTION FOR THE RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT, (III) IF ALL SUCH NEW YORK COURTS DECLINE JURISDICTION OVER ANY PERSON, OR DECLINE (OR, IN THE CASE OF THE FEDERAL DISTRICT COURT, LACK) JURISDICTION OVER ANY SUBJECT MATTER OF SUCH ACTION OR PROCEEDING, A LEGAL ACTION OR PROCEEDING MAY BE BROUGHT WITH RESPECT THERETO IN ANOTHER COURT HAVING JURISDICTION AND (IV) IN THE EVENT A LEGAL ACTION OR PROCEEDING IS BROUGHT AGAINST ANY PARTY HERETO OR INVOLVING ANY OF ITS ASSETS OR PROPERTY IN ANOTHER COURT (WITHOUT ANY COLLUSIVE ASSISTANCE BY SUCH PARTY OR ANY OF ITS SUBSIDIARIES OR AFFILIATES), SUCH PARTY FROM ASSERTING A CLAIM OR DEFENSE (INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 10.14 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW YORK COURT) IN ANY SUCH ACTION OR PROCEEDING.

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(c) WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 10.14(B). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 10.15 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 10.15 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 10.16 Binding Effect. When this Agreement shall have become effective in accordance with Section 10.11, it shall thereafter be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, subject to the provisions of Section 10.07.

Section 10.17 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges and agrees that it has informed its other Affiliates, that: (A) no fiduciary, advisory or agency relationship between any of the Borrower and its Subsidiaries and the Lender is intended to be or has been created in respect of any of the transactions contemplated hereby and by the other Loan Documents, irrespective of whether the Lender has advised or is advising the Borrower and its Subsidiaries on other matters, (B) the arranging and other services regarding this Agreement provided by the Lender are arm's-length commercial transactions

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between the Borrower and its Subsidiaries, on the one hand, and the Lender, on the other hand, (C) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (D) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents.

Section 10.18 Electronic Execution of Assignments and Certain Other Documents. The words “execution,” “signed,” “signature,” and words of like import in any amendment or other modification hereof (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 10.19 PATRIOT Act. If the Lender is subject to the PATRIOT Act it hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow the Lender, as applicable, to identify each Loan Party in accordance with the PATRIOT Act. The Borrower shall, promptly following a request by the Lender, provide all documentation and other information that the Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act.

Section 10.20 Judgment Currency.

(a) The Borrower’s obligations hereunder and under the other Loan Documents to make payments in Dollars (pursuant to such obligation, the “Obligation Currency”) shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except to the extent that such tender or recovery results in the effective receipt by the Lender of the full amount of the Obligation Currency expressed to be payable to the Lender under this Agreement or the other Loan Documents. If, for the purpose of obtaining or enforcing judgment against Borrower in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than the Obligation Currency (such other currency being hereinafter referred to as the “Judgment Currency”) an amount due in the Obligation Currency, the conversion shall be made at the rate of exchange (as quoted by the Lender or if the Lender does not quote a rate of exchange on such currency, by a known dealer in such currency designated by the Lender) determined, in each case, as of the Business Day immediately preceding the day on which the judgment is given (such Business Day being hereinafter referred to as the “Judgment Currency Conversion Date”).

(b) If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion Date and the date of actual payment of the amount due,

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the Borrower shall pay, or cause to be paid, the amount necessary such that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce not less than the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated on the judgment or judicial award as the rate of exchanged prevailing on the Judgment Currency Conversion Date.

(c) For purposes of determining any other rate of exchange for this Section 10.20, such amounts shall include any premium and costs payable in connection with the purchase of the Obligation Currency.

Section 10.21 Intercreditor Agreement.

(a) Each of the Lender and the other Secured Parties (i) acknowledges that it has received a copy of the ABL Intercreditor Agreement, (ii) consents to the terms of the ABL Intercreditor Agreement, (iii) authorizes and instructs the Lender to enter into the ABL Intercreditor Agreement or other intercreditor agreements (and any amendments, amendments and restatements, restatements or waivers of or supplements to or other modifications to, such agreements in connection with the incurrence by any Loan Party of any Indebtedness of such Loan Party that is permitted to be secured by the Collateral pursuant to Sections 7.01 and 7.03 of this Agreement, in order to permit such Indebtedness to be secured by a valid, perfected Lien (with such priority as may be designated by such Loan Party, to the extent such priority is permitted by the Loan Documents)) as collateral agent and on behalf of such Person, and by its acceptance of the benefits of the Collateral Documents, hereby acknowledges that the ABL Intercreditor Agreement and any such other intercreditor agreement is or will be, as applicable, binding upon it and (iv) agrees that it will be bound by and will take no actions contrary to the provisions of the ABL Intercreditor Agreement or such other intercreditor agreements (and any amendments, amendments and restatements, restatements or waivers of or supplements to or other modifications to, such agreements in connection with the incurrence by any Loan Party of any Indebtedness of such Loan Party that is permitted to be secured by the Collateral pursuant to Sections 7.01 and 7.03 of this Agreement, in order to permit such Indebtedness to be secured by a valid, perfected Lien (with such priority as may be designated by such Loan Party, to the extent such priority is permitted by the Loan Documents)), and to subject the Liens on the Collateral securing the Obligations to the provisions thereof.

(b) The terms of this Agreement and each other Loan Document, any Lien granted to the Lender for the benefit of the Secured Parties or otherwise pursuant to this Agreement or the other Loan Documents and the exercise of any right or remedy by the Lender hereunder or thereunder are subject to the provisions of the ABL Intercreditor Agreement. In the event of any inconsistency between the provisions of this Agreement or any other Loan Document and the ABL Intercreditor Agreement, the provisions of the ABL Intercreditor Agreement shall supersede the provisions of this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, and notwithstanding anything herein to the contrary, all rights and remedies of the Lender and

Error! Unknown document property name.

the Secured Parties hereunder shall be subject to the terms of the ABL Intercreditor Agreement.

Section 10.22 Tax Treatment. The parties hereby agree that (a) the Term Loan (and any Term Notes) and the Warrants are to be treated as an “investment unit” within the meaning of Section 1273(c)(2) of the Code and (b) pursuant to Treasury Regulations Section 1.1273-2(h) that, for tax purposes, the Warrants will be allocated \$1,296,128.79 of the \$5,000,000 commitment of the Lender and that such allocation shall be treated as a reduction of the issue price of the Notes issued in connection with this Agreement. The parties hereto agree not to take a position inconsistent with this Section 10.22 for U.S. federal, state, or local income tax purposes (including the filing of any information return, such as an IRS Form 1099), unless there is a determination within the meaning of Section 1313 of the Code to the contrary. The Lender may obtain the issue price, amount of “original issue discount”, issue date and yield to maturity for such note by submitting a request for such information to the Borrower at the address referenced in Section 10.02.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

BETTER CHOICE COMPANY INC.,
as the Borrower

by  48C6B952E3184BA...
Name: Kent Cunningham
Title: Chief Executive Officer

[Signature Page to Term Loan Credit Agreement]

ALPHIA INC., as the Lender

by 
Name: David McLain
Title: Chief Executive Officer

[Signature Page to Term Loan Credit Agreement]

TERM NOTE

\$5,000,000

June 21, 2023

FOR VALUE RECEIVED, the undersigned (including its permitted successors, the "Borrower") hereby promises to pay to Alphaia Inc. or its registered assigns (the "Lender"), in accordance with the provisions of the Term Loan Credit Agreement (as hereinafter defined), the aggregate unpaid principal amount of each Term Loan made by the Lender to the Borrower under that certain Term Loan Credit Agreement, dated as of June 21, 2023 (as amended, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Term Loan Credit Agreement"), between the Borrower and the Lender. Capitalized terms used herein and not otherwise defined shall have the meanings assigned thereto in the Term Loan Credit Agreement.

The Borrower promises to pay interest on the aggregate unpaid principal amount of each Term Loan made by the Lender to the Borrower under the Term Loan Credit Agreement from the date of such Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Term Loan Credit Agreement. All payments of principal and interest shall be made to the Lender in Dollars in immediately available funds at the Lender's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Term Loan Credit Agreement.

This Term Note is one of the Term Notes referred to in the Term Loan Credit Agreement, is entitled to the benefits and subject to the provisions thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Term Note is also entitled to the benefits of the Guaranty and is secured by the Collateral. Upon the occurrence and continuation of one or more of the Events of Default specified in the Term Loan Credit Agreement, all amounts then remaining unpaid on this Term Note shall become, or may be declared to be, immediately due and payable, all as provided in the Term Loan Credit Agreement. Term Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also (but shall not be required to) attach schedules to this Term Note and endorse thereon the date, amount and maturity of its Term Loans and payments with respect thereto.

The Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Term Note.

THIS TERM NOTE SHALL BE GOVERNED BY AND CONSTRUED IN
ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

BETTER CHOICE COMPANY INC.

A Delaware corporation

By: 
Name: Kent Cunningham
Title: Chief Executive Officer

[Signature Page to Term Note]

Notwithstanding anything herein to the contrary, the Liens and security interests granted to Alpha Inc., as Lender, pursuant to this Agreement in any Collateral and the exercise of any right or remedy by Alpha Inc., with respect to any Collateral hereunder are subject to the provisions of the Intercreditor Agreement, dated as of June 21, 2023 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Intercreditor Agreement”), between Wintrust Bank N.A. and Alpha Inc.. In the event of any conflict between the terms of the Intercreditor Agreement and the terms of this Agreement, the terms of the Intercreditor Agreement shall govern and control.

TERM LOAN SECURITY AGREEMENT

Dated June 21, 2023

among

The Grantors referred to herein,
as Grantors

and

ALPHIA INC.,
as Lender

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Schedules

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Exhibits:

- | | | |
|-----------|---|---|
| Exhibit A | - | Form of Term Loan Security Agreement Supplement |
| Exhibit B | - | Form of Term Loan Intellectual Property Security Agreement |
| Exhibit C | - | Form of Term Loan Intellectual Property Security Agreement Supplement |



TERM LOAN SECURITY AGREEMENT, dated June 21, 2023 (this "Agreement"), among each of the signatories hereto designated as a Grantor on the signature pages hereto (together with any other entity that may become a party hereto as a Grantor, as provided herein, each a "Grantor" and collectively, the "Grantors"), and ALPHA INC., as Lender (the "Lender").

PRELIMINARY STATEMENTS

WHEREAS, Better Choice Company Inc., a Delaware corporation (the "Borrower") and Alpha Inc., as Lender have entered into a Term Loan Credit Agreement dated of even date herewith (as amended, amended and restated, supplemented, replaced, refinanced or otherwise modified from time to time (including any increases of the principal amount outstanding thereunder), the "Term Loan Credit Agreement");

WHEREAS, pursuant to the Term Loan Credit Agreement, the Grantors are entering into this Agreement in order to grant to the Lender, a security interest in the Collateral (as hereinafter defined); and

WHEREAS, each Grantor will derive substantial direct and indirect benefit from the transactions contemplated by the Loan Documents.

NOW, THEREFORE, in consideration of the premises and in order to induce the Lender to make the Term Loan, each Grantor hereby agrees with the Lender as follows:

Section 1. Defined Terms. "UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; *provided* that, if by reason of any mandatory provisions of law, the perfection, the effect of perfection or non-perfection or priority of the security interests granted to the Lender pursuant to this Agreement are governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than New York, then "UCC" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of such perfection, effect of perfection or non-perfection or priority. Terms defined in the Term Loan Credit Agreement and not otherwise defined in this Agreement are used in this Agreement as defined in the Term Loan Credit Agreement; *provided* that terms defined in Article 8 or 9 of the UCC are used in this Agreement as such terms are defined in such Article 8 or 9 (including Accounts, Certificated Security, Chattel Paper, Commercial Tort Claims, Commodity Account, Commodity Contract, Deposit Accounts, Documents, Equipment, Financial Assets, Fixtures, General Intangibles, Goods, Instruments, Inventory, Investment Property, Letter of Credit Rights, Securities Accounts, Securities Intermediary, Security, Security Entitlements and Supporting Obligations).

"Collateral Access Agreement" means any landlord waiver, property access or other agreement, in form and substance reasonably satisfactory to the Lender, between the Lender and any third party (including any landlord, bailee, consignee, customs broker, inventory or other property manager or other similar Person) in possession of any Collateral or any landlord of any real property where any Collateral is located, as such landlord waiver, property access or other agreement may be amended, restated, supplemented or otherwise modified from time to time.

Section 2. Grant of Security. As security for the payment or performance, as the case may be, in full of the Secured Obligations (as defined below), each Grantor hereby grants to the Lender, a security interest in such Grantor's right, title and interest in and to the following, in each case, as to each type of property described below, whether now owned or hereafter acquired by such Grantor, wherever located, and whether now or hereafter existing or arising (collectively, the "Collateral");

- (a) all Accounts;

(b) all cash and Cash Equivalents;

(c) all Chattel Paper;

(d) all Commercial Tort Claims set forth on Schedule IV hereto or for which notice is provided or is required to be provided pursuant to Section 6(b) below;

(e) all Deposit Accounts;

(f) all Documents;

(g) all Equipment;

(h) all Fixtures;

(i) all General Intangibles;

(j) all Goods;

(k) all Instruments;

(l) all Inventory;

(m) all Letter of Credit Rights;

(n) the following (the "Security Collateral");

(i) all indebtedness from time to time owed to such Grantor, including, without limitation, the Indebtedness set forth opposite such Grantor's name on and otherwise described on Schedule II (as such Schedule II may be supplemented from time to time by supplements to this Agreement) (all such indebtedness whether or not so set forth being the "Pledged Debt"), and the instruments and promissory notes, if any, evidencing such indebtedness, and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged Debt; and

(ii) all Equity Interests of any Person from time to time acquired, owned or held directly by such Grantor in any manner, including, without limitation, the Equity Interests owned or held by each Grantor set forth opposite such Grantor's name on and otherwise described on Schedule II (as such Schedule II may be supplemented from time to time by supplements to this Agreement) (all such Equity Interests whether or not so set forth being the "Pledged Interests"), and the certificates, if any, representing such shares or units or other Equity Interests, and all dividends, distributions, return of capital, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares or other Equity Interests and all warrants, rights or options issued thereon or with respect thereto;

(o) all Investment Property and all Financial Assets, and all dividends, distributions, return of capital, interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange therefor and all warrants, rights or options issued thereon or with respect thereto;



(p) all contracts and agreements between any Grantor and one or more additional parties (including, without limitation, any Swap Contracts, licensing agreements and any partnership agreements, joint venture agreements, limited liability company agreements) and the IP Agreements (as hereinafter defined), in each case as such agreements may be amended, amended and restated, supplemented or otherwise modified from time to time (collectively, the “Assigned Agreements”), including, without limitation, all rights of such Grantor to receive moneys due and to become due under or pursuant to the Assigned Agreements (all such Collateral in this clause (p) being the “Agreement Collateral”);

(q) the following (collectively, the “Intellectual Property Collateral”) with respect to any Grantor to the extent governed by, arising under, pursuant to, or by virtue of, the laws of the United States of America or any state thereof:

(i) all patents, patent applications, utility models, statutory invention registrations and all inventions, including those claimed or disclosed therein and all improvements thereto (“Patents”);

(ii) all trademarks, trademark applications, service marks, domain names, trade dress, logos, designs, slogans, trade names, business names, corporate names and other source identifiers, and all general intangibles of like nature whether registered or unregistered, together, in each case, with the goodwill symbolized thereby (“Trademarks”);

(iii) all copyrights, including, without limitation, copyrights in Computer Software (as hereinafter defined), internet web sites and the content thereof, whether registered or unregistered (“Copyrights”);

(iv) all computer software, programs and databases (including, without limitation, source code, object code and all related applications and data files), firmware and documentation and materials relating thereto, together with any and all maintenance rights, service rights, programming rights, hosting rights, test rights, improvement rights, renewal rights and indemnification rights and any substitutions, replacements, improvements, error corrections, updates and new versions of any of the foregoing (“Computer Software”);

(v) all confidential and proprietary information, including, without limitation, know-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, databases and data, including, without limitation, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information (collectively, “Trade Secrets”), and all other intellectual and intangible property of any type, including, without limitation, industrial designs and mask works;

(vi) all registrations and applications for registration for any of the foregoing in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, including, without limitation, the registrations and applications for registration of United States intellectual property set forth in Schedule III hereto (as such Schedule III may be supplemented from time to time by supplements to this Agreement, each such supplement being substantially in the form of Exhibit C hereto (an “IP Security Agreement Supplement”) executed by such Grantor in favor of the Lender from time to time), together with all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations thereof (all such Intellectual Property Collateral that has been registered, or for the registration of which an



application has been made, in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, the “Registered Intellectual Property Collateral”);

(vii) all written agreements, permits, consents, orders and franchises relating to the license, development, use or disclosure of any of the foregoing to which such Grantor, now or hereafter, is a party or a beneficiary (“IP Agreements”) and all rights of such Grantor thereunder; and

(viii) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages;

(r) all books and records (including, without limitation, customer lists, credit files, printouts and other computer output materials and records) of such Grantor pertaining to any of the Collateral;

(s) all other tangible and intangible personal property of whatever nature whether or not covered by Article 9 of the UCC; and

(t) all proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and Supporting Obligations relating to, any and all of the Collateral (including, without limitation, proceeds, collateral and Supporting Obligations that constitute property of the types described in clauses (a) through (q) of this Section 2), and, to the extent not otherwise included, all payments under insurance (whether or not the Lender is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral;

provided that notwithstanding anything to the contrary contained in the foregoing clauses (a) through (t), the security interest created by this Agreement shall not extend to, and the terms “Collateral,” “Security Collateral,” “Agreement Collateral,” “Intellectual Property Collateral” and other terms defining the components of the Collateral in the foregoing clauses (a) through (t) shall not include, any of the following (collectively, the “Excluded Assets”):

(i) any lease, license or other agreement or any property subject to a purchase money security interest, a Capitalized Lease Obligation or other similar arrangement permitted under the Term Loan Credit Agreement to the extent that (and only for so long as) a grant of a security interest therein would violate or invalidate, or result in other adverse consequences to the Borrower and its Subsidiaries under, such lease, license, agreement, or purchase money, Capitalized Lease Obligation or similar arrangement, or create a right of termination in favor, or require the consent, of any other party thereto (other than any Borrower or any Guarantor), in each case to the extent (A) not rendered unenforceable pursuant to applicable provisions of the UCC or other applicable law and (B) such lease, license, agreement, or purchase money, Capitalized Lease Obligation or similar arrangement, right of termination or consent was not entered into in contemplation of the Transactions; *provided*, that the Collateral shall include proceeds and receivables (that are not otherwise Excluded Assets) of any property excluded under this clause (i) to the extent the assignment is expressly deemed effective under the UCC notwithstanding such prohibition;

(ii) any assets acquired after the Closing Date, to the extent that, and for so long as, a grant of a security interest therein would violate an enforceable contractual obligation

assumed by any Grantor in connection with such acquisition that (A) is binding on such assets, (B) was existing at the time of the acquisition thereof and (C) was not created or made binding on such assets in contemplation or in connection with the acquisition of such assets, in each case to the extent the applicable prohibition or requirement for consent is not rendered ineffective pursuant to applicable provisions of the UCC; *provided* that the Collateral shall include proceeds and receivables (that are not otherwise Excluded Assets) of any property excluded under this clause (ii) to the extent the assignment is expressly deemed effective under the UCC notwithstanding such prohibition;

(iii) [reserved];

(iv) [reserved];

(v) any property of any Grantor, to the extent (A) that any applicable Law or Governmental Authority prohibits the creation of a Lien thereon or such creation would require a consent of any Governmental Authority or any other Person (other than any Borrower or any of its Subsidiaries) that has not been obtained, in each case to the extent the applicable prohibition or requirement for consent is not rendered ineffective pursuant to applicable provisions of the UCC; *provided* that the Collateral shall include proceeds and receivables (that are not otherwise Excluded Assets) of any property excluded under this clause (A) to the extent the assignment is expressly deemed effective under the UCC notwithstanding such prohibition, or (B) such Grantor is prohibited from granting a lien on such property to secure the Term Facility by any Contractual Obligation in existence on the Closing Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof);

(vi) any intent-to-use trademark applications prior to the filing, and acceptance by the United States Patent and Trademark Office, of a "Statement of Use or "Amendment to Allege Use" with respect thereto, if any, to the extent that, and solely during the period in which, the grant of a security interest therein prior to such filing and acceptance would impair the validity or enforceability of such intent-to-use trademark applications or the resulting trademark applications under applicable federal law;

(vii) any governmental licenses or state or local franchises, charters and authorizations, to the extent that (and only for so long as) a grant of a security interest therein would be prohibited or restricted thereby, in each case to the extent the applicable prohibition or restriction is not rendered ineffective after giving effect to the applicable provisions of the UCC;

(viii) any margin stock (within the meaning of Regulation U issued by the FRB);
and

(ix) any personal property of any Grantor, to the extent that the Lender and the Borrower reasonably agree that the cost or burden of obtaining a security interest therein, would be excessive in relation to the practical benefit to the Lender obtained thereby.

provided, further, however, that the term "Excluded Assets" shall not (x) include the shares of capital stock and limited liability company interests described in Schedule II and (y) include proceeds of any items contained in the foregoing clauses (i) through (ix) to the extent such Proceeds would not otherwise constitute an "Excluded Asset" pursuant to the terms of this Agreement.

Notwithstanding anything to the contrary contained in the foregoing clauses (a) through (t) or in the Loan Documents, no Grantor shall be required to (w) enter into control agreements or other control arrangements

with respect to, or otherwise perfect any security interest by "control" including over, securities accounts, deposit accounts, other bank accounts, cash and cash equivalents and accounts related to the clearing, payment processing and similar operations of the Borrower and its Subsidiaries, or other assets specifically requiring perfection through control, other than certificates evidencing Pledged Interests in Subsidiaries ("Designated Pledged Interests") and instruments evidencing Pledged Debt owed by any debtor having a fair market value (in the aggregate for all such Pledged Debt held by all Grantors owing by the applicable debtor) in excess of \$50,000 (such Pledged Debt, the "Designated Pledged Debt"), (x) take any action in, or required by the laws of, any jurisdiction (other than in the United States of America, any state thereof and the District of Columbia) to create a security interest in or to perfect any security interest in any Collateral, including in Equity Interests of Foreign Subsidiaries or any intellectual property rights (it being understood that there shall be no security documents governed by the laws of any jurisdiction (other than in the United States of America, any state thereof and the District of Columbia) and there shall be no requirement of any Grantor to make any filings or take any action in any office in any foreign jurisdiction, including with respect to foreign intellectual property), (y) perfect the security interest in the following other than by the filing of a UCC financing statement in the filing office indicated in Section 9-501(a)(2) of the applicable UCC: (1) Letter of Credit Rights, (2) motor vehicles and other assets subject to certificates of title, (3) Commercial Tort Claims with a claimed amount of less than \$50,000, (4) instruments representing or evidencing the Pledged Debt (other than Designated Pledged Debt) or (5) Pledged Interests (other than Designated Pledged Interests) or (z) perfect the security interest in certain Collateral in such circumstances where the Lender determines, in its reasonable discretion, that the cost of perfecting the security interest in such Collateral is excessive in relation to the practical benefit to the Lender obtained thereby (clauses (w), (x), (y) and (z)), collectively, the "Perfection Exceptions").

Section 3. Security for Obligations. This Agreement secures, in the case of each Grantor, the payment of all Obligations of such Grantor now or hereafter existing under the Loan Documents (as such Loan Documents may be amended, amended and restated, supplemented, replaced, refined or otherwise modified from time to time (including any increases of the principal amount outstanding thereunder)), whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, fees, premiums, penalties, indemnifications, contract causes of action, costs, expenses or otherwise (all such Obligations being the "Secured Obligations"). Without limiting the generality of the foregoing, this Agreement secures, as to each Grantor, the payment of all amounts that constitute part of the Secured Obligations that would be owed by such Grantor to the Lender under the Loan Documents but for the fact that they are unenforceable or not allowable due to the effects of Debtor Relief Laws.

Section 4. Grantors Remain Liable. Anything herein to the contrary notwithstanding, (a) each Grantor shall remain liable under the contracts and agreements included in such Grantor's Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Lender of any of the rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral and (c) the Lender shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Agreement or any other Loan Document, nor shall the Lender be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

Section 5. Delivery and Control of Security Collateral. Subject to the terms of the ABL Intercreditor Agreement,

(a) all certificates, if any, representing or evidencing the Designated Pledged Interests and all instruments representing or evidencing the Designated Pledged Debt shall be delivered to and held by or on behalf of the Lender pursuant hereto and shall be in suitable form for transfer by delivery or shall

be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to the Lender. Subject to the terms of the ABL Intercreditor Agreement, during the continuation of an Event of Default, the Lender shall have the right, at any time in its discretion and with notice to the Borrower (*provided* that, in the case of an Event of Default pursuant to Sections 8.01(f) or (g) of the Term Loan Credit Agreement, such notice shall have automatically been deemed to have been given), to (i) transfer to or to register in the name of the Lender or any of its nominees any or all of the Security Collateral, subject only to the revocable rights specified in Section 11(a), (ii) exchange certificates or instruments representing or evidencing Security Collateral for certificates or instruments of smaller or larger denominations and (iii) convert Security Collateral consisting of Financial Assets credited to any Securities Account to Security Collateral consisting of Financial Assets held directly by the Lender, and to convert Security Collateral consisting of Financial Assets held directly by the Lender to Security Collateral consisting of Financial Assets credited to any Securities Account.

(b) Subject to the terms of the ABL Intercreditor Agreement, during the continuation of an Event of Default, promptly upon the reasonable request of the Lender (*provided* that, in the case of an Event of Default pursuant to Sections 8.01(f) or (g) of the Term Loan Credit Agreement, such request shall have automatically been deemed to have been given), with respect to any Security Collateral in which any Grantor has any right, title or interest and that constitutes an uncertificated security of a Subsidiary (but only to the extent that the issuer thereof is (a) wholly-owned by one or more Grantors and (b) organized under the laws of a State of the United States or the District of Columbia), such Grantor will cause the issuer thereof (at the option of the Lender (*provided* that, in the case of any deemed notice as a result of an Event of Default pursuant to Sections 8.01(f) or (g) of the Term Loan Credit Agreement, the Lender shall be deemed to have elected the option set forth in the following clause (b)(i))) either (i) to register the Lender as the registered owner of such security or (ii) to agree in an authenticated record with such Grantor and the Lender that such issuer will comply with instructions with respect to such security originated by the Lender without further consent of such Grantor, such authenticated record to be in form and substance reasonably satisfactory to the Lender. During the continuation of an Event of Default, with respect to any Security Collateral in which any Grantor has any right, title or interest and that is not an uncertificated security, promptly upon the request of the Lender (*provided* that, in the case of an Event of Default pursuant to Sections 8.01(f) or (g) of the Term Loan Credit Agreement, such request shall have automatically been deemed to have been given), such Grantor will notify each issuer of the Designated Pledged Interests that such Pledged Interests are subject to the security interests granted hereunder.

(c) With respect to any interest in any limited liability company or limited partnership constituting Security Collateral in which any Grantor has any right, title or interest, on the date hereof (after giving effect to the Transactions) or in the future, and that constitutes a “security” within the meaning of Article 8 of the UCC and is governed by Article 8 of the UCC (but only to the extent that the issuer thereof is (a) wholly-owned and (b) organized under the laws of a State of the United States or the District of Columbia), such Grantor agrees that (i) such interest shall be certificated and (ii) each such interest shall at all times hereafter continue to be such a security and represented by such certificate. With respect to any interest in any limited liability company or limited partnership constituting Security Collateral in which any Grantor has any right, title or interest, on the date hereof (after giving effect to the Transactions) or in the future, and that does not constitute a “security” within the meaning of Article 8 of the UCC (but only to the extent that the issuer thereof is (a) wholly-owned and (b) organized under the laws of a State of the United States or the District of Columbia), such Grantor shall at no time elect to treat any such interest as a “security” within the meaning of Article 8 of the UCC, nor shall such interest be represented by a certificate, unless such Grantor provides written notification to the Lender of such election and such interest is thereafter represented by a certificate that is promptly delivered to the Lender pursuant to the terms hereof.

(d) During the continuation of an Event of Default, promptly upon the request of the Lender (*provided* that, in the case of an Event of Default pursuant to Sections 8.01(f) or (g) of the Term

Loan Credit Agreement, such request shall have automatically been deemed to have been given), such Grantor will notify each issuer of the Designated Pledged Debt that such Pledged Debt is subject to the security interests granted hereunder.

(e) Each Grantor shall use commercially reasonable efforts to obtain a Collateral Access Agreement from the lessor of each leased property, mortgagee of owned property or bailee or consignee with respect to any warehouse, processor or converter facility or other location where Collateral in excess of \$50,000 is stored or located or deemed to be located, which agreement or letter shall provide access rights, contain a waiver or subordination of all Liens or claims that the landlord, mortgagee, bailee or consignee may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to the Lender.

Section 6. Electronic Chattel Paper, Transferable Records; Giving Notice of Commercial Tort Claims; Letter of Credit Rights. Subject to the terms of the ABL Intercreditor Agreement, so long as any Secured Obligation of any Loan Party under any Loan Document shall remain unpaid:

(a) during the continuation of an Event of Default, promptly upon the request of the Lender (*provided* that, in the case of an Event of Default pursuant to Sections 8.01(f) or (g) of the Term Loan Credit Agreement, such request shall have automatically been deemed to have been given), each Grantor will maintain all (i) Electronic Chattel Paper so that the Lender has control of such Electronic Chattel Paper in the manner specified in Section 9-105 of the UCC and (ii) all transferable records so that the Lender has control of such transferable records in the manner specified in Section 16 of the Uniform Electronic Transactions Act, as in effect in the jurisdiction governing such transferable record ("UETA");

(b) each Grantor will give prompt notice to the Lender of any individual Commercial Tort Claim with a claimed amount in excess of \$50,000 that may arise after the date hereof and will promptly execute or otherwise authenticate a supplement to this Agreement and otherwise take all necessary action, to subject such Commercial Tort Claim to the security interest created under this Agreement; and

(c) each Grantor, by granting a security interest in Letter of Credit Rights to the Lender, intends to (and hereby does) assign as collateral to the Lender its rights (including its contingent rights) to the proceeds of all such Letter of Credit Rights of which it is or hereafter becomes a beneficiary or assignee (it being understood that no actions shall be required to perfect a security interest in Letter of Credit Rights other than filing of a Uniform Commercial Code financing statement). Subject to the terms of the ABL Intercreditor Agreement, upon the occurrence and continuation of an Event of Default, each Grantor will, promptly upon written request by the Lender (*provided* that, in the case of an Event of Default pursuant to Sections 8.01(f) or (g) of the Term Loan Credit Agreement, such written request shall have automatically been deemed to have been given), (i) notify (and such Grantor hereby authorizes the Lender to notify, upon written notice to such Grantor of its intention to do so) the issuer and each nominated person with respect to each of the letters of credit that the Letter of Credit Rights have been assigned to the Lender hereunder and any payments due or to become due in respect thereof are to be made directly to the Lender or its designee and (ii) arrange for the Lender to become the transferee beneficiary of such letter of credit.

Section 7. Representations and Warranties. Each Grantor represents and warrants as follows (it being understood that none of the foregoing applies to the Excluded Assets):

(a) as of the Closing Date (after giving effect to the Transactions), (i) such Grantor's exact legal name, as defined in Section 9-503(a) of the UCC, type of organization, jurisdiction of organization or incorporation, organizational identification number (if any) and taxpayer identification number (if any), is correctly set forth on Schedule I hereto, (ii) such Grantor is located (within the meaning

of Section 9-307 of the UCC) and has its chief executive office, in the state or jurisdiction set forth on Schedule I hereto and (iii) such Grantor has no trade names other than as listed on Schedule I hereto and as of the Closing Date, within the five (5) years preceding the Closing Date, has not changed its name, location, chief executive office, type of organization, jurisdiction of organization or incorporation, organizational identification number (if any) or taxpayer identification number (if any) from those set forth on Schedule I, except as described on Schedule I;

(b) as of the Closing Date (after giving effect to the Transactions), the Pledged Interests pledged by such Grantor and listed on Schedule II hereto constitute the percentage of the issued and outstanding Equity Interests of the issuers thereof indicated on Schedule II hereto;

(c)

(i) the operation of such Grantor's business as currently conducted and the use of the Intellectual Property Collateral in connection therewith do not, to the knowledge of such Grantor, infringe upon or misappropriate the intellectual property rights of any third party;

(ii) such Grantor is the exclusive owner of all right, title and interest in and to the Intellectual Property Collateral, or is entitled to use all Intellectual Property Collateral, subject only to the terms of the IP Agreements;

(iii) as of the Closing Date (after giving effect to the Transactions), the Intellectual Property Collateral set forth on Schedule III hereto includes (A) all of the registered or applied for Patents, Trademarks and Copyrights owned by such Grantor and material to such Grantor's business, (B) all domain names owned by any Grantor and material to such Grantor's business, except for any domain names originated as a result of foreign intellectual property filings and (C) all IP Agreements pursuant to which any Grantor (x) is granted or obtains or agrees to grant or obtain from any other Person any right to use any material Intellectual Property Collateral or (y) permits or agrees to permit any other Person to use, enforce or register any material Intellectual Property Collateral owned by any Grantor;

(iv) to such Grantor's knowledge, Grantor has made or performed, or caused to be made or performed, all filings, recordings and other acts and has paid all required fees and taxes to maintain in full force and effect and protect its interest in each and every application and registration made by the previous owner for Intellectual Property Collateral owned by such Grantor, including, without limitation, recordings of any of its proprietary interests in United States Patents and United States Trademarks with the United States Patent and Trademark Office and recordation of any of its proprietary interests in United States Copyrights with the United States Copyright Office made by the previous owner; and such Grantor has used proper statutory notice in the same manner as the previous owner in connection with its use of each such Patent, Trademark and Copyright owned by such Grantor;

(v) to such Grantor's knowledge, (A) none of the Trade Secrets of such Grantor has been divulged, disclosed or appropriated to the detriment of such Grantor for the benefit of any Person other than such Grantor and (B) such Grantor has taken commercially reasonable measures to protect the confidentiality of such Grantor's Trade Secret's;

(vi) to such Grantor's knowledge, no Grantor or Intellectual Property Collateral is subject to (x) any claim, action, suit, investigation, litigation or proceeding alleging that the Grantor's rights in or use of the Intellectual Property Collateral or that any services provided by, processes used by, or products manufactured or sold by, such Grantor infringe or otherwise

violate any patent, trademark, copyright or any other intellectual property right of any third party or (y) any outstanding consent, settlement, decree, order, injunction, judgment or ruling restricting the use of any Intellectual Property Collateral or that would impair the validity or enforceability of such Intellectual Property Collateral; and

(d) such Grantor has no Commercial Tort Claims with an individual claimed value in excess of \$50,000 on the Closing Date other than those listed in Schedule IV and additional Commercial Tort Claims as to which such Grantor has complied with the requirements of Section 6(b) hereof.

Section 8. Further Assurances. (a) Each Grantor agrees that from time to time, at the request of the Lender and the expense of such Grantor, such Grantor will promptly execute and deliver, or otherwise authenticate, all further instruments and documents, and take all further action that may be necessary or that the Lender may reasonably request, in order to perfect and protect any pledge or security interest granted or purported to be granted by such Grantor hereunder or to enable the Lender to exercise and enforce its rights and remedies hereunder with respect to any Collateral of such Grantor, subject in each case to the Perfection Exceptions and the terms of the ABL Intercreditor Agreement. Without limiting the generality of the foregoing, subject to the terms of the ABL Intercreditor Agreement, each Grantor will, upon the Lender's reasonable request, promptly with respect to Collateral of such Grantor: (i) if any such Collateral shall be evidenced by a promissory note or other instrument or Chattel Paper, deliver and pledge to the Lender hereunder such note or instrument or Chattel Paper duly indorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to the Lender; (ii) execute or authenticate and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be reasonably necessary or desirable, or as the Lender may reasonably request, in order to perfect and preserve the security interest granted or purported to be granted by such Grantor hereunder; notwithstanding anything to the contrary herein or in any Loan Document, the Grantors shall not have any obligation to perfect any security interest granted hereunder in any Intellectual Property Collateral in any jurisdiction other than the United States, any state thereof or the District of Columbia; and (iii) deliver and pledge to the Lender certificates representing Security Collateral consisting of Designated Pledged Interests or Designated Pledged Debt, in each case that constitutes certificated securities, accompanied by undated stock or bond powers executed in blank (to the extent required to be pledged pursuant to the Term Loan Credit Agreement or this Agreement).

(b) Each Grantor hereby authorizes the Lender to file, at any time or from time to time, one or more UCC financing or continuation statements, and amendments thereto, including, without limitation, one or more UCC financing statements indicating that such financing statements cover all assets or all personal property, whether now owned or hereafter acquired (or words of similar effect) of such Grantor, in each case without the signature of such Grantor, and regardless of whether any particular asset described in such financing statements falls within the scope of the UCC or the granting clause of this Agreement.

Section 9. Post-Closing Changes; Bailees; Collections on Assigned Agreements and Accounts. (a) Each Grantor will give prompt written notice to the Lender of any change in its exact legal name, as defined in Section 9-503(a) of the UCC, type of organization, jurisdiction of organization or incorporation, organizational identification number (if any) and taxpayer identification number (if any) from those set forth in Schedule I (*provided* that such written notice shall be given no later than five (5) Business Days (or such later date as may be agreed by the Lender) after such change) and will take all action reasonably required by the Lender for the purpose of perfecting or protecting the security interest granted by this Agreement.

(b) Subject to the terms of the ABL Intercreditor Agreement, during the continuation of an Event of Default, if Collateral of any Grantor is at any time in the possession or control of a

warehouseman, bailee or agent, upon the request of the Lender (*provided* that, in the case of an Event of Default pursuant to Sections 8.01(f) or (g) of the Term Loan Credit Agreement, such request shall have automatically been deemed to have been given) such Grantor will (i) notify such warehouseman, bailee or agent of the security interest created hereunder, (ii) instruct such warehouseman, bailee or agent to hold all such Collateral solely for the Lender's account subject only to the Lender's instructions, (iii) use commercially reasonable efforts to cause such warehouseman, bailee or agent to authenticate a record (in form and substance reasonably satisfactory to the Lender) acknowledging that it holds possession of such Collateral for the Lender's benefit and shall act solely on the instructions of the Lender without the further consent of the Grantor or any other Person and (iv) if obtained, make such authenticated record available to the Lender.

(c) Except as otherwise provided in this Section 9(c), each Grantor may continue to collect, at its own expense, in its sole discretion, all amounts due or to become due such Grantor under its Accounts. In connection with such collections, such Grantor may take (and, subject to the terms of the ABL Intercreditor Agreement, at the Lender's direction during the continuation of an Event of Default, shall take) such commercially reasonable action as such Grantor (or during the continuation of an Event of Default, the Lender) may deem necessary or advisable to enforce collection thereof; *provided, however*, that, subject to the terms of the ABL Intercreditor Agreement, the Lender shall have the right at any time upon the occurrence and during the continuance of an Event of Default and upon written notice to such Grantor of its intention to do so (*provided* that, in the case of an Event of Default pursuant to Sections 8.01(f) or (g) of the Term Loan Credit Agreement, such notice shall have automatically been deemed to have been given), to notify the obligors under any Accounts, of the assignment of such Accounts to the Lender and to direct such obligors to make payment of all amounts due or to become due to such Grantor thereunder directly to the Lender and, upon such notification and at the expense of such Grantor, to enforce collection of any such Accounts, to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done, and to otherwise exercise all rights with respect to such Accounts, including, without limitation, those set forth in Section 9-607 of the UCC. After receipt by any Grantor of written notice (*provided* that such written notice shall not be required in the case of an Event of Default pursuant to Sections 8.01(f) or (g) of the Term Loan Credit Agreement) from the Lender and during the continuation of an Event of Default, (i) all amounts and proceeds (including, without limitation, instruments) received by such Grantor in respect of the Accounts, of such Grantor shall be received in trust for the benefit of the Lender hereunder, shall be segregated from other funds of such Grantor and shall be either (A) released to such Grantor to the extent permitted under the terms of the Term Loan Credit Agreement to the extent an Event of Default no longer shall be continuing or (B) if any Event of Default shall be continuing, applied as provided in Section 8.03 of the Term Loan Credit Agreement and (ii) except with the consent of the Lender, such consent not to be unreasonably withheld, such Grantor will not adjust, settle or compromise the amount or payment of any Account, release wholly or partly any obligor thereof, or allow any credit or discount thereon.

Section 10. As to Intellectual Property Collateral. (a) With respect to each item of its Registered Intellectual Property Collateral owned by a Grantor, except as otherwise provided in the Term Loan Credit Agreement, each Grantor agrees to take, at its expense, commercially reasonable steps in the United States, including, without limitation, in the United States Patent and Trademark Office, the United States Copyright Office and any other domestic governmental authority, as applicable, to (i) maintain the validity and enforceability of such Registered Intellectual Property Collateral and maintain such Registered Intellectual Property Collateral in full force and effect, and (ii) pursue the registration (to the extent registrable) and maintenance of each application and registration for any Patent, Trademark or Copyright owned by such Grantor, now or hereafter included in such Registered Intellectual Property Collateral, including, without limitation, the payment of required fees and taxes, the filing of responses to office actions issued by the United States Patent and Trademark Office, the United States Copyright Office and any other domestic governmental authority, as applicable, the filing of applications for renewal or extension, the filing

of affidavits under Sections 8 and 15 of the U.S. Trademark Act, the filing of divisional, continuation, continuation-in-part, reissue and renewal applications or extensions, the payment of maintenance fees and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings, except, in each case, as permitted by the Loan Documents.

(b) Except where permitted by the Loan Documents, each Grantor shall use proper statutory notice in connection with its use of owned Intellectual Property Collateral that is material to the business of the Borrower and its Subsidiaries. Except where permitted by the Loan Documents, no Grantor shall do or permit any act or knowingly omit to do any act whereby any of its owned Intellectual Property Collateral may lapse or become invalid or unenforceable or placed in the public domain.

(c) [Reserved.]

(d) With respect to Registered Intellectual Property Collateral owned by each Grantor, such Grantor agrees to execute or otherwise authenticate an agreement, in substantially the form set forth in Exhibit B hereto or otherwise in form and substance reasonably satisfactory to the Lender (an “Intellectual Property Security Agreement”), for recording the security interest granted hereunder to the Lender in such Registered Intellectual Property Collateral with the United States Patent and Trademark Office, the United States Copyright Office or any other domestic governmental authorities necessary to perfect the security interest granted hereunder in any registered or applied-for United States Registered Intellectual Property Collateral, as applicable.

(e) Without limiting Section 2, each Grantor agrees that should it obtain an ownership interest in any Registered Intellectual Property Collateral that is not, as of the Closing Date, a part of the Registered Intellectual Property Collateral (“After-Acquired Intellectual Property”) (i) the provisions of this Agreement shall automatically apply thereto, and (ii) any such After-Acquired Intellectual Property and, in the case of trademarks, the goodwill symbolized thereby, shall automatically become part of the Registered Intellectual Property Collateral subject to the terms and conditions of this Agreement with respect thereto. Each Grantor shall, concurrently with the delivery of financial statements under Section 6.01(a) and (b) of the Term Loan Credit Agreement (or such later date as agreed to by the Lender in its reasonable discretion), execute and deliver to the Lender, or otherwise authenticate, an agreement substantially in the form of Exhibit C hereto or otherwise in form and substance reasonably satisfactory to the Lender (an “IP Security Agreement Supplement”) covering such After-Acquired Intellectual Property, if any, which, at the request of the Lender, shall be recorded with (or which, at the option of the Grantor, the Lender shall be authorized to record with) the United States Patent and Trademark Office or the United States Copyright Office to perfect the security interest granted hereunder in any registered or applied-for United States After-Acquired Intellectual Property, as applicable.

Section 11. Voting Rights; Dividends; Etc. (a) So long as no Event of Default shall have occurred and be continuing, and after the occurrence of an Event of Default but prior to an Equity Rights Shift Date:

(i) each Grantor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Security Collateral of such Grantor or any part thereof for any purpose; *provided, however*, that such Grantor will not exercise or refrain from exercising any such right in a manner prohibited by the Term Loan Credit Agreement;

(ii) each Grantor shall be entitled to receive and retain any and all dividends, interest and other distributions paid in respect of the Security Collateral of such Grantor if and to the extent that the payment thereof is not otherwise prohibited by the terms of the Loan Documents; *provided, however*, that (x) any non-cash dividends in respect thereof, including any rights to



receive the same to the extent not so distributed or paid, that would constitute Pledged Interests, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Interests, received in exchange for Pledged Interests or any part thereof, or in redemption thereof, as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise and (y) any non-cash dividends and other non-cash distributions or payments paid or payable in respect of any Pledged Interests that would constitute Pledged Interests in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid in surplus, shall be and become part of the Pledged Interests, as applicable, and, if received by any Grantor, and to the extent constituting Designated Pledged Interests, such Grantor shall deliver and pledge to the Lender such Designated Pledged Interests in accordance with Section 8(a)(iii); and

(iii) The Lender will execute and deliver (or cause to be executed and delivered) to each Grantor all such proxies and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and other rights that it is entitled to exercise pursuant to paragraph (i) above and to receive the dividends or interest payments that it is authorized to receive and retain pursuant to paragraph (ii) above.

(b) Subject to the terms of the ABL Intercreditor Agreement, upon the occurrence and during the continuance of an Event of Default:

(i) upon notice to the applicable Grantor, and automatically in the case of clause (y) below to the extent such Event of Default is under Section 8.01(f) or (g) of the Term Loan Credit Agreement (the date of such notice, or of such Event of Default under Section 8.01(f) or (g) of the Term Loan Credit Agreement, the "Equity Rights Shift Date"), all rights of each Grantor (x) to exercise or refrain from exercising the voting and other consensual rights that it would otherwise be entitled to exercise pursuant to Section 11(a)(i) shall, upon notice to such Grantor by the Lender, cease and (y) to receive the dividends, interest and other distributions that it would otherwise be authorized to receive and retain pursuant to Section 11(a)(ii) shall cease, and all such rights shall thereupon become vested in the Lender, which shall thereupon have the sole right to exercise or refrain from exercising such voting and other consensual rights and to receive and hold as Security Collateral such dividends, interest and other distributions; and

(ii) all dividends, interest and other distributions that are received by any Grantor contrary to the provisions of paragraph (i) of this Section 11(b) shall be received in trust for the benefit of the Lender, shall be segregated from other funds of such Grantor and shall be forthwith paid over to the Lender as Security Collateral in the same form as so received (with any necessary indorsement).

Section 12. Lender Appointed Attorney-in-Fact. Subject to the terms of the ABL Intercreditor Agreement, each Grantor hereby irrevocably appoints the Lender such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, from time to time, upon the occurrence and during the continuance of an Event of Default, in the Lender's discretion, to do any or all of the following that the Lender may deem necessary or advisable to accomplish the purposes of this Agreement:

(a) to obtain and adjust insurance required to be paid to the Lender;

(b) to ask for, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;



(c) to receive, indorse and collect any drafts or other instruments, documents and Chattel Paper, in connection with clause (a) or (b) above;

(d) to exercise any of such Grantor's rights under the ABL Credit Agreement, including, without limitation, the direction of any disposition of funds to which such Grantor is entitled thereunder; and

(e) to file any claims or take any action or institute any proceedings that the Lender may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce compliance with the terms and conditions of any Assigned Agreement or the rights of the Lender with respect to any of the Collateral.

Section 13. Lender May Perform. If any Grantor fails to perform any agreement contained herein, the Lender may, after providing notice to such Grantor of its intent to do so (*provided* that, in the case of an Event of Default pursuant to Sections 8.01(f) or (g) of the Term Loan Credit Agreement, such notice shall have automatically been deemed to have been given), but without any obligation to do so, itself perform, or cause performance of, such agreement, and the expenses of the Lender incurred in connection therewith shall be payable by such Grantor pursuant to Section 10.04 of the Term Loan Credit Agreement.

Section 14. The Lender's Duties. The powers conferred on the Lender hereunder are solely to protect the Lender's interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care with respect to the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Lender shall have no duty as to any Collateral, as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not the Lender has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Collateral. The Lender shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which it accords its own property.

Section 15. Remedies. If any Event of Default shall have occurred and be continuing, subject to the terms herein and to the terms of the ABL Intercreditor Agreement:

(a) The Lender may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a Lender upon default under the UCC (whether or not the UCC applies to the affected Collateral) and also may: (i) require each Grantor to, and each Grantor hereby agrees that it will at its expense and upon request of the Lender forthwith, assemble all or part of the Collateral as directed by the Lender and make it available to the Lender at a place and time to be designated by the Lender that is reasonably convenient to both parties; (ii) without notice except as specified below, but subject to pre-existing rights and licenses, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Lender's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as are commercially reasonable, as determined by the Lender, and, to the extent applicable, in accordance with the provisions of the UCC; (iii) occupy any premises owned or leased by any of the Grantors where the Collateral or any part thereof is assembled or located for a reasonable period in order to effectuate its rights and remedies hereunder or under law, without obligation to such Grantor in respect of such occupation; and (iv) to the maximum extent permitted by applicable law, exercise any and all rights and remedies of any of the Grantors under or in connection with the Collateral, or otherwise in respect of the Collateral, including, without limitation, (A) any and all rights of such Grantor to demand or otherwise require payment of any amount under, or performance of any provision of, the Assigned Agreements, the Accounts and the other Collateral, and



(B) exercise all other rights and remedies with respect to the Assigned Agreements, the Accounts and the other Collateral, including, without limitation, those set forth in Section 9-607 of the UCC. Each Grantor agrees that, to the extent notice of sale shall be required by law, to the maximum extent permitted by applicable law, at least ten (10) days' notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. To the maximum extent permitted by applicable law, the Lender shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) All payments received by any Grantor under or in connection with any Assigned Agreement or otherwise in respect of the Collateral shall be received in trust for the benefit of the Lender, shall be segregated from other funds of such Grantor and shall be forthwith paid over to the Lender in the same form as so received (with any necessary indorsement).

(c) The Lender may, during the continuation of an Event of Default pursuant to the Term Loan Credit Agreement, without notice to any Grantor except as required by law and at any time or from time to time, charge, set-off and otherwise apply all or any part of the Secured Obligations against any funds held with respect to any Deposit Account.

(d) Any cash held by or on behalf of the Lender and all cash proceeds received by or on behalf of the Lender in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of the Lender, be held by the Lender as collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to the Lender pursuant Section 10.04 of the Term Loan Credit Agreement) in whole or in part by the Lender against, all or any part of the Secured Obligations, in the manner set forth in Section 8.03 of the Term Loan Credit Agreement.

(e) If the Lender shall determine to exercise its right to sell all or any of the Security Collateral of any Grantor pursuant to this Section 15, each Grantor agrees that, upon request of the Lender, such Grantor will, subject to pre-existing rights and licenses, at its own expense, use its reasonable best efforts to do or cause to be done all such other acts and things as may be necessary to make such sale of such Security Collateral or any part thereof valid and binding and in compliance with applicable law.

(f) Subject to compliance with applicable law, including the Securities Act of 1933 and the Exchange Act and all rules and regulations thereunder, the Lender is authorized, in connection with any sale of the Security Collateral pursuant to this Section 15, to deliver or otherwise disclose to any prospective purchaser of the Security Collateral: (i) any registration statement or prospectus, and all supplements and amendments thereto; (ii) information and projections and (iii) any other information in its possession relating to such Security Collateral.

(g) Each Grantor acknowledges the impossibility of ascertaining the amount of damages that would be suffered by the Lender by reason of the failure by such Grantor to perform any of the covenants contained in Section 15(f) above and, consequently, agrees that Section 15(f) shall be specifically enforceable against such Grantor.

Section 16. Amendments; Waivers; Additional Grantors; Etc. (a) Subject to Section 10.01 of the Term Loan Credit Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any departure by any Grantor herefrom, shall in any event be effective unless the same shall be in writing and signed by the Lender and the Grantors, and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of the Lender to exercise, and no delay in exercising any right hereunder, shall operate

as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

(b) Upon the execution and delivery, or authentication, by any Person of a security agreement supplement in substantially the form of Exhibit A hereto (each a “Security Agreement Supplement”), (i) such Person shall be referred to as an “Additional Grantor” and shall be and become a Grantor hereunder, and each reference in this Agreement and the other Loan Documents to “Grantor” shall also mean and be a reference to such Additional Grantor, and each reference in this Agreement and the other Loan Documents to “Collateral” shall also mean and be a reference to the Collateral of such Additional Grantor, and (ii) the supplemental schedules I through V attached to each Security Agreement Supplement shall be incorporated into and become a part of and supplement Schedules I through V, respectively, hereto, and the Lender may attach such supplemental schedules to such Schedules; and each reference to such Schedules shall mean and be a reference to such Schedules as supplemented pursuant to each Security Agreement Supplement.

Section 17. Notices, Etc. All notices and other communications provided for hereunder shall be in writing (including telegraphic, telecopy or telex communication or facsimile transmission) and mailed, telegraphed, telecopied, telexed, faxed, emailed or delivered to it, if to any Grantor, addressed to it in care of the Borrower at the Borrower’s address specified in Section 10.02 of the Term Loan Credit Agreement, if to the Lender, at its address specified in Section 10.02 of the Term Loan Credit Agreement. All such notices and other communications shall be deemed to be given or made at such time as shall be set forth in Section 10.02 of the Term Loan Credit Agreement. Delivery by telecopier or in .pdf or similar format by electronic mail of an executed counterpart of any amendment or waiver of any provision of this Agreement or of any Security Agreement Supplement or Schedule hereto shall be effective as delivery of an original executed counterpart thereof.

Section 18. Continuing Security Interest; Assignments under the Term Loan Credit Agreement. This Agreement shall create a continuing security interest in the Collateral and shall to the extent provided herein (a) remain in full force and effect until the payment in full in cash of the Secured Obligations, (b) be binding upon each Grantor, its successors and assigns and (c) inure, together with the rights and remedies to the benefit of the Lender and its successors and permitted transferees and assigns. Without limiting the generality of the foregoing clause (c), the Lender may assign or otherwise transfer all or any portion of its rights and obligations under the Term Loan Credit Agreement (including, without limitation, all or any portion of its Term Loans owing to it and the Term Note, held by it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender herein or otherwise, in each case as provided in Section 10.07 of the Term Loan Credit Agreement.

Section 19. Release; Termination. (a) Upon (x) any sale, lease, transfer or other disposition of any item of Collateral of any Grantor permitted by, and in accordance with, the terms of the Loan Documents (other than to another Loan Party or to a Person becoming or required to become a Loan Party at the time of such sale, lease, transfer or other disposition), or (y) any transaction permitted by, and in accordance with, the terms of the Loan Documents, resulting in a Grantor owning any Collateral becoming an Excluded Subsidiary or being released from its obligations under the Guaranty, in each case, the assignment, pledge and security interest granted hereby with respect to such collateral shall automatically terminate and all rights to such Collateral shall revert to such Grantor and the Lender will, at such Grantor’s expense, execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence the release of such item of Collateral from the assignment, pledge and security interest granted hereby; *provided, however*, that, if requested by the Lender, such Grantor shall have delivered to the Lender a written request for release, together with a form of release for execution by



the Lender, a certificate of such Grantor to the effect that the transaction is in compliance with the Loan Documents and such other supporting information as the Lender may reasonably request.

(b) Upon the termination of the payment in full in cash of the Secured Obligations, the pledge and security interests granted hereby shall automatically terminate and all rights to the Collateral shall revert to the applicable Grantor. Upon any such termination, the Lender will, at the applicable Grantor's expense, execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination.

Section 20. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement in .pdf or similar format by electronic mail shall be effective as delivery of an original executed counterpart of this Agreement.

Section 21. The Mortgages. In the event that any of the Collateral hereunder is also subject to a valid and enforceable Lien under the terms of any Mortgage and the terms of such Mortgage are inconsistent with the terms of this Agreement, then with respect to such Collateral, the terms of such Mortgage shall be controlling (other than with respect to personal property constituting Collateral pursuant to Section 2 hereof) in the case of fixtures and real estate leases, letting and licenses of, and contracts and agreements relating to the lease of, real property, and the terms of this Agreement shall be controlling in the case of all other Collateral.

Section 22. Governing Law; Jurisdiction; Etc. (a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT TO THE EXCLUSIVE GENERAL JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE COUNTY OF NEW YORK (THE "NEW YORK SUPREME COURT"), AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (THE "FEDERAL DISTRICT COURT," AND TOGETHER WITH THE NEW YORK SUPREME COURT, THE "NEW YORK COURTS") AND APPELLATE COURTS FROM EITHER OF THEM; *PROVIDED* THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE (I) THE LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS (IN WHICH CASE ANY PARTY SHALL BE ENTITLED TO ASSERT ANY CLAIM OR DEFENSE, INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 22 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW YORK COURT), OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE LENDER, (II) ANY PARTY FROM BRINGING ANY LEGAL ACTION OR PROCEEDING IN ANY JURISDICTION FOR THE RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT, (III) IF ALL SUCH NEW YORK COURTS DECLINE JURISDICTION OVER ANY PERSON, OR DECLINE (OR, IN THE CASE OF THE FEDERAL DISTRICT COURT, LACK) JURISDICTION OVER ANY SUBJECT MATTER OF SUCH ACTION OR PROCEEDING, A LEGAL ACTION OR PROCEEDING MAY BE BROUGHT WITH RESPECT THERETO IN ANOTHER COURT HAVING JURISDICTION AND (IV) IN THE EVENT A LEGAL ACTION OR PROCEEDING IS BROUGHT AGAINST ANY PARTY HERETO OR INVOLVING ANY OF ITS ASSETS OR PROPERTY IN ANOTHER COURT (WITHOUT ANY COLLUSIVE ASSISTANCE BY SUCH PARTY OR ANY OF ITS SUBSIDIARIES

OR AFFILIATES), SUCH PARTY FROM ASSERTING A CLAIM OR DEFENSE (INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 22 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW YORK COURT) IN ANY SUCH ACTION OR PROCEEDING.

(c) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY COURT REFERRED TO IN SECTION 22(B). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02 OF THE TERM LOAN CREDIT AGREEMENT. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 22(E) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 23. Intercreditor Agreement. The terms of this Agreement, any Lien granted to the Lender or otherwise pursuant to this Agreement or the other Loan Documents and the exercise of any right or remedy by the Lender hereunder are subject to the provisions of the ABL Intercreditor Agreement. In the event of any inconsistency between the provisions of this Agreement and the ABL Intercreditor Agreement, the provisions of the ABL Intercreditor Agreement shall supersede the provisions of this Agreement. Without limiting the generality of the foregoing, and notwithstanding anything herein to the contrary, all rights and remedies of the Lender hereunder shall be subject to the terms of the ABL Intercreditor Agreement.

[Signature Pages Follow.]



IN WITNESS WHEREOF, each Grantor and the Lender have caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first written above.

BETTER CHOICE COMPANY INC., as a Grantor


By: 
Name: Kent Cunningham
Title: Chief Executive Officer

HALO, PURELY FOR PETS, INC., as a Grantor

By: 
Name: Kent Cunningham
Title: Chief Executive Officer

[Signature Page to Term Loan Security Agreement]

ALPHIA INC., as Lender

By: 
Name: David McLain
Title: Chief Executive Officer

[Signature Page to Term Loan Security Agreement]

Schedule I to the
Term Loan Security Agreement

**LOCATION, CHIEF EXECUTIVE OFFICE, TYPE OF ORGANIZATION, JURISDICTION OF ORGANIZATION OR
INCORPORATION, ORGANIZATIONAL IDENTIFICATION NUMBER AND TAX IDENTIFICATION NUMBER**

<u>Grantor Legal Name</u>	<u>Type of Entity</u>	<u>Jurisdiction of Organization/ Formation</u>	<u>Address of Chief Executive Office / Registered/Head Office / Principal Place of Business</u>	<u>Preferred Mailing Address</u>	<u>Organizational Identification Number</u>	<u>Federal Taxpayer Identification Number</u>
Better Choice Company Inc.	Corporation	Delaware	12400 Race Track Road, Tampa, FL 33647	12400 Race Track Road, Tampa, FL 33647	DE 7223705	83-4284557
Halo, Purely for Pets, Inc.	Corporation	Delaware	12400 Race Track Road, Tampa, FL 33647	12400 Race Track Road, Tampa, FL 33647	DE 4182913	86-1170662

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Term Loan Security Agreement

Schedule II to the
Term Loan Security Agreement

PLEDGED EQUITY

<u>Grantor / Record Owner</u>	<u>Issuer</u>	<u>Type of Entity</u>	<u>Certificate No.</u>	<u>No. of Shares or Interests Owned</u>	<u>No. of Shares or Interests Outstanding</u>	<u>Percentage Ownership</u>
Better Choice Company Inc.	Halo, Purely for Pets, Inc.	Delaware corporation	CS-10	890 shares of common stock	890 shares of common stock	100%

PLEDGED DEBT

None.

Term Loan Security Agreement

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INTELLECTUAL PROPERTY

I. PATENTS

None.

II. DOMAIN NAMES AND TRADEMARKS

Domain Names:

www.halopets.com

www.trudog.com

www.betterchoicecompany.com

U.S. Trademarks:

Country	Trademark	Owner	Status	Filing Date	Appl. Ser. No.	Reg. Date	Reg. No.
USA	LOVE YOUR CAT'S LIFE	Better Choice Company Inc.	Registered	6/6/2017	87477430	1/12/2021	6245737
USA	LOVE YOUR CAT'S LIFE	Better Choice Company Inc.	Registered	6/6/2017	87979609	3/5/2019	5693690
USA	TRUDOG	Better Choice Company Inc.	Registered	8/8/2013	86032169	5/27/2014	4540604
USA	LOVE YOUR DOG'S LIFE	Better Choice Company Inc.	Registered	6/14/2013	85959882	2/10/2015	4685423
USA	CLOUD NINE	Halo, Purely for Pets, Inc.	Registered	4/29/2004	78/410,393	7/19/2005	2970425
USA	CLOUD NINE HERBAL DIP	Halo, Purely for Pets, Inc.	Registered	9/20/1996	75/169,663	10/21/1997	2106939
USA	DreamCoat (Stylized/Design)	Halo, Purely for Pets, Inc.	Registered	3/23/2018	87/846,700	9/11/2018	5561194
USA	GARDEN OF VEGAN	Halo, Purely for Pets, Inc.	Registered	9/2/2016	87/159,411	10/31/2017	5325313
USA	HALO	Halo, Purely for Pets, Inc.	Registered	8/5/1992	74/302,240	4/13/1993	1764019
USA	HALO	Halo, Purely for Pets, Inc.	Registered	3/6/2007	77/123,050	11/20/2007	3338946

Country	Trademark	Owner	Status	Filing Date	Appl. Ser. No.	Reg. Date	Reg. No.
USA	HALO (Stylized/Design)	Halo, Purely for Pets, Inc.	Registered	3/22/2018	87/845,390	9/11/2018	5561192
USA	HALO (Stylized/Design)	Halo, Purely for Pets, Inc.	Allowed	12/16/2021	97/174,494	N/A	N/A
USA	HALO BECAUSE WHOLE MAKES A WHOLE LOT OF DIFFERENCE (Stylized/Design)	Halo, Purely for Pets, Inc.	Registered	12/27/2016	87/281,362	10/24/2017	5318672
USA	HALO BECAUSE WHOLE MEAT MAKES A WHOLE LOT OF DIFFERENCE (Stylized/Design)	Halo, Purely for Pets, Inc.	Registered	12/27/2016	87/281,360	10/24/2017	5318671
USA	HALO ELEVATE	Halo, Purely for Pets, Inc.	Registered	4/7/2021	90/628,351	11/15/2022	6902368
USA	HALO ELEVATE	Halo, Purely for Pets, Inc.	Allowed	4/30/2021	90/683,300	N/A	N/A
USA	HALO HAPPY	Halo, Purely for Pets, Inc.	Allowed	4/7/2021	90/628,352	N/A	N/A
USA	HALO HAPPY	Halo, Purely for Pets, Inc.	Allowed	4/30/2021	90/683,302	N/A	N/A
USA	HALO HOLISTIC	Halo, Purely for Pets, Inc.	Registered	9/24/2018	88/128,626	5/24/2022	6739699
USA	HALO HOLISTIC	Halo, Purely for Pets, Inc.	Allowed	4/30/2021	90/683,303	N/A	N/A
USA	HALO PURELY FOR PETS	Halo, Purely for Pets, Inc.	Registered	1/10/2001	76/192,223	8/27/2002	2611979
USA	HEALTHSOME	Halo, Purely for Pets, Inc.	Registered	3/11/2009	77/688,415	11/23/2010	3880680
USA	HOLISTIC. WHOLE. HUMANE.	Halo, Purely for Pets, Inc.	Registered	9/15/2017	87/609,936	9/11/2018	5559197
USA	LIV-A-LITTLES	Halo, Purely for Pets, Inc.	Registered	11/1/2005	78/744,462	10/3/2006	3150982
USA	LUV-A-LOTS	Halo, Purely for Pets, Inc.	Registered	6/13/2016	87/069,066	10/23/2018	5590757
USA	OCEAN OF VEGAN	Halo, Purely for Pets, Inc.	Registered	5/7/2019	88/418,520	7/6/2021	6411886
USA	OUR #1 PRIORITY IS YOUR PET'S #2	Halo, Purely for Pets, Inc.	Registered	8/24/2017	87/581,807	6/5/2018	5488224
USA	POOP THAT'S A PLEASURE TO SCOOP	Halo, Purely for Pets, Inc.	Registered	7/5/2017	87/515,839	3/6/2018	5419986
USA	POOPSIE	Halo, Purely for Pets, Inc.	Registered	5/25/2017	87/977,827	7/17/2018	5521324
USA	Poopsie Design	Halo, Purely for Pets, Inc.	Registered	5/25/2017	87/977,227	5/8/2018	5466441
USA	SPOT'S STEW	Halo, Purely for Pets, Inc.	Registered	3/13/1998	75/449,735	1/5/1999	2216548

Term Loan Security Agreement

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Country	Trademark	Owner	Status	Filing Date	Appl. Ser. No.	Reg. Date	Reg. No.
USA	SPOT'S STEW SUCCULENT SALMON RECIPE	Halo, Purely for Pets, Inc.	Registered	3/8/2007	77/125,531	6/10/2008	3446096
USA	THE FEED	Halo, Purely for Pets, Inc.	Pending	9/7/2022	97581094	N/A	N/A
USA	THE WORLD'S BEST FOOD FOR THE WORLD'S BEST KIDS	Halo, Purely for Pets, Inc.	Allowed	12/15/2021	97/172,905	N/A	N/A
USA	WHOLE MEAT MAKES A WHOLE LOT OF DIFFERENCE	Halo, Purely for Pets, Inc.	Registered	7/5/2017	87/515,841	2/20/2018	5409144
USA	XTRA-C	Halo, Purely for Pets, Inc.	Registered	6/2/2003	76/521,838	5/25/2004	2847006
USA	IT'S BETTER	Better Choice Company, Inc.	Cancelled	3/4/2016	86928894	3/20/2018	5428949
USA	KEEP YOUR BEST FRIEND FIT	Better Choice Company, Inc.	Cancelled	2/10/2017	87332040	9/5/2017	5280904
USA	KEEPING IT REAL	Better Choice Company, Inc.	Cancelled	12/19/2013	86148549	3/13/2018	5423612
USA	ORAPUP	Better Choice Company, Inc.	Cancelled	10/4/2012	85745543	6/4/2013	4346420
USA	TRUPET	Better Choice Company, Inc.	Cancelled	8/8/2013	86032463	10/21/2014	4625980

III. TRADE NAMES

Names

Halo
Halo Holistic
Halo Elevate

IV. COPYRIGHTS

Term Loan Security Agreement

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None (see registered trademarks above).

V. IP AGREEMENTS

None.

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COMMERCIAL TORT CLAIMS

None.

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Term Loan Security Agreement

**Exhibit A to the
Term Loan Security Agreement**

FORM OF TERM LOAN SECURITY AGREEMENT SUPPLEMENT

[Date of Term Loan Security Agreement Supplement]

ALPHIA INC.
as Lender
referred to in the
Term Loan Credit Agreement referred
to below

Attn: _____

[Name of Additional Grantor]

Ladies and Gentlemen:

Reference is made to (i) the Term Loan Credit Agreement dated as of June 21, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Term Loan Credit Agreement”), between Better Choice Company Inc., a Delaware corporation, as Borrower and Alpha Inc., as Lender, and (ii) the Term Loan Security Agreement dated June 21, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), between the Grantors from time to time party thereto and the Lender. Terms defined in the Term Loan Credit Agreement or the Security Agreement and not otherwise defined herein are used herein as defined in the Term Loan Credit Agreement or the Security Agreement (and in the event a term is defined differently in the Term Loan Credit Agreement and the Security Agreement, the applicable definition shall be the one given to such term in the Security Agreement).

SECTION 1. Grant of Security. The undersigned hereby grants to the Lender, , a security interest in, all of its right, title and interest in and to all of the Collateral of the undersigned (including all Accounts, cash and Cash Equivalents, Chattel Paper, Commercial Tort Claims set forth on Schedule IV of this Security Agreement Supplement, Deposit Accounts, Documents, Equipment, Fixtures, General Intangibles, Goods, Instruments, Inventory, Letter of Credit Rights, Security Collateral, Agreement Collateral, Intellectual Property Collateral, and the other Collateral referred to in Section 2 of the Security Agreement), except for any Excluded Assets, whether now owned or hereafter acquired by the undersigned, wherever located and whether now or hereafter existing or arising, including, without limitation, the property and assets of the undersigned set forth on the attached supplemental schedules to the Schedules to the Security Agreement. The undersigned shall not be required to take any actions described as Perfection Exceptions.

SECTION 2. Security for Obligations. The grant of a security interest in the Collateral by the undersigned under this Security Agreement Supplement and the Security Agreement secures the payment of all Secured Obligations of the undersigned now or hereafter existing under or in respect of the Loan Documents (as such Loan Documents may be amended, amended and restated, supplemented, replaced, refinanced or otherwise modified from time to time (including any increases of the principal amount outstanding thereunder)), whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, premiums, penalties, fees, indemnifications, contract causes

of action, costs, expenses or otherwise. Without limiting the generality of the foregoing, this Security Agreement Supplement and the Security Agreement secures the payment of all amounts that constitute part of the Secured Obligations that would be owed by the Grantor to the Lender under the Loan Documents but for the fact that they are unenforceable or not allowable due to the effects of Debtor Relief Laws.

SECTION 3. Supplements to Security Agreement Schedules. The undersigned has attached hereto supplemental Schedules I through IV, respectively, to the Security Agreement, and the undersigned hereby certifies, as of the date first above written, that such supplemental schedules have been prepared by the undersigned in substantially the form of the equivalent Schedules to the Security Agreement and are complete and correct in all material respects.

SECTION 4. Authorization to File UCC Statements. The undersigned hereby authorizes the Lender to file, at any time or from time to time, one or more UCC financing or continuation statements, and amendments thereto, including, without limitation, one or more UCC financing statements indicating that such financing statements cover all assets or all personal property, whether now owned or hereafter acquired (or words of similar effect) of the undersigned, in each case without the signature of the undersigned, and regardless of whether any particular asset described in such financing statements falls within the scope of the UCC or the granting clause of this Security Agreement Supplement.

SECTION 5. Representations and Warranties. The undersigned hereby makes each representation and warranty set forth in Section 7 of the Security Agreement with respect to itself (as supplemented by the attached supplemental schedules) as of the date hereof.

SECTION 6. Obligations Under the Security Agreement. The undersigned hereby agrees, as of the date first above written, to be bound as a Grantor by all of the terms and provisions of the Security Agreement to the same extent as each of the other Grantors. The undersigned further agrees, as of the date first above written, that each reference in the Security Agreement to an "Additional Grantor" or a "Grantor" shall also mean and be a reference to the undersigned and that each reference to the "Collateral" or any part thereof shall also mean and be a reference to the undersigned's Collateral or part thereof, as the case may be.

SECTION 7. Governing Law; Jurisdiction; Etc. (a) THIS SECURITY AGREEMENT SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS SECURITY AGREEMENT SUPPLEMENT TO THE EXCLUSIVE GENERAL JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE COUNTY OF NEW YORK (THE "NEW YORK SUPREME COURT"), AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (THE "FEDERAL DISTRICT COURT," AND TOGETHER WITH THE NEW YORK SUPREME COURT, THE "NEW YORK COURTS") AND APPELLATE COURTS FROM EITHER OF THEM; *PROVIDED* THAT NOTHING IN THIS SECURITY AGREEMENT SUPPLEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE (I) THE LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS (IN WHICH CASE ANY PARTY SHALL BE ENTITLED TO ASSERT ANY CLAIM OR DEFENSE, INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 7 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW YORK COURT), OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE LENDER, (II) ANY PARTY FROM BRINGING ANY LEGAL ACTION OR PROCEEDING IN ANY

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JURISDICTION FOR THE RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT, (III) IF ALL SUCH NEW YORK COURTS DECLINE JURISDICTION OVER ANY PERSON, OR DECLINE (OR, IN THE CASE OF THE FEDERAL DISTRICT COURT, LACK) JURISDICTION OVER ANY SUBJECT MATTER OF SUCH ACTION OR PROCEEDING, A LEGAL ACTION OR PROCEEDING MAY BE BROUGHT WITH RESPECT THERETO IN ANOTHER COURT HAVING JURISDICTION AND (IV) IN THE EVENT A LEGAL ACTION OR PROCEEDING IS BROUGHT AGAINST ANY PARTY HERETO OR INVOLVING ANY OF ITS ASSETS OR PROPERTY IN ANOTHER COURT (WITHOUT ANY COLLUSIVE ASSISTANCE BY SUCH PARTY OR ANY OF ITS SUBSIDIARIES OR AFFILIATES), SUCH PARTY FROM ASSERTING A CLAIM OR DEFENSE (INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 7 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW YORK COURT) IN ANY SUCH ACTION OR PROCEEDING.

(c) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT SUPPLEMENT IN ANY COURT REFERRED TO IN SECTION 7(B). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02 OF THE TERM LOAN CREDIT AGREEMENT. NOTHING IN THIS SECURITY AGREEMENT SUPPLEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) EACH PARTY TO THIS SECURITY AGREEMENT SUPPLEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS SECURITY AGREEMENT SUPPLEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS SECURITY AGREEMENT SUPPLEMENT, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS SECURITY AGREEMENT SUPPLEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 7(E) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

[Remainder of the page intentionally left in blank.]

Very truly yours,
[NAME OF ADDITIONAL GRANTOR]

By: _____
Name:
Title:

Address for notices:

Acknowledged,

ALPHIA INC., as Lender

By: _____
Name:
Title:

**Exhibit B to the
Term Loan Security Agreement**

FORM OF TERM LOAN INTELLECTUAL PROPERTY SECURITY AGREEMENT

This TERM LOAN INTELLECTUAL PROPERTY SECURITY AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, the “IP Security Agreement”) dated June 21, 2023, is among the Persons listed on the signature pages hereof (collectively, the “Grantors”) and Alpha Inc., as Lender (the “Lender”).

WHEREAS, Better Choice Company Inc., a Delaware corporation (the “Borrower”) and the Lender have entered into a Term Loan Credit Agreement dated of even date herewith (as amended, amended and restated, supplemented, replaced, refinanced or otherwise modified from time to time (including any increases of the principal amount outstanding thereunder), the “Term Loan Credit Agreement”);

WHEREAS, as a condition precedent to the making of the Term Loan by the Lender, each Grantor has executed and delivered that certain Term Loan Security Agreement dated June 21, 2023 among the Grantors and the Lender (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”); and

WHEREAS, under the terms of the Security Agreement, the Grantors have granted to the Lender, a security interest in, among other property, certain intellectual property of the Grantors, and have agreed thereunder to execute this IP Security Agreement for recording with the United States Patent and Trademark Office, the United States Copyright Office and any other appropriate domestic governmental authorities, as applicable.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Grantor agrees as follows:

SECTION 8. Grant of Security. As security for the payment or performance, as the case may be, in full, of the Secured Obligations, each Grantor hereby grants to the Lender, a security interest in all of such Grantor’s right, title and interest in and to the following to the extent governed by, arising under, pursuant to, or by virtue of, the laws of the United States of America or any state thereof (the “Collateral”):

(a) all patents, patent applications, utility models, statutory invention registrations and all inventions, including those claimed or disclosed therein and all improvements thereto (“Patents”);

(b) all trademarks, trademark applications, service marks, domain names, trade dress, logos, designs, slogans, trade names, business names, corporate names and other source identifiers, and all general intangibles of like nature whether registered or unregistered, together, in each case, with the goodwill symbolized thereby (“Trademarks”);

(c) all copyrights, including, without limitation, copyrights in Computer Software (as hereinafter defined), internet web sites and the content thereof, whether registered or unregistered (“Copyrights”);

(d) all computer software, programs and databases (including, without limitation, source code, object code and all related applications and data files), firmware and documentation and materials relating thereto, together with any and all maintenance rights, service rights, programming rights,

hosting rights, test rights, improvement rights, renewal rights and indemnification rights and any substitutions, replacements, improvements, error corrections, updates and new versions of any of the foregoing ("Computer Software");

(e) all confidential and proprietary information, including, without limitation, know-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, databases and data, including, without limitation, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information (collectively, "Trade Secrets"), and all other intellectual and intangible property of any type, including, without limitation, industrial designs and mask works;

(f) all registrations and applications for registration for any of the foregoing in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, including, without limitation, the registrations and applications for registration of United States intellectual property set forth in Schedule I hereto (as may be supplemented from time to time), together with all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations thereof;

(g) all written agreements, permits, consents, orders and franchises relating to the license, development, use or disclosure of any of the foregoing to which such Grantor, now or hereafter, is a party or a beneficiary ("IP Agreements") and all rights of such Grantor thereunder; and

(h) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages;

provided that notwithstanding anything to the contrary contained in the foregoing clauses (a) through (h), the security interest created hereby shall not extend to, and the term "Collateral" shall not include, any Excluded Assets, including, but not limited to, any intent-to-use trademark applications prior to the filing, and acceptance by the United States Patent and Trademark Office, of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, if any, to the extent that, and solely during the period in which, the grant of a security interest therein prior to such filing and acceptance would impair the validity or enforceability of such intent-to-use trademark applications or the resulting trademark registrations under applicable federal law.

SECTION 9. Security for Obligations. The grant of a security interest in, the Collateral by each Grantor under this IP Security Agreement secures the payment of all Secured Obligations of such Grantor now or hereafter existing under or in respect of the Loan Documents (as such Loan Documents may be amended, amended and restated, supplemented, replaced, refinanced or otherwise modified from time to time (including any increases of the principal amount outstanding thereunder)), whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, premiums, penalties, fees, indemnifications, contract causes of action, costs, expenses or otherwise. Without limiting the generality of the foregoing, this IP Security Agreement secures, as to each Grantor, the payment of all amounts that constitute part of the Secured Obligations that would be owed by such Grantor to the Lender under the Loan Documents but for the fact that they are unenforceable or not allowable due to the effects of Debtor Relief Laws.

SECTION 10. Recordation. Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner for Patents and the Commissioner for Trademarks and any other applicable government officer record this IP Security Agreement.

SECTION 11. Execution in Counterparts. This IP Security Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or in .pdf or similar format by electronic mail shall be effective as delivery of an original executed counterpart of this Agreement.

SECTION 12. Grants, Rights and Remedies. This IP Security Agreement has been entered into in conjunction with the provisions of the Security Agreement. Each Grantor does hereby acknowledge and confirm that the grant of the security interest hereunder to, and the rights and remedies of, the Lender with respect to the Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated herein by reference as if fully set forth herein. In the event of any conflict between the terms of this IP Security Agreement and the terms of the Security Agreement, the terms of the Security Agreement shall govern.

SECTION 13. Governing Law; Jurisdiction; Etc. (a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT TO THE EXCLUSIVE GENERAL JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE COUNTY OF NEW YORK (THE "NEW YORK SUPREME COURT"), AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (THE "FEDERAL DISTRICT COURT," AND TOGETHER WITH THE NEW YORK SUPREME COURT, THE "NEW YORK COURTS") AND APPELLATE COURTS FROM EITHER OF THEM; *PROVIDED* THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE (I) THE LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS (IN WHICH CASE ANY PARTY SHALL BE ENTITLED TO ASSERT ANY CLAIM OR DEFENSE, INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 13 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW YORK COURT), OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE LENDER, (II) ANY PARTY FROM BRINGING ANY LEGAL ACTION OR PROCEEDING IN ANY JURISDICTION FOR THE RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT, (III) IF ALL SUCH NEW YORK COURTS DECLINE JURISDICTION OVER ANY PERSON, OR DECLINE (OR, IN THE CASE OF THE FEDERAL DISTRICT COURT, LACK) JURISDICTION OVER ANY SUBJECT MATTER OF SUCH ACTION OR PROCEEDING, A LEGAL ACTION OR PROCEEDING MAY BE BROUGHT WITH RESPECT THERETO IN ANOTHER COURT HAVING JURISDICTION AND (IV) IN THE EVENT A LEGAL ACTION OR PROCEEDING IS BROUGHT AGAINST ANY PARTY HERETO OR INVOLVING ANY OF ITS ASSETS OR PROPERTY IN ANOTHER COURT (WITHOUT ANY COLLUSIVE ASSISTANCE BY SUCH PARTY OR ANY OF ITS SUBSIDIARIES OR AFFILIATES), SUCH PARTY FROM ASSERTING A CLAIM OR DEFENSE (INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 13 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW YORK COURT) IN ANY SUCH ACTION OR PROCEEDING.

(c) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS IP SECURITY AGREEMENT IN ANY COURT REFERRED TO IN SECTION 13(B). EACH OF THE PARTIES HERETO HEREBY

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IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02 OF THE TERM LOAN CREDIT AGREEMENT. NOTHING IN THIS IP SECURITY AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) EACH PARTY TO THIS IP SECURITY AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS IP SECURITY AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS IP SECURITY AGREEMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 13(E) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

IN WITNESS WHEREOF, each Grantor and the Lender have caused this IP Security Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first written above.

[NAMES OF ENTITIES OWNING IP]

By: _____
Name:
Title:

ALPHIA INC., as Lender

By: _____
Name:
Title:

**Exhibit C to the
Term Loan Security Agreement**

**FORM OF
TERM LOAN INTELLECTUAL PROPERTY SECURITY AGREEMENT SUPPLEMENT**

This TERM LOAN INTELLECTUAL PROPERTY SECURITY AGREEMENT SUPPLEMENT (this "IP Security Agreement Supplement") dated [] is made by the Person listed on the signature page hereof (the "Grantor") in favor of ALPHIA INC., as Lender (the "Lender").

WHEREAS, Better Choice Company Inc., a Delaware corporation (the "Borrower") and the Lender have entered into a Term Loan Credit Agreement dated of even date herewith (as amended, amended and restated, supplemented, replaced, refinanced or otherwise modified from time to time (including any increases of the principal amount outstanding thereunder), the "Term Loan Credit Agreement"). Terms defined in the Term Loan Credit Agreement or in the Security Agreement (as defined below) and not otherwise defined herein are used herein as defined in the Term Loan Credit Agreement or the Security Agreement, as the case may be (and in the event of a term is defined differently in the Term Loan Credit Agreement and the Security Agreement, the applicable definition shall be the one given to such term in the Security Agreement);

WHEREAS, pursuant to the Term Loan Credit Agreement, the Grantors have executed and delivered or otherwise become bound by that certain Term Loan Security Agreement dated June 21, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement") and that certain Term Loan Intellectual Property Security Agreement dated June 21, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "IP Security Agreement"); and

WHEREAS, under the terms of the Security Agreement, the Grantor has agreed to grant to the Lender, a security interest in any after-acquired intellectual property collateral of the Grantor and has agreed in connection therewith to execute this IP Security Agreement Supplement for recording with the United States Patent and Trademark Office, the United States Copyright Office and other domestic governmental authorities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor agrees as follows:

SECTION 1. Grant of Security. As security for the payment or performance, as the case may be, in full, of the Secured Obligations, each Grantor hereby grants to the Lender, a security interest in all of such Grantor's right, title and interest in and to the following to the extent governed by, arising under, pursuant to, or by virtue of, the laws of the United States of America or any state thereof (the "Additional Collateral");

(a) all patents, patent applications, utility models, statutory invention registrations and all inventions, including those claimed or disclosed therein and all improvements thereto ("Patents");

(b) all trademarks, trademark applications, service marks, domain names, trade dress, logos, designs, slogans, trade names, business names, corporate names and other source identifiers, and all general intangibles of like nature whether registered or unregistered, together, in each case, with the goodwill symbolized thereby ("Trademarks");

(c) all copyrights, including, without limitation, copyrights in Computer Software (as hereinafter defined), internet web sites and the content thereof, whether registered or unregistered ("Copyrights");

(d) all computer software, programs and databases (including, without limitation, source code, object code and all related applications and data files), firmware and documentation and materials relating thereto, together with any and all maintenance rights, service rights, programming rights, hosting rights, test rights, improvement rights, renewal rights and indemnification rights and any substitutions, replacements, improvements, error corrections, updates and new versions of any of the foregoing ("Computer Software");

(e) all confidential and proprietary information, including, without limitation, know-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, databases and data, including, without limitation, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information (collectively, "Trade Secrets"), and all other intellectual and intangible property of any type, including, without limitation, industrial designs and mask works;

(f) all registrations and applications for registration for any of the foregoing in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, including, without limitation, the registrations and applications for registration of United States intellectual property set forth in Schedule I hereto, together with all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations thereof;

(g) all written agreements, permits, consents, orders and franchises relating to the license, development, use or disclosure of any of the foregoing to which such Grantor, now or hereafter, is a party or a beneficiary ("IP Agreements") and all rights of such Grantor thereunder; and

(h) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages;

provided that notwithstanding anything to the contrary contained in the foregoing clauses (i) through (v), the security interest created hereby shall not extend to, and the term "Collateral" shall not include, any Excluded Assets, including, but not limited to, any intent-to-use trademark applications prior to the filing, and acceptance by the United States Patent and Trademark Office, of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, if any, to the extent that, and solely during the period in which, the grant of a security interest therein prior to such filing and acceptance would impair the validity or enforceability of such intent-to-use trademark applications or the resulting trademark registrations under applicable federal law.

SECTION 2. Supplement to Security Agreement. Schedule III to the Security Agreement is, effective as of the date hereof, hereby supplemented to add to such Schedule the Additional Collateral.

SECTION 3. Security for Obligations. The grant of a security interest in the Additional Collateral by the Grantor under this IP Security Agreement Supplement secures the payment of all Secured Obligations of the Grantor now or hereafter existing under or in respect of the Loan Documents (as such Loan Documents may be amended, amended and restated, supplemented, replaced, refinanced or otherwise modified from time to time (including any increases of the principal amount outstanding thereunder)), whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations,

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interest, premiums, penalties, fees, indemnifications, contract causes of action, costs, expenses or otherwise. Without limiting the generality of the foregoing, this IP Security Agreement Supplement secures the payment of all amounts that constitute part of the Secured Obligations that would be owed by the Grantor to the Lender under the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving a Loan Party.

SECTION 4. Recordation. Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner for Patents and the Commissioner for Trademarks and any other applicable government officer record this IP Security Agreement Supplement.

SECTION 5. Grants, Rights and Remedies. This IP Security Agreement Supplement has been entered into in conjunction with the provisions of the Security Agreement. The Grantor does hereby acknowledge and confirm that the grant of the security interest hereunder to, and the rights and remedies of, the Lender with respect to the Additional Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated herein by reference as if fully set forth herein. In the event of any conflict between the terms of this IP Security Agreement Supplement and the terms of the Security Agreement, the terms of the Security Agreement shall govern.

SECTION 6. Governing Law; Jurisdiction; Etc. (a) THIS IP SECURITY AGREEMENT SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS IP SECURITY AGREEMENT SUPPLEMENT TO THE EXCLUSIVE GENERAL JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE COUNTY OF NEW YORK (THE "NEW YORK SUPREME COURT"), AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (THE "FEDERAL DISTRICT COURT," AND TOGETHER WITH THE NEW YORK SUPREME COURT, THE "NEW YORK COURTS") AND APPELLATE COURTS FROM EITHER OF THEM; *PROVIDED* THAT NOTHING IN THIS IP SECURITY AGREEMENT SUPPLEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE (I) THE LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS (IN WHICH CASE ANY PARTY SHALL BE ENTITLED TO ASSERT ANY CLAIM OR DEFENSE, INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 6 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW YORK COURT), OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE LENDER, (II) ANY PARTY FROM BRINGING ANY LEGAL ACTION OR PROCEEDING IN ANY JURISDICTION FOR THE RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT, (III) IF ALL SUCH NEW YORK COURTS DECLINE JURISDICTION OVER ANY PERSON, OR DECLINE (OR, IN THE CASE OF THE FEDERAL DISTRICT COURT, LACK) JURISDICTION OVER ANY SUBJECT MATTER OF SUCH ACTION OR PROCEEDING, A LEGAL ACTION OR PROCEEDING MAY BE BROUGHT WITH RESPECT THERETO IN ANOTHER COURT HAVING JURISDICTION AND (IV) IN THE EVENT A LEGAL ACTION OR PROCEEDING IS BROUGHT AGAINST ANY PARTY HERETO OR INVOLVING ANY OF ITS ASSETS OR PROPERTY IN ANOTHER COURT (WITHOUT ANY COLLUSIVE ASSISTANCE BY SUCH PARTY OR ANY OF ITS SUBSIDIARIES OR AFFILIATES), SUCH PARTY FROM ASSERTING A CLAIM OR DEFENSE (INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 6 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW YORK COURT) IN ANY SUCH ACTION OR PROCEEDING.

(c) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS IP SECURITY AGREEMENT SUPPLEMENT IN ANY COURT REFERRED TO IN SECTION 6(B). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02 OF THE TERM LOAN CREDIT AGREEMENT. NOTHING IN THIS IP SECURITY AGREEMENT SUPPLEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) EACH PARTY TO THIS IP SECURITY AGREEMENT SUPPLEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS IP SECURITY AGREEMENT SUPPLEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS IP SECURITY AGREEMENT SUPPLEMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 6(E) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

IN WITNESS WHEREOF, the Grantor has caused this IP Security Agreement Supplement to be duly executed and delivered by its officer thereunto duly authorized as of the date first written above.

[NAME OF GRANTOR]

By: _____

Name:

Title:

Address for notices:

TERM LOAN INTELLECTUAL PROPERTY SECURITY AGREEMENT

This TERM LOAN INTELLECTUAL PROPERTY SECURITY AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, the “IP Security Agreement”) dated June 21, 2023, is among the Persons listed on the signature pages hereof (collectively, the “Grantors”) and Alpha Inc., as Lender (the “Lender”).

WHEREAS, Better Choice Company Inc., a Delaware corporation (the “Borrower”) and the Lender have entered into a Term Loan Credit Agreement dated of even date herewith (as amended, amended and restated, supplemented, replaced, refinanced or otherwise modified from time to time (including any increases of the principal amount outstanding thereunder), the “Term Loan Credit Agreement”);

WHEREAS, as a condition precedent to the making of the Term Loan by the Lender, each Grantor has executed and delivered that certain Term Loan Security Agreement dated June 21, 2023 among the Grantors and the Lender (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”); and

WHEREAS, under the terms of the Security Agreement, the Grantors have granted to the Lender, a security interest in, among other property, certain intellectual property of the Grantors, and have agreed thereunder to execute this IP Security Agreement for recording with the United States Patent and Trademark Office, the United States Copyright Office and any other appropriate domestic governmental authorities, as applicable.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Grantor agrees as follows:

SECTION 1. Grant of Security. As security for the payment or performance, as the case may be, in full, of the Secured Obligations, each Grantor hereby grants to the Lender, a security interest in all of such Grantor’s right, title and interest in and to the following to the extent governed by, arising under, pursuant to, or by virtue of, the laws of the United States of America or any state thereof (the “Collateral”):

all patents, patent applications, utility models, statutory invention registrations and all inventions, including those claimed or disclosed therein and all improvements thereto (“Patents”);

all trademarks, trademark applications, service marks, domain names, trade dress, logos, designs, slogans, trade names, business names, corporate names and other source identifiers, and all general intangibles of like nature whether registered or unregistered, together, in each case, with the goodwill symbolized thereby (“Trademarks”);

all copyrights, including, without limitation, copyrights in Computer Software (as hereinafter defined), internet web sites and the content thereof, whether registered or unregistered (“Copyrights”);

all computer software, programs and databases (including, without limitation, source code, object code and all related applications and data files), firmware and documentation and materials relating thereto, together with any and all maintenance rights, service rights, programming rights, hosting rights, test rights, improvement rights, renewal rights and indemnification rights and any substitutions, replacements, improvements, error corrections, updates and new versions of any of the foregoing (“Computer Software”);

all confidential and proprietary information, including, without limitation, know-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, databases and data, including, without limitation, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information (collectively, "Trade Secrets"), and all other intellectual and intangible property of any type, including, without limitation, industrial designs and mask works;

all registrations and applications for registration for any of the foregoing in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, including, without limitation, the registrations and applications for registration of United States intellectual property set forth in Schedule I hereto (as may be supplemented from time to time), together with all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations thereof;

all written agreements, permits, consents, orders and franchises relating to the license, development, use or disclosure of any of the foregoing to which such Grantor, now or hereafter, is a party or a beneficiary ("IP Agreements") and all rights of such Grantor thereunder; and

any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages;

provided that notwithstanding anything to the contrary contained in the foregoing clauses (a) through (e), the security interest created hereby shall not extend to, and the term "Collateral" shall not include, any Excluded Assets, including, but not limited to, any intent-to-use trademark applications prior to the filing, and acceptance by the United States Patent and Trademark Office, of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, if any, to the extent that, and solely during the period in which, the grant of a security interest therein prior to such filing and acceptance would impair the validity or enforceability of such intent-to-use trademark applications or the resulting trademark registrations under applicable federal law.

SECTION 2. Security for Obligations. The grant of a security interest in, the Collateral by each Grantor under this IP Security Agreement secures the payment of all Secured Obligations of such Grantor now or hereafter existing under or in respect of the Loan Documents (as such Loan Documents may be amended, amended and restated, supplemented, replaced, refinanced or otherwise modified from time to time (including any increases of the principal amount outstanding thereunder)), whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, premiums, penalties, fees, indemnifications, contract causes of action, costs, expenses or otherwise. Without limiting the generality of the foregoing, this IP Security Agreement secures, as to each Grantor, the payment of all amounts that constitute part of the Secured Obligations that would be owed by such Grantor to the Lender under the Loan Documents but for the fact that they are unenforceable or not allowable due to the effects of Debtor Relief Laws.

SECTION 3. Recordation. Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner for Patents and the Commissioner for Trademarks and any other applicable government officer record this IP Security Agreement.

SECTION 4. Execution in Counterparts. This IP Security Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or in .pdf or similar format by electronic mail shall be effective as delivery of an original executed counterpart of this Agreement.



SECTION 5. Grants, Rights and Remedies. This IP Security Agreement has been entered into in conjunction with the provisions of the Security Agreement. Each Grantor does hereby acknowledge and confirm that the grant of the security interest hereunder to, and the rights and remedies of, the Lender with respect to the Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated herein by reference as if fully set forth herein. In the event of any conflict between the terms of this IP Security Agreement and the terms of the Security Agreement, the terms of the Security Agreement shall govern.

SECTION 6. Governing Law; Jurisdiction; Etc. (a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT TO THE EXCLUSIVE GENERAL JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE COUNTY OF NEW YORK (THE "NEW YORK SUPREME COURT"), AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (THE "FEDERAL DISTRICT COURT," AND TOGETHER WITH THE NEW YORK SUPREME COURT, THE "NEW YORK COURTS") AND APPELLATE COURTS FROM EITHER OF THEM; *PROVIDED* THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE (I) THE LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS (IN WHICH CASE ANY PARTY SHALL BE ENTITLED TO ASSERT ANY CLAIM OR DEFENSE, INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 6 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW YORK COURT), OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE LENDER, (II) ANY PARTY FROM BRINGING ANY LEGAL ACTION OR PROCEEDING IN ANY JURISDICTION FOR THE RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT, (III) IF ALL SUCH NEW YORK COURTS DECLINE JURISDICTION OVER ANY PERSON, OR DECLINE (OR, IN THE CASE OF THE FEDERAL DISTRICT COURT, LACK) JURISDICTION OVER ANY SUBJECT MATTER OF SUCH ACTION OR PROCEEDING, A LEGAL ACTION OR PROCEEDING MAY BE BROUGHT WITH RESPECT THERETO IN ANOTHER COURT HAVING JURISDICTION AND (IV) IN THE EVENT A LEGAL ACTION OR PROCEEDING IS BROUGHT AGAINST ANY PARTY HERETO OR INVOLVING ANY OF ITS ASSETS OR PROPERTY IN ANOTHER COURT (WITHOUT ANY COLLUSIVE ASSISTANCE BY SUCH PARTY OR ANY OF ITS SUBSIDIARIES OR AFFILIATES), SUCH PARTY FROM ASSERTING A CLAIM OR DEFENSE (INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 6 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW YORK COURT) IN ANY SUCH ACTION OR PROCEEDING.

(c) EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS IP SECURITY AGREEMENT IN ANY COURT REFERRED TO IN SECTION 6(B). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02 OF THE TERM LOAN

CREDIT AGREEMENT. NOTHING IN THIS IP SECURITY AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) EACH PARTY TO THIS IP SECURITY AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS IP SECURITY AGREEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS IP SECURITY AGREEMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 6(E) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

IN WITNESS WHEREOF, each Grantor and the Lender have caused this IP Security Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first written above.

BETTER CHOICE COMPANY INC.

By: 
Name: Kent Cunningham
Title: Chief Executive Officer

HALO, PURELY FOR PETS, INC.

By: 
Name: Kent Cunningham
Title: Chief Executive Officer

[Signature Page to Term Loan Intellectual Property Security Agreement]

ALPHIA INC., as Lender

By: 
Name: David McLain
Title: Chief Executive Officer

[Signature Page to Term Loan Intellectual Property Security Agreement]

INTELLECTUAL PROPERTY

Registered Trademarks and Active Trademark Applications

Country	Trademark	Owner	Status	Filing Date	Appl. Ser. No.	Reg. Date	Reg. No.
USA	LOVE YOUR CAT'S LIFE	Better Choice Company Inc.	Registered	6/6/2017	87477430	1/12/2021	6245737
USA	LOVE YOUR CAT'S LIFE	Better Choice Company Inc.	Registered	6/6/2017	87979609	3/5/2019	5693690
USA	TRUDOG	Better Choice Company Inc.	Registered	8/8/2013	86032169	5/27/2014	4540604
USA	LOVE YOUR DOG'S LIFE	Better Choice Company Inc.	Registered	6/14/2013	85959882	2/10/2015	4685423
USA	CLOUD NINE	Halo, Purely for Pets, Inc.	Registered	4/29/2004	78/410,393	7/19/2005	2970425
USA	CLOUD NINE HERBAL DIP	Halo, Purely for Pets, Inc.	Registered	9/20/1996	75/169,663	10/21/1997	2106939
USA	DreamCoat (Stylized/Design)	Halo, Purely for Pets, Inc.	Registered	3/23/2018	87/846,700	9/11/2018	5561194
USA	GARDEN OF VEGAN	Halo, Purely for Pets, Inc.	Registered	9/2/2016	87/159,411	10/31/2017	5325313
USA	HALO	Halo, Purely for Pets, Inc.	Registered	8/5/1992	74/302,240	4/13/1993	1764019
USA	HALO	Halo, Purely for Pets, Inc.	Registered	3/6/2007	77/123,050	11/20/2007	3338946
USA	HALO (Stylized/Design)	Halo, Purely for Pets, Inc.	Registered	3/22/2018	87/845,390	9/11/2018	5561192
USA	HALO (Stylized/Design)	Halo, Purely for Pets, Inc.	Allowed	12/16/2021	97/174,494	N/A	N/A
USA	HALO BECAUSE WHOLE MAKES A WHOLE LOT OF DIFFERENCE (Stylized/Design)	Halo, Purely for Pets, Inc.	Registered	12/27/2016	87/281,362	10/24/2017	5318672
USA	HALO BECAUSE WHOLE MEAT MAKES A WHOLE LOT OF DIFFERENCE (Stylized/Design)	Halo, Purely for Pets, Inc.	Registered	12/27/2016	87/281,360	10/24/2017	5318671
USA	HALO ELEVATE	Halo, Purely for Pets, Inc.	Registered	4/7/2021	90/628,351	11/15/2022	6902368

Country	Trademark	Owner	Status	Filing Date	Appl. Ser. No.	Reg. Date	Reg. No.
USA	HALO ELEVATE	Halo, Purely for Pets, Inc.	Allowed	4/30/2021	90/683,300	N/A	N/A
USA	HALO HAPPY	Halo, Purely for Pets, Inc.	Allowed	4/7/2021	90/628,352	N/A	N/A
USA	HALO HAPPY	Halo, Purely for Pets, Inc.	Allowed	4/30/2021	90/683,302	N/A	N/A
USA	HALO HOLISTIC	Halo, Purely for Pets, Inc.	Registered	9/24/2018	88/128,626	5/24/2022	6739699
USA	HALO HOLISTIC	Halo, Purely for Pets, Inc.	Allowed	4/30/2021	90/683,303	N/A	N/A
USA	HALO PURELY FOR PETS	Halo, Purely for Pets, Inc.	Registered	1/10/2001	76/192,223	8/27/2002	2611979
USA	HEALTHSOME	Halo, Purely for Pets, Inc.	Registered	3/11/2009	77/688,415	11/23/2010	3880680
USA	HOLISTIC. WHOLE. HUMANE.	Halo, Purely for Pets, Inc.	Registered	9/15/2017	87/609,936	9/11/2018	5559197
USA	LIV-A-LITTLES	Halo, Purely for Pets, Inc.	Registered	11/1/2005	78/744,462	10/3/2006	3150982
USA	LUV-A-LOTS	Halo, Purely for Pets, Inc.	Registered	6/13/2016	87/069,066	10/23/2018	5590757
USA	OCEAN OF VEGAN	Halo, Purely for Pets, Inc.	Registered	5/7/2019	88/418,520	7/6/2021	6411886
USA	OUR #1 PRIORITY IS YOUR PET'S #2	Halo, Purely for Pets, Inc.	Registered	8/24/2017	87/581,807	6/5/2018	5488224
USA	POOP THAT'S A PLEASURE TO SCOOP	Halo, Purely for Pets, Inc.	Registered	7/5/2017	87/515,839	3/6/2018	5419986
USA	POOPSIE	Halo, Purely for Pets, Inc.	Registered	5/25/2017	87/977,827	7/17/2018	5521324
USA	Poopsie Design	Halo, Purely for Pets, Inc.	Registered	5/25/2017	87/977,227	5/8/2018	5466441
USA	SPOT'S STEW	Halo, Purely for Pets, Inc.	Registered	3/13/1998	75/449,735	1/5/1999	2216548
USA	SPOT'S STEW SUCCULENT SALMON RECIPE	Halo, Purely for Pets, Inc.	Registered	3/8/2007	77/125,531	6/10/2008	3446096
USA	THE FEED	Halo, Purely for Pets, Inc.	Pending	9/7/2022	97581094	N/A	N/A
USA	THE WORLD'S BEST FOOD FOR THE WORLD'S BEST KIDS	Halo, Purely for Pets, Inc.	Allowed	12/15/2021	97/172,905	N/A	N/A
USA	WHOLE MEAT MAKES A WHOLE LOT OF DIFFERENCE	Halo, Purely for Pets, Inc.	Registered	7/5/2017	87/515,841	2/20/2018	5409144
USA	XTRA-C	Halo, Purely for Pets, Inc.	Registered	6/2/2003	76/521,838	5/25/2004	2847006
USA	IT'S BETTER	Better Choice Company, Inc.	Cancelled	3/4/2016	86928894	3/20/2018	5428949

Country	Trademark	Owner	Status	Filing Date	Appl. Ser. No.	Reg. Date	Reg. No.
USA	KEEP YOUR BEST FRIEND FIT	Better Choice Company, Inc.	Cancelled	2/10/2017	87332040	9/5/2017	5280904
USA	KEEPING IT REAL	Better Choice Company, Inc.	Cancelled	12/19/2013	86148549	3/13/2018	5423612
USA	ORAPUP	Better Choice Company, Inc.	Cancelled	10/4/2012	85745543	6/4/2013	4346420
USA	TRUPET	Better Choice Company, Inc.	Cancelled	8/8/2013	86032463	10/21/2014	4625980

Patents and Patents Pending

None.

Copyrights and Copyrights Pending

None.

TERM LOAN GUARANTY

Dated as of June 21, 2023

among

HALO, PURELY FOR PETS, INC.

and

EACH ADDITIONAL GUARANTOR THAT BECOMES A PARTY HERETO,

as Guarantors,

and

ALPHIA INC.,

as Lender

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Exhibit A – Term Loan Guaranty Supplement

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TERM LOAN GUARANTY

TERM LOAN GUARANTY dated as of June 21, 2023 (this “Guaranty”), among Halo, Purely for Pets, Inc., a Delaware corporation (“Halo”) and each Additional Guarantor (as defined in Section 7(b)) that becomes a party hereto (Halo and the Additional Guarantors being, collectively, the “Guarantors” and, individually, each a “Guarantor”) and Alpha Inc., as Lender (as defined in the Term Loan Credit Agreement referred to below).

PRELIMINARY STATEMENT

Reference is made to that certain Term Loan Credit Agreement dated as of June 21, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Term Loan Credit Agreement”), between Better Choice Company Inc., a Delaware corporation (the “Borrower”) and Alpha Inc., as Lender (the “Lender”). Terms defined in the Term Loan Credit Agreement and not otherwise defined in this Guaranty are used in this Guaranty as defined in the Term Loan Credit Agreement.

WHEREAS, it is a condition precedent to the making of the Term Loan by the Lender, that each Guarantor shall have executed and delivered this Guaranty. Each Guarantor, jointly and severally with each other Guarantor, hereby agrees as follows:

Section 1. Guaranty; Limitation of Liability. (a) Each Guarantor hereby, jointly and severally, absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety, the punctual payment when due, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of all Obligations of each other Loan Party now or hereafter existing under or in respect of the Loan Documents (including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing Obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, premiums, fees, indemnities, contract causes of action, costs, expenses or otherwise; *provided* that the guarantee made by each Guarantor hereunder relates solely to any Obligations of the Borrower and the Subsidiaries of the Borrower under any Loan Document (such Obligations being the “Guaranteed Obligations”), and each Guarantor agrees to pay any and all reasonable and documented or invoiced out-of-pocket costs and expenses to the extent payable or reimbursable by the Borrower pursuant to Section 10.04 of the Term Loan Credit Agreement as if such section were set forth in full herein, *mutatis mutandis*. Each Guarantor’s guarantee hereunder is a guarantee of payment (and not of collection). Without limiting the generality of the foregoing, each Guarantor’s liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Loan Party to the Lender under or in respect of the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Loan Party.

(b) Each Guarantor, and by its acceptance of this Guaranty, the Lender, hereby confirms that it is the intention of all such Persons that this Guaranty and the Obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of any Debtor Relief Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this Guaranty and the Obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Lender and the Guarantors hereby irrevocably agree that the Obligations of each Guarantor under this Guaranty at any time shall be limited to the maximum amount as will result in the Obligations of such Guarantor under this Guaranty not constituting a fraudulent transfer or conveyance.

(c) Each Guarantor hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to the Lender under this Guaranty or any other guaranty with

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respect to the Guaranteed Obligations, such Guarantor will contribute, to the maximum extent permitted by applicable law, such amounts to each other Guarantor and any such other guarantor, as applicable, so as to maximize the aggregate amount paid to the Lender under or in respect of the Loan Documents.

Section 2. Guaranty Absolute. To the maximum extent permitted by applicable law, each Guarantor agrees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Lender with respect thereto. The Obligations of each Guarantor under or in respect of this Guaranty are independent of the Guaranteed Obligations or any other Obligations of any other Loan Party under or in respect of the Loan Documents, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce this Guaranty, irrespective of whether any action is brought against the Borrower or any other Loan Party or whether the Borrower or any other Loan Party are joined in any such action or actions. The liability of each Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives, to the maximum extent permitted by applicable law, any defenses (other than a defense of payment in full in cash of the Guaranteed Obligations it may now have or hereafter acquire in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations or any other Obligations of any other Loan Party under or in respect of the Loan Documents, or any other amendment or waiver of, or any consent to departure from, any Loan Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or any of its Subsidiaries or otherwise;

(c) any taking, exchange, release or non-perfection of any Collateral or any other collateral, or any taking, release or amendment or waiver of, or consent to departure from, any other guaranty, for all or any of the Guaranteed Obligations;

(d) any manner of application of Collateral or any other collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any Collateral or any other collateral for all or any of the Guaranteed Obligations or any other Obligations of any Loan Party under the Loan Documents or any other assets of any Loan Party or any of its Subsidiaries;

(e) any change, restructuring or termination of the corporate structure or existence of any Loan Party or any of its Subsidiaries;

(f) any failure of the Lender to disclose to any Loan Party any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Loan Party now or hereafter known to the Lender;

(g) the failure of any other Person to execute or deliver this Guaranty, any Guaranty Supplement (as hereinafter defined) or any other guaranty or agreement or the release or reduction of liability of any Guarantor or other guarantor or surety, in each case, with respect to the Guaranteed Obligations; or

(h) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the Lender that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety.

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This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Lender or any other Person upon the insolvency, bankruptcy or reorganization of the Borrower or any other Loan Party or otherwise, all as though such payment had not been made.

Section 3. Waivers and Acknowledgments. (a) Each Guarantor hereby unconditionally and irrevocably waives, to the maximum extent permitted by applicable law, promptness, diligence, notice of acceptance, presentment, demand for performance, notice of nonperformance, default, acceleration, protest or dishonor and any other notice with respect to any of the Guaranteed Obligations and this Guaranty and any requirement that the Lender protect, secure, perfect or insure any Lien or any property subject thereto or exhaust any right or take any action against any Loan Party or any other Person or any Collateral.

(b) Each Guarantor hereby unconditionally and irrevocably waives, to the maximum extent permitted by applicable law, any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature (in accordance with the terms hereof) and applies to all Guaranteed Obligations, whether existing now or in the future.

(c) Each Guarantor hereby unconditionally and irrevocably waives, to the maximum extent permitted by applicable law, (i) any defense (other than a defense of payment in full in cash of the Guaranteed Obligations) arising by reason of any claim or defense based upon an election of remedies by the Lender that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Loan Parties, any other guarantor or any other Person or any Collateral and (ii) any defense based on any right of set-off or counterclaim against or in respect of the Obligations of such Guarantor hereunder.

(d) Each Guarantor acknowledges that the Lender may, in accordance with the Loan Documents, without notice to or demand upon such Guarantor and without affecting the liability of such Guarantor under this Guaranty, foreclose under any mortgage by non-judicial sale, and each Guarantor hereby waives, to the maximum extent permitted by applicable law, any defense (other than a defense of payment in full in cash of the Guaranteed Obligations) to the recovery by the Lender against such Guarantor of any deficiency after such non-judicial sale and any defense (other than a defense of payment in full in cash of the Guaranteed Obligations) or benefits that may be afforded by applicable law.

(e) Each Guarantor hereby unconditionally and irrevocably waives, to the maximum extent permitted by applicable law, any duty on the part of the Lender to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Loan Party or any of its Subsidiaries now or hereafter known by the Lender.

(f) Each Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Loan Documents and that the waivers set forth in Section 2 and this Section 3 are knowingly made in contemplation of such benefits.

Section 4. Subrogation. Each Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against the Borrower, any other Loan Party or any other insider guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's Obligations under or in respect of this Guaranty or any other Loan Document, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification (whether arising pursuant to Section 14 of this Guaranty, or otherwise) and

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any right to participate in any claim or remedy of the Lender against the Borrower, any other Loan Party or any other insider guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from the Borrower, any other Loan Party or any other insider guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall have been paid in full in cash. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the payment in full in cash of the Guaranteed Obligations and all other amounts payable under this Guaranty, such amount shall be received and held in trust for the benefit of the Lender, shall be segregated from other property and funds of such Guarantor and shall forthwith be paid or delivered to the Lender in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the Loan Documents, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall have been paid in full in cash, the Lender will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment made by such Guarantor pursuant to this Guaranty.

Section 5. Payments Free and Clear of Taxes, Etc. Any and all payments by any Guarantor under this Guaranty shall be made, to the extent provided in Section 3.01 of the Term Loan Credit Agreement, free and clear of and without deduction for any and all present or future Taxes.

Section 6. Representations and Warranties; Covenants. Each Guarantor hereby (a) represents and warrants to the Lender, that such Guarantor has, independently and without reliance upon the Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Guaranty and each other Loan Document to which it is or is to be a party, and such Guarantor has established adequate means of obtaining from each other Loan Party on a continuing basis information pertaining to, and is now and on a continuing basis will be familiar with, the business, condition (financial or otherwise), operations, performance, properties and prospects of such other Loan Party in all material respects, (b) represents and warrants to the Lender that each representation and warranty made in the Term Loan Credit Agreement by the Borrower with respect to such Guarantor is true and correct in all material respects (without duplication of any materiality qualifiers contained therein) as of the date made (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (without duplication of any materiality qualifiers contained therein) as of such earlier date), except to the extent such representations and warranties only apply to the Borrower or the Borrower and its Subsidiaries on a consolidated basis and (c) covenants that until payment in full in cash of the Guaranteed Obligations, it shall observe and perform each of the covenants and agreements in Article VI and Article VII of the Term Loan Credit Agreement made by the Borrower with respect to such Guarantor.

Section 7. Amendments, Guaranty Supplements, Etc. (a) Subject to Section 10.01 of the Term Loan Credit Agreement, no amendment or waiver of any provision of this Guaranty and no consent to any departure by any Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed by the Lender and the Guarantors and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. Upon a Guarantor becoming an Excluded Subsidiary as a result of a transaction permitted under the Loan Documents, such Guarantor shall be released from this Guaranty in accordance with the provisions of the applicable Loan Document(s).

(b) Upon the execution and delivery by any Person of a guaranty supplement in substantially the form of Exhibit A hereto (each, a "Guaranty Supplement"), (i) such Person shall be referred to as an "Additional Guarantor" and shall become and be a Guarantor hereunder, and each reference in this Guaranty to a "Guarantor" shall also mean and be a reference to such Additional Guarantor, and each reference in any other Loan Document to a "Guarantor" shall also mean and be a reference to such Additional Guarantor and (ii) each reference herein to "this Guaranty", "hereunder", "hereof" or words of like import referring to this Guaranty, and each reference in any other Loan Document to the "Guaranty", "thereunder", "thereof" or words of like import referring to this Guaranty, shall mean and be a reference to this Guaranty as supplemented by such Guaranty Supplement.

Section 8. Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, and all notices and other communications expressly permitted hereunder to be given by telephone or electronic mail shall be made to the applicable telephone number or electronic mail address, as the case may be, if to any Guarantor, addressed to it in care of the Borrower at the Borrower's address specified in Section 10.02 of the Term Loan Credit Agreement, if to the Lender, at its address specified in Section 10.02 of the Term Loan Credit Agreement, in each case, to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to other parties, as provided in Section 10.02(b) of the Term Loan Credit Agreement. All such notices and other communications shall be deemed to be given, made or effective at such time as shall be set forth in Section 10.02 of the Term Loan Credit Agreement.

Section 9. No Waiver; Remedies. No failure on the part of the Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 10. Right of Set-off. Each Guarantor hereby acknowledges and agrees to the right of set-off of the Lender set forth in Section 10.08 of the Term Loan Credit Agreement, to the extent and subject to the conditions set forth in such section.

Section 11. Continuing Guaranty; Assignments under the Term Loan Credit Agreement. This Guaranty is a continuing guaranty and shall (a) remain in full force and effect until the payment in full in cash of the Guaranteed Obligations and all other amounts payable under this Guaranty, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Lender and its permitted successors, permitted transferees and permitted assigns. Without limiting the generality of clause (c) of the immediately preceding sentence, the Lender may assign or otherwise transfer all or any portion of its rights and obligations under the Term Loan Credit Agreement (including, without limitation, all or any portion of the Term Loans owing to it and the Note or Notes held by it) to any other Person in accordance with Section 10.07 of the Term Loan Credit Agreement, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Lender herein or otherwise, in each case as and to the extent provided in Section 10.07 of the Term Loan Credit Agreement. No Guarantor shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lender, other than pursuant to a transaction permitted by the Term Loan Credit Agreement and consummated in accordance with the terms and conditions contained therein.

Section 12. Indemnification. Without limitation of any other Obligations of any Guarantor or remedies of the Lender under this Guaranty, each Guarantor shall indemnify and hold harmless each Indemnitee from and against (and will reimburse each Indemnitee, as and when incurred, for) any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments,

suits, costs (including settlement costs), disbursements, and reasonable and documented or invoiced out-of-pocket costs and expenses to the extent payable or reimbursable by the Borrower pursuant to Section 10.05 of the Term Loan Credit Agreement as if such section were set forth in full herein, *mutatis mutandis*.

Section 13. Right of Contribution.

(a) To the extent that any Guarantor shall be required hereunder to pay a portion of the Guaranteed Obligations that shall exceed the greater of (i) the amount of the economic benefit actually received by such Guarantor from the Term Facility and (ii) the amount that such Guarantor would otherwise have paid if such Guarantor had paid the aggregate amount of the Guaranteed Obligations (excluding any amount thereof repaid by the Borrower or any other Guarantor) in the same proportion as such Guarantor's net worth at the date enforcement hereunder is sought bears to the aggregate net worth of all the Guarantors at the date enforcement hereunder is sought, then, such Guarantor shall be reimbursed by such other Guarantors for the amount of such excess, pro rata, based on the respective net worths of such other Guarantors at the date enforcement hereunder is sought. For purposes of determining the net worth of any Guarantor in connection with the foregoing, all guarantees of such Guarantor other than the Guaranty and any other guarantee of the Guaranteed Obligations will be deemed to be enforceable and payable after the Guaranty and any other guarantee of the Guaranteed Obligations.

(b) Each Guarantor's right of contribution under this Section 13 shall be subject to the terms and conditions of Section 4. The provisions of this Section 13 shall in no respect limit the obligations and liabilities of any Guarantor to the Lender, and each Guarantor shall remain liable to the Lender for the full amount guaranteed by such Guarantor hereunder. Each Guarantor agrees to contribute, to the maximum extent permitted by applicable law, such amounts to each other Guarantor so as to maximize the aggregate amount paid to the Lender under or in respect of the Loan Documents.

Section 14. Conflict. In the event of a conflict of the terms or provisions of this Guaranty and the Term Loan Credit Agreement, the terms and provisions of the Term Loan Credit Agreement shall govern.

Section 15. Execution in Counterparts. This Guaranty and each amendment, waiver and consent with respect hereto may be executed in one or more counterparts (and by different parties thereto in separate counterparts), each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Delivery by facsimile or other electronic transmission of an executed counterpart of a signature page to this Guaranty and each amendment, waiver and consent with respect hereto shall be effective as delivery of an original executed counterpart thereof.

Section 16. Governing Law; Jurisdiction; Waiver of Jury Trial, Etc. (a) THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) EACH GUARANTOR AND THE LENDER IRREVOCABLY AND UNCONDITIONALLY SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT TO THE EXCLUSIVE GENERAL JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE COUNTY OF NEW YORK (THE "NEW YORK SUPREME COURT"), AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (THE "FEDERAL DISTRICT COURT," AND TOGETHER WITH THE NEW YORK SUPREME COURT, THE "NEW YORK COURTS") AND APPELLATE COURTS FROM EITHER OF THEM; *PROVIDED* THAT NOTHING IN THIS GUARANTY SHALL BE DEEMED OR OPERATE TO PRECLUDE

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(I) THE LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS (IN WHICH CASE ANY PARTY SHALL BE ENTITLED TO ASSERT ANY CLAIM OR DEFENSE, INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 16 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW YORK COURT), OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE LENDER, (II) ANY PARTY FROM BRINGING ANY LEGAL ACTION OR PROCEEDING IN ANY JURISDICTION FOR THE RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT, (III) IF ALL SUCH NEW YORK COURTS DECLINE JURISDICTION OVER ANY PERSON, OR DECLINE (OR, IN THE CASE OF THE FEDERAL DISTRICT COURT, LACK) JURISDICTION OVER ANY SUBJECT MATTER OF SUCH ACTION OR PROCEEDING, A LEGAL ACTION OR PROCEEDING MAY BE BROUGHT WITH RESPECT THERETO IN ANOTHER COURT HAVING JURISDICTION AND (IV) IN THE EVENT A LEGAL ACTION OR PROCEEDING IS BROUGHT AGAINST ANY PARTY HERETO OR INVOLVING ANY OF ITS ASSETS OR PROPERTY IN ANOTHER COURT (WITHOUT ANY COLLUSIVE ASSISTANCE BY SUCH PARTY OR ANY OF ITS SUBSIDIARIES OR AFFILIATES), SUCH PARTY FROM ASSERTING A CLAIM OR DEFENSE (INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 16 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW YORK COURT) IN ANY SUCH ACTION OR PROCEEDING.

(c) EACH GUARANTOR AND LENDER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 16(B). EACH GUARANTOR AND LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) EACH GUARANTOR AND THE LENDER IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 8 OF THIS GUARANTY. NOTHING IN THIS GUARANTY WILL AFFECT THE RIGHT OF EACH GUARANTOR OR THE LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) EACH GUARANTOR AND THE LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS GUARANTY OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS WITH RESPECT TO THIS GUARANTY, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH GUARANTOR, AND BY ITS ACCEPTANCE OF THIS GUARANTY, THE LENDER HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT THE LENDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 16(E) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH GUARANTOR AND THE LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Guarantor and the Lender have caused this Guaranty to be duly executed and delivered as of the date first above written.

HALO, PURELY FOR PETS, INC., as a Guarantor

By:  DocuSigned by:
48C6B062E3184BA
Name: Kent Cunningham
Title: Chief Executive Officer

Acknowledged and Agreed:

ALPHIA INC., as Lender

By: 
Name: David McLain
Title: Chief Executive Officer

[Signature Page to Term Loan Guaranty]

**Exhibit A
to the
Guaranty**

FORM OF TERM LOAN GUARANTY SUPPLEMENT

ALPHIA INC., as Lender
322 Main Street
Bern, Kansas 66408
Attention: David McLain
Email: dmclain@alphia.com

Ladies and Gentlemen:

Reference is made to (i) that certain Term Loan Credit Agreement dated as of June 21, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Term Loan Credit Agreement"), between Better Choice Company Inc., a Delaware corporation (the "Borrower"), and Alpha Inc., as lender (the "Lender") and (ii) that certain Term Loan Guaranty dated as of June 21, 2023 (as amended, supplemented or otherwise modified from time to time, the "Guaranty"), among Halo, Purely for Pets, Inc., a Delaware Corporation, the other Guarantors party thereto from time to time and the Lender. All capitalized terms defined in the Guaranty or in the Term Loan Credit Agreement and not otherwise defined herein are used herein as therein defined.

Section 1. Guaranty; Limitation of Liability. (a) The undersigned hereby, jointly and severally with the other Guarantors, absolutely, unconditionally and irrevocably guarantees, as a primary obligor and not merely as a surety, the punctual payment when due, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of all Obligations of each other Loan Party now or hereafter existing under or in respect of the Loan Documents (including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing Obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, premium, fees, indemnities, contract causes of action, costs, expenses or otherwise (such Obligations being the "Guaranteed Obligations"), and agrees to pay any and all reasonable and documented or invoiced out-of-pocket costs and expenses to the extent payable or reimbursable by the Borrower pursuant to Section 10.04 of the Term Loan Credit Agreement as if such section were set forth in full herein, *mutatis mutandis*. The undersigned's guarantee hereunder and under the Guaranty is a guarantee of payment (and not of collection). Without limiting the generality of the foregoing, the undersigned's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Loan Party to the Lender under or in respect of the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Loan Party.

(b) The undersigned, and by its acceptance of this Guaranty Supplement, the Lender, hereby confirms that it is the intention of all such Persons that this Guaranty Supplement, the Guaranty and the Obligations of the undersigned hereunder and thereunder not constitute a fraudulent transfer or conveyance for purposes of any Debtor Relief Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this Guaranty Supplement, the Guaranty and the Obligations of the undersigned hereunder and thereunder. To effectuate

the foregoing intention, the Lender and the undersigned hereby irrevocably agree that the Obligations of

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the undersigned under this Guaranty Supplement and the Guaranty at any time shall be limited to the maximum amount as will result in the obligations of the undersigned under this Guaranty Supplement and the Guaranty not constituting a fraudulent transfer or conveyance.

(c) The undersigned hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to the Lender under this Guaranty Supplement, the Guaranty or any other guaranty with respect to the Guaranteed Obligations, the undersigned will contribute, to the maximum extent permitted by applicable law, such amounts to each other Guarantor and any such other guarantor, as applicable, so as to maximize the aggregate amount paid to the Lender under or in respect of the Loan Documents.

Section 2. Obligations Under the Guaranty. The undersigned hereby agrees, as of the date first above written, to be bound as a Guarantor by all of the terms and conditions of the Guaranty to the same extent as each of the other Guarantors thereunder. The undersigned further agrees, as of the date first above written, that each reference in the Guaranty to an "Additional Guarantor" or a "Guarantor" shall also mean and be a reference to the undersigned, and each reference in any other Loan Document to a "Guarantor" or a "Loan Party" shall also mean and be a reference to the undersigned.

Section 3. Representations and Warranties. The undersigned hereby makes each representation and warranty set forth in Section 6 of the Guaranty with respect to itself as of the date hereof.

Section 4. Delivery by Facsimile. Delivery of an executed counterpart of a signature page to this Guaranty Supplement by facsimile or other electronic transmission shall be effective as delivery of an original executed counterpart of this Guaranty Supplement.

Section 5. Guaranty. Except as expressly supplemented hereby, the Guaranty shall remain in full force and effect.

Section 6. Conflict. In the event of a conflict of the terms of this Guaranty Supplement and the Term Loan Credit Agreement, the terms and provisions of the Term Loan Credit Agreement shall govern.

Section 7. Governing Law; Jurisdiction; Waiver of Jury Trial, Etc.

(a) THIS GUARANTY SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) THE UNDERSIGNED IRREVOCABLY AND UNCONDITIONALLY SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS GUARANTY SUPPLEMENT OR ANY OTHER LOAN DOCUMENT TO THE EXCLUSIVE GENERAL JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE COUNTY OF NEW YORK (THE "NEW YORK SUPREME COURT"), AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (THE "FEDERAL DISTRICT COURT," AND TOGETHER WITH THE NEW YORK SUPREME COURT, THE "NEW YORK COURTS") AND APPELLATE COURTS FROM EITHER OF THEM; *PROVIDED* THAT NOTHING IN THIS GUARANTY SUPPLEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE (I) THE LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS (IN WHICH CASE ANY PARTY SHALL BE ENTITLED TO ASSERT ANY CLAIM OR DEFENSE, INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 7 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW

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YORK COURT), OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE LENDER, (II) ANY PARTY FROM BRINGING ANY LEGAL ACTION OR PROCEEDING IN ANY JURISDICTION FOR THE RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT, (III) IF ALL SUCH NEW YORK COURTS DECLINE JURISDICTION OVER ANY PERSON, OR DECLINE (OR, IN THE CASE OF THE FEDERAL DISTRICT COURT, LACK) JURISDICTION OVER ANY SUBJECT MATTER OF SUCH ACTION OR PROCEEDING, A LEGAL ACTION OR PROCEEDING MAY BE BROUGHT WITH RESPECT THERETO IN ANOTHER COURT HAVING JURISDICTION AND (IV) IN THE EVENT A LEGAL ACTION OR PROCEEDING IS BROUGHT AGAINST ANY PARTY HERETO OR INVOLVING ANY OF ITS ASSETS OR PROPERTY IN ANOTHER COURT (WITHOUT ANY COLLUSIVE ASSISTANCE BY SUCH PARTY OR ANY OF ITS SUBSIDIARIES OR AFFILIATES), SUCH PARTY FROM ASSERTING A CLAIM OR DEFENSE (INCLUDING ANY CLAIM OR DEFENSE THAT THIS SECTION 7 WOULD OTHERWISE REQUIRE TO BE ASSERTED IN A LEGAL ACTION OR PROCEEDING IN A NEW YORK COURT) IN ANY SUCH ACTION OR PROCEEDING.

(c) THE UNDERSIGNED IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY SUPPLEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 7(B). THE UNDERSIGNED HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) THE UNDERSIGNED IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 8 OF THE GUARANTY. NOTHING IN THIS GUARANTY SUPPLEMENT WILL AFFECT THE RIGHT OF THE LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) **THE UNDERSIGNED HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS GUARANTY SUPPLEMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS WITH RESPECT TO THIS GUARANTY SUPPLEMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND THE UNDERSIGNED HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT THE LENDER MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 7(E) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE UNDERSIGNED TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.**

[SIGNATURE PAGES FOLLOW]



Very truly yours,

[NAME OF ADDITIONAL GUARANTOR]

By: _____
Name:
Title:

Acknowledged and Agreed:

ALPHIA INC.,
as Lender

By: _____
Name:
Title:



THIS ISSUANCE OF THIS WARRANT HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. THIS WARRANT MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR AN EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

BETTER CHOICE COMPANY INC.

WARRANT

This **WARRANT** (this “**Warrant**”) is entered into as of June 21, 2023, by and between Better Choice Company Inc., a Delaware corporation (the “**Company**”), and Alpha Inc., a Delaware corporation (the “**Holder**”).

WHEREAS, the Company agreed to issue and sell, and the Holder agreed to purchase, a warrant entitling the Holder to the right to receive certain shares of Common Stock from the Company; and

WHEREAS, the Company desires to provide for the form, terms and provisions of the warrant, including the terms upon which it shall be issued and exercised, and the respective rights, limitation of rights and immunities of the Company and the Holder; and

WHEREAS, all acts and things have been done and performed which are necessary to make this Warrant, when executed on behalf of the Company, the legally valid and binding obligations of the Company, and to authorize the execution and delivery of this Warrant.

NOW THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. TERMS AND EXERCISE OF WARRANTS

1.1 Warrant Shares; Exercise Price.

(a) The Company hereby grants to the Holder a right to purchase 6,545,338.45 shares of Common Stock (the “**Warrant Shares**”), at a purchase price per share equal to the Exercise Price.

(b) In the event that the Company consummates a private placement or public offering of capital stock or exercises outstanding warrants of the Company (other than this Warrant) (an “**Additional Offering**”) at any time prior to the six-month anniversary of the date of this Warrant, the number of Warrant Shares purchasable pursuant to the exercise of this Warrant shall be increased to such number of Warrant Shares equal to the greater of (i) 19.9% of the number of shares of Common Stock issued and outstanding immediately

following the consummation of such Additional Offering and (ii) an amount equal to (x) the number of Warrant Shares as of the date hereof, plus (y) 19.9% of the number of shares of Common Stock issued in such Additional Offering(s), calculated on a Fully-Diluted Basis.

(c) If at any time the Company grants, issues or sells any Common Stock, options to purchase Common Stock, securities convertible into Common Stock or rights relating to Common Stock (the “**Purchase Rights**”) to any Person other than the Holder, at a price per share less than the then-current Exercise Price, then the then-current Exercise Price shall be proportionately reduced to match the price per share of the Purchase Rights.

(d) If the Company at any time on or after the date hereof subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company at any time on or after the date hereof combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased. Any adjustment under this Section 1.1(d) shall become effective at the close of business on the date the subdivision or combination becomes effective. If this Warrant is exercised after the record date for a subdivision or combination and prior to its effective date, the Company’s Board of Directors will make an appropriate adjustment in the Exercise Price and the number of Warrant Shares to account for such subdivision or combination.

1.2 Exercise.

(a) At all times prior to the Expiration Date (as defined below), the Holder may (in its sole discretion) exercise this Warrant for all or any part of the Warrant Shares purchasable hereunder (the date on which this Warrant or any portion thereof is exercised, an “**Exercise Date**”). This Warrant, to the extent not exercised on or before the Expiration Date, shall become void, and all rights hereunder shall cease.

(b) This Warrant may be exercised by (i) surrendering this Warrant (or, if lost or destroyed, a customary affidavit and indemnity in lieu thereof) to the Company at its then principal executive offices, together with an Exercise Notice in the form attached hereto as Exhibit A (each, an “**Exercise Notice**”), duly completed (including specifying the number of Warrant Shares to be purchased) and executed; and (ii) payment to the Company of the Exercise Price per Warrant Share to be issued (the “**Aggregate Exercise Price**”).

(c) The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder, nor shall any ink-original signature or medallion guarantee (or other type of guarantee or notarization) with respect to any Exercise Notice be required. Execution and delivery of the Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares.

1.3 Payment of the Exercise Price. Payment of the Aggregate Exercise Price shall be made, at the option of Holder (in its sole discretion), as expressed in the Exercise Notice, by the following methods:

(a) by delivery to the Company of a certified or official bank check payable to the order of the Company or by wire transfer of immediately available funds to an account designated in writing by the Company, in the amount of the Aggregate Exercise Price;

(b) by instructing the Company to issue Warrant Shares then issuable upon exercise of all or any part of this Warrant on a net basis such that, without payment of any cash consideration or other immediately available funds, the Holder shall surrender this Warrant in exchange for the number of Warrant Shares as is computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the total number of Warrant Shares for which the Holder has elected to exercise this Warrant pursuant to Section 1.1.

A = the Fair Market Value of one Warrant Share as of the date on which this Warrant is exercised pursuant to Section 1.2.

B = the Exercise Price in effect under the Warrant as of the date on which this Warrant is exercised pursuant to Section 1.2.

or

(c) any combination of the foregoing.

In the event of any withholding of Warrant Shares pursuant to clause (b) or (c) where the number of shares of Common Stock whose value is equal to the Aggregate Exercise Price is not a whole number, the Company shall, at its election, either (x) pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or (y) round up to the next whole share. In the case of a dispute as to the determination of the Aggregate Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 14.6.

1.4 Reservation of Common Stock. At all times prior to the Expiration Date, the Company shall reserve and keep available out of its authorized but unissued Common Stock or other securities constituting Warrant Shares, solely for the purpose of issuance upon the exercise of this Warrant, the maximum number of Warrant Shares issuable upon the exercise of this Warrant, and the par value per Warrant Share shall at all times be less than or equal to the



applicable Exercise Price. The Company shall take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided in this Warrant without violation of any applicable law or regulation, or of any requirements of the trading market upon which the Common Stock may be listed. The Company shall not increase the par value of any Warrant Shares receivable upon the exercise of any Warrant above the Exercise Price then in effect, and shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the exercise of this Warrant.

1.5 Conditional Exercise. Notwithstanding any other provision of this Warrant, if an exercise of any portion of this Warrant is to be made in connection with a Change of Control, such exercise may at the election of the Holder be conditioned upon the consummation of such transaction, in which case such exercise shall not be deemed to be effective until immediately prior to the consummation of such transaction.

1.6 Interim Distributions. If the Company at any time or from time to time after the date hereof declares, or approves the payments of, a dividend, distribution or other payment with respect to the Common Stock (an “**Interim Distribution**”), then the Company shall, substantially contemporaneous with the making of such Interim Distribution, pay to the Holder an amount equal to the product of (i) the Interim Distribution, multiplied by (ii) the Percentage (“**Holder Distribution**”); *provided*, that, notwithstanding the foregoing, the Company will not be required to pay the Holder Distribution with respect to any Interim Distribution payable in the form of equity securities of the Company; *provided, further*, that, notwithstanding the foregoing, to the extent that the Holder has purchased shares of Common Stock upon any prior exercise of this Warrant, the Percentage shall be proportionately reduced for purposes of this Section 1.6.

1.7 Warrant Rights. With respect to any rights or warrants (the “**Rights**”) that may be issued or distributed pursuant to any rights plan that the Company implements after the date of this Warrant (a “**Rights Plan**”), to the extent that such Rights Plan is in effect at an Exercise Date, the Holder will receive, with respect to the Common Stock issued upon such exercise, the Rights described therein (whether or not the Rights have separated from the Common Stock at the time of exercise), subject to the limitations set forth in and in accordance with the provisions of any such Rights Plan.

2. TERMINATION; SURRENDER. Other than the rights set forth in Section 1.8(b), which shall survive as specified therein, the rights of the Holder under this Warrant shall terminate upon the first to occur of (i) the Holder’s exercise in full of this Warrant or (ii) the fifth anniversary of the effective date of that certain First Lien Term Loan Credit Agreement, entered into as of the date hereof (the “**Term Loan**”) (such date on which this Warrant actually terminates, the “**Expiration Date**”). On the Expiration Date, the Holder shall surrender this Warrant to the Company or, if lost or destroyed, a customary affidavit and indemnity in lieu thereof.

3. TRANSFER OF WARRANTS. The Holder may transfer, assign or encumber all or any part of this Warrant, other than to a Competitor, without the prior written consent of the Company; *provided, however*, that such transfer shall be in compliance with the Securities Act (as defined below) or any state (or other jurisdiction) securities or “blue sky” laws applicable to the Company or this Warrant or pursuant to an exemption therefrom.

4. REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Company. The Company hereby represents and warrants to the Holder as follows:

(a) Organization and Qualification. The Company is validly existing and in good standing under the laws of its jurisdiction of formation.

(b) Authority; Enforceability. The Company has all requisite corporate power and authority to execute and deliver this Warrant and to perform its obligations hereunder and to consummate the transactions contemplated hereby, and all action required on the part of the Company for such execution, delivery and performance has been duly and validly taken. Assuming due execution and delivery by the Holder, this Warrant constitutes the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as enforceability thereof may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and by general equitable principles.

(c) SEC Reports. The Company has filed with or furnished to the SEC all forms, reports, schedules, statements and other documents required to be filed with or furnished to the SEC by the Company since January 1, 2020 (all such documents, together with all exhibits and schedules to the foregoing materials and all information incorporated therein by reference, the "**Company SEC Documents**"). As of their respective filing dates (or, if amended or superseded by a filing prior to the date of this Warrant, then on the date of such filing), the Company SEC Documents complied in all material respects with the applicable requirements of the Securities Act, the Exchange Act (as defined below) and the Sarbanes-Oxley Act of 2002, as the case may be, including, in each case, the applicable rules and regulations of the SEC promulgated thereunder, and none of the Company SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(d) Valid Issuance. The outstanding shares of Common Stock are all duly and validly authorized and issued, fully paid and nonassessable, and have been issued in accordance with the registration or qualification provisions of the Securities Act and any relevant state securities laws or pursuant to valid exemptions therefrom. Except as disclosed in the Company's Annual Report on Form 10-K filed with the SEC on March 28, 2023, there are not outstanding any options, warrants, rights (including conversion or preemptive rights) or agreements to acquire from the Company any shares of its capital stock. The Company is not a party or subject to any agreement or understanding, and to the Company's knowledge, there is no agreement or understanding between any Persons, that affects or relates to the voting or giving of written consents with respect to any security or the voting by a director of the Company.

(e) Valid Issuance of the Warrant Shares. The Warrant Shares, when issued, sold and delivered in accordance with the terms of this Warrant for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable, and will be

free of restrictions on transfer other than restrictions on transfer under the Securities Act and other applicable state and federal securities laws.

(f) Governmental Consents. No consent, approval, qualification, order or authorization of, or filing with, any governmental authority is required on the part of the Company in connection with the Company's valid execution, delivery or performance of this Warrant, the offer, sale or issuance of the Warrant Shares by the Company, other than any notices or filings required to be filed with the SEC to register the Warrant Shares pursuant to the terms hereof or such post-closing filings as may be required under applicable state securities laws, which will be timely filed within the applicable periods therefor.

(g) Compliance with Other Instruments. The Company is not in violation or default of any provision of the Certificate of Incorporation or its bylaws, nor are any of its subsidiaries in violation or default of any provision of its applicable organizational documents. Neither the Company nor any of its subsidiaries is in violation or default of any provision of any material mortgage, agreement, instrument or contract to which it is a party or by which it is bound. To the Company's knowledge, neither the Company nor any of its subsidiaries is in violation of any federal or state judgment, order, writ, decree, statute, rule or regulation applicable to it other than any such violation that would not be material to the Company and its subsidiaries, taken as a whole. The execution, delivery and performance by the Company of this Warrant and the consummation of the transactions contemplated thereby will not, with or without the passage of time or giving of notice, result in any such material violation or default or result in the creation of any material lien, charge or encumbrance upon any assets of the Company or any of its subsidiaries or the suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to the Company or any of its subsidiaries, their respective business or operations, or any of their respective assets or properties.

(h) Offering. Subject to the accuracy and completeness of the Holder's representations herein, the offer, sale and issuance of this Warrant as contemplated herein is exempt from the registration requirements of the Securities Act, and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemption.

4.2 Representations and Warranties of the Holder. The Holder represents and warrants to the Company, as of the date hereof, as follows:Organization and Qualification. The Holder is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of formation.

(b) Authority; Enforceability. The Holder has all requisite corporate power and authority to execute and deliver this Warrant and to perform its obligations hereunder and to consummate the transactions contemplated hereby, and all action required on the part of the Holder for such execution, delivery and performance has been duly and validly taken. Assuming due execution and delivery by the Company, this Warrant constitutes the legal, valid and binding obligation of the Holder enforceable against the Holder in accordance with its terms, except as enforceability thereof may be limited by bankruptcy, insolvency,

moratorium and other similar laws affecting creditors' rights generally and by general equitable principles.

(c) Purchase for Own Account. This Warrant and the Warrant Shares to be acquired upon exercise of this Warrant by the Holder are being acquired for investment for the Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Securities Act.

(d) Investment Experience. The Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. The Holder can bear the economic risk of its investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that the Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities.

(e) Accredited Investor Status. The Holder is an "accredited investor" as defined in Rule 501(a) of the Securities Act.

(f) The Securities Act. The Holder understands that this Warrant and the Warrant Shares issuable upon exercise hereof have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. The Holder understands that this Warrant and the Warrant Shares issued upon any exercise hereof must be held indefinitely unless subsequently registered under the Securities Act and qualified under applicable state "blue sky" laws, or unless exemption from such registration and qualification are otherwise available. The Holder is aware of the provisions of Rule 144 promulgated under the Securities Act.

5. NO RIGHTS AS A STOCKHOLDER. Except as otherwise specifically provided herein, prior to the issuance to the Holder of the Warrant Shares to which the Holder is then entitled to receive upon the due exercise of this Warrant, the Holder shall not be entitled to vote or be deemed the holder of shares of capital stock of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, as such, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise) or receive notice of meetings. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 5, the Company shall provide the Holder with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders.

6. NO IMPAIRMENT. The Company shall not, by amendment of its Certificate of Incorporation or bylaws, or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed by it under this

Warrant, but shall at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may reasonably be requested by the Holder in order to protect the exercise rights of the Holder against dilution or other impairment, consistent with the tenor and purpose of this Warrant.

7. REGISTRATION OF COMMON STOCK. The Company agrees to prepare and file, at its expense, as soon as practicable after the date hereof, but in any event prior to the earlier of (x) a Change of Control and (y) the first anniversary of the date hereof (subject to any restrictions thereon contained in any underwriting or placement agent agreement entered into by the Company), with the U.S. Securities and Exchange Commission (the “SEC”) a registration statement or a prospectus supplement to an existing registration statement of the Company, for the registration, under the Securities Act of 1933, as amended (the “Securities Act”), of the resale of the shares of Common Stock issuable upon exercise of this Warrant. The Company shall use its best efforts to cause the same to become effective, if applicable, and to maintain the effectiveness of such registration statement, and a current prospectus relating thereto, with respect to the resale of such shares of Common Stock for so long as such shares remain Registrable Securities. In addition, the Company agrees to use its commercially reasonable efforts to register such securities under the blue sky laws of the states of residence of the Holder to the extent an exemption under the Securities Act is not available for the exercise of this Warrant.

8. RESERVED.

9. INFORMATION RIGHTS. Subject to the Company’s compliance with applicable law, the Company shall provide the Holder with prompt written notice of all of the following actions (which notice shall include in reasonable detail a description of such action and the reason therefor): (i) at least 30 days prior to any Change of Control, (ii) at least 15 days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common Stock, (B) with respect to any grants, issuances or sales of any options or convertible securities or rights to purchase stock, warrants, securities or other property, in each case to all holders of shares of Common Stock, (C) with respect to entitling or enabling stockholders of the Company to vote at a meeting (or by written consent) or (D) with respect to entitling or enabling stockholders of the Company to receive any right to subscribe for or purchase any shares of capital stock or any class or any other securities, or to receive any other security, (iii) at least 15 days prior to the voluntary dissolution, liquidation or winding up of the Company (or immediately upon the involuntary dissolution, liquidation or winding up of the Company) and (iv) at least 20 days prior to any adjustment of the Exercise Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment; *provided*, in each case, that if the Company is then subject to the Securities and Exchange Act of 1934, as amended (the “Exchange Act”), such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

10. DEFINITIONS. As used herein, unless the context otherwise requires, the following terms have the respective meanings set forth below.

“**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

“Certificate of Incorporation” means the Company’s Certificate of Incorporation, dated as of January 1, 2019, as amended, modified or supplemented from time to time in compliance with the terms thereof.

“Change of Control” means any transaction or series of transactions pursuant to which (i) the Company, directly or indirectly, effects any merger or consolidation of the Company with or into another Person, (ii) the Company (and all of its subsidiaries, taken as a whole), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination); *provided*, that a “Change of Control” shall not be deemed to have occurred with respect to (a) any reorganization, recapitalization or reclassification of the Common Stock in which holders of the Company’s voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, (b) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or (c) a merger in connection with a bona fide acquisition by the Company of any Person in which (x) the gross consideration paid, directly or indirectly, by the Company in such acquisition is not greater than 20% of the Company’s market capitalization as calculated on the date of the consummation of such merger and (y) such merger does not contemplate a change to the identity of a majority of the board of directors of the Company.

“Common Stock” means shares of common stock of the Company, par value \$0.001 per share.

“Competitor” means any Person that directly competes with the Company for all or any portion of its clientele or business; *provided*, that, for the purposes of this Warrant, the Holder’s affiliates shall not be deemed a Competitor.

“Excluded Transaction” means any the issuance of any capital stock of the Company or any of its subsidiaries (i) pursuant to an equity incentive plan providing for issuance to employees, directors, consultants, sales representatives and/or advisors of the Company and its subsidiaries or otherwise issued in connection with any employment or other service arrangements of the

Company and its subsidiaries; (ii) in connection with the conversion or exchange of convertible securities issued and outstanding as of the date of this Warrant; (iii) in connection with the conversion or exchange of capital stock that are issued after the date hereof and that are convertible and exchangeable pursuant to their terms; or (iv) to any wholly-owned subsidiary of the Company.

“Exercise Price” means \$0.26, subject to adjustment as provided herein.

“Fair Market Value” means, as of any particular date: (i) the volume weighted average price per share for such day on the NYSE American; (ii) if there have been no sales of the Common Stock on the NYSE American on any such day, the average of the highest bid and lowest asked prices for the Common Stock on the NYSE American at the end of such day; (iii) if on any such day the Common Stock is not listed on the NYSE American, the closing sales price of the Common Stock as quoted on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association for such day; or (d) if there have been no sales of the Common Stock on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association on such day, the average of the highest bid and lowest asked prices for the Common Stock quoted on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association at the end of such day; in each case, averaged over 20 consecutive Business Days ending on the Business Day immediately prior to the day as of which “Fair Market Value” is being determined; *provided*, that if the Common Stock is listed on any domestic securities exchange, the term “Business Day” as used in this sentence means Business Days on which such exchange is open for trading. If at any time the Common Stock is not listed on any domestic securities exchange or quoted on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association, the “Fair Market Value” of the Common Stock shall be the fair market value per share as determined jointly by the Board of Directors of the Company and the Holder.

“Fully Diluted Basis” means, with respect to an Additional Offering, the total number of shares of Common Stock of the Company issued in such Additional Offering assuming the exercise, conversion or exchange of all other options or convertible securities or rights to purchase stock, warrants, securities or other property to the extent such options or convertible securities or rights to purchase stock, warrants, securities or other property are vested issued in such Additional Offering.

“Person” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

“Registrable Securities” means the Warrant Shares issued or issuable pursuant to this Warrant and any securities issued with respect to, or in exchange for or in replacement thereof upon any stock split, stock dividend, recapitalization, subdivision, merger or similar event; *provided, however*, that such securities shall no longer be deemed Registrable Securities upon such securities being eligible for resale pursuant to Rule 144 under the Securities Act of 1933, as amended, without volume or manner-of-sale restrictions pursuant to such Rule and without the requirement for the Company to be in compliance with the current public information requirement under such Rule, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company’s transfer agent and the Holder.

11. TAXES. The Company shall pay all expenses in connection with, and all taxes and other governmental charges that may be imposed with respect to, the issuance or delivery of this Warrant

(or the Warrant Shares upon the exercise of this Warrant), all of which taxes and other governmental charges shall be paid by the Company.

12. NOTICES. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by an internationally recognized courier service, by email or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified by notice given in accordance with this Section 12):

If to the Company, at:

Better Choice Company Inc.
12400 Race Track Road
Tampa, Florida 33626
Attention: Kent Cunningham
Email: kcunningham@bttrco.com

with a copy (which shall not constitute notice) to:

Meister Seelig & Fein PLLC
125 Park Avenue, 7th Floor
New York, New York 10017
Attention: Louis Lombardo
Email: LL@msf-law.com

If to Holder, at:

Alphia Inc.
322 Main Street
Bern, Kansas 66408
Attention: David McLain
Email: dmclain@alpha.com

with a copy (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
Attention: Saeed Muzumdar; Christopher Lang
Email: smuzumdar@gibsondunn.com; clang@gibsondunn.com

13. WAIVERS; AMENDMENTS. Any provision of this Warrant may be amended or waived only with the written consent of the Company and the Holder (and no amendment or waiver of this Warrant shall require the consent of any stockholder of the Company). Any amendment or waiver effected in compliance with this Section 13 shall be binding upon the Company and the Holder. In the event that there shall be multiple Holders, the Company shall give prompt notice to each Holder

the event that there shall be multiple holders, the Company shall give prompt notice to each holder

of any amendment or waiver effected in compliance with this Section 13. No failure or delay of the Company or the Holder in exercising any power or right 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 thereon or the exercise of any other right or power. No notice or demand on the Company in any case shall entitle the Company to any other or future notice or demand in similar or other circumstances. The rights and remedies of the Company and the Holder hereunder are cumulative and not exclusive of any rights or remedies which it would otherwise have.

14. MISCELLANEOUS.

14.1 Successors and Assigns. All the provisions of this Warrant by or for the benefit of the Company or the Holder shall bind and inure to the benefit of their respective successors and permitted assigns. However, this Warrant and the rights hereunder are not assignable other than pursuant to the terms and conditions herein.

14.2 Severability. In case any one or more of the provisions contained in this Warrant shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Furthermore, in lieu of any such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Warrant a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be legal, valid and enforceable, unless the requisite parties separately agree to a replacement provision that is valid, legal and enforceable.

14.3 Equitable Remedies. Without limiting the rights of the Company and the Holder to pursue all other legal rights available to such party (including equitable remedies) for the other parties' failure to perform its obligations hereunder, the Company and the Holder each hereto acknowledge and agree that the remedy at law for any failure to perform any obligations hereunder (or any failure to observe the terms of this Warrant by any stockholder of the Company) may be inadequate and that each shall be entitled to seek specific performance, injunctive relief or other equitable remedies in the event of any such failure.

14.4 Governing Law. THIS WARRANT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, EXCEPT AS OTHERWISE REQUIRED BY MANDATORY PROVISIONS OF LAW.

14.5 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS WARRANT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN



INDUCED TO ENTER INTO THIS WARRANT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

14.6 Dispute Resolution. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via electronic mail within two Business Days of receipt of the Exercise Notice or other event giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within three Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within two Business Days, submit via electronic mail the disputed determination of the Exercise Price or the arithmetic calculation of the Warrant Shares to an independent, reputable investment bank and/or accounting firm selected by the Company and approved by the Holder. The Company shall cause at its expense the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than 10 Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error.

14.7 Restricted Securities. The Holder understands that unless a registration statement covering the issuance of the Warrant Shares is available at the time of the issuance of Warrant Shares, the Warrant Shares will not be registered under the Securities Act and will be "restricted securities" under applicable U.S. federal and state securities laws. As a result, the Warrant Shares will bear a restricted securities legend in customary form, unless the Company determines in good faith that such legend is not necessary, and the Holder must hold the Warrant Shares indefinitely unless they are registered with the SEC and qualified by state authorities, or an exemption from such registration and qualification requirements is available.

14.8 Construction. The section headings used herein are for convenience of reference only and shall not be construed in any way to affect the interpretation of any provisions of this Warrant. The titles and subtitles used in this Warrant are used for convenience only and are not to be considered in construing or interpreting this Warrant. Terms defined in the singular have the corresponding meanings in the plural, and vice versa. Unless the context of this Warrant clearly requires otherwise, words importing the masculine gender include the feminine and neutral genders and vice versa. The terms "include," "includes" or "including" mean "including without limitation." The words "hereof," "hereto," "hereby," "herein," "hereunder" and words of similar import, when used in this Warrant, refer to this Warrant as a whole and not to any particular section or article in which such words appear. Except to the extent expressly provided herein, the Holder's exercise of any rights under this Warrant, including with respect to the granting or withholding of any consent required hereunder, may be done at the sole discretion of the Holder.

14.9 Counterparts. This Warrant may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to be one and the same instrument.

14.10 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday or a Sunday

or shall be a legal holiday, then such action may be taken or such right may be exercised on the next succeeding day not a legal holiday.

[Signature Pages Follow]



IN WITNESS WHEREOF, the parties hereto have caused this Warrant to be duly executed as of the date hereof.

COMPANY:

BETTER CHOICE COMPANY INC.

A handwritten signature in blue ink, appearing to be "KC", enclosed within a blue rectangular box. The letters "DS" are printed in small font at the top right corner of the box.

By: _____

Name: Kent Cunningham

Title: Chief Executive Officer

[Signature Page to First Tranche Warrant]

PURCHASER:

ALPHIA INC.

By: 

Name: David McLain

Title: Chief Executive Officer

*Signature Page to
Warrant*

Exhibit A

EXERCISE NOTICE

**TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS
WARRANT TO PURCHASE COMMON STOCK**

BETTER CHOICE COMPANY INC.

The undersigned holder hereby exercises the right to purchase shares of Common Stock (“**Warrant Shares**”) of Better Choice Company Inc., a company incorporated under the laws of Delaware (the “**Company**”), evidenced by the attached Warrant to purchase Common Stock (the “**Warrant**”). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

- ☐ The Holder hereby irrevocably elects to exercise the right, represented by the Warrant, to receive _____ Warrant Shares and herewith tenders payment for such Warrant Shares to the order of the Company, in the amount of _____ U.S. dollars per share of Common Stock in accordance with the terms of the Warrant, by certified or official bank check made payable to the order of the Company or by wire transfer of immediately available funds to an account designated in writing by the Company; OR
- ☐ The Holder hereby irrevocably elects to exercise the right, represented by the Warrant, to receive _____ Warrant Shares and hereby elects to use the “cashless exercise” option to purchase the Warrant Shares.

The Company shall deliver to the holder the Warrant Shares in accordance with the terms of the Warrant.

Date: _____, _____

Name of Holder

By: _____
Name:
Title:

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THIS ISSUANCE OF THIS WARRANT HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. THIS WARRANT MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER SUCH ACT AND LAWS OR AN EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN.

BETTER CHOICE COMPANY INC.

WARRANT

This **WARRANT** (this “**Warrant**”) is entered into as of June 21, 2023, by and between Better Choice Company Inc., a Delaware corporation (the “**Company**”), and Alpha Inc., a Delaware corporation (the “**Holder**”).

WHEREAS, the Company agreed to issue and sell, and the Holder agreed to purchase, a warrant entitling the Holder to the right to receive certain shares of Common Stock from the Company; and

WHEREAS, the Company desires to provide for the form, terms and provisions of the warrant, including the terms upon which it shall be issued and exercised, and the respective rights, limitation of rights and immunities of the Company and the Holder; and

WHEREAS, all acts and things have been done and performed which are necessary to make this Warrant, when executed on behalf of the Company, the legally valid and binding obligations of the Company, and to authorize the execution and delivery of this Warrant.

NOW THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. TERMS AND EXERCISE OF WARRANTS

1.1 Warrant Shares; Exercise Price.

(a) The Company hereby grants to the Holder a right to purchase 8,222,787 shares of Common Stock (the “**Warrant Shares**”), at a purchase price per share equal to the Exercise Price.

(b) In the event that the Company consummates a private placement or public offering of capital stock or exercises outstanding warrants of the Company (other than this Warrant) (an “**Additional Offering**”) at any time prior to the six-month anniversary of the date of this Warrant, the number of Warrant Shares purchasable pursuant to the exercise of this Warrant shall be increased to such number of Warrant Shares equal to the greater of (i) 25.0% of the number of shares of Common Stock issued and outstanding immediately following the consummation of such Additional Offering and (ii) an amount equal to (x) the number of Warrant Shares as of the date hereof, plus (y) 25.0% of the number of shares

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of Common Stock issued in such Additional Offering(s), calculated on a Fully-Diluted Basis.

(c) If at any time the Company grants, issues or sells any Common Stock, options to purchase Common Stock, securities convertible into Common Stock or rights relating to Common Stock (the “**Purchase Rights**”) to any Person other than the Holder, at a price per share less than the then-current Exercise Price, then the then-current Exercise Price shall be proportionately reduced to match the price per share of the Purchase Rights.

(d) If the Company at any time on or after the date hereof subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to such subdivision will be proportionately reduced. If the Company at any time on or after the date hereof combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination will be proportionately increased. Any adjustment under this Section 1.1(d) shall become effective at the close of business on the date the subdivision or combination becomes effective. If this Warrant is exercised after the record date for a subdivision or combination and prior to its effective date, the Company’s Board of Directors will make an appropriate adjustment in the Exercise Price and the number of Warrant Shares to account for such subdivision or combination.

1.2 Exercise.

(a) At all times prior to the Expiration Date (as defined below) and following the approval of this Warrant and the Holder’s exercise hereof by the holders of at least a majority of the outstanding shares of Common Stock (the “**Stockholder Approval**”), the Holder may (in its sole discretion) exercise this Warrant for all or any part of the Warrant Shares purchasable hereunder (the date on which this Warrant or any portion thereof is exercised, an “**Exercise Date**”). This Warrant, to the extent not exercised on or before the Expiration Date, shall become void, and all rights hereunder shall cease.

(b) This Warrant may be exercised by (i) surrendering this Warrant (or, if lost or destroyed, a customary affidavit and indemnity in lieu thereof) to the Company at its then principal executive offices, together with an Exercise Notice in the form attached hereto as Exhibit A (each, an “**Exercise Notice**”), duly completed (including specifying the number of Warrant Shares to be purchased) and executed; and (ii) payment to the Company of the Exercise Price per Warrant Share to be issued (the “**Aggregate Exercise Price**”).

(c) The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder, nor shall any ink-original signature or medallion guarantee (or other type of guarantee or notarization) with respect to any Exercise Notice be required. Execution and delivery of the Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original Warrant and issuance of a new Warrant evidencing the right to purchase the remaining number of Warrant Shares.

1.3 Payment of the Exercise Price. Payment of the Aggregate Exercise Price shall be made, at the option of Holder (in its sole discretion), as expressed in the Exercise Notice, by the following methods:

(a) by delivery to the Company of a certified or official bank check payable to the order of the Company or by wire transfer of immediately available funds to an account designated in writing by the Company, in the amount of the Aggregate Exercise Price;

(b) by instructing the Company to issue Warrant Shares then issuable upon exercise of all or any part of this Warrant on a net basis such that, without payment of any cash consideration or other immediately available funds, the Holder shall surrender this Warrant in exchange for the number of Warrant Shares as is computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the total number of Warrant Shares for which the Holder has elected to exercise this Warrant pursuant to Section 1.1.

A = the Fair Market Value of one Warrant Share as of the date on which this Warrant is exercised pursuant to Section 1.2.

B = the Exercise Price in effect under the Warrant as of the date on which this Warrant is exercised pursuant to Section 1.2.

or

(c) any combination of the foregoing.

In the event of any withholding of Warrant Shares pursuant to clause (b) or (c) where the number of shares of Common Stock whose value is equal to the Aggregate Exercise Price is not a whole number, the Company shall, at its election, either (x) pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or (y) round up to the next whole share. In the case of a dispute as to the determination of the Aggregate Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed and resolve such dispute in accordance with Section 15.6.

1.4 Reservation of Common Stock. At all times prior to the Expiration Date, the Company shall reserve and keep available out of its authorized but unissued Common Stock or other securities constituting Warrant Shares, solely for the purpose of issuance upon the exercise of this Warrant, the maximum number of Warrant Shares issuable upon the exercise of this Warrant, and the par value per Warrant Share shall at all times be less than or equal to the



applicable Exercise Price. The Company shall take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided in this Warrant without violation of any applicable law or regulation, or of any requirements of the trading market upon which the Common Stock may be listed. The Company shall not increase the par value of any Warrant Shares receivable upon the exercise of any Warrant above the Exercise Price then in effect, and shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the exercise of this Warrant.

1.5 Conditional Exercise. Notwithstanding any other provision of this Warrant, if an exercise of any portion of this Warrant is to be made in connection with a Change of Control, such exercise may at the election of the Holder be conditioned upon the consummation of such transaction, in which case such exercise shall not be deemed to be effective until immediately prior to the consummation of such transaction.

1.6 Interim Distributions. If the Company at any time or from time to time after the date hereof declares, or approves the payments of, a dividend, distribution or other payment with respect to the Common Stock (an “**Interim Distribution**”), then the Company shall, substantially contemporaneous with the making of such Interim Distribution, pay to the Holder an amount equal to the product of (i) the Interim Distribution, multiplied by (ii) the Percentage (“**Holder Distribution**”); *provided*, that, notwithstanding the foregoing, the Company will not be required to pay the Holder Distribution with respect to any Interim Distribution payable in the form of equity securities of the Company; *provided, further*, that, notwithstanding the foregoing, to the extent that the Holder has purchased shares of Common Stock upon any prior exercise of this Warrant, the Percentage shall be proportionately reduced for purposes of this Section 1.6.

1.7 Warrant Rights. With respect to any rights or warrants (the “**Rights**”) that may be issued or distributed pursuant to any rights plan that the Company implements after the date of this Warrant (a “**Rights Plan**”), to the extent that such Rights Plan is in effect at an Exercise Date, the Holder will receive, with respect to the Common Stock issued upon such exercise, the Rights described therein (whether or not the Rights have separated from the Common Stock at the time of exercise), subject to the limitations set forth in and in accordance with the provisions of any such Rights Plan.

2. TERMINATION; SURRENDER. Other than the rights set forth in Section 1.8(b), which shall survive as specified therein, the rights of the Holder under this Warrant shall terminate upon the first to occur of (i) the Holder’s exercise in full of this Warrant or (ii) the fifth anniversary of the effective date of that certain First Lien Term Loan Credit Agreement, entered into as of the date hereof (the “**Term Loan**”) (such date on which this Warrant actually terminates, the “**Expiration Date**”). On the Expiration Date, the Holder shall surrender this Warrant to the Company or, if lost or destroyed, a customary affidavit and indemnity in lieu thereof.

3. TRANSFER OF WARRANTS. The Holder may transfer, assign or encumber all or any part of this Warrant, other than to a Competitor, without the prior written consent of the Company; *provided, however*, that such transfer shall be in compliance with the Securities Act (as defined below) or any state (or other jurisdiction) securities or “blue sky” laws applicable to the Company or this Warrant or pursuant to an exemption therefrom.

4. REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Company. The Company hereby represents and warrants to the Holder as follows:

(a) Organization and Qualification. The Company is validly existing and in good standing under the laws of its jurisdiction of formation.

(b) Authority; Enforceability. The Company has all requisite corporate power and authority to execute and deliver this Warrant and to perform its obligations hereunder and to consummate the transactions contemplated hereby, and all action required on the part of the Company for such execution, delivery and performance has been duly and validly taken. Assuming due execution and delivery by the Holder, this Warrant constitutes the legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as enforceability thereof may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and by general equitable principles.

(c) SEC Reports. The Company has filed with or furnished to the SEC all forms, reports, schedules, statements and other documents required to be filed with or furnished to the SEC by the Company since January 1, 2020 (all such documents, together with all exhibits and schedules to the foregoing materials and all information incorporated therein by reference, the "**Company SEC Documents**"). As of their respective filing dates (or, if amended or superseded by a filing prior to the date of this Warrant, then on the date of such filing), the Company SEC Documents complied in all material respects with the applicable requirements of the Securities Act, the Exchange Act (as defined below) and the Sarbanes-Oxley Act of 2002, as the case may be, including, in each case, the applicable rules and regulations of the SEC promulgated thereunder, and none of the Company SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(d) Valid Issuance. The outstanding shares of Common Stock are all duly and validly authorized and issued, fully paid and nonassessable, and have been issued in accordance with the registration or qualification provisions of the Securities Act and any relevant state securities laws or pursuant to valid exemptions therefrom. Except as disclosed in the Company's Annual Report on Form 10-K filed with the SEC on March 28, 2023, there are not outstanding any options, warrants, rights (including conversion or preemptive rights) or agreements to acquire from the Company any shares of its capital stock. The Company is not a party or subject to any agreement or understanding, and to the Company's knowledge, there is no agreement or understanding between any Persons, that affects or relates to the voting or giving of written consents with respect to any security or the voting by a director of the Company.

(e) Valid Issuance of the Warrant Shares. The Warrant Shares, when issued, sold and delivered in accordance with the terms of this Warrant for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable, and will be

free of restrictions on transfer other than restrictions on transfer under the Securities Act and other applicable state and federal securities laws.

(f) Governmental Consents. No consent, approval, qualification, order or authorization of, or filing with, any governmental authority is required on the part of the Company in connection with the Company's valid execution, delivery or performance of this Warrant, the offer, sale or issuance of the Warrant Shares by the Company, other than any notices or filings required to be filed with the SEC to register the Warrant Shares pursuant to the terms hereof or such post-closing filings as may be required under applicable state securities laws, which will be timely filed within the applicable periods therefor.

(g) Compliance with Other Instruments. The Company is not in violation or default of any provision of the Certificate of Incorporation or its bylaws, nor are any of its subsidiaries in violation or default of any provision of its applicable organizational documents. Neither the Company nor any of its subsidiaries is in violation or default of any provision of any material mortgage, agreement, instrument or contract to which it is a party or by which it is bound. To the Company's knowledge, neither the Company nor any of its subsidiaries is in violation of any federal or state judgment, order, writ, decree, statute, rule or regulation applicable to it other than any such violation that would not be material to the Company and its subsidiaries, taken as a whole. The execution, delivery and performance by the Company of this Warrant and the consummation of the transactions contemplated thereby will not, with or without the passage of time or giving of notice, result in any such material violation or default or result in the creation of any material lien, charge or encumbrance upon any assets of the Company or any of its subsidiaries or the suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to the Company or any of its subsidiaries, their respective business or operations, or any of their respective assets or properties.

(h) Offering. Subject to the accuracy and completeness of the Holder's representations herein, the offer, sale and issuance of this Warrant as contemplated herein is exempt from the registration requirements of the Securities Act, and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemption.

4.2 Representations and Warranties of the Holder. The Holder represents and warrants to the Company, as of the date hereof, as follows:Organization and Qualification. The Holder is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of formation.

(b) Authority; Enforceability. The Holder has all requisite corporate power and authority to execute and deliver this Warrant and to perform its obligations hereunder and to consummate the transactions contemplated hereby, and all action required on the part of the Holder for such execution, delivery and performance has been duly and validly taken. Assuming due execution and delivery by the Company, this Warrant constitutes the legal, valid and binding obligation of the Holder enforceable against the Holder in accordance with its terms, except as enforceability thereof may be limited by bankruptcy, insolvency,

moratorium and other similar laws affecting creditors' rights generally and by general equitable principles.

(c) Purchase for Own Account. This Warrant and the Warrant Shares to be acquired upon exercise of this Warrant by the Holder are being acquired for investment for the Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Securities Act.

(d) Investment Experience. The Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. The Holder can bear the economic risk of its investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that the Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities.

(e) Accredited Investor Status. The Holder is an "accredited investor" as defined in Rule 501(a) of the Securities Act.

(f) The Securities Act. The Holder understands that this Warrant and the Warrant Shares issuable upon exercise hereof have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. The Holder understands that this Warrant and the Warrant Shares issued upon any exercise hereof must be held indefinitely unless subsequently registered under the Securities Act and qualified under applicable state "blue sky" laws, or unless exemption from such registration and qualification are otherwise available. The Holder is aware of the provisions of Rule 144 promulgated under the Securities Act.

5. NO RIGHTS AS A STOCKHOLDER. Except as otherwise specifically provided herein, prior to the issuance to the Holder of the Warrant Shares to which the Holder is then entitled to receive upon the due exercise of this Warrant, the Holder shall not be entitled to vote or be deemed the holder of shares of capital stock of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, as such, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise) or receive notice of meetings. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 5, the Company shall provide the Holder with copies of the same notices and other information given to the stockholders of the Company generally, contemporaneously with the giving thereof to the stockholders.

6. NO IMPAIRMENT. The Company shall not, by amendment of its Certificate of Incorporation or bylaws, or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed by it under this

Warrant, but shall at all times in good faith assist in the carrying out of all the provisions of this Warrant and in the taking of all such action as may reasonably be requested by the Holder in order to protect the exercise rights of the Holder against dilution or other impairment, consistent with the tenor and purpose of this Warrant.

7. **REGISTRATION OF COMMON STOCK.** The Company agrees to prepare and file, at its expense, as soon as practicable after the date hereof, but in any event prior to the earlier of (x) a Change of Control and (y) the first anniversary of the date hereof (subject to any restrictions thereon contained in any underwriting or placement agent agreement entered into by the Company) with the U.S. Securities and Exchange Commission (the “SEC”) a registration statement or a prospectus supplement to an existing registration statement of the Company, for the registration, under the Securities Act of 1933, as amended (the “Securities Act”), of the resale of the shares of Common Stock issuable upon exercise of this Warrant. The Company shall use its best efforts to cause the same to become effective, if applicable, and to maintain the effectiveness of such registration statement, and a current prospectus relating thereto, with respect to the resale of such shares of Common Stock for so long as such shares remain Registrable Securities. In addition, the Company agrees to use its commercially reasonable efforts to register such securities under the blue sky laws of the states of residence of the Holder to the extent an exemption under the Securities Act is not available for the exercise of this Warrant.

8. **STOCKHOLDERS MEETING.** As promptly as practicable after the date hereof, the Company shall duly call, give notice of, convene and hold a special meeting of its stockholders (the “Stockholders Meeting”) for the purpose of obtaining the Stockholder Approval. The Company may postpone or adjourn the Stockholders Meeting solely (a) with the consent of the Holder; or (b) (i) due to the absence of a quorum or (ii) if the Company has not received proxies representing a sufficient number of shares of Common Stock for the Stockholder Approval, whether or not a quorum is present, to solicit additional proxies; *provided*, that the Company shall not be required to adjourn the Stockholders Meeting more than one time pursuant to this sentence, and no such adjournment pursuant to this sentence shall be required to be for a period exceeding 10 Business Days. The Board of Directors of the Company, shall recommend to its stockholders that they approve this Warrant and the Holder’s exercise hereof (the “**Company Recommendation**”) and shall use its reasonable best efforts to obtain the Stockholder Approval at the Stockholders Meeting. In the event the Stockholder Approval is not obtained at the Stockholders Meeting, the Company shall resubmit the proposal to approve this Warrant and the Holder’s exercise hereof to its stockholders at subsequent meetings of its stockholders held prior to the Expiration Date along with the Company Recommendation until the Stockholder Approval is obtained.

9. **RESERVED.**

10. **INFORMATION RIGHTS.** Subject to the Company’s compliance with applicable law, the Company shall provide the Holder with prompt written notice of all of the following actions (which notice shall include in reasonable detail a description of such action and the reason therefor): (i) at least 30 days prior to any Change of Control, (ii) at least 15 days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the shares of Common Stock, (B) with respect to any grants, issuances or sales of any options or convertible securities or rights to purchase stock, warrants, securities or other



property, in each case to all holders of shares of Common Stock, (C) with respect to entitling or enabling stockholders of the Company to vote at a meeting (or by written consent) or (D) with respect to entitling or enabling stockholders of the Company to receive any right to subscribe for or purchase any shares of capital stock or any class or any other securities, or to receive any other security, (iii) at least 15 days prior to the voluntary dissolution, liquidation or winding up of the Company (or immediately upon the involuntary dissolution, liquidation or winding up of the Company) and (iv) at least 20 days prior to any adjustment of the Exercise Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment; *provided*, in each case, that if the Company is then subject to the Securities and Exchange Act of 1934, as amended (the “**Exchange Act**”), such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

11. DEFINITIONS. As used herein, unless the context otherwise requires, the following terms have the respective meanings set forth below.

“**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

“**Certificate of Incorporation**” means the Company’s Certificate of Incorporation, dated as of January 1, 2019, as amended, modified or supplemented from time to time in compliance with the terms thereof.

“**Change of Control**” means any transaction or series of transactions pursuant to which (i) the Company, directly or indirectly, effects any merger or consolidation of the Company with or into another Person, (ii) the Company (and all of its subsidiaries, taken as a whole), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination); *provided*, that a “Change of Control” shall not be deemed to have occurred with respect to (a) any reorganization, recapitalization or reclassification of the Common Stock in which holders of the Company’s voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization.

recapitalization or reclassification, (b) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or (c) a merger in connection with a bona fide acquisition by the Company of any Person in which (x) the gross consideration paid, directly or indirectly, by the Company in such acquisition is not greater than 20% of the Company's market capitalization as calculated on the date of the consummation of such merger and (y) such merger does not contemplate a change to the identity of a majority of the board of directors of the Company.

"Common Stock" means shares of common stock of the Company, par value \$0.001 per share.

"Competitor" means any Person that directly competes with the Company for all or any portion of its clientele or business; *provided*, that, for the purposes of this Warrant, the Holder's affiliates shall not be deemed a Competitor.

"Excluded Transaction" means any the issuance of any capital stock of the Company or any of its subsidiaries (i) pursuant to an equity incentive plan providing for issuance to employees, directors, consultants, sales representatives and/or advisors of the Company and its subsidiaries or otherwise issued in connection with any employment or other service arrangements of the Company and its subsidiaries; (ii) in connection with the conversion or exchange of convertible securities issued and outstanding as of the date of this Warrant; (iii) in connection with the conversion or exchange of capital stock that are issued after the date hereof and that are convertible and exchangeable pursuant to their terms; or (iv) to any wholly-owned subsidiary of the Company.

"Exercise Price" means \$0.26, subject to adjustment as provided herein.

"Fair Market Value" means, as of any particular date: (i) the volume weighted average price per share for such day on the NYSE American; (ii) if there have been no sales of the Common Stock on the NYSE American on any such day, the average of the highest bid and lowest asked prices for the Common Stock on the NYSE American at the end of such day; (iii) if on any such day the Common Stock is not listed on the NYSE American, the closing sales price of the Common Stock as quoted on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association for such day; or (d) if there have been no sales of the Common Stock on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association on such day, the average of the highest bid and lowest asked prices for the Common Stock quoted on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association at the end of such day; in each case, averaged over 20 consecutive Business Days ending on the Business Day immediately prior to the day as of which "Fair Market Value" is being determined; *provided*, that if the Common Stock is listed on any domestic securities exchange, the term "Business Day" as used in this sentence means Business Days on which such exchange is open for trading. If at any time the Common Stock is not listed on any domestic securities exchange or quoted on the OTC Bulletin Board, the Pink OTC Markets or similar quotation system or association, the "Fair Market Value" of the Common Stock shall be the fair market value per share as determined jointly by the Board of Directors of the Company and the Holder.

"Fully Diluted Basis" means, with respect to an Additional Offering, the total number of shares of Common Stock of the Company issued in such Additional Offering assuming the exercise, conversion or exchange of all other options or convertible securities or rights to purchase stock, warrants, securities or other property to the extent such options or convertible securities or



rights to purchase stock, warrants, securities or other property are vested issued in such Additional Offering.

“Person” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and a government or any department or agency thereof.

“Registrable Securities” means the Warrant Shares issued or issuable pursuant to this Warrant and any securities issued with respect to, or in exchange for or in replacement thereof upon any stock split, stock dividend, recapitalization, subdivision, merger or similar event; *provided, however*, that such securities shall no longer be deemed Registrable Securities upon such securities being eligible for resale pursuant to Rule 144 under the Securities Act of 1933, as amended, without volume or manner-of-sale restrictions pursuant to such Rule and without the requirement for the Company to be in compliance with the current public information requirement under such Rule, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Company’s transfer agent and the Holder.

12. TAXES. The Company shall pay all expenses in connection with, and all taxes and other governmental charges that may be imposed with respect to, the issuance or delivery of this Warrant (or the Warrant Shares upon the exercise of this Warrant), all of which taxes and other governmental charges shall be paid by the Company.

13. NOTICES. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by an internationally recognized courier service, by email or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified by notice given in accordance with this Section 13):

If to the Company, at:

Better Choice Company Inc.
12400 Race Track Road
Tampa, Florida 33626
Attention: Kent Cunningham
Email: kcunningham@bttrco.com

with a copy (which shall not constitute notice) to:

Meister Seelig & Fein PLLC
125 Park Avenue, 7th Floor
New York, New York 10017
Attention: Louis Lombardo
Email: LL@msf-law.com

If to Holder, at:

Alpha Inc.

322 Main Street
Bern, Kansas 66408
Attention: David McLain
Email: dmclain@alpha.com

with a copy (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
Attention: Saeed Muzumdar; Christopher Lang
Email: smuzumdar@gibsondunn.com; clang@gibsondunn.com

14. WAIVERS; AMENDMENTS. Any provision of this Warrant may be amended or waived only with the written consent of the Company and the Holder (and no amendment or waiver of this Warrant shall require the consent of any stockholder of the Company). Any amendment or waiver effected in compliance with this Section 14 shall be binding upon the Company and the Holder. In the event that there shall be multiple Holders, the Company shall give prompt notice to each Holder of any amendment or waiver effected in compliance with this Section 14. No failure or delay of the Company or the Holder in exercising any power or right 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 thereon or the exercise of any other right or power. No notice or demand on the Company in any case shall entitle the Company to any other or future notice or demand in similar or other circumstances. The rights and remedies of the Company and the Holder hereunder are cumulative and not exclusive of any rights or remedies which it would otherwise have.

15. MISCELLANEOUS.

15.1 Successors and Assigns. All the provisions of this Warrant by or for the benefit of the Company or the Holder shall bind and inure to the benefit of their respective successors and permitted assigns. However, this Warrant and the rights hereunder are not assignable other than pursuant to the terms and conditions herein.

15.2 Severability. In case any one or more of the provisions contained in this Warrant shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Furthermore, in lieu of any such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Warrant a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be legal, valid and enforceable, unless the requisite parties separately agree to a replacement provision that is valid, legal and enforceable.

15.3 Equitable Remedies. Without limiting the rights of the Company and the Holder to pursue all other legal rights available to such party (including equitable remedies) for the other parties' failure to perform its obligations hereunder, the Company and the Holder each hereto acknowledge and agree that the remedy at law for any failure to perform any obligations hereunder (or any failure to observe the terms of this Warrant by any stockholder of the Company) may be



inadequate and that each shall be entitled to seek specific performance, injunctive relief or other equitable remedies in the event of any such failure.

15.4 Governing Law. THIS WARRANT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, EXCEPT AS OTHERWISE REQUIRED BY MANDATORY PROVISIONS OF LAW.

15.5 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS WARRANT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS WARRANT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

15.6 Dispute Resolution. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall submit the disputed determinations or arithmetic calculations via electronic mail within two Business Days of receipt of the Exercise Notice or other event giving rise to such dispute, as the case may be, to the Holder. If the Holder and the Company are unable to agree upon such determination or calculation of the Exercise Price or the Warrant Shares within three Business Days of such disputed determination or arithmetic calculation being submitted to the Holder, then the Company shall, within two Business Days submit via electronic mail the disputed determination of the Exercise Price or the arithmetic calculation of the Warrant Shares to an independent, reputable investment bank and/or accounting firm selected by the Company and approved by the Holder. The Company shall cause at its expense the investment bank or the accountant, as the case may be, to perform the determinations or calculations and notify the Company and the Holder of the results no later than 10 Business Days from the time it receives the disputed determinations or calculations. Such investment bank's or accountant's determination or calculation, as the case may be, shall be binding upon all parties absent demonstrable error.

15.7 Restricted Securities. The Holder understands that unless a registration statement covering the issuance of the Warrant Shares is available at the time of the issuance of Warrant Shares, the Warrant Shares will not be registered under the Securities Act and will be "restricted securities" under applicable U.S. federal and state securities laws. As a result, the Warrant Shares will bear a restricted securities legend in customary form, unless the Company determines in good faith that such legend is not necessary, and the Holder must hold the Warrant Shares indefinitely unless they are registered with the SEC and qualified by state authorities, or an exemption from such registration and qualification requirements is available.

15.8 Construction. The section headings used herein are for convenience of reference only and shall not be construed in any way to affect the interpretation of any provisions of this



Warrant. The titles and subtitles used in this Warrant are used for convenience only and are not to be considered in construing or interpreting this Warrant. Terms defined in the singular have the corresponding meanings in the plural, and vice versa. Unless the context of this Warrant clearly requires otherwise, words importing the masculine gender include the feminine and neutral genders and vice versa. The terms “include,” “includes” or “including” mean “including without limitation.” The words “hereof,” “hereto,” “hereby,” “herein,” “hereunder” and words of similar import, when used in this Warrant, refer to this Warrant as a whole and not to any particular section or article in which such words appear. Except to the extent expressly provided herein, the Holder’s exercise of any rights under this Warrant, including with respect to the granting or withholding of any consent required hereunder, may be done at the sole discretion of the Holder.

15.9 Counterparts. This Warrant may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together, shall be deemed to be one and the same instrument.

15.10 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday or a Sunday or shall be a legal holiday, then such action may be taken or such right may be exercised on the next succeeding day not a legal holiday.

[Signature Pages Follow]



IN WITNESS WHEREOF, the parties hereto have caused this Warrant to be duly executed as of the date hereof.

COMPANY:

BETTER CHOICE COMPANY INC.

By: 
Name: Kent Cunningham
Title: Chief Executive Officer

[Signature Page to Second Tranche Warrant]

PURCHASER:

ALPHIA INC.

By: 

Name: David McLain

Title: Chief Executive Officer

*Signature Page to
Warrant*

Exhibit A

EXERCISE NOTICE

**TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS
WARRANT TO PURCHASE COMMON STOCK**

BETTER CHOICE COMPANY INC.

The undersigned holder hereby exercises the right to purchase shares of Common Stock (“**Warrant Shares**”) of Better Choice Company Inc., a company incorporated under the laws of Delaware (the “**Company**”), evidenced by the attached Warrant to purchase Common Stock (the “**Warrant**”). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

- ☐ The Holder hereby irrevocably elects to exercise the right, represented by the Warrant, to receive _____ Warrant Shares and herewith tenders payment for such Warrant Shares to the order of the Company, in the amount of _____ U.S. dollars per share of Common Stock in accordance with the terms of the Warrant, by certified or official bank check made payable to the order of the Company or by wire transfer of immediately available funds to an account designated in writing by the Company; OR
- ☐ The Holder hereby irrevocably elects to exercise the right, represented by the Warrant, to receive _____ Warrant Shares and hereby elects to use the “cashless exercise” option to purchase the Warrant Shares.

The Company shall deliver to the holder the Warrant Shares in accordance with the terms of the Warrant.

Date: _____, _____

Name of Holder

By: _____
Name:
Title:

Error! Unknown document property name.

Better Choice Company Inc.

June 21, 2023

Alphia Inc.
322 Main Street
Bern, Kansas 66408
Attention: David McLain
Email: dmclain@alphia.com

Re: Additional Rights Under Warrants

To Whom It May Concern:

Reference is made to (i) that certain Warrant, dated as of the date hereof, by and between Better Choice Company Inc. (the “**Company**”) and Alphia Inc. (the “**Holder**”), providing for, among other things, the Holder’s right to purchase 6,545,338.45 shares of common stock, par value \$0.001 per share (the “**Common Stock**”), of the Company (the “**First Tranche Warrant**”) and (ii) that certain Warrant, dated as of the date hereof, by and between the Company and the Holder, providing for, among other things, the Holder’s right to purchase 8,222,787 shares of Common Stock (the “**Second Tranche Warrant**” and, together with the First Tranche Warrant, the “**Warrants**”). Capitalized terms used but not defined herein shall have their respective meanings in the Warrants.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby acknowledge and agree as follows:

1. Right of First Refusal.

(a) For so long as the Term Loan remains outstanding and for a period of 12 months thereafter, in the event of any (i) direct or indirect transfer, sale, lease, license or encumbrance of all or any portion of the capital stock or assets of the Company or any of its subsidiaries (other than (x) inventory to be sold in the ordinary course of business consistent with past practice and (y) sales of immaterial or obsolete assets), (ii) any merger, consolidation or other business combination relating to the Company or any of its subsidiaries to the extent such transaction constitutes a Change of Control, (iii) any recapitalization, reorganization or any other extraordinary business transaction involving or otherwise relating to the Company or any of its subsidiaries to the extent such transaction constitutes a Change of Control or (iv) any equity issuance or debt incurrence involving the Company or any of its subsidiaries (other than in connection with the Relating Private Placement or any Excluded Transaction) (each, a “**Fundamental Transaction**”), the Company hereby grants the Holder, or its permitted transferees or assigns, a Right of First Refusal to effect such Fundamental Transaction, at the same price and on the same terms and conditions as those offered in the Fundamental Transaction Notice.

(b) The Company must deliver a Fundamental Transaction Notice to the Holder not later than 30 days prior to the consummation of such Fundamental Transaction. Such

Fundamental Transaction Notice shall contain the material terms and conditions (including price and form of consideration) of the proposed Fundamental Transaction, the identity of the prospective purchaser or purchasers and the intended date of the proposed Fundamental Transaction. To exercise its Right of First Refusal under this Section 1, the Holder must deliver a notice to the Company notifying the Company of its intention to exercise its Right of First Refusal within 15 days after the Holder's receipt of the Fundamental Transaction Notice notifying the Company of its intention to exercise its Right of First Refusal (a "**ROFR Notice**"). The closing of such Fundamental Transaction shall take place as soon as practical after the Holder's delivery of a ROFR Notice, but in no event later than 90 days thereafter.

(c) If the Holder does not timely deliver a ROFR Notice in accordance with Section 1(b), then the Company may proceed with the Fundamental Transaction, but only in accordance with the terms (including the purchase price) set forth in the Fundamental Transaction Notice, within 90 days after delivery of the Fundamental Transaction Notice (the "**Fundamental Transaction Closing Period**"); *provided*, that if the Company does not enter into a definitive acquisition agreement within the Fundamental Transaction Closing Period or such Fundamental Transaction is not consummated pursuant to a definitive acquisition agreement entered into during the Fundamental Transaction Closing Period, the Company shall be required to again comply with this Section 1 prior to entering into a definitive acquisition agreement with respect to such Fundamental Transaction.

(d) As used in this Section 1, the following terms have the respective meanings set forth below.

(i) "**Fundamental Transaction Notice**" means a written notice from the Company to the Holder setting forth the terms and conditions of a proposed Fundamental Transaction.

(ii) "**Right of First Refusal**" means the right, but not an obligation, of, in the case of a Fundamental Transaction to effect a Fundamental Transaction, on the terms and conditions specified in the Fundamental Transaction Notice.

2. Additional Offering. As promptly as practicable following the effective date of the Term Loan, the Company shall use its reasonable best efforts to raise at least \$3,000,000 of gross proceeds through a private placement or public offering of Common Stock or the exercise of outstanding warrants.
3. Board Observer. From and after the date hereof until the later of (x) the date on which the Holder and its permitted transferees and assigns no longer hold the Warrants or any Warrant Shares and (y) the date on which the Term Loan is terminated in accordance with its terms, the Holder, or its permitted transferees or assigns, shall have the right to designate one observer (an "**Observer**") to attend all meetings of the Company's Board of Directors in a non-voting observer capacity and such Observer shall be entitled to attend, but not to otherwise participate in, discussions at all such meetings and to receive all appropriate notices, reports, presentations, resolutions, minutes, consents and other relevant materials with respect to such meetings at substantially the same time as they are provided to the members of the Company's Board of Directors: *provided, however*, that any such Observer

shall be excluded from attending any such meeting or receiving any such materials to the extent necessary to preserve attorney-client or any similar legal privilege, to comply with applicable law or in the case of any conflict of interest (as determined by the Company's Board of Directors, acting in good faith) involving such Observer or the Person or group designating such Observer.

4. Certain Actions. From and after an Exercise Date until date that is the later of (x) the Expiration Date or (y) the date on which the Holder is no longer the beneficial owner of shares of Common Stock, the Company shall not take any action, including any purchase, redemption or acquisition of shares of capital stock or other equity interests of the Company, or make any omission, in each case, that would result in the shares of Common Stock acquired by the Holder pursuant to an exercise of the Warrants constituting 50% or more of the issued and outstanding shares of Common Stock of the Company without the prior written consent of the Holder.
5. Entire Agreement. This Agreement and the Warrants set forth the entire agreement between the parties hereto relating to the subject matter hereof, supersede all prior communications and understandings of any nature, and may not be supplemented or altered orally.
6. Miscellaneous. The provisions of Sections 14.1 through 14.6 and 14.8 through 14.10 of the First Tranche Warrant are hereby incorporated *mutatis mutandis*.

[The remainder of this page is intentionally left blank.]



If the above correctly reflects our understanding with respect to the foregoing matters, please so confirm by signing the enclosed copy of this Agreement.

Sincerely,

Better Choice Company Inc.

DocuSigned by:

48C6B952E3184BA...

By: _____

Name: Kent Cunningham

Title: Chief Executive Officer

[Signature Page to Alpha – BCC – Warrant Side Letter]

Acknowledged and agreed as of the date first written above:

ALPHIA INC.

By: 

Name: David McLain

Title: Chief Executive Officer

ACCOUNT PURCHASE AGREEMENT

This **ACCOUNT PURCHASE AGREEMENT** (this "**Agreement**") is dated as of June 21, 2023 (the "**Effective Date**") and made by and between Wintrust Receivables Finance, a division of Wintrust Bank N.A. ("**Wintrust**"), and Halo, Purely for Pets, Inc., a Delaware corporation ("**Customer**").

ARTICLE I. Purpose of Agreement. Customer desires to sell and assign its Accounts to Wintrust and Wintrust desires to purchase such Accounts on a recourse basis on the terms and conditions set forth herein. This Agreement sets forth the terms and conditions of which Wintrust will purchase Accounts from the Customer. It is the intention of Customer and Wintrust that each purchase of an Account by Wintrust constitutes a true sale of such Account and not a loan or financing transaction.

ARTICLE II. Definitions and Interpretation.

2.01. Definitions. All capitalized terms not otherwise specifically defined in this Agreement shall have the meanings ascribed to such terms in the UCC, if defined therein, and otherwise as set forth below.

"Account Related Property" means, with respect to any Account, (a) all rights of action accrued or to accrue thereon, including, full power to collect, sue for, compromise, assign, in whole or in part, or in any other manner enforce collection thereof in Customer's name or otherwise; (b) the books and records evidencing or relating to such Account; (c) all deposits, Supporting Obligations or other security for the obligation of any person under or relating to such Account; (d) all goods relating to, or which by sale have resulted in, such Account, including such goods as may be returned by any Account Debtor or other Person; and (e) all rights of stoppage in transit, replevin, repossession and reclamation and all other rights of action of an unpaid vendor, service provider or lienor.

"Advance" means any advance or loan by Wintrust pursuant to or in connection with this Agreement.

"Advance Rate" means the "Advance Rate" set forth on Annex A hereto, which rate may be adjusted by Wintrust at any time in Wintrust's discretion.

"Affiliate" means a Person that owns or controls any Person that Controls or is Controlled by or is under common Control with the Person, and each of that Person's directors, officers, members or managers. **"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **"Controlling"** and **"Controlled"** have correlative meanings. Notwithstanding the foregoing, neither Alpha Inc., nor any of its Affiliates shall be deemed to be Affiliates of Customer or Parent.

"Alpha Debt" means all existing and future indebtedness, obligations and liabilities of Customer or any Guarantor under, pursuant to, evidenced by or in connection with the Alpha Loan Documents.

"Alpha Loan Documents" shall mean, collectively, (a) that certain Term Loan Credit Agreement, dated on or about the date hereof, by and among Customer and/or certain affiliates of Customer, Alpha Inc. and (b) all agreements, documents or instruments at any time executed or delivered in connection therewith, in each case, as amended or otherwise modified from time to time.

"Alpha Intercreditor Agreement" shall mean that certain Intercreditor and Subordination Agreement, dated on or about the date hereof, by and between Wintrust and the holder(s) of the Alpha Debt or the agent on behalf of such holders, as amended or otherwise modified from time to time.

"Alpha Permitted Payments" means payments in respect of Alpha Debt pursuant to the Alpha Loan Documents (as in effect on the date hereof as modified in accordance with the Alpha Intercreditor Agreement) other than voluntary prepayments of principal thereof. For the avoidance of doubt, "Alpha Permitted Payments"

Account Purchase Agreement

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include, without limitation, (i) scheduled payments of principal, interest, fees and other amounts pursuant to the Alpha Loan Documents (as in effect on the date hereof as modified in accordance with the Alpha Intercreditor Agreement), (ii) mandatory prepayments required by the terms of the Alpha Loan Documents (as in effect on the date hereof as modified in accordance with the Alpha Intercreditor Agreement), (iii) payments in respect of Alpha Debt upon acceleration or after maturity thereof in accordance with the Alpha Loan Documents (as in effect on the date hereof as modified in accordance with the Alpha Intercreditor Agreement), and (iv) payments of fees, expenses and other amounts required by the terms of the Alpha Loan Documents (as in effect on the date hereof as modified in accordance with the Alpha Intercreditor Agreement).

"Bank Product Obligations" means any and all payment, reimbursement and other obligations, fees and liabilities arising from the following products or services extended to Customer or its subsidiaries by Wintrust or any of its Affiliates: (a) services relating to operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services; (b) products under a "swap agreement" as defined in Bankruptcy Code Section 101(53B)(A); (c) commercial credit card and merchant card services; and (d) letters of credit, leases and other banking products or services.

"Bankruptcy Code" means Title 11 of the United States Code.

"Business Day" means any day that Wintrust Bank N.A. is open for business to the public.

"Collateral" means all of the following now owned or existing or hereafter arising or acquired assets and properties of Customer, wherever located, together with all substitutions, replacements, additions and accessions therefor or thereto and all Proceeds thereof, (a) all Accounts and Account Related Property, Chattel Paper, Documents, Equipment, Fixtures, General Intangibles (including all rights as a consignor, a consignee, an unpaid vendor, mechanic, artisan, or other lienor, including stoppage in transit, setoff, detainee, replevin, reclamation and repurchase), Instruments, Inventory, Investment Property, Letter of Credit Rights, Commercial Tort Claims, Supporting Obligations, income tax refunds, unearned premiums owed to the Customer by insurers, Documents, notes, drafts, acceptances and other forms of obligations, all books, records, ledger cards, computer programs, and other documents or property at any time evidencing or relating to all Customer's Accounts; (b) all Goods, machinery, tools, accessory tools, motor vehicles, parts, supplies, furniture and furnishings; (c) all intellectual property, trade names, trademarks, trade secrets, service marks, data bases, software and software systems, including the source and object codes, information systems, disks, tapes, customer lists, telephone numbers, credit memoranda, good will, patents, patent applications, patents pending, copyrights, royalties, literary rights, licenses and franchises; (d) cash or monies wherever located; (e) all Deposit Accounts and Securities Accounts, all, any and all deposits, securities, Investment Property or other sums at any time credited to or held therein; (f) any and all proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; (g) cash, money and property, which now or hereafter are at any time in the possession or control of Wintrust or in transit by mail or carrier to or from Wintrust, or in the possession of any third party acting on Wintrust's behalf, without regard to whether Wintrust received the same in pledge for safekeeping, as agent for collection or transmission or otherwise, or whether Wintrust has conditionally released the same; and (h) all products thereof and all cash and non-cash Proceeds. For the avoidance of doubt, "Collateral" shall not include any real property.

"Commercial Dispute" means any dispute or claim arising out of or in any respect related to or arising in connection with an Account or any transaction related to an Account, including any alleged dispute as to price, invoice terms, quantity, quality or late delivery and claims of release from liability, counterclaim or any alleged claim of deduction, offset, or counterclaim or otherwise, or any return, refusal of services.

"Disclosure Schedule" means the disclosure schedule attached as Schedule 1 hereto.

"Eligible Account" means an Account which is deemed by Wintrust, in its discretion, to be eligible for borrowing purposes and which shall exclude, unless otherwise agreed by Wintrust: (a) any Account evidenced by an invoice with a due date beyond the "Eligibility Period" set forth on Annex A hereto; (b) any Account subject to

Account Purchase Agreement

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a Commercial Dispute; (c) any Account to the extent, when added to all other Accounts of an Account Debtor purchased hereunder, it would cause the Purchase Limit with respect to the applicable Account Debtor to be exceeded; (d) any Account with respect to which an invoice and required Supporting Documentation has not been delivered or, as delivered, is incomplete or incorrect in any material respect; (e) any Account as to which the representations and warranties in this Agreement and the other Related Documents are not true and correct in all material respects; (f) Accounts owing by any unit of governmental authority, whether foreign or domestic; provided, however, that Wintrust may include such Accounts owing from the United States government to the extent the Customer has complied with the federal Assignment of Claims Act or other applicable law in a manner reasonably acceptable to Wintrust; (g) Accounts not payable in United States dollars; (h) Accounts owed by an Account Debtor that is organized, or all of whose material assets are located, outside the United States, except to the extent such Account is supported by credit insurance reasonably acceptable to Wintrust in its discretion (but net of the cost of such insurance); (i) Accounts owed by an Account Debtor (A) that is not Solvent, (B) that has ceased business or made an assignment for the benefit of creditors, or consented to the appointment of a trustee or receiver or taken any action to liquidate, dissolve or terminate its existence, (C) as to which an Insolvency Proceeding has been commenced and is continuing or (D) that is subject to any Sanction or on any specially designated nationals list maintained by OFAC; (j) Accounts owed by an owner, shareholder, subsidiary, Affiliate, officer or employee of the Customer; (k) Accounts which are not subject to a duly perfected first priority Lien in Wintrust's favor or which are subject to any Lien in favor of any other Person except as permitted hereunder; (l) any Account that has been restructured, extended, amended or modified; (m) an Account whose sale, transfer or assignment (whether absolutely or by way of security) is limited or restricted by the terms of the contract evidencing or relating to such Account unless such limitation or restriction has been complied with and the sale, transfer or assignment of such Account hereunder is valid and effective; (n) that portion of any Account that constitutes a finance charges, service charges or sales or excise taxes; (o) that portion of any account subject to a potential offset, counterclaim, dispute, deduction, discount, recoupment, reserve, defense, chargeback, credit or allowance; (p) any Account that has been invoiced, paid or partially paid in advance of the full delivery and acceptance of goods or the performance and acceptance of services or in advance of the submission of the Account to Wintrust; (q) any Account arising from a sale on a cash-on-delivery, bill-and-hold, sale or return, sale on approval, consignment, or other repurchase or return basis; and (r) any Account as to which the Account Debtor has not signed, if required by Wintrust, a waiver of offset in a form acceptable to Wintrust in its discretion or as to which the Account Debtor has not received, if required by Wintrust, written notice of the assignment of such Account to Wintrust and to make payment thereof directly to Wintrust pursuant to the Lockbox Instructions or as otherwise specified by Wintrust.

"Event of Default" has the meaning given to such term in Article VII.

"Facility Limit" means the "Facility Limit" set forth on Annex A to this Agreement.

"Final Payment" means each of the following shall have occurred: (a) the full and indefeasible cash payment of all Obligations, including any Bank Product Obligations not cash collateralized pursuant to clause (b) below; (b) the cash collateralization of any indemnity or other inchoate obligations and any Bank Product Obligations on commercially reasonable terms, all in amounts acceptable to Wintrust; and (c) the termination of this Agreement pursuant to a termination agreement reasonably acceptable to Customer and Wintrust.

"Formula Amount" means, as of any date of determination, an amount equal to (a) the "Advance Rate" set forth on Annex A hereto multiplied by the net face amount of Eligible Accounts less (b) such reserves as Wintrust reasonably deems necessary as security for the payment and performance of the Obligations, to enhance the likelihood of repayment of the Obligations or to reflect events, conditions, contingencies or risks which are reasonably likely to materially adversely affect the Collateral or the business of Customer. Such reserves may include, without limitation reserves for two full quarters of interest payments in respect of the Alpha Debt. The Formula Amount shall be determined on a commercially reasonable basis in good faith by Wintrust from time to time based on such collateral reports and other information as Wintrust may request or receive from Customer hereunder.

"Guarantor" means each Person that at any time executes a Guaranty.



"Guaranty" means a guaranty, executed with or in favor of Wintrust in form and substance acceptable to Wintrust, with respect to the prompt payment or performance of the Obligations.

"Insolvency Proceeding" means, with respect to any Person, (a) any proceeding commenced by or against such Person under any provision of the Bankruptcy Code, (b) any proceeding commenced by or against such Person under any other state or federal bankruptcy or insolvency law seeking liquidation, winding up, reorganization, arrangement, adjustment or other similar relief or (c) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its Property.

"Invoice Notation" means the following notation to be placed on each invoice (or its electronic equivalent) relating to any Account:

This invoice has been sold, transferred and assigned to and is payable only to Wintrust
Receivables Finance, a Division of Wintrust Bank, at P.O. Box 8268, Carol Stream, IL
60197-8268, Reference: Halo, Purely for Pets, Inc.

"Ledger Account" means a ledger (or book-entry) account maintained by Wintrust on its books and records in the name of Customer for purposes of this Agreement.

"Lien" means any interest in property securing an obligation including any security interest, bond, mortgage, assignment (whether absolute or by way of security), tax lien or other lien (statutory or otherwise), restriction, pledge or any other encumbrance of any kind or nature whatsoever.

"Lockbox Instructions" means the instructions set forth on Schedule 2.

"Material Adverse Effect" means, with respect to any Person, the effect of any event or circumstance that, taken alone or in conjunction with other events or circumstances, (a) has or could be reasonably expected to have a material adverse effect on the business, operations, properties, prospects or condition (financial or otherwise) of such Person, on the value of any material Collateral, on the enforceability of any Related Document, or on the validity or priority of Wintrust's liens on any Collateral; (b) impairs in any material respect the ability of Customer or any Guarantor to perform its obligations under the Related Documents, including repayment of any Obligations; or (c) otherwise impairs in any material respect the ability of Wintrust to enforce or collect any Obligations or to realize upon any Collateral.

"Obligations" means (a) all present and future obligations owing by Customer to Wintrust or its Affiliates, whether or not for the payment of money and whether or not evidenced by any note or other instrument, and including all Advances, fees, costs, expenses, debts, liabilities, indemnities and obligations due to Wintrust or its Affiliates by Customer (including interest, fees and expenses accruing during the pendency of any Insolvency Proceeding, regardless of whether allowed or allowable in such proceeding), including liability for breach of any warranty, representation or covenant and duty, of every kind and description that Customer owes to Wintrust under this Agreement or any Related Document or otherwise, (b) all Bank Product Obligations, and (c) obligations and liabilities of Customer for goods or services which are purchased by Customer from another Person and which give rise to an Account factored or financed by Wintrust or its Affiliates, in each case, whether or not evidenced by a writing and whether or not for the payment of money, direct or indirect, absolute or contingent, due or to become due, joint or several, primary or secondary, liquidated or unliquidated, secured or unsecured, original or renewed or extended, whether arising before, during or after the commencement of any case under the Bankruptcy Code in which Customer or any other Person is a Debtor.

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

"OFAC/AML/CFT Laws" means all applicable laws with respect to (a) OFAC, (b) anti-money laundering ("AML"), or (c) Countering the Financing of Terrorism ("CFT").



"Overadvance" means, as of any date of determination, the amount by which the total outstanding Advances exceed the lesser of the Formula Amount or the Facility Limit.

"Parent" means Better Choice Company, Inc., together with its successors and assigns.

"Permitted Debt" (a) indebtedness (other than Obligations) in an aggregate outstanding principal amount not in excess of \$250,000 for payment of any of the purchase price of fixed assets incurred within 10 days before or after acquisition of any fixed assets, for the purpose of financing any of the purchase price thereof and any renewals, extensions or refinancings (but not increases) thereof; (b) Subordinated Debt; (c) the Alpha Debt so long as such Alpha Debt is subject to the Alpha Intercreditor Agreement and (d) other indebtedness outstanding on the Effective Date and set forth on the Disclosure Schedule.

"Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, estate, entity or government agency.

"Prime Rate" means the floating per annum rate of interest most recently published in the Money Rates column of the Wall Street Journal as the prime or base rate; provided, however at no time shall the Prime Rate be less than three percent (3.00%) at any time. If publication of the Wall Street Journal is discontinued, Wintrust, in its sole discretion shall designate another daily financial or governmental publication of national circulation to be used to determine Prime Rate. The effective date of any change in the Prime Rate shall for purposes hereof be the date Wintrust determines the Prime Rate is changed by such publication. Wintrust shall not be obligated to give notice of any change in the Prime Rate. The "Prime Rate" is not necessarily the lowest rate of interest that Wintrust or any of its Affiliates charges its customers. Wintrust's determination of the Prime Rate shall be conclusive, absent manifest error.

"Purchase Limit" means the limit Wintrust sets from time to time establishing the maximum gross face amount of purchased Accounts which are approved to be outstanding at any given time by a particular Account Debtor which Purchase Limit shall be established in a commercially reasonable manner by Wintrust acting in good faith.

"Purchase Price" means, for any Account purchased by Wintrust hereunder, an amount equal to the gross face amount of such Account less all selling discounts (calculated on shortest terms) made available or extended to the Account Debtor, whether taken or not, customer deposits, and credits, offsets or deductions of any kind allowed or granted to or taken by the Account Debtor at any time.

"Related Documents" means this Agreement, any control agreement, any Guaranty, any lien waiver, the Alpha Intercreditor Agreement, any other intercreditor agreement or subordination agreement related to or benefiting the Obligations, all documents and agreements (including all letter of credit applications and agreements) related to Bank Product Obligations, and each certificate, financial statement or report delivered hereunder or thereunder, documents, instruments or agreements now or hereafter delivered by Customer or any guarantor or other Person to Wintrust in connection with the Obligations or any transactions relating hereto and thereto, including any security agreement or other document, instrument or agreement now or hereafter securing (or given with the intent to secure) any Obligations.

"Sanction" means any sanction administered or enforced by the U.S. Government (including OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury or other sanctions authority.

"Schedule of Accounts" has the meaning given to such term in Section 3.02.

"Settlement Date" means, for any Account, the Business Day after which payment in full of such Account is posted by Wintrust to the Ledger Account.



"Solvent" means for the referenced Person (a) fair-market value of its assets exceeds its liabilities; (b) it has sufficient cash flow to enable it to pay its debts as they mature; and (c) it does not have unreasonably small capital to conduct its businesses.

"Subordinated Debt" means indebtedness for borrowed money of Customer that is incurred with the prior written consent of Wintrust and expressly subordinate and junior in right of payment to payment of all Obligations pursuant to an agreement, and on terms and conditions (including with respect to security (if any), maturity, interest, fees and repayment) satisfactory to Wintrust.

"Supporting Documentation" has the meaning given to such term in Section 3.02.

"Term" means the "Term" set forth on Annex A to this Agreement, as such Term may be extended in accordance with the terms hereof.

"UCC" means Article 9 of the Uniform Commercial Code as adopted in the State of Illinois.

2.02 Interpretive Provisions. The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. The terms "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. The terms "including" and "include" shall mean "including, without limitation" and, for purposes of this Agreement and each Related Document, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit any provision. Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement and each Related Document. All references to (a) laws include all related regulations, interpretations, supplements, amendments and successor provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals (to the extent permitted by this Agreement); (c) any section mean, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person include successors and assigns; (f) time of day mean time of day at Wintrust's notice address hereunder; and (g) discretion of Wintrust mean its commercially reasonable (from the perspective of a secured lender) discretion exercised at any time. All references to Obligations or other amounts herein shall be denominated in Dollars, unless expressly provided otherwise. Customer shall have the burden of establishing any alleged negligence, misconduct or lack of good faith by Wintrust under this Agreement or any Related Documents. Reference to a Customer's or other Person's "knowledge" or similar concept means actual knowledge of an officer. This Agreement and all terms and provisions hereof shall be liberally construed to affect the purposes set forth herein and to sustain the validity of the Related Documents.

ARTICLE III: Purchase and Assignment of Accounts; Advances; Interest and Certain Fees

3.01 Purchase and Sale of Accounts. Customer hereby irrevocably and unconditionally sells, conveys, transfers and assigns to Wintrust as absolute owner, and Wintrust hereby accepts from Customer, all of Customer's right, title and interest in and to its existing and future Accounts. Such sale, conveyance, transfer and assignment of such Accounts is effective without further act or instrument. Wintrust shall be the sole and exclusive owner of the Accounts of Customer and shall have all rights and remedies of the owner with respect thereto, including rights to the goods and property represented thereby and the rights of an unpaid seller or provider of the goods or services giving rise thereto, including the rights of stoppage in transit, reclamation and replevin. Subject to the terms and conditions of this Agreement, any and all Proceeds and payments from the Account Debtor as to each Account shall be the sole property of Wintrust.

3.02 Submission of Accounts. Customer shall submit to Wintrust a schedule of Accounts in a form, and by electronic or other means, satisfactory to Wintrust (a **"Schedule of Accounts"**). Except for the initial Accounts to be purchased on the Effective Date, Customer shall submit each of its Accounts to Wintrust, pursuant to a Schedule of Accounts, within seven (7) days after the date that the goods are sold or services are performed that give rise to the Account. Customer shall submit the Accounts to Wintrust together with the following (the

"Supporting Documentation"): (a) an original invoice or an electronic equivalent thereof, either of which must be in a form reasonably acceptable to Wintrust; (b) a copy (including in electronic form) of (i) any applicable evidence of completion of service, proof of delivery or bill of lading; and (ii) any contracts, purchase orders, service orders (with purchase or service order numbers corresponding with such invoice), as appropriate to the business of Customer related to the Accounts; and (c) such other documentation and information as may be reasonably requested by Wintrust. In the event Customer fails to submit an Account, Customer acknowledges and agrees that Wintrust shall be deemed the owner and assignee of such Account, and such Account shall be subject to all terms and conditions of this Agreement.

3.03 Payment of Purchase Price. As consideration for the sale, conveyance, transfer and assignment of an Account to Wintrust hereunder, Wintrust shall pay to Customer the Purchase Price for such Account on the Settlement Date for such Account.

3.04 Advances. At Customer's request, but in Wintrust's discretion, Wintrust may make Advances to Customer up to an aggregate amount at any time outstanding not to exceed the lesser of the Facility Limit and the Formula Amount. In addition, Wintrust may and Customer authorizes Wintrust to, at any time make Advances to protect Wintrust's interest in the Collateral, to perform any of Customer's obligations under this Agreement and/or to pay any Obligations then due and payable, at any time and from time to time and in each case without any request from or advance notice to Customer. Unless earlier repayment is demanded by Wintrust or is otherwise required in accordance with the terms hereof, all Advances are payable upon the earlier of expiration of the Term or termination of this Agreement. Without limiting the foregoing, if at any time an Overadvance exists, Customer shall, promptly and in any event within one (1) Business Day of the occurrence of such Overadvance, repay the Advances in an amount sufficient to eliminate such Overadvance.

3.05 Ledger Account. Wintrust shall credit the Ledger Account with the Purchase Price of Accounts sold to Wintrust hereunder, and with any Proceeds received by Wintrust in respect of Accounts not purchased by Wintrust hereunder, in each case, as and when payable hereunder. Other payments received by Wintrust for the account of Customer shall be credited to the Ledger Account no later than the Business Day following receipt by Wintrust in good collected funds. Wintrust shall debit the Ledger Account for all payment Obligations of Customer as and when due hereunder. For administrative convenience, Wintrust may apply any amount required hereunder to be credited to the Ledger Account to or against any amount permitted hereunder to be charged to the Ledger Account, including application of the Purchase Price in reduction of the outstanding Advances or other payment Obligations then due. Wintrust shall, upon request of Customer and so long as no Event of Default exists, remit to Customer any positive balance in the Ledger Account provided that Wintrust may withhold from the Ledger Account such amounts as it reasonably deems necessary as security for the payment and performance of the Obligations, to enhance the likelihood of repayment of the Obligations or to reflect events, conditions, contingencies or risks which are reasonably likely to materially adversely affect the Collateral or the business of Customer. If at any time the Ledger Account is negative, Customer shall immediately repay the deficiency to Wintrust.

3.06 Chargebacks. Wintrust shall have the right to, at any time, chargeback to Customer an Account which is determined not to be an Eligible Account, even if Wintrust has already remitted payment of the Purchase Price therefor. In the event an Account for which Wintrust has already remitted payment of the Purchase Price is charged back to Customer in accordance with the terms hereof, Customer shall repurchase such Account by paying to Wintrust an amount equal to the excess, if any, of (i) such Purchase Price over (ii) the aggregate amount of payments previously received by Wintrust in respect of such Account (and not required to be disgorged). In the event an Account is charged back to Customer prior to the payment by Wintrust of the Purchase Price therefor, Wintrust shall, in lieu of payment of the Purchase Price for any such Account, credit the Ledger Account with any Proceeds received by Wintrust in respect of such Account on the Settlement Date therefor. Notwithstanding the repurchase of an Account by Customer or the election by Wintrust to chargeback to Customer an Account, Wintrust shall retain its security interest in such Account as security for full payment and performance of all Obligations. For purposes of this Agreement, an Account that has been validly charged back to Customer shall thereafter be treated as an Account not purchased by Wintrust.



3.07 Interest. The outstanding Advances will bear interest at a variable per annum rate equal to the "Contract Rate" set forth on Annex A to this Agreement. For purposes of calculating interest on the Advances, payments and proceeds received by Wintrust for the account of Customer (including for application to the Advances) will be deemed received by Wintrust the number of "Collection Days" (as set forth on Annex A to this Agreement) after the date credited to the Ledger Account (or applied to such Advances) in accordance with the terms hereof (and interest shall continue to accrue on such Advances so repaid for such number of Collection Days). All such interest will be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed and will be payable by Customer to Wintrust monthly in arrears on the last Business Day of each month. Notwithstanding the foregoing, from and after the occurrence of an Event of Default, all Obligations shall, at the election of Wintrust, bear interest at a rate per annum equal to the "Contract Rate" set forth on Annex A to this Agreement plus an additional three (3) percentage points per annum, and such interest shall be accrued daily and payable by Customer to Wintrust upon demand. All interest hereunder may be charged by Wintrust to the Ledger Account as an Advance as and when due.

3.08 Certain Fees. Customer will pay to Wintrust the fees set forth on Annex A hereto. Such fees shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed shall be fully earned, and may be charged by Wintrust to the Ledger Account as an Advance, when due in accordance with such Annex and shall not be subject to refund of any kind or pro-rated upon any termination of this Agreement, except to the extent set forth on Annex A.

3.09 Invoice Notation and Notification of Account Debtors. The Customer shall cause all invoices, billing statements, bills of lading, documents or other evidence of Accounts to reflect the interest of Wintrust therein and shall cause the Invoice Notation to be prominently reflected on each original invoice (or otherwise accompany or be reflected in the electronic equivalent of an invoice) or such other documentation accepted by Wintrust for each Account purchased hereunder. Without limiting the foregoing, Customer agrees that Wintrust may and irrevocably authorizes Wintrust to, notify Account Debtors of the assignment to Wintrust of (or security interest of Wintrust in) the Accounts and that such Accounts are payable only to Wintrust pursuant to the Lockbox Instructions or as otherwise specified by Wintrust.

3.10 Lockbox Instructions and Cash Management. Within 30 days of the Effective Date, Customer shall cause all payments made by Account Debtors in respect of Accounts to be made in accordance with the Lockbox Instructions. Any deposit account of Customer that may receive payments in respect of Accounts or proceeds of Accounts (other than tax, payroll, zero balance disbursement and trust accounts funded in the ordinary course of business) shall be subject to a control agreement with the applicable depository establishing control of Wintrust over such deposit account on terms reasonably acceptable to Wintrust (including instructions to forward net amounts on a periodic basis acceptable to Wintrust in accordance with the Lockbox Instructions). No amendment, supplement or modification to the Lockbox Instructions or any control agreement shall be permitted without the written direction and consent of Wintrust.

3.11 Misdirected Payments. If, notwithstanding the requirements of Section 3.10, any cash, checks, drafts or other payment on any Account or proceeds of an Account comes into the possession or control of Customer (a "Misdirected Payment"), Customer shall hold such payment or proceeds in trust for the benefit of and as the property of Wintrust and immediately turn over to Wintrust such payment or proceeds in the same form received (together with any necessary endorsement) pursuant to the Lockbox Instructions.

ARTICLE IV. Representations, Warranties and Covenants.

4.01 Representations and Warranties. To induce Wintrust to enter into this Agreement, Customer hereby represents and warrants to Wintrust as follows:

(a) Customer and Guarantors.

(i) Customer and each Guarantor, if any, (A) if not a natural person, is duly organized, validly existing and in good standing under the laws of its state or formation or organization; (B) if not a natural

person, is properly licensed, qualified and authorized to operate its business; (C) if not a natural person, has duly authorized by all requisite organizational or equity holder action the execution, delivery and performance of all Related Documents; (D) if not a natural person, has duly authorized the persons executing all Related Documents to which it is a party to execute and deliver such Related Documents; (E) is Solvent and is not subject to any Insolvency Proceeding; (F) has made and shall continue to make timely payment and remittance to applicable governmental authorities of all income tax, withholding tax, FICA tax, Medicare tax or other tax obligations owed by it and has filed on a timely basis all reports or returns required under any federal or state law taxes; (G) has made and shall continue to make timely payment of all amounts due and perform all material undisputed obligations under any material contract or agreement including, organized labor contracts or pension plans or obligations; and (H) is in material compliance with, and all of its properties and business operations are in material compliance with, all applicable laws, rules, regulations, and governmental guidelines, orders, statutes and regulations; provided, however, that none of the materiality qualifications under this clause (H) shall apply to compliance with OFAC/AML/CFT Laws.

(ii) None of the execution, delivery or performance of the Related Documents (A) violates any provision of any applicable law or its organizational and governing documents or (B) conflicts with, results in breach of, or constitutes (with due notice or lapse of time or both) a default under, or result in the creation or imposition of any Lien upon any of its property or assets under, any material agreement or instrument to which it is a party or by which it or its properties is bound.

(iii) Each Related Document is a legal, valid and binding obligation of the Customer or Guarantor party thereto, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

(iv) Except as specifically set forth on the Disclosure Schedule, Customer and each Guarantor, if any, (A) has good and marketable title to all of its property and assets that are material to its business and has paid and discharged all lawful claims that, if unpaid, could become a lien on its properties; (B) is not a party to or the subject of any action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or to its knowledge, threatened against or affecting it, which if adversely determined, could reasonably be expected to have a Material Adverse Effect on it; (C) is not a party to any contract or other agreement with an Affiliate, except for contracts and other agreements in the ordinary course of business pursuant to the reasonable requirements of its business and upon fair and reasonable terms no less favorable to it than would be obtained in a comparable arms-length transaction; (D) has any subsidiaries or equity holders; and (E) has no place of business or location of Collateral, including its principal place of business at which it keeps all books and records relating to the Collateral. All information on the Disclosure Schedule is true and correct as of the Effective Date.

(v) No Event of Default has occurred and is continuing under any Related Document. No event, circumstance, or change has occurred that has or could reasonably be expected to have a Material Adverse Effect.

(b) Accounts and Collateral. As to each Account (i) Customer is, at the time of purchase of each Account by Wintrust, the lawful owner of and has good and undisputed title to such Account; (ii) such Account is free from any Liens other than in favor of Wintrust or expressly permitted hereunder; (iii) each Account identified as an Eligible Account satisfies all the requirements of the definition of "Eligible Account"; (iv) such Account is an accurate and undisputed statement of indebtedness owed by Account Debtor to Customer for a certain sum which is due and payable in accordance with its terms; (v) such Account is for a bona fide sale, delivery and acceptance of merchandise or performance of services, all of which have been provided on a commercial basis and none of which are for personal, family or household purposes; (vi) all terms governing such Account are accurately reflected in the Supporting Documentation; (vii) Customer has the full legal right and authority to sell, assign and transfer each Account without conflict with any applicable law or other agreements and free and clear of all Liens other than in favor of Wintrust or as expressly permitted hereunder; and (viii) each invoice representing such

Account clearly sets forth the Invoice Notation if such Invoice Notation is required by Wintrust hereunder. All Liens of Wintrust on the Collateral are duly perfected and, except for Liens that are expressly permitted by this Agreement or other written agreement of Wintrust to have priority over Wintrust's Liens, first priority Liens.

(c) Financial Condition. (i) All financial statements delivered to Wintrust accurately and fairly state the Customer's or, if applicable, any Guarantor's financial condition; (ii) there has been no material adverse change in the Customer's financial condition from that reflected in the financial statements most recently delivered; (iii) no written information concerning the Customer, its subsidiaries or any Guarantor, including any financial statements, delivered to Wintrust is inaccurate in any material respect or fails to disclose any fact or facts which, or which might reasonably be expected to, materially adversely affect the Customer's financial condition; (iv) there is no litigation pending or threatened, which taken in the aggregate if adversely determined, can reasonably be expected to have a Material Adverse Effect.

All representations, warranties and covenants set forth in this Section 4.01 shall be deemed made on the Effective Date and each subsequent date on which (A) a Schedule of Accounts is submitted by Customer to Wintrust, (B) any sale or assignment of Accounts is consummated and/or (C) any Advance is made in respect of purchased Accounts.

4.02 Negative Covenants. To induce Wintrust to enter into this Agreement, Customer hereby covenants and agrees that it shall not do any of the following:

(a) Location of Collateral. Change the location of its principal places of business or books and records relating to Accounts or location of any material portion of other Collateral, including Inventory, without prior written notice to Wintrust.

(b) Liens. Grant or permit to exist any Lien on its Accounts or other personal property except (i) Liens securing the Alpha Debt so long as such Liens are subject to the Alpha Intercreditor Agreement and (ii) other Liens set forth on the Disclosure Schedule or expressly consented to in writing by Wintrust.

(c) Indebtedness. (i) Incur or permit to exist, or permit Parent to incur or exist, any indebtedness for borrowed money (including capital leases, letters of credit and similar indebtedness) other than Permitted Debt; or (ii) enter into, or permit Parent to enter into, any agreement or incur or permit to exist any indebtedness that authorizes any creditor or other person to initiate ACH transfers or other withdrawals from any of its Deposit Accounts in connection with a merchant cash advance, other financing facility or indebtedness or otherwise.

(d) Sale of Assets. Sell, assign transfer or dispose of (i) Accounts to any party other than Wintrust or (ii) any other Collateral outside the ordinary course of business.

(e) Modification of Accounts. Change, modify or supplement (i) the terms of the original invoice or Supporting Documents without giving prompt written notice to Wintrust, or (ii) the payment instructions on Accounts sold to Wintrust.

(f) Subsidiaries. Form or acquire any direct or indirect subsidiary after the Effective Date.

(g) Loans and Investments. Make or permit to exist, or permit Parent to make or Permit to exist, any loans, investments, advances or transfer assets other than (i) loans, investments and advances outstanding on the Effective Date and set forth on the Disclosure Schedule and (ii) other loans, investments and transfers in the ordinary course of business for adequate consideration and on market terms.

(h) Dividends and Distributions. Make, or permit Parent to make, any dividend, distribution, repurchase, defeasance or other payment in respect of any stock, membership interest, partnership interest or other equity interest ("**Equity Interest**"), or any payment of any indebtedness of Customer or Parent owing to any holder of any Equity Interest, other than (a) payments by a subsidiary to the Customer, (b) non-cash payments by issuance of in-kind common Equity Interests, (c) cash payments by Customer to holders of its Equity Interests, or

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by Parent to holders of its Equity Interests, made upon 30 days prior written notice to Wintrust so long as (i) no Event of Default exists or would be caused thereby and (ii) after giving pro forma effect thereto the Customer shall have positive cash flow for the most recently ended four consecutive fiscal quarters, as determined by Wintrust in its discretion, and (d) Alpha Permitted Payments.

(i) Payments of Indebtedness for Borrowed Money. Make, or permit Parent to make, any payments (whether voluntary or mandatory, or a prepayment, redemption, retirement, defeasance or acquisition) with respect to any (a) Subordinated Debt, except regularly scheduled payments of principal, interest and fees, but only to the extent permitted under any subordination agreement or provision relating to such indebtedness (and a senior officer of Customer shall certify to Wintrust, not less than five Business Days prior to the date of payment, that all conditions under such agreement have been satisfied); or (b) any indebtedness for borrowed money (other than the Obligations) prior to its due date under the agreements evidencing such indebtedness as in effect on the Effective Date (or as amended thereafter with the consent of Wintrust); provided that, notwithstanding any of the foregoing, Alpha Permitted Payments shall be permitted in any event.

(j) Affiliate Transactions. Enter into or permit to exist any transaction with any Affiliate, including loans, investments, advances or transfers or assets, other than (a) transactions expressly permitted by this Agreement or the Related Documents; (b) payment of reasonable compensation to officers and employees for services actually rendered, and payment of customary directors' fees and indemnities; (c) transactions with Affiliates consummated prior to the Effective Date, as shown on the Disclosure Schedule; and (d) transactions with Affiliates in the ordinary course of business, upon fair and reasonable terms fully disclosed in writing to Wintrust and no less favorable than would be obtained in a comparable arm's-length transaction with a non-Affiliate.

4.03 Affirmative Covenants. To induce Wintrust to enter into this Agreement, Customer hereby covenants and agrees that it shall do each of the following:

(a) Financial Information. Furnish Wintrust with the financial statements and other information set forth on Annex B, together with (i) annual tax returns with evidence of payment of all taxes shown by such returns to be owing; (ii) upon Wintrust's request, (A) copies of each Internal Revenue Service form 941 or its equivalent filed with the Internal Revenue Service, together with evidence of the timely payment of all payroll taxes required by law and (B) an Internal Revenue Service form 8821, or its equivalent, authorizing Wintrust to obtain information directly from, and communicate with, the Internal Revenue Service about Customer and the status of its taxes owing to the Internal Revenue Service, and (iii) such other financial information and information relating to the Accounts as Wintrust may reasonably request from time to time. All financial statements shall be prepared in a manner consistent with GAAP.

(b) Audits and Verifications. Permit Wintrust or its representatives or professionals engaged by Wintrust to visit, audit and inspect any of its properties, to examine its books of accounts, records, reports and other papers, to make copies and extracts therefrom, and to discuss the affairs, finances and accounts of the Customer with its officers, employees, independent public accountants, creditors and depository institutions, and otherwise verify all financial information regarding Customer, all at such reasonable times and as often as may be reasonably requested. Customer hereby agrees to pay and reimburse Wintrust on demand, for each such audit or inspection conducted by Wintrust, an audit fee at the rates established from time to time by Wintrust as its fee for audits or inspections, together with all actual out-of-pocket costs and expenses incurred in conducting any such audit or inspection; provided, that, absent the occurrence and continuance of an Event of Default, Customer shall not be required to pay or reimburse Wintrust for more than one (1) such audit or inspection per consecutive twelve (12) month period (excluding, for purposes of such cap, audits or inspections conducted prior to the date hereof). Wintrust shall have the right, at any time, to verify the validity, amount or any other matter relating to the Accounts by verbal or written communications directly with the Customer's Account Debtors. Customer shall cooperate fully with Wintrust in an effort to facilitate and promptly conclude any such verification process. Customer will provide Wintrust all current user names, access codes and passwords to any Account Debtor websites to which Customer has access. Customer shall not interfere with Wintrust's verification process or terminate or limit access to any Account Debtor information that is available online to Customer.

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(c) Notices.

(i) Customer shall give prompt written notice to Wintrust of (A) the occurrence of any Event of Default; (B) the occurrence of any event or circumstance that could reasonably be expected to have a Material Adverse Effect; (C) any Commercial Disputes between Account Debtor and Customer or the return of any product by Account Debtor to Customer, in each case in an amount in excess of any "Dispute Threshold" set forth on Annex A to this Agreement; or (D) the commencement of any material legal proceeding or service of any legal document in any material respect affecting the Customer or any Guarantor including, but not limited to, any complaints, judgment, Liens, attachments, garnishments or any Insolvency Proceeding with respect to Customer or any Guarantor.

(ii) Customer shall give Wintrust thirty (30) days prior written notice of any (A) change in the location of any of its principal places of business or location of Collateral; (B) proposed change of Customer's name, trade names, legal entity, corporate structure or status, or any proposed change in any of Customer's senior officers; or (C) change, other than due to death or disability, in the principals, partners, shareholders and/or owners of Customer.

(d) Insurance. Maintain property and liability insurance with acceptable companies covering the Collateral as is reasonable, customary and adequate for similar businesses and otherwise in amounts and with coverages acceptable to Wintrust. Each policy shall include satisfactory endorsements (i) showing Wintrust as lender loss payee or additional insured, as applicable, and (ii) requiring 30 days prior written notice to Wintrust in the event of cancellation of the policy for any reason; provided, that, within five (5) days after the date hereof, Customer shall deliver to Wintrust certificates of insurance with respect to such insurance policies and such endorsements to such insurance policies as contemplated above.

(e) Primary Banking Relationship. Establish and maintain, and cause Parent and each of its subsidiaries to establish and maintain, Old Plank Trail Bank as its principal depository bank, including for the maintenance of all principal operating, collection, disbursement and other deposit accounts, and its principal provider of all services relating to cash management, including collections, payroll, disbursements, automated clearinghouse, e-payable, electronic funds transfer, wire transfer, lockbox, controlled disbursement or services similar to any of the foregoing.

(f) Compliance. (i) Comply, and cause each of its subsidiaries to comply, in all material respects with all applicable laws other than OFAC/AML/CFT Laws; (ii) comply, and cause each of its subsidiaries to comply, in all respects with OFAC/AML/CFT Laws; and (iii) promptly provide information and documentation reasonably requested by Wintrust in connection with or for purposes of compliance with this Agreement or any other Related Document.

(g) Taxes. Timely file all tax returns and reports required to be filed by Customer. Pay and discharge when due all federal, state and local taxes (including payroll taxes) payable by or imposed on Customer except to the extent (i) the validity or amount thereof is being contested by Customer in good faith by appropriate proceedings, (ii) Customer has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (iii) such contest has the effect of staying collection of such tax.

(h) Further Assurances. Execute and deliver to Wintrust such documents, instruments and agreements, and shall take such actions, as Wintrust reasonably deems appropriate under applicable law to evidence or perfect its Lien on any Collateral or otherwise to give effect to the intent of this Agreement and the other Related Documents.

ARTICLE V: Security Interest.

As security for all present and future Obligations, Customer grants to Wintrust, for the benefit of itself and its Affiliates, a continuing security interest in and Lien upon the Collateral. Customer shall take all actions reasonably requested by Wintrust from time to time to cause the attachment, perfection and, except as expressly permitted

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hereunder or as Wintrust may otherwise agree in writing, first priority of Wintrust's Lien on the Collateral. Customer authorizes Wintrust to complete and file, at any time and from time to time as Wintrust may require, such financing statements with respect to the Collateral naming Wintrust (or its representative) as secured party and Customer as debtor, and describing the Collateral as "all assets" or "all personal property" or by such other words deemed appropriate by Wintrust, together with all amendments and continuations with respect thereto deemed appropriate by Wintrust in its discretion from time to time. Customer ratifies any action taken by Wintrust before the Effective Date to establish, evidence or perfect its Lien on any Collateral.

ARTICLE VI. Operational Provisions.

6.01 Power of Attorney. In order to carry out this Agreement, Customer irrevocably and unconditionally appoints Wintrust or any person designated by Wintrust as its special attorney in fact, or agent, with power to, at Customer's sole expense, exercise at any time any of the following powers: **(a)** strike through Customer's remittance information on all invoices delivered to Account Debtors and note Wintrust's remittance information on all invoices; **(b)** receive, open, read, and thereafter forward to Customer if appropriate all mail addressed to Customer (including any trade name of Customer) sent to Wintrust's address. Any payments received shall be processed in accordance with this Agreement; **(c)** endorse the name of Customer or Customer's trade name on any checks or other evidences of payment that may come into the possession of Wintrust with respect to any Account; **(d)** upon and during the continuance of an Event of Default, in Customer's name or otherwise, demand, sue for, collect, and give releases for any and all monies due to or become due on any Account; **(e)** upon and during the continuance of an Event of Default, compromise, prosecute, or defend any action, claim or proceeding as to any Account or offer a trade discount to Customer's Account Debtor exclusive of Customer's normal business custom with any Account Debtor; **(f)** initiate electronic debit or credit entries through the ACH system to Customer's account or any other deposit account maintained by Customer wherever located; **(g)** sign Customer's name on any notice of assignment or other notices to Account Debtors; **(h)** send notices, demand or requests to any Account Debtor in the name of Customer for any purpose reasonably deemed necessary or desirable by Wintrust including, without limitation, notices regarding payment instructions or seeking estoppel information on the Accounts and such other matters integral to the relationship; and **(i)** upon and during the continuance of an Event of Default, do any and all things necessary and proper to carry out the purposes intended by this Agreement. The power of attorney granted to Wintrust herein shall be deemed to be coupled with an interest and, therefore, irrevocable until Final Payment has occurred. The authority granted to Wintrust under this provision shall remain in full force and effect until Final Payment has occurred.

6.02 Collection By Wintrust. Wintrust may make a good faith, commercially reasonable effort to collect the Accounts but shall have no obligation to do so. Wintrust shall have discretion as to the time, manner, procedures, policies and methods used for collecting Accounts, including, the manner and frequency of contacting any Account Debtor and the election to refrain from collecting the Accounts or exercising any rights or remedies with respect thereto. All decisions by Wintrust as to collection or enforcement or refraining therefrom, including any such decision based on a commercially reasonable determination that the Account Debtor owing such Account does not have the financial ability to pay or that the amount of recovery is outweighed by the likely costs and expenses to pursue collection of such Account, shall be presumptively commercially reasonable absent bad faith as finally determined by a court of competent jurisdiction. Should Wintrust receive a duplicate payment on an Account or a payment which is not identified, Wintrust may, at its election, either return such payment to the sender thereof or apply such payment to the account of Customer by crediting the same to the Ledger Account. Customer hereby waives and releases any and all claims relating to or arising out of any good faith act or omission by Wintrust in the collection or enforcement of the Accounts and holds Wintrust harmless therefrom.

6.03 Taxes. Should any excise, sale, use or other tax be imposed by any federal, state or local authority requiring a deduction or withholding from the purchase price for a sale of any Account, or if the Account Debtor is authorized to withhold and deduct such tax or levy, then the Customer shall immediately pay Wintrust the amount of the tax or levy so withheld, and the Customer shall indemnify and hold Wintrust harmless from any loss or expense on account of such tax or levy.

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6.04 Customer Information Access. Information regarding the transactions occurring hereunder or posted to the Ledger Account are maintained by Wintrust and available for review by Customer through Wintrust's internet based on line portal (the "**Portal**"). Customer acknowledges that the information Wintrust makes available to Customer, including but not limited to the information made available through the Portal, constitutes and satisfies any duty to respond to a Request for an Accounting or Request regarding a Statement of Account pursuant to § 9-210 of the UCC. Customer acknowledges that information available on the Portal is real time and subject to further adjustment by Wintrust pursuant to the terms herein. All of Wintrust's electronically maintained data, all hard-copy print-outs of such data, including all of Wintrust's books and records and all other data in relation thereto between Wintrust and Customer shall be admissible in evidence by Wintrust as prima facie evidence of the status of the Accounts and Obligations due Wintrust. Each month end statement, report, or accounting rendered or issued by Wintrust to Customer shall be deemed conclusively accurate and binding on Customer unless within thirty (30) days after the date of issuance or the date such information is posted or otherwise made available on the Portal, Customer notifies Wintrust to the contrary by registered or certified mail, setting forth with specificity the reasons why Customer believes such statement, report or accounting is inaccurate. Customer's failure to receive any monthly statement shall not relieve it of the responsibility to request such statement or otherwise excuse Customer from accessing the Portal to obtain such information. Upon an Event of Default, all of Customer's rights of access to the Portal shall be provisional pending Customer's cure of all such Events of Default and Wintrust may limit or terminate Customer's access to the Portal. Customer acknowledges that no information on the Portal shall modify the terms and conditions of this Agreement.

6.05 Wintrust Settlement of Accounts. Customer agrees that it shall not grant any allowance, credit or adjustment to an Account Debtor, or accept any return of merchandise, except to the extent that, as of the date thereof and after giving effect thereto, no Event of Default or Overadvance exists. Wintrust may, at its option at any time an Event of Default exists, settle and/or compromise any Commercial Dispute without any liability to Customer so long as the compromise is done in good faith and in accordance with applicable law. Wintrust, as the sole and absolute owner of the Accounts, shall have the sole and exclusive power and authority, at any time an Event of Default exists, to collect each such Account, through legal action or otherwise, and exercise, to the maximum extent permitted by applicable law, any other right now existing or hereafter arising with respect to any of such Accounts. Any settlement made by Wintrust shall not relieve Customer of any of its obligations with respect to an Account or under this Agreement.

6.06 Information. In the event Wintrust provides financial information to Customer regarding an Account Debtor or other third party, whether by setting a Purchase Limit, at the request of Customer or otherwise, Customer understands and agrees that no representation or warranty or opinion is made or given by Wintrust as to the creditworthiness or other matter relating to any such Account Debtor or third party. Customer acknowledges that Wintrust is not a credit agency and that its credit decisions are based on information received from third-party sources.

6.07 Communications. Customer hereby irrevocably authorizes its employees and agents to provide to Wintrust any and all information that Wintrust reasonably requests from time to time regarding Customer, and to discuss with Wintrust from time to time any and all matters relating to the Customer. Customer gives its irrevocable authorization to Wintrust to disclose, release and exchange all information, including but not limited to any confidential information, regarding Customer and to communicate without limitation as to any matters related to Customer as Wintrust reasonably deems necessary or advisable from time to time and at its option with any third parties or any other persons claiming an interest or right in or to the Collateral. In furtherance of the foregoing, the Customer hereby waives any privilege or claim of confidentiality to the extent such might otherwise prevent such accountants from providing such information to Wintrust or discussing such matters with Wintrust

6.08 Service Providers. Customer acknowledges and agrees that Wintrust shall have the right at any time to (i) assign the performance of the services hereunder to any entity or outsource the services and the performance of such services to be provided hereunder to a third party; and (ii) utilize accounting, legal and other professionals in the ordinary course of its business, which third parties and professionals may have access to certain information regarding Customer, to be held in confidence.

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6.09 Compliance. Customer shall conduct its business, and all transactions under this Agreement will be performed, in accordance with OFAC/AML/CFT Laws and such other applicable financial reporting or record keeping laws. Nothing contained this Agreement shall be interpreted or construed as requiring Wintrust to transfer funds, use proceeds, or transact business in any manner that would violate any OFAC/AML/CFT Laws. Upon request of Wintrust, Customer shall provide documentary and other evidence of Customer's identity as may be reasonably requested Wintrust at any time to enable Wintrust to verify Customer's identity or to comply with any applicable laws, including but not limited to the USA Patriot Act of 2001.

ARTICLE VII. Default

7.01 Events of Default. Any one or more of the following shall constitute an "**Event of Default**" hereunder: (a) Customer shall fail to pay any payment Obligation when due; (b) Customer shall fail to perform or breach any other agreement, covenant or promise of Customer under this Agreement or any performance Obligation hereunder and, in the event of any such failure with respect to Sections 4.02f), 4.02(g), 4.02(h), 6.03 or 6.09 of this Agreement, such failure shall continue for thirty (30) days from the earlier of written notice thereof to Customer or knowledge thereof by Customer; (c) any breach or default, after any expressly applicable notice or cure period, by Customer or any Guarantor in the performance of any agreement, covenant or promise of such Customer or Guarantor under any Related Document; (d) any representation or warranty of Customer or any Guarantor under this Agreement or any other Related Document shall be incorrect or untrue in any material respect when made or deemed made; (e) an Insolvency Proceeding shall occur with respect to Customer (a "**Specified Default**") or any Guarantor unless, in the case of any such involuntary Insolvency Proceeding, the same is dismissed within forty-five (45) days; (f) (i) one or more judgments, orders or awards for the payment of money in excess of \$200,000, individually or in the aggregate, shall be entered or filed against the Collateral, Customer or any Guarantor and either the same is not discharged and released with thirty (30) days thereof or execution thereof or thereon shall at any time not be effectively stayed or (ii) or any judgment other than for the payment of money, or injunction, attachment, garnishment or execution is rendered against Customer, any Guarantor or any of the Collateral having a value in excess of \$100,000; (g) Customer or any corporate Guarantor suspends or ceases operation of all or a material portion of its business, or is enjoined, restrained or in any way prevented by any governmental authority from conducting any material part of its business; (h) any breach or default by Customer or any Guarantor, in excess of \$200,000, under any document, instrument or agreement to which it is a party, or by which any of its properties are bound, if the maturity of any indebtedness of such Customer or Guarantor may be accelerated or demanded due to such breach or default; (i) the death or disability of any personal Guarantor, or the dissolution, merger or consolidation of any other Guarantor; (j) there shall be a material change in the Control, management or ownership of Customer, Parent or any corporate Guarantor; provided, however, that no Event of Default under this clause (j) shall result from any exercise of warrants, or other acquisition of equity directly or indirectly in Customer, Parent or any corporate Guarantor, by Alpha Inc. or any Affiliate thereof, so long as Wintrust has received customary know-your-customer documentation in respect of Alpha Inc. or such Affiliate in form and substance, and with results, reasonably satisfactory to Wintrust; (k) this Agreement or any Related Document shall cease to be in full force and effect or Customer or any Guarantor shall contest or deny in any manner the validity or enforceability of this Agreement or any Related Document to which it is a party, or any third-party creditor shall contest or deny the validity or enforceability of any intercreditor or subordination agreement executed in connection with this Agreement; or (l) the occurrence of any default or event of default, following any applicable notice or cure period, under the Alpha Loan Documents or in respect of the Alpha Debt, in each case if the maturity of any indebtedness under the Alpha Loan Documents may be accelerated or demanded due to such default or event of default.

7.02 Remedies on Default. At any time upon or after the occurrence of an Event of Default, Wintrust may (a) accelerate and declare to be immediate due and payable the Obligations, in which case such Obligations shall be immediately due and payable and Customer shall immediately repay all such Obligations in full; (b) set off against, and appropriate and apply to the payment of the Obligations, any and all amounts owing by Wintrust to Customer; (c) chargeback to Customer, and require Customer to repurchase from Wintrust, all Accounts; (d) cease making Advances under this Agreement; (e) terminate Customer's access to the Portal; or (f) exercise any or all rights, powers and remedies available hereunder or under the Related Documents, or accorded by law or equity or otherwise, in each case, without presentment, demand, protest, notice of dishonor, or other notice of any kind, all

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of which are hereby expressly waived by Customer. Notwithstanding the foregoing or anything to the contrary herein, immediately upon the occurrence of a Specified Default, all Obligations shall be automatically accelerated, all Accounts shall be automatically charged back to Customer, and this Agreement shall be automatically terminated, in each case, without notice or further action of any kind. Without limiting the generality of the foregoing, at any time upon and after the occurrence of an Event of Default, Wintrust shall have all the rights and remedies of a secured party under the UCC and other applicable laws with respect to all Collateral, including the right to sell or cause to be sold any or all of such Collateral, in one or more sales or parcels, at such prices and upon such terms as Wintrust shall elect, for cash or on credit or for future delivery, without assumption of any credit risk, and at a public or private sale as Wintrust may deem appropriate. After application to the Obligations of the proceeds of any such sale or disposition of Collateral, Customer shall remain liable for any deficiency. In order to satisfy any of the Obligations due Wintrust, Customer authorizes Wintrust to initiate electronic debit or credit entries through the ACH system to any Deposit Account maintained by Customer, and Customer shall indemnify and hold Wintrust harmless of any claims or damages that might arise therefrom unless Wintrust is found to have acted in bad faith and without just cause.

7.03 License. Wintrust is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all trade names or other Intellectual Property of Customer, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other property, in exercising any rights or remedies with respect to, any Collateral.

7.04 No Waiver of Rights by Wintrust. No failure or delay by Wintrust in exercising any of its powers or rights hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such power or right preclude other or further exercise thereof or the exercise of any other right or power. Wintrust's rights, remedies and benefits hereunder are cumulative and not exclusive of any other rights, remedies or benefits which Wintrust may have. No waiver by Wintrust will be effective unless in writing and then only to the extent specifically stated.

ARTICLE VIII. Term and Termination

8.01 Term. This Agreement shall continue in full force and effect during the Term and then applicable Term shall, as of the last day thereof, automatically continue for successive renewal terms of twelve (12) months unless (a) Customer provides written notice of non-renewal delivered to an officer of Wintrust at least sixty (60) days prior to the expiration of the initial or any renewal Term or (b) this Agreement is otherwise terminated as provided herein.

8.02 Termination. Wintrust may terminate this Agreement upon at least thirty (30) days written notice to Customer; or any date set by Wintrust upon the occurrence of an Event of Default. Any request by Customer for early termination of this Agreement prior to the end of the then existing Term must be in writing. The failure of Customer to submit Eligible Accounts during the Term of this Agreement may, at the election of Wintrust, be considered an early termination of this Agreement by Customer. All Obligations hereunder shall become immediately due and payable on the effective date of termination of this Agreement. Notwithstanding any termination of this Agreement, until such time as all Obligations shall have been fully paid and satisfied in immediately available funds, this Agreement shall remain binding upon Customer and, without limiting the foregoing, all security interests and Liens granted by Customer in favor of Wintrust hereunder shall remain in full force and effect. Further, all provisions hereof that, by their terms, survive termination or expiration hereof, shall survive termination or expiration of this Agreement.

8.03 Avoidance Claims or other Repayment of Account Debtor. This Agreement and each Related Document shall be revived and deemed not to have terminated in the event any payment made to Wintrust hereunder or under any Related Document is invalidated, declared to be fraudulent or preferential, set aside or required to be repaid, including in pursuant to any settlement entered into by Wintrust in its discretion, and the amount of the repayment by Wintrust shall be an Obligation secured by the Collateral and otherwise subject to the ongoing terms of this Agreement. This provision shall survive termination of this Agreement.

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ARTICLE IX. General Provisions

9.01 Assignment. This Agreement inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto, provided, however, that Customer shall not have the right to assign its rights hereunder or any interest herein without Wintrust's prior written consent. Wintrust shall have the right at any time to assign this Agreement and delegate all of its rights and duties hereunder.

9.02 Waivers by Customer. To the fullest extent permitted by applicable law, Customer waives (a) presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, documents, instruments, chattel paper and guaranties at any time held by Wintrust on which Customer may in any way be liable, and hereby ratifies anything Wintrust may do in this regard; (b) notice prior to taking possession or control of any Collateral; (c) any bond or security that might be required by a court prior to allowing Wintrust to exercise any rights or remedies; (d) the benefit of all valuation, appraisal and exemption laws; (e) any claim against Wintrust on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any enforcement action, the Obligations, the Related Documents or the transactions relating thereto; and (f) notice of acceptance hereof. Customer acknowledges that the foregoing waivers are a material inducement to Wintrust entering into this Agreement and that they are relying upon the foregoing in their dealings with Customer. Customer has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

9.03 Relationship of Parties. Customer acknowledges that the transactions contemplated hereby are arm's-length commercial transactions and the relationship under the Agreement is principally that of seller and purchaser. Customer acknowledges that Wintrust is not a fiduciary of Customer and Customer will not seek or attempt to establish that Wintrust is a fiduciary of or owes any fiduciary duty to Customer. Customer waives any right to assert, now or in the future, that Wintrust has a fiduciary duty to Customer or the existence of a confidential relationship with Wintrust in any action or proceeding, whether by way of claim, counterclaim, cross claim or otherwise.

9.04 Severability. In the event any one or more of the provisions contained in this Agreement or any Related Document shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and the Agreement or the applicable other Related Document shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.

9.05 Entire Agreement. This Agreement and the Related Documents contain the entire understanding between the parties, and comprises the complete and integrated agreement of the parties, on the subject matter hereof and supersedes all prior agreements, written or oral, on the subject matter hereof. Customer specifically acknowledges and agrees that Wintrust has not made, nor has Customer relied upon, any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, except as specifically set forth herein and in the Related Documents. It is the intention of the parties hereto that in the event of any subsequent litigation, controversy, or dispute concerning the terms and provisions of this Agreement, no party shall be permitted to offer or introduce oral or extrinsic evidence concerning the terms and conditions hereof that are not included or referred to herein and not reflected in writing.

9.06 Amendment. No amendment, modification, waiver or consent, oral or otherwise, with respect to this Agreement or any provision herein will in any event be effective unless the same is in writing and signed by an officer of Wintrust. Such amendment, modification, waiver or consent must have an authenticated signature of an officer of Wintrust, and no email correspondence shall be considered a writing or as containing an authenticated signature for purposes of such amendment, modification, waiver or consent.

9.07 Opportunity to Consult with Counsel. The parties have read this Agreement, understand its contents and each of the parties hereto has had an opportunity to consult with its respective legal counsel prior to executing

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this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

9.08 Data Transmission. Customer agrees that Wintrust shall have no responsibility or liability for privacy or security of data transmitted from Wintrust to Customer or from Customer to Wintrust, except to the extent due to Wintrust's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.

9.09 No Consequential Damages. No claim may be made by Customer, or any of its members, managers, shareholders, affiliates, directors, officers, employees, attorneys or agents (the "**Customer Parties**") against Wintrust or any of its members, managers, shareholders, Affiliates, directors, officers, employees, attorneys or agents for any special, indirect, or consequential damages in respect of any breach or wrongful conduct, whether the claim therefor is based on contract, tort or duty imposed by law, in connection with, arising out of or in any way related to the transactions contemplated and relationship established by this Agreement or any other Related Document, or any act, omission or event occurring in connection therewith, including loss of goodwill, loss of profit, or any other losses associated therewith, whether Wintrust did or did not have any reason to know of a loss that may result from any general or particular requirement of Customer, and Customer hereby waives, releases and agrees on behalf of the Customer Parties not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

9.10 Indemnification. Customer shall indemnify Wintrust and each of its owners, officers, directors, employees, Affiliates, agents and attorneys (each an "**indemnified party**") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, actual, reasonable, out-of-pocket fees and disbursements of counsel) which may be imposed on, incurred by, or asserted against any indemnified party in any litigation, proceeding or investigation instituted or conducted by any governmental agency or instrumentality or any other person or entity with respect to any aspect of, or any transaction contemplated by, or referred to in, or any matter related to, this Agreement or any other Related Document, whether or not such indemnified party is a party thereto, except to the extent that any of the foregoing arises directly out of the gross negligence or willful misconduct of such indemnified party as determined in a final, non-appealable judgment by a court of competent jurisdiction. Customer agrees to indemnify and hold harmless Wintrust from any loss or liability arising out of the assertion of any claim that any payment received by Wintrust hereunder or in respect of the Obligations is avoidable under the Bankruptcy Code or any other debtor relief statute or by any creditor, whether under state or federal law, as a preference, fraudulent conveyance or otherwise, and Customer shall pay to Wintrust on demand the amount thereof. Customer shall notify Wintrust as soon as possible after Customer becomes aware of the assertion of any such avoidance claim or other claim subject to indemnification hereunder. This Section 9.10 shall survive termination of this Agreement.

9.11 Notices hereunder. Any notice or other communications by either party to the other in connection with this Agreement or any written notice as provided for herein shall be in writing and deemed delivered (i) three (3) days after being mailed by certified mail, postage prepaid and return receipt requested; (ii) the next Business Day after being sent via overnight delivery by a nationally recognized delivery service; (iii) at such time as receipt or refusal by personal delivery, each at the address set forth below for such party, or at such other address as may have been furnished in writing by such party in accordance with notice provisions set forth herein. No email correspondence or voicemail shall be considered a written notice for purposes of this Section 9.11.

9.12 Costs and Expenses. Customer agrees to pay on demand all actual, reasonable, out-of-pocket costs and expenses, including (without limitation) attorneys' fees, incurred by Wintrust in connection with this Agreement or any other Related Documents or the transactions contemplated hereby and thereby, including (a) all such costs, expenses and fees incurred in connection with the negotiation, due diligence, preparation, execution, amendment, administration, performance, collection and enforcement hereof and thereof, (b) all such costs, expenses and fees incurred in connection with the creation, perfection, protection, satisfaction, foreclosure or enforcement of any Lien or security interest granted hereunder, the collection of any Account or any Obligation, (c) all such costs, expenses and fees incurred or charged, or paid on behalf of Customer, by Wintrust in connection or association

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with the administration, management provision or enforcement of this Agreement or any other Related Document, including (i) all legal, accounting and other professional fees; (ii) any and all search fees, recording fees, lien notation fees, inspection fees, and filing fees in connection with its due diligence; (iii) fees relating to applications for credit insurance or due diligence that may be required to ascertain the creditworthiness of the Customer or Account Debtors; (iv) usual and customary fees, as adjusted by Wintrust from time to time, for any and all services and banking products requested by Customer and provided by Wintrust or its Affiliates to Customer, including, without limitation, wire, ACH and other transfers; cashier's checks; overnight delivery; check cashing; expedited funding; and other services and products; (v) subject to Section 4.03(b), any and all expenses in connection with an inspection or audit hereunder; and (vi) all fees, costs and expenses relating to enforcement of any rights under this Agreement or any other Related Document, or establishing, preserving or perfecting any Lien on Collateral or protecting or preserving Accounts or other Collateral. This Section shall survive termination of this Agreement.

9.13 Savings Clause. No provision of this Agreement or of any Related Document shall require the payment or the collection of interest in excess of the maximum amount permitted by applicable law. In the event Wintrust ever receives, collects or applies as interest hereunder or under any Related Document any amount in excess of the maximum amount permitted by applicable law, such excess shall be applied as a payment and reduction of the principal of the Obligations and, if the principal of such Obligations has been paid in full, any remaining excess shall be paid to Customer. In determining whether or not the interest paid or payable exceeds the maximum rate permitted by applicable law, Wintrust and Customer shall, to the extent permitted by applicable law, (a) characterize any non-principal payment as an expense, fee, or premium rather than as 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 entire contemplated term of this Agreement so that interest for the entire term does not exceed the maximum rate permitted by law. If at any time the interest rate set forth in this Agreement or any Related Document exceeds the maximum interest rate allowable under applicable law, the interest rate will be deemed to be such maximum interest rate allowable under applicable law.

9.14 Governing Law; Jurisdiction. This Agreement and each Related Document (unless otherwise specifically agreed therein) shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to any choice of law or conflict of law provisions or rules. The parties hereby (a) consent to the personal jurisdiction of the state and federal courts located in the State of Illinois in connection with any controversy related to this Agreement or any other Related Document; (b) waive any argument that venue in any such forum is not convenient; (c) agree that the venue for any litigation initiated by Wintrust or the Customer in connection with this Agreement or any other Related Document shall be either the State Courts of the City and County of Cook or the United States District Court, District of the Northern District of Illinois; and (d) agree that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall be deemed or operate to affect the right of Wintrust to initiate a legal proceeding in any other jurisdiction to protect or enforce Wintrust's rights in the Accounts or in the Collateral, or to preclude the enforcement of any judgment or order obtained in such forum or the taking of any action under this Agreement or the other Related Documents to enforce same in any other appropriate forum or jurisdiction.

9.15 Waiver of Right to Trial by Jury. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER THIS AGREEMENT, THE OTHER RELATED DOCUMENTS OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THEREWITH, OR (2) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, THE OTHER RELATED DOCUMENTS OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL

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COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

9.16 Counterpart Signatures; Electronic Submissions. The Agreement and each other Related Document may be executed in any number of counterparts, each of which so executed shall be deemed an original and constitute one and the same agreement. Delivery of a manually executed copy of a signature page of this Agreement or any other Related Document or any document ancillary thereto or executed pursuant to the transactions contemplated by this Agreement or the other Related Document by facsimile or by electronic transmission of a portable document format file or equivalent (also known as a "**PDF file**") shall be effective as delivery of a manually executed original counterpart of this Agreement or such other Related Document or agreement. An electronic signature of this Agreement or any other Related Document shall be effective as delivery of a manually executed original counterpart of this Agreement or such other Related Document, which electronic signature shall be defined as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by Customer with the intent to sign the record. Any notice, request or other communication under this Agreement or the other Related Documents in the form or format of an electronic record shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record.

9.17 Intercreditor Agreement. The terms of this Agreement and each other Related Document, any Lien granted to Wintrust or otherwise pursuant to this Agreement or the other Related Documents and the exercise of any right or remedy by Wintrust hereunder or thereunder are subject to the provisions of the Alpha Intercreditor Agreement. In the event of any inconsistency between the provisions of this Agreement or any other Related Document and the Alpha Intercreditor Agreement, the provisions of the Alpha Intercreditor Agreement shall supersede the provisions of this Agreement and the other Related Documents. Without limiting the generality of the foregoing, and notwithstanding anything herein to the contrary, all rights and remedies of Wintrust hereunder shall be subject to the terms of the Alpha Intercreditor Agreement.

Signature Pages to Follow

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IN WITNESS WHEREOF, the undersigned have executed this Account Purchase Agreement as of the date first above written.

WINTRUST:

WINTRUST RECEIVABLES FINANCE,
a division of Wintrust Bank

By: 

Name: Jackie Day
Its: Senior Vice President

Wintrust Receivables Finance
a division of Wintrust Bank
Attn: John Marrinson, Executive VP
231 South LaSalle Street
Fourth Floor
Chicago, Illinois 60604
Telephone: 312-431-6594
email: jday@wintrust.com

CUSTOMER:

HALO, PURELY FOR PETS, INC.,
a Delaware corporation

By: _____

Name: Kent Cunningham
Its: Chief Executive Officer

Better Choice Company, Inc.
12400 Race Track Road
Tampa, Florida 33626
Attn: Kent Cunningham
Telephone: 615-497-0280
email: kcunningham@bttrco.com

IN WITNESS WHEREOF, the undersigned have executed this Account Purchase Agreement as of the date first above written.

WINTRUST:

WINTRUST RECEIVABLES FINANCE,
a division of Wintrust Bank

By: _____

Name: Jackie Day
Its: Senior Vice President

Wintrust Receivables Finance
a division of Wintrust Bank
Attn: John Marrinson, Executive VP
231 South LaSalle Street
Fourth Floor
Chicago, Illinois 60604
Telephone: 312-431-6594
email: jday@wintrust.com

CUSTOMER:

HALO, PURELY FOR PETS, INC.,
a Delaware corporation

By:  _____

Name: Kent Cunningham
Its: Chief Executive Officer

Better Choice Company Inc.
12400 Race Track Road
Tampa, Florida 33626
Attn: Kent Cunningham
Telephone: 615-497-0280
email: kcunningham@bttrco.com

ANNEX A

Certain Fees, Rates and Terms

Eligibility Period:	ninety (90) days from the original invoice date or, with respect to Accounts due from Amazon.com, Inc. or Chewy, Inc., one hundred twenty (120) days from the original invoice date.
Advance Rate:	75%
Collection Days:	two (2) Business Days
Dispute Threshold:	The greater of (a) \$10,000, or (b) 5% of the aggregate face amount of all Accounts owing by an Account Debtor
Facility Limit:	Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000)
Contract Rate:	An interest rate per annum equal to the Prime Rate in effect from time to time plus 2.50%
Term:	two (2) year(s) from the Effective Date
Certain Fees:	<p>(a) <u>Missing Notification Fee</u>. In the event Wintrust requires Customer to include the Invoice Notion on an invoice (or similar documentation) for an Account and Customer does not include such Invoice Notion on such invoice (or similar documentation), Customer shall pay to Wintrust a missing notation fee in an amount equal to 15% of the amount of such invoice (or similar documentation). Such fee shall be due and payable to Wintrust upon issuance of the invoice (or similar documentation) from which such Invoice Notion was omitted.</p> <p>(b) <u>Misdirected Payment Fee</u>. For each Misdirected Payment that is not delivered to Wintrust on or before the third (3rd) Business Day following receipt thereof by Customer, Customer shall pay to Wintrust a misdirected payment fee equal to the greater of One Hundred Dollars (\$100) or 5% of such Misdirected Payment. Such fee shall be due when payable in accordance with the foregoing.</p> <p>(c) <u>Minimum Fee</u>. In the event the aggregate interest paid by Customer to Wintrust (excluding default interest) is less than \$7,500 (the "Minimum Amount") during any calendar month (each, a "Fee Period") or, if this Agreement is terminated prior to the last day of the applicable Term, then in each case the Customer shall pay to Wintrust, on the last Business Day of such Fee Period or on the effective date of such termination, as applicable, the difference between the Minimum Amount and the aggregate interest (excluding default interest) paid by Customer to Wintrust during such Fee Period or, in the case of termination, Fee Period to date. The initial Fee Period shall be the first full calendar month following the date hereof.</p> <p>(d) <u>Termination Fee</u>. In the event Customer terminates this Agreement on a date other than the last day of the initial 2-year Term, or in the event Wintrust terminates this Agreement after the occurrence of an Event of Default, Customer shall pay to Wintrust, upon such termination, a termination fee equal to (i) if such termination occurs prior to the first annual anniversary of the Effective Date, 2% of the Facility Limit, and (ii) if such termination occurs on or after the first annual anniversary of the Effective Date and prior to the second annual anniversary of the Effective Date, 1% of the Facility Limit; <u>provided, however</u>, that such fee shall be waived if Final Payment has occurred and the Agreement is terminated following the first anniversary of the Effective Date with proceeds of a commercial line of credit provided by Old Plank Trail Bank.</p>

ANNEX B

Financial Information

Customer shall deliver to Wintrust:

- (a) within 90 days of the end of each fiscal year, annual financial statements of Parent, audited by an independent accountant reasonably acceptable to Wintrust, and prepared on a consolidating basis;
- (b) within 30 days following the end of each month, internally prepared financial statements of Customer for such period and internally prepared financial statements of Parent for such period;
- (c) within 20 days after the end of each month, (A) a detailed aged trial balance of all Accounts which are existing as of the last day of the preceding month, specifying the names, addresses, face value, dates of invoices and due dates for each Account Debtor obligated on an Account so listed, and (B) an accurate and complete report of the accounts payable of the Customer, including, without limitation, any checks held for the accounts payable;
- (d) promptly after Wintrust's request and on such periodic basis as Wintrust shall determine, but no less frequently than weekly, a sales and collections report for the preceding period; and
- (e) within 60 days prior to the end of each fiscal year, projections of income and cash flow and the balance sheet for Customer by month for the next fiscal year, and accompanied by senior management's discussion and analysis of such projections, which will be prepared by Customer in good faith, with care and diligence, and using assumptions that are reasonable under the circumstances at the time such projections are delivered to Wintrust and disclosed therein when delivered.

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Schedule 1
DISCLOSURE SCHEDULE

1. CUSTOMER AND SUBSIDIARIES INFORMATION

<u>Legal Name</u>	<u>Jurisdiction of Organization & Type of Organization</u>	<u>Foreign Qualifications</u>	<u>Organizational Identification Number</u>	<u>Federal Tax Identification Number</u>
Better Choice Company, Inc.	Delaware corporation	Florida	DE File No. 7223705	83-4284557
Halo, Purely for Pets, Inc.	Delaware corporation	Florida	DE File No. 4182913	86-1170662
Bona Vida, Inc.	Delaware corporation	Delaware	DE File No. 7087984	82-5494740
Wamor Corporation, S.A.	Uruguay corporation	Uruguay	UY File No. 557680	N/A

2. EQUITY OWNERSHIP OF CUSTOMER AND SUBSIDIARIES

A. Customer

<u>Record Owner</u>	<u>Class/Type of Equity</u>	<u>Number of Shares/Units</u>	<u>% Ownership</u>
Publicly held	Common Stock		

B. Subsidiaries

<u>Name</u>	<u>Jurisdiction and Tax ID Number</u>	<u>Owner</u>	<u>% Ownership</u>
Hale, Purely for Pets, Inc.	DE File No. 4182913	Customer	100%
Bona Vida, Inc.	DE File No. 7087984	Customer	100%

<u>Name</u>	<u>Jurisdiction and Tax ID Number</u>	<u>Owner</u>	<u>% Ownership</u>
Wamor Corporation, S.A.	Uruguay	Customer	100%

3. BUSINESS AND COLLATERAL LOCATIONS

A. Chief executive office of Customer

12400 Race Track Road
Tampa Florida 33626

B. Other Business Locations

1260 Karl Court
Wauconda Illinois 60084

C. Other Collateral Locations (Third Party or Leased)

None

4. DEPOSIT ACCOUNTS AND SECURITIES ACCOUNTS

A. Deposit Accounts

Name on Account	Depository	Account Number	Type of Account
Halo, Purely for Pets, Inc.	Old Plank Trail Community Bank, N.A.	9246245849	Checking
Halo, Purely for Pets, Inc.	Old Plank Trail Community Bank, N.A.	9241907670	Lockbox
Halo, Purely for Pets, Inc.	Old Plank Trail Community Bank, N.A.	9243952804	Savings
Better Choice Company	JP Morgan Chase Bank	000000708208811	Checking

B. Securities Accounts

Name on Account	Securities Intermediary/ Broker	Account Number	Type of Account	Type of Securities
None.				

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5. LITIGATION

A. Proceedings and investigations pending against Customers or Subsidiaries:

There are four allegations against Customer on behalf of four claimants (collectively hereinafter "Claimants"). In the letters, Claimants, all of whom are former employees of Customer, allege discrimination on account of sex (female) and pregnancy and wrongful termination as a result of same. More specifically, Claimants allege that they were wrongfully terminated on January 3, 2023 under the guise of a reduction in work force. However, Claimants allege that the only female employees who were terminated due to the reduction in work force were either pregnant or on maternity leave. In that regard, Claimants allege that the purported reduction in work force impacted nine employees in total, five of which were men and four of which were women. Claimants allege that all four of the female employees terminated in the reduction in work force were either pregnant or on maternity leave and the female employees retained in the reduction in work force were not pregnant or on maternity leave. In light of the above, Claimants alleged that Customer discriminated against them on account of their sex (female) and pregnancy and wrongfully terminated them as a result of same.

This matter was submitted for coverage under the Insured's Insurance Policy No. EPL6TACBJNF002 for the Policy Period on July 16, 2022 to July 16, 2023 (the "Policy"). The Policy provides an aggregate Limit of Liability for all Employment Practice Claims (inclusive of Costs of Defense) in the amount of \$1,000,000 and is subject to a retention of \$50,000 per Employment Practices Claim other than by Employees of Customer in California or a \$150,000 retention per Employment Practices Claim by Employees of Customer in California via Endorsement No. 15.

Customer and the Claimants were referred to mediation by both Customer and Claimants' legal representatives. Customer is currently represented by Benjamin Sharkey of Jackson Lewis P.C. A settlement amount has not been agreed upon as of the date of the Effective Date.

B. Threatened proceedings or investigations of which any Customer or Subsidiary is aware:

None.

6. EXISTING LIENS

A. UCC Financing Statements

None

B. OTHER LIENS

None

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7. EXISTING INDEBTEDNESS

None

8. EXISTING INVESTMENTS AND LOANS (OTHER THAN IN SUBSIDIARIES)

None

9. TRANSACTIONS WITH AFFILIATES

None

Schedule 2

LOCKBOX INSTRUCTIONS

For Checks and other Payment Items:

Wintrust Bank, N.A.
FBO Better Choice Company DBA Halo
P.O. Box 8268, Carol Stream, IL 60197-8268

For ACH transactions:

Wintrust Bank, N.A.
231 S LaSalle, Floor 4
Chicago, IL 60604
Beneficiary: Wintrust BANK C/O
Account Number: 3805191672
Transit/Routing Number: 071925444

For Domestic wires:

Wintrust Bank, N.A.
231 S LaSalle, Floor 4
Chicago, IL 60604
Beneficiary: Wintrust BANK C/O
Account Number: 1468100
Transit/Routing Number: 071925444

For USD International wires, please utilize the following information:

Wintrust Bank, N.A.
231 S LaSalle, Floor 4
Chicago, IL 60604
SWIFT CODE: NSCTUS44
Beneficiary: Wintrust BANK C/O
Beneficiary Account Number: 1468100
Transit/Routing Number: 071925444



UNLIMITED CONTINUING GUARANTY AGREEMENT

This **Unlimited Continuing Guaranty Agreement** (the "**Guaranty**") is executed as of June 21, 2023 by Better Choice Company, Inc., a Delaware corporation (the "**Guarantor**"), for the benefit of Wintrust Receivable Finance, a division of Wintrust Bank ("**Wintrust**") with an address of 231 South LaSalle Street, Fourth Floor, Chicago, Illinois 60604. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Purchase Agreement (as hereinafter defined).

RECITALS

WHEREAS, pursuant to that certain Account Purchase Agreement dated as of the date hereof (as the same may be amended, modified, increased, supplemented and/or restated from time to time, collectively, the "**Purchase Agreement**"), by and between Wintrust and Halo, Purely for Pets, Inc., a Delaware corporation (including any new or successor entity formed as a result of any merger or reorganization of Customer, and all other successors and assigns of Customer, the "**Customer**"), Customer will offer to sell to Wintrust and Wintrust may purchase from Customer one or more Accounts now existing or hereafter arising together with other financial accommodations that may be extended by Wintrust.

WHEREAS, Wintrust is willing to enter into the Purchase Agreement, but only on the condition, among others, that Guarantor shall have executed and delivered to Wintrust, for its benefit, this Guaranty.

WHEREAS, Guarantor holds 100% of the equity interests in the Customer and will derive substantial direct and indirect benefits from the transaction contemplated under the Purchase Agreement.

NOW, THEREFORE, as an inducement to Wintrust to enter into the Purchase Agreement with Customer, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

ARTICLE 1: NATURE AND SCOPE OF GUARANTY

1.1 Guaranty of Obligations. Guarantor hereby irrevocably and unconditionally guaranties to Wintrust and its successors and assigns the due and punctual payment of all obligations and indebtedness due to Wintrust by Customer, whether now existing or hereafter arising (the "**Obligations**"). Guarantor hereby irrevocably and unconditionally covenants and agrees that Guarantor is liable for the Obligations as a primary obligor. The Obligations of Guarantor hereunder are unlimited as to amount.

1.2 Additional Undertakings. Guarantor further agrees to use best efforts to cause Customer to comply with each of the following requirements: (a) all reports with respect to all financials and other reports of every nature whatsoever submitted by Customer to Wintrust or required under the Purchase Agreement shall be true, complete and correct in all respects, as of the date delivered to Wintrust, consistent with generally accepted accounting practices, and will not contain any misstatement of fact, (b) Customer shall fully and timely comply with all of the representations, warranties and covenants of the Purchase Agreement, including, without limitation, those covenants with respect to (i) the existence of liens on or security interests in the Accounts or the other collateral which secure the Obligations, (ii) the quality of the Accounts or the collateral which secures the Obligations, and (iii) Customer's ownership or assignment of the Accounts or other collateral which secures the obligations.

1.3 Obligations Not Reduced by Offset. The Obligations, liabilities and indebtedness of Guarantor to Wintrust hereunder shall not be reduced, discharged or released because or by reason of any existing or future offset, claim or defense of Customer, or any other party, against Wintrust or against payment of the Obligations, whether such offset, claim or defense arises in connection with the Obligations (or the transactions creating the Obligations) or otherwise, except indefeasible payment in full. Without limiting the foregoing or the Guarantor's liability hereunder, to the extent that Wintrust makes any payments, advances funds or extends credit to Customer, and does not receive payments or benefits thereon in the amounts and at the times required or provided by the Purchase Agreement, the Related Documents or

applicable agreements or laws, Guarantor is absolutely liable to make such payments to (and confer such benefits on) Wintrust, on a timely basis.

1.4 Payment by Guarantor. If all or any part of the Obligations owing by Customer to Wintrust shall not be punctually paid when due, whether at maturity or earlier by acceleration or otherwise, Guarantor shall immediately upon demand by Wintrust, and without presentment, protest, notice of protest, notice of non-payment, notice of intention to accelerate or acceleration or any other notice whatsoever, pay in lawful money of the United States of America, the amount due on the Obligations to Wintrust at Wintrust's office in Chicago, Illinois. Such demands may be made at any time coincident with or after the time for payment of all or part of the Obligations, and may be made from time to time with respect to the same or different items of Obligations. Such demand shall be deemed made, given and received in accordance with the notice provisions herein.

1.5 No Duty to Pursue Others. It shall not be necessary for Wintrust, and Guarantor hereby waives any rights which such Guarantor may have to require Wintrust, in order to enforce such payment by Guarantor, first to (a) institute suit or exhaust its remedies against Customer or others liable on the Obligations or any other person, (b) enforce its rights or exhaust any remedies available to it against any security which shall ever have been given to secure the Obligations, (c) enforce its rights against any other guarantor of the Obligations, (d) join Customer or any others liable on the Obligations in any action seeking to enforce this Guaranty, or (e) resort to any other means of obtaining payment of the Obligations. Wintrust shall not be required to mitigate damages or take any other action to reduce, collect or enforce the Obligations.

1.6 Guarantor Waivers. Guarantor hereby waives (i) diligence, presentment, demand of payment, filing of claims with a court in the event of receivership or bankruptcy of Customer, protest or notice with respect to the Obligations and all demands whatsoever, and covenants that this Guaranty will not be discharged, except by complete performance of the obligations and liabilities contained herein; (ii) any suretyship defenses such that Guarantor might have under the laws of Delaware, Illinois or any other state and any right to any defense based upon any statute or rule of law which provides that the obligations of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (iii) notice of the creation and existence of any and all of the Obligations of the Customer under the Purchase Agreement, and of any security therefore, and of the acceptance of this Guaranty, or of extensions of credit or indulgences hereunder or of any other matters or things whatsoever relating hereto; (iv) any requirement that Wintrust protect, secure, perfect or insure any security interest or lien or any property subject thereto or exhaust any right or take any action with respect to any person, entity or property; (v) any defense or circumstance (including, without limitation, disability, insolvency, lack of authority or power, insanity, death or dissolution) which might otherwise constitute a legal or equitable discharge of such Guarantor's liability under this Guaranty; (vi) any requirement, substantive or procedural, that (a) Wintrust first enforce any rights or remedies against Customer or any other person or entity liable to Wintrust for all or any part of the Obligations of Customer under the Purchase Agreement, including, without limitation, that a judgment first be rendered against Customer or any other person or entity, or that Customer or any other person or entity should be joined in such cause; or (b) Wintrust first enforce rights against any collateral, security, property liens or other rights or remedies of Wintrust, which shall have been given to secure all or any part of the Obligations of Customer under the Purchase Agreement or of Guarantor under this Guaranty (such waiver to be without prejudice to Wintrust' right, at its option, to proceed against Customer or any other person or entity, whether by separate action or by joinder); (vii) any defense given to sureties or guarantors at law or in equity; and (viii) any rights to extension, composition or otherwise under the Bankruptcy Code or any amendments thereto, or under any state or other federal statute.

1.7 Nature of Guaranty. This Guaranty is an irrevocable, absolute, continuing guaranty of payment and performance and not a guaranty of collection. This Guaranty shall continue to be effective with respect to any Obligations existing or which arise out of commitments made by Wintrust prior to any attempted revocation by Guarantor, and as to all renewals and extensions thereof, in whole or in part, whenever made. The fact that at any time or from time to time the Obligations may be increased or reduced shall not release, discharge or reduce the obligation of Guarantor with respect to indebtedness or obligations of Customer to

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Wintrust thereafter incurred (or other Obligations thereafter arising). This Guaranty may be enforced by Wintrust and any subsequent holder of the Obligations and shall not be discharged by the assignment or negotiation of all or part of the Obligations.

1.8 Payment of Expenses. In the event that any Guarantor should breach or fail to timely perform any provisions of this Guaranty, Guarantor shall, immediately upon demand by Wintrust, pay Wintrust all reasonable costs and expenses (including court costs and reasonable attorneys' fees) incurred by Wintrust in the enforcement of this Guaranty against the Guarantor hereof or the preservation of Wintrust's rights hereunder against Guarantor. The covenant contained in this Section 1.8 shall survive the payment of the Obligations.

1.9 Effect of Bankruptcy. In the event that, pursuant to any insolvency, bankruptcy, reorganization, receivership or other debtor relief law, or any judgment, order or decision thereunder, Wintrust must rescind or restore any payment, or any part thereof, received by Wintrust in satisfaction of the Obligations, any prior release or discharge from the terms of this Guaranty given to a Guarantor by Wintrust shall be without effect, and this Guaranty shall remain in full force and effect. It is the intention of Guarantor that such Guarantor's obligations hereunder shall not be discharged except by Guarantor's performance of such obligations, and then only to the extent of such performance, and by the indefeasible payment of the Obligations.

ARTICLE II: GUARANTOR'S OBLIGATIONS

2.1 No Impairment. Guarantor hereby consents and agrees to each of the following, and agrees that such Guarantor's obligations under this Guaranty shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and waive any common law, equitable, statutory or other rights and defenses (including, without limitation, rights to notice) which such Guarantor might otherwise have as a result of or in connection with any of the following:

2.1.1 Modifications or Adjustments. Any renewal, extension, increase, modification, alteration or rearrangement of all or any part of the Obligations, or the Purchase Agreement, or any document, instrument, contract or understanding between Customer and Wintrust, or any other parties, pertaining to the Obligations; or any adjustment, indulgence, forbearance or compromise that might be granted or given by Wintrust to Customer;

2.1.2 Condition of Customer. The insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of Customer or any other party at any time liable for the payment of all or part of the Obligations; or any dissolution of Customer, or any sale, lease or transfer of any or all of the assets of Customer, or any changes in the shareholders or members of Customer; or any reorganization of Customer;

2.1.3 Invalidity of Obligations. The invalidity, illegality or unenforceability of all or any part of the Obligations or the Purchase Agreement, or any document, instrument, contract or understanding between Customer and Wintrust, for any reason whatsoever, including, without limitation, the fact that (a) the Obligations, or any part thereof, exceeds the amount permitted by law, (b) the act of creating the Obligations or any part thereof is ultra vires, (c) the officers or representatives executing the documents creating the Obligations acted in excess of their authority, (d) the Obligations violate applicable usury laws, (e) the creation, performance or repayment of the Obligations or the execution, delivery and performance of any document or instrument representing part of the Obligations or executed in connection with the Obligations, or given to secure the repayment of the Obligations is illegal, uncollectible or unenforceable, or (f) the documents or instruments pertaining to the Obligations have been forged or otherwise are irregular or not genuine or authentic;

2.1.4 Release of Customer. Any full or partial release of the liability of Customer on the Obligations or any part thereof, or of any co-guarantor, or any other person or entity now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Obligations or any part thereof, it being recognized, acknowledged and

or assure the payment of the obligations of any part thereof, it being recognized, acknowledged and

agreed by Guarantor that such Guarantor may be required to pay the Obligations in full, without assistance or support of any other party, and no Guarantor has been induced to enter into this Guaranty on the basis of a contemplation, belief, understanding or agreement that other parties will be liable to perform the Obligations, or that Wintrust will look to other parties to perform the Obligations;

2.1.5 **Other Security.** The taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for all or any part of the Obligations;

2.1.6 **Release of Collateral, etc.** Any release, surrender, exchange, subordination, deterioration, waste, loss or impairment of any collateral, property or security, at any time existing in connection with, or assuring or securing payment of, all or any part of the Obligations;

2.1.7 **Care and Diligence.** The failure of Wintrust or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of any collateral, property or security;

2.1.8 **Status of Liens.** The fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the Obligations shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by Guarantor that such Guarantor is not entering into this Guaranty in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectability or value of any collateral for the Obligations;

2.1.9 **Offset.** The Obligations, and the liabilities and obligations of Guarantor to Wintrust hereunder, shall not be reduced, discharged or released because of or by reason of any existing or future right of offset, defense or claim of Customer against Wintrust, or any other party, or against payment of the Obligations, whether such right of offset, defense or claim arises in connection with the Obligations (or the transactions creating the Obligations) or otherwise;

2.1.10 **Merger.** The reorganization, merger or consolidation of Customer into or with any other entity;

2.1.11 **Preference.** Any payment by Customer to Wintrust is held to constitute a preference under bankruptcy laws, or for any reason Wintrust is required to refund such payment or pay such amount to Customer or someone else;

2.1.12 **Payments.** The application of all payments received from Customer, or on account of the Obligations of Customer under the Purchase Agreement from whatsoever source, toward the payment of such of the Obligations of Customer under the Purchase Agreement in such order of application as Wintrust may in its sole discretion from time to time elect, and this Guaranty shall apply to and secure any ultimate balance that shall remain owing to Wintrust under the Purchase Agreement; or

2.1.13 **Other Actions Taken or Omitted.** Any other action taken or omitted to be taken with respect to the Obligations, or security and collateral therefor.

2.2 Obligation of Guarantor. It is the unambiguous and unequivocal intention of Guarantor that such Guarantor shall be obligated to pay the Obligations when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever (including, without limitation, the unenforceability of the Purchase Agreement, or any document, instrument, contract or understanding between Customer and Wintrust), whether contemplated or un contemplated, and whether or not otherwise or particularly described herein, except for the full and final payment and satisfaction of the Obligations.

ARTICLE III: REPRESENTATIONS, WARRANTIES AND COVENANTS

To induce Wintrust to enter into the Purchase Agreement and extend financial accommodations to Customer:

Customer.

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3.1 Guarantor. Guarantor represents and warrants to Wintrust as to such Guarantor that: (1) Guarantor has all requisite corporate power, authority and capacity to enter into and perform all obligations under this Guaranty, and has no defense to any action, suit or proceeding that may be instituted under this Guaranty; (2) this Guaranty constitutes the valid and legally binding obligation of Guarantor, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, moratorium, reorganization and other laws of general applicability relating to or affecting creditors' rights and equitable limitations on the availability of specific remedies; (3) there are currently no proceedings or investigations pending or, to the knowledge of Guarantor, threatened before any court which, in any one case or in the aggregate, if determined adversely to such Guarantor's interests, would have a material adverse effect on Guarantor's properties or condition (financial or otherwise), present or prospective; (4) no other agreement or special condition exists between Guarantor and Wintrust regarding the liability of Guarantor under this Guaranty; (5) there is no statute, regulation, rule, order or judgment, and no provision of any mortgage, contract or agreement binding on Guarantor or affecting Guarantor's property which would prohibit, conflict with or in any way prevent the execution, delivery or carrying out of the terms of this Guaranty; (6) as of the date hereof, the Guarantor is an equity owner of Customer; and (7) as of the date hereof, and after giving effect to this Guaranty and the obligations evidenced hereby: (i) Guarantor is and will be solvent; (ii) the fair saleable value of Guarantor's assets exceed and will continue to exceed each of Guarantor's liabilities (both fixed and contingent); and (iii) Guarantor is and will continue to be able to pay each of Guarantor's debts as they mature.

3.2 Accounts. Guarantor further represents and warrants to Wintrust that (i) for each Account submitted to Wintrust, such Account will not violate any of the representations, warranties and covenants regarding such Account set forth in the Purchase Agreement; (ii) there are no side letters, vendor agreements or other agreements by and between Customer and any Account Debtor other than has been and will be disclosed to Wintrust in writing; and (iii) on the Effective Date, Wintrust has a valid and existing first priority security interest in the Accounts of Customer.

3.3 Covenants. Guarantor covenants that such Guarantor shall: (1) promptly inform Wintrust of (i) any litigation or governmental investigation against Guarantor or affecting any collateral or security interest for all or any part of the Purchase Agreement or this Guaranty which, if determined adversely, might have a material adverse effect upon the financial condition of Guarantor or upon such collateral or security interest or might cause a default under the Purchase Agreement; (ii) any claim or controversy which might become the subject of such litigation or governmental investigation regarding either Customer or Guarantor; and (iii) any material adverse change in the financial condition of Guarantor or Customer; and (2) so long as the Obligations under this Guaranty continue, Guarantor shall not (i) transfer or pledge any material portion of Guarantor's assets for less than full and adequate consideration, or (ii) permit the sale of all or substantially all the assets of Customer or any of its successors or assigns or the direct or indirect acquisition by any person (or group of persons acting in concert) of ownership or control of a controlling interest in the voting securities (or the power to vote the same) of Customer or any of its successors or assigns.

3.4 Familiarity and Reliance. Guarantor is familiar with, and has independently reviewed books and records regarding the financial condition of the Customer and the terms of the Purchase Agreement, and any document, instrument, contract or understanding between Customer and Wintrust arising from or related to the Obligations. Neither Wintrust nor any other party has made any representation, warranty or statement to Guarantor in order to induce Guarantor to execute this Guaranty. Guarantor has received, or will receive, direct or indirect benefit from the making of this Guaranty and the transactions contemplated under the Purchase Agreement;

3.5 Survival. All representations and warranties made by Guarantor herein shall survive the execution hereof.

ARTICLE IV: SUBORDINATION OF CERTAIN INDEBTEDNESS; WAIVER OF SUBROGATION

4.1 Subordination of All Guarantor Claims. As used herein, the term "Guarantor Claims" shall mean all debts and liabilities of Customer to Guarantor, whether such debts and liabilities now exist or are hereafter incurred or arise, or whether the obligations of Customer thereon be direct, contingent, primary, secondary, several, joint and several, or otherwise, and irrespective of whether such debts or liabilities

secondary, several, joint and several, or otherwise, and irrespective of whether such debts or liabilities

be evidenced by note, contract, open account, or otherwise, and irrespective of the person or persons in whose favor such debts or liabilities may, at their inception, have been, or may hereafter be created, or the manner in which they have been or may hereafter be acquired by any Guarantor. Until the Obligations shall be paid and satisfied in full, and in cash as to monetary Obligations, and Guarantor shall have performed all of Guarantor's obligations hereunder, whenever an Event of Default has occurred and is continuing or if such payment would result in the occurrence of an Event of Default, no Guarantor shall not receive or collect, directly or indirectly, from Customer or any other party any amount of the Guarantor Claims.

4.2 Waiver of Subrogation. Unless and until the Obligations have been indefeasibly paid in full, Guarantor hereby waives and releases, to the fullest extent permitted by law:

4.2.1 any and all rights that would result in such Guarantor being deemed a "creditor", under the United States Bankruptcy Code, of Customer or any other person, on account of payments made or obligations performed by such Guarantor relating to this Guaranty; and

4.2.2 any claim, right or remedy which any Guarantor may now have or hereafter acquire against Customer that arises hereunder and/or from the performance by any Guarantor hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of Wintrust against Customer or any security which Wintrust now has or hereafter acquires, whether or not such claim, right or remedy arises in equity under contract, by statute, under common law or otherwise.

4.3 Claims in Bankruptcy. In the event of receivership, bankruptcy, reorganization, arrangement, debtor's relief, or other insolvency proceedings involving Customer as debtor, Wintrust shall have the right to prove the Guarantor Claims in any such proceeding so as to establish its rights hereunder and receive directly from the receiver, trustee or other court custodian dividends and payments which would otherwise be payable upon Guarantor Claims. Guarantor hereby assigns such dividends and payments to Wintrust to the extent required for repayment of such Guarantor's obligation hereunder.

4.4 Payments Held in Trust. In the event that, notwithstanding Sections 4.1, 4.2 and 4.3 above, any Guarantor should receive any funds, payment, claim or distribution which is prohibited by such Sections, such Guarantor agrees to hold in trust for Wintrust an amount equal to the amount of all funds, payments, claims or distributions so received, and agrees that such Guarantor shall have absolutely no dominion over the amount of such funds, payments, claims or distributions, except to pay them promptly to Wintrust, and Guarantor covenants to pay promptly the same to Wintrust.

4.5 Liens Subordinate. Except as set forth in the Alpha Intercreditor Agreement, Guarantor agrees that any liens, security interests, judgment liens, charges or other encumbrances upon Customer's assets securing payment of the Guarantor Claims shall be and remain inferior and subordinate to any liens, security interests, judgment liens, charges or other encumbrances upon such Customer's assets securing payment of the Obligations, regardless of whether such encumbrances in favor of a Guarantor or Wintrust presently exist or are hereafter created or attached. Without the prior written consent of Wintrust, or as permitted by the Alpha Loan Documents, no Guarantor shall (a) exercise or enforce any creditor's right a Guarantor may have against Customer, or (b) foreclose, repossess, sequester or otherwise take steps or institute any action or proceedings, judicial or otherwise, including without limitation the commencement of, or joinder in, any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any liens, mortgages, deeds of trust, security interest, collateral rights, judgments or other encumbrances on assets of Customer held by a Guarantor.

4.6 Notation of Records. All promissory notes, accounts receivable ledgers or other evidences of the Guarantor Claims accepted by or held by any Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under the terms of this Guaranty.

4.7 Disgorged Payments. If after receipt of any payment of all or any part of the Obligations, Wintrust is for any reason compelled to surrender such payment to any person or entity because such payment is

is for any reason compelled to surrender such payment to any person or entity because such payment is

determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any reason, this Guaranty shall continue in full force notwithstanding any contrary action that may have been taken by Wintrust in reliance upon such payment, and any such contrary action so taken shall be without prejudice to Wintrust's rights under this Guaranty and shall be deemed to have been conditioned upon such payment having become final and irrevocable.

ARTICLE V: GENERAL PROVISIONS

5.1. Waiver. No failure to exercise, and no delay in exercising, on the part of Wintrust, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right. The rights of Wintrust hereunder shall be in addition to all other rights provided by law. No modification or waiver of any provision of this Guaranty, nor consent to departure therefrom, shall be effective unless in writing and signed by Wintrust and no such consent or waiver shall extend beyond the particular case and purpose involved. No notice or demand given in any case shall constitute a waiver of the right to take other action in the same, similar or other instances without such notice or demand.

5.2 Rights and Remedies. If any Guarantor becomes liable for any obligations or indebtedness owing by Customer to Wintrust, by endorsement or otherwise, other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby and the rights of Wintrust hereunder shall be cumulative of any and all other rights that Wintrust may ever have against any Guarantor. The exercise by Wintrust of any right or remedy hereunder or under any other instrument, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy.

5.3 Severability. In the event any one or more of the provisions contained in this Guaranty should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained therein shall not in any way be affected thereby, unless such continued effectiveness of this Guaranty, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

5.4 Notices. All communications under this Guaranty shall be in writing and deemed delivered (i) three (3) days after being mailed by certified mail, postage prepaid and return receipt requested, (ii) the next Business Day after being sent via overnight delivery by a nationally recognized delivery service; (iii) at such time as receipt or refusal by personal delivery, each at the address set forth below the signature line of Guarantor and for Wintrust as set forth in the preamble to the attention of John Marrinson, Executive Vice President, or at such other address as may have been furnished in writing by such party in accordance with notice provisions set forth herein.

5.5 Governing Law; Jurisdiction; Waiver of Jury Trial; Attorney's Fees.

5.5.1 Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to any choice of law or conflict of law provisions or rules. Each Guaranty agrees that any legal suit, action or proceeding arising out of or relating directly or indirectly to this Guaranty shall be instituted exclusively in a state or federal court of appropriate subject matter jurisdiction in the City of Chicago, County of Cook, State of Illinois. Guarantor waives any objection which such Guarantor may have now or hereafter to the venue of any suit, action or proceeding, and irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding. Nothing in this Guaranty shall be deemed or operate to affect the right of Wintrust to initiate a legal proceeding in any other jurisdiction to protect or enforce Wintrust's rights, or to preclude the enforcement of any judgment or order obtained in such forum or the taking of any action under this Guaranty enforce same in any other appropriate forum or jurisdiction. This Section 5.5.1 is a material inducement to Wintrust to enter into this Guaranty. It shall not in any way affect, waive, limit, amend or modify Wintrust's ability to pursue its remedies.

5.5.2 **Waiver of Right to Trial by Jury.** EACH PARTY TO THIS GUARANTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER THIS GUARANTY OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (2) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS GUARANTY OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

5.5.3 **Attorney's Fees.** Guarantor agrees to reimburse Wintrust for all actual, reasonable out-of-pocket attorney's fees, court costs and other expenses incurred by Wintrust arising under or related to this Guaranty including, but not limited to, the negotiation and drafting of this Guaranty and related legal documents, protecting or enforcing its interest in the Accounts, or those related to any appeal or the enforcement of any judgment. Notwithstanding the existence of any law, statute or rule, in any jurisdiction that may provide any Guarantor with a right to attorney's fees or costs, Guarantor hereby waives any and all rights to hereafter seek attorney's fees or costs thereunder and Guarantor agrees that Wintrust exclusively shall be entitled to indemnification and recovery of any and all attorney's fees or costs in respect to any litigation based hereon, arising out of, or related hereto, whether under, or in connection with, this and/or any agreement executed in conjunction herewith, or any course of conduct, course of dealing, oral or written statements or actions of any Guarantor.

5.6 **Parties Bound.** This Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns and legal representatives; *provided, however,* that Guarantor may not, without the prior written consent of Wintrust, assign any of such Guarantor's respective rights, powers, duties or obligations hereunder.

5.7 **Headings.** Section headings are for convenience of reference only and shall in no way affect the interpretation of this Guaranty.

5.8. **Indemnity.** Guarantor hereby agrees to indemnify, hold harmless, and defend Wintrust and its directors, officers, agents, counsel and employees ("**Indemnified Persons**") from and against any and all losses, liabilities, damages, costs, expenses, suits, actions and proceedings ("**Losses**") ever suffered or incurred by any Indemnified Person arising out of or relating to this Guaranty, but not including any losses caused by the gross negligence or willful misconduct as determined in a final and non-appealable judgement by a court of competent jurisdiction of such Indemnified Person, and Guarantor shall jointly and severally reimburse Wintrust and each other Indemnified Person for any expenses (including in connection with the investigation of, preparation for or defense of any actual or threatened claim, action or proceeding arising herefrom and therefrom, including any such costs of responding to discovery requests or subpoenas, regardless of whether Wintrust or such other Indemnified Person is a party thereto). In the event that any claim, demand, investigation, litigation or inquiry (a "**Claim**") is brought against any Indemnified Person, the Indemnified Person agrees to give prompt written notice to Guarantor with respect to same, together with a copy of such Claim, provided that, a delay in giving notice shall not relieve Guarantor of liability hereunder except to the extent that a Guarantor suffers actual prejudice because of the delay. So long as no Event of Default shall have occurred and be continuing under the Purchase Agreement, Guarantor shall have the right in good faith and by appropriate proceedings to defend any Claim and to employ counsel acceptable to such Indemnified Person to conduct such defense (at Guarantor's sole expense) so long as such defense shall not involve any danger of the foreclosure, sale, forfeiture or loss of, or imposition of any lien, on any part of the Collateral, or subject any Indemnified Person to criminal liability. Should any Guarantor elect to engage counsel acceptable to such Indemnified Person, such Indemnified Person may continue to participate in the defense of any such Claim and will

Person, such indemnified Person may continue to participate in the defense of any such Claim and will

retain the right to settle any such matter on terms and conditions satisfactory to such Indemnified Person and such Guarantor. All such settlements shall be paid by and remain the sole responsibility of Guarantor. In the event any Guarantor does not accept the defense of the Claim as provided above such Indemnified Person shall have the full right to defend against such Claim, in such Indemnified Person's sole discretion, and pursue all rights hereunder. Notwithstanding any contrary provision of this Guaranty, the obligation of Guarantor under this Section 5.8 shall survive the payment in full of each Customer's Obligations under the Purchase Agreement and the termination of the Purchase Agreement and this Guaranty. This Section shall not be deemed to be a bar of any claim by Guarantor against any Indemnified Person for such Indemnified Person's gross negligence or willful misconduct as determined in a final and non-appealable judgement by a court of competent jurisdiction to Guarantor.

5.9 Notice of Final Agreement. This Guaranty constitutes a written agreement which represents the final agreement between the parties. Such written agreement may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties relating to this Guaranty.

5.10 Legal Counsel. Guarantor acknowledges that such Guarantor has had the opportunity to be represented by independent legal counsel in connection with all matters concerning this Guaranty, including, but not limited to, the negotiation, acceptance and execution of this Guaranty; and that such Guarantor has freely and voluntarily entered into this Guaranty as the product of arms-length negotiations. In the event an ambiguity or question of intent or interpretation arises, the Guaranty shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of the Guaranty.

5.11 Warrant of Attorney. Guarantor hereby authorizes any attorney-at-law to appear for such Guarantor in any action on this Guaranty at any time after the same becomes due as herein provided in any court of record in or of the State of Illinois or elsewhere, to waive the issuance and service of process and confess a judgment in favor of the holder against such Guarantor for the amount that may then be due hereon and costs of suit, and also to waive and release all errors in said proceedings and judgment and all proceedings, petitions, writs of error, right of appeal, and stays of execution thereon or therefrom. The foregoing warrant of attorney shall survive any judgment; and if any judgment be vacated for any reason, the holder nevertheless may thereafter use the foregoing warrant of attorney to obtain an additional judgment or judgments against any Guarantor.

[Signatures on Following Page]

This **Unconditional, Unlimited Continuing Guaranty Agreement** is executed as of the date and year first above written.

BETTER CHOICE COMPANY INC.

By: _____

Name: Kent Cunningham

Title: Chief Executive Officer

Address:

12400 Race Track Rd.

Tampa, FL 33626
