

**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): July 20, 2023**

**Live Ventures Incorporated**

(Exact name of registrant as specified in its charter)

**Nevada**  
(State or other jurisdiction  
of incorporation)

**001-33937**  
(Commission File Number)

**85-0206668**  
(IRS Employer  
Identification No.)

**325 E. Warm Springs Road, Suite 102**  
**Las Vegas, Nevada**  
(Address of principal executive offices)

**89119**  
(Zip Code)

**Registrant's Telephone Number, Including Area Code: (702) 997-5968**

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:**

<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered</b>
Common Stock, \$0.001 par value per share	LIVE	The NASDAQ Stock Market LLC

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.**

*Acquisition of Precision Metal Works, Inc.*

On July 20, 2023, Live Ventures Incorporated, a Nevada corporation ("Registrant" or "Parent"), through its wholly-owned subsidiary, PMW Affiliated Holdings, LLC, a Delaware limited liability company ("PMW Affiliated" or "Buyer"), acquired 100% of the issued and outstanding equity interests (the "Equity Interests") of Precision Metal Works, Inc., a Kentucky corporation formerly known as Nth HOLDING, Ltd and successor to a Kentucky-based metal stamping and value-added manufacturing company formerly also known as Precision Metal Works, Inc. ("PMW" or the "Acquired Company" and such acquisition, the "Acquisition").

The Acquisition was pursuant to a Stock Purchase Agreement (the "Purchase Agreement"), dated as of July 19, 2023, with a closing date of July 20, 2023 (the "Effective Date") by and among, Buyer, the trustees of each of The Richard Stanley Family Trust and The John Locke Family Trust, (being the only stockholders of the Acquired Company) (collectively, the "Sellers"), and, solely with respect to Section 5.09 thereof, Richard Stanley and John Locke. The aggregate purchase price for the Equity Interests was \$25.0 million plus the Closing Cash, minus outstanding Indebtedness and minus unpaid Transaction Expenses (as such terms are defined in the Purchase Agreement), subject to certain adjustments including for net working capital (the "Purchase Price"), with the possibility of up to \$3 million additional consideration to Sellers upon meeting earn-out targets. On the Effective Date, the Purchase Price was paid as follows:

- \$7.209 million in cash (the "Cash Amount") to the Sellers, net of a \$0.719 million decrease related to adjustments for estimated cash and net working capital at closing;
- \$2.5 million in aggregate principal amount (the "Note Amount") of Subordinated Secured Promissory Notes (the "Notes") in favor of Sellers;
- \$11.948 million of indebtedness of the Acquired Company paid at closing;
- \$1.345 million of estimated Transaction Expenses owed by Sellers and paid at closing;

- \$1.020 million escrowed for potential purchase price adjustment pursuant to the Purchase Agreement; and
- \$0.225 million escrowed for potential indemnification claims pursuant to the Purchase Agreement

In addition to the Purchase Price, the Purchase Agreement provides for the payment of “Earn-out Payments” defined therein of up to an aggregate of \$3,000,000 based on the Acquired Company’s financial performance, measured by Adjusted EBITDA (as defined in the Purchase Agreement) relative to the targets for such performance over periods until June 30, 2028.

The Purchase Agreement contains certain representations, warranties, covenants, and agreements of PMW, the Buyer and Sellers, including indemnification rights in favor of the Buyer.

On the Effective Date, pursuant to the Purchase Agreement, Buyer issued the Notes to the Sellers for an aggregate principal amount of \$2.5 million. The Notes mature on July 18, 2028, and bear interest at a rate of 8.00% per annum (10.0% following certain specified events of default) with quarterly accrued interest payable on the first day of each calendar quarter beginning October 1, 2023, and required principal repayments of \$62,500 per Note (\$125,000 in aggregate) on the first day of each calendar quarter beginning July 1, 2025. The Notes mature and all outstanding principal and interest thereunder become due on January 18, 2028. The Sellers right to payment is subordinated to all of Buyer’s indebtedness and liabilities to Fifth Third Bank, National Association under the Credit and Security Agreement described under Item 2.03 below, and the Buyers’ obligations under the Notes are guaranteed by the Company.

The foregoing summary descriptions of certain terms and provisions of the Purchase Agreement and the Notes do not purport to be complete and are qualified in their entirety by reference to the full text of (i) the Purchase Agreement, a copy of which is attached as Exhibit 10.117 to this Current Report on Form 8-K, and (ii) the form of the Notes, which is attached as Exhibit 10.118 to this Current Report on Form 8-K.

The information included, or incorporated by reference, in Item 2.03 of this Current Report on Form 8-K is incorporated by reference into this Item 1.01 of this Current Report.

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**Item 2.01. Completion of Acquisition or Disposition of Assets.**

The information included, or incorporated by reference, in Item 1.01 of this Current Report is incorporated by reference into this Item 2.01 of this Current Report.

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

The information included in Item 1.01 above of this Current Report on Form 8-K is incorporated by reference into this Item 2.03 of this Current Report.

*Credit and Security Agreement*

In connection with the Acquisition, on the Effective Date, PMW and PMW Affiliated, each as a borrower (the “Borrowers”), entered into a Credit and Security Agreement (“Credit Agreement”) with Fifth Third Bank, National Association (the “Lender”). Subject to the terms and conditions of the Credit Agreement, on the Closing Date, the Lender made a revolving loan of approximately \$9.40 million (the “Initial Revolving Loan”) and, from time to time prior to July 19, 2026 (the “Maturity Date”), at the Borrower’s request, will make additional revolving loans (together with the Initial Revolving Loan, the “Revolving Loans”) and letters of credit available to the Borrowers. The Credit Agreement provides for a maximum amount available for the Revolving Loans (the “Revolving Credit Facility”) of \$15 million (the “Maximum Revolving Loan Limit”), provided that the outstanding balance of all Revolving Loans will not exceed the lesser of the (i) Maximum Revolving Loan Limit and the (ii) Borrowing Base (as defined in the Credit Agreement). The Lender may, from time to time, establish and revise reserves (“Reserves”) against the Borrowing Base and the Maximum Revolving Loan Limit in such amounts and of such types as the Lender deems appropriate in its discretion to reflect certain specified matters.

In addition to the Revolving Loan facility, the Credit Agreement also provides for (i) a Machinery & Equipment Term Loan (as defined in the Credit Agreement) in an amount equal to \$4.952 million, all of which was loaned at Closing, and (ii) Capital Expenditure Term Loans (as defined in the Credit Agreement) from time to time prior to the expiration of the Draw Period (as defined in the Credit Agreement) in an aggregate amount advanced not to exceed \$2.75 million.

The Borrowers are obligated under the Credit Agreement to make mandatory prepayments in certain specified situations. Additionally, in the event of any voluntary prepayment of all obligations and termination of the Lender’s obligation to make loans, or certain accelerations of loaned amounts, the Borrowers are required to pay a termination fee of 2.0% of the Maximum Revolving Loan Limit, plus the average outstanding principal balance of the Machinery and Equipment Term Loan and the Capital Expenditure Loans for the six-month period immediately prior to the date of termination, if the prepayment is more than two years prior to Maturity Date, or 1.0% if the prepayment is less than two years, but more than one year, prior to the Maturity Date.

The Machinery & Equipment Loan and the Capital Expenditure Term Loan require certain monthly principal payments in addition to interest as provided in the Credit Agreement.

All Loans made under the Revolving Credit Facility that are Reference Rate Loans, bear interest at a rate equal to the sum of the Reference Rate plus the Applicable Margin: “Reference Rate” means the greater of (a) 3.0% or (b) the Lender’s publicly announced prime rate (which is not intended to be Lender’s lowest or most favorable rate in effect at any time) in effect from time to time. The “Applicable Margin” for revolving loans is zero, while for the Machinery & Equipment Term Loan or any Capital Expenditure Term Loan, it is 50 basis points (0.5%)

Borrowers may elect for certain loans to be subject to the “Tranche Rate,” bearing, with respect to any Interest Period (as defined in the Credit Agreement), interest at a rate equal to the greater of (a) 0.75% or (b) the forward-looking Term SOFR rate administered by CME Group, Inc. (or other administrator selected by the Lender) and published on the applicable Bloomberg LP screen page (“Term SOFR”) relating to quotations for one month, plus the Applicable Margin. The Applicable Margins for Tranche Rate loans is 200 basis points (2.0%) for Revolving Loans and 250 basis points (2.5%) for the Machinery & Equipment Term Loan or any Capital Expenditure Term Loan.

Following certain specified events of default, all Loans may, at the option of the Lender, bear interest at a rate up to 2.0% higher than the otherwise applicable rate.

The Borrowers agreed to pay customary closing, breakage and administrative fees in connection with the Credit Agreement, as well as Letter of Credit fees and an unused line fee on the Revolving Credit Facility equal to 0.375% per annum of the amount on which the Maximum Revolving Loan Limit exceeds the average daily balance of the Revolving Loans plus the Letter of Credit Obligations for each month.

The Borrowers agreed to certain financial and other covenants in connection with the Credit Agreement, including, without limitation, a requirement that the Borrowers maintain a specified fixed charge coverage ratio, and covenants against, to the extent not permitted by the Credit Agreement, making distributions or incurring indebtedness, disposing of property, creating subsidiaries, engaging in mergers, acquisitions or other material transactions, making investments in

other persons, entering into a materially different line of business, engaging in transactions with affiliates, incurring liens or making payments on debt subordinated to the obligations under the Credit Agreement.

The proceeds of all Loans under the Credit Agreement are to be used solely for (i) the business purposes of the Borrowers, (ii) the transactions contemplated by the Purchase Agreement, (iii) certain other Permitted Acquisitions (as defined in the Credit Agreement, and (iv) the payment of fees, costs and expenses in connection with the negotiation, execution and delivery of this Credit Agreement and other related documents.

The Credit Agreement contains customary representations, warranties, covenants, and agreements of the Borrowers and Lenders.

The collateral granted to the Lender by the Borrowers to secure the loans under the Credit Agreement includes (subject to certain specified exclusions) all of each Borrower's accounts, chattel paper, instruments, documents, general intangibles (including intellectual property), inventory, goods including equipment, vehicles and fixtures, investment property, deposit accounts, cash, letter of credit rights, commercial tort claims, and replacements and proceeds of the foregoing. Additionally, PMW Affiliated, pursuant to a Stock Pledge Agreement, has pledged to the Lender 100% of its ownership interest in the stock of PMW.

The foregoing brief summary descriptions of certain terms and provisions of the Credit and Security Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of the Credit and Security Agreement, a copy of which is attached as Exhibit 10.119 to this Current Report on Form 8-K.

#### *Lease Agreements*

On the Effective Date, the Acquired Company sold two real properties, one located on Allmond Ave., Louisville, Kentucky, and the other located on Commerce Blvd, Frankfort, Kentucky, to Legacy West Kentucky Portfolio, LLC ("Lessor") for an aggregate purchase price of \$14.5 million and leased back each property from Lessor pursuant to a Lease, dated the Effective Date, between Lessor and the Acquired Company (each a "Lease" and, together, the "Leases"); those transactions are referred to herein, collectively, as the "Sale-Leaseback Transactions". One of the properties in the Sale-Leaseback Transactions was acquired on the Effective Date for \$5.1 million in connection with an option of the Acquired Company to purchase that property.

The Leases each have an initial term of 20 years, with two renewal terms, provided that there is no default under such Lease, of five years each. Commencing on the Effective Date, and during the initial lease year of the Term the annual basic rent payable by Acquired Company with respect to the Louisville property is \$761,920, payable in monthly installments of \$63,493 per month, while with respect to the Frankfort property, the annual rent payable by the Acquired Company is \$419,725, payable in monthly installments of \$34,977.08. Thereafter, with respect to each leased premises, on each anniversary of the Effective Date, including during each Renewal Period, such basic rent shall increase by two percent (2.0%). In addition, the Acquired Company Lessee (i) must pay all taxes, insurance, assessments, and other costs, expenses and obligations, including a management fee not to exceed \$500/month, subject to annual increases (ii) must keep the leased premises in good condition and repair throughout the Lease term, reasonable wear and tear and the effects of time excepted; (iii) maintain, at its sole cost and expense, insurance covering the leased property, including, without limitation, all improvements now located, or that may be erected in the future, on the leased premises, against specified losses; and (iv) agrees to make repairs and improvements, including replacing the roof for each property, for which the total expenditure will be \$500,000 per property in the first 60 months of the lease term. The Acquired Company's tenancy of the leased premises is subject to other customary covenants and conditions. The Acquired Company does not have the right to purchase either leased premises under the applicable Lease.

#### *Note About Information Included in this Current Report*

The Purchase Agreement, the Notes, the Credit and Security Agreement and the Leases (collectively, the "Transaction Agreements") and the descriptions above have been included in the various Items of this Current Report on Form 8-K to provide investors and securityholders with certain information regarding the terms of each agreement. They are not intended to provide any other factual information about the Company, Buyer, the Acquired Company, or their respective subsidiaries, affiliates, or stockholders or the terms and conditions of the Transaction Agreements. The representations, warranties, and covenants contained in the Transaction Agreements were made only for purposes of the Transaction Agreements as of their specific dates; were solely for the benefit of the parties to the respective Transaction Agreements; and may be subject to limitations agreed upon by the parties, including being qualified by confidential disclosures made by each party to the other for the purposes of allocating contractual risk between or among them that differs from those applicable to investors or securityholders. Investors and securityholders should be aware that the representations, warranties, and covenants or any description thereof may not reflect the actual state of facts or condition of the Company, Buyer, the Acquired Companies, or any of their respective subsidiaries, affiliates, businesses, or securityholders. Moreover, information concerning the subject matter of the representations, warranties, and covenants may change after the Effective Date. Accordingly, investors and securityholders should read the representations and warranties in the referenced

agreements not in isolation but only in conjunction with the other information about the Company and its subsidiaries that the Company includes in reports, statements, and other filings it makes with the SEC.

**Item 8.01. Other Events.**

On July 24, 2023, Live Ventures issued a press release announcing the acquisition of PMW. A copy of the press release is filed herewith as Exhibit 99.1 to this Current Report on Form 8-K.

**Item 9.01 Financial Statements and Exhibits.**

**(a) Financial Statements of Businesses Acquired**

The Company will file financial statements as required under Regulation S-X for the Acquired Company by amendment to this Current Report on Form 8-K.

**(b) Pro Forma Financial Information**

The Company will file pro forma financial statements as required under Regulation S-X for the Acquired Company by amendment to this Current Report on Form 8-K.

**(d) Exhibits**

Exhibit Number	Description
10.117	<a href="#"><u>Securities Purchase Agreement by and among the trustees of The Richard Stanley Family Trust, the trustees of The John Locke Family Trust, Precision Metal Works, Inc. (formerly known as NTH HOLDING, Ltd), PMW Affiliated Holdings, Inc. and, solely with respect to Section 5.09 thereof, John Locke and Richard Stanley, dated as of July 19, 2023.</u></a> <sup>1</sup>
10.118	<a href="#"><u>Form of Subordinated Secured Promissory Note dated July 19, 2023 issued by Precision Metal Works, Inc. in favor of each of (i) The Richard Stanley Family Trust, and (ii) the John Locke Family Trust.</u></a>
10.119	<a href="#"><u>Credit and Security Agreement by and among Precision Metal Works, Inc. and PMW Affiliated Holdings, Inc. and Fifth Third Bank, National Association, dated as of July 19, 2023.</u></a> <sup>1</sup>
10.120	<a href="#"><u>Lease Agreement (4701 Allmond Ave., Louisville, KY), dated as of July 19, 2023, by and between Precision Metal Works, Inc. and Legacy West Partners Kentucky Portfolio, LLC.</u></a>
10.121	<a href="#"><u>Lease Agreement (111 Commerce Blvd., Frankfort, KY), dated as of July 19, 2023, by and between Precision Metal Works, Inc. and Legacy West Partners Kentucky Portfolio, LLC.</u></a>
99.1	Press Release, dated July 24, 2023
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

<sup>1</sup> Schedules and exhibits omitted pursuant to Item 601(a)(5) of Regulation S-K. Copies of any omitted schedule or exhibit will be furnished to the Securities and Exchange Commission upon request.

## SIGNATURES

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

LIVE VENTURES INCORPORATED

By: /s/ Jon Isaac

Name: Jon Isaac

Title: Chief Executive Officer

Dated: July 26, 2023

**STOCK PURCHASE AGREEMENT**

**Among**

**THE RICHARD STANLEY FAMILY TRUST THE JOHN LOCKE FAMILY TRUST PRECISION METAL**

**WORKS, INC.**

**(formerly known as NTH HOLDING, Ltd) and**

**PMW AFFILIATED HOLDINGS, LLC**

dated as of July 19, 2023

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## STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (this “**Agreement**”), dated as of July 19, 2023, is entered into between the trustees of The Richard Stanley Family Trust, a trust formed under the Laws of Ontario, Canada; the trustees of The John Locke Family Trust, a trust formed under the Laws of Ontario, Canada (each, a “**Seller**” and, together, the “**Sellers**”); Precision Metal Works, Inc., a Kentucky corporation formerly known as NTH HOLDING, Ltd (Kentucky Organization No. 0940452) (the “**Company Parent**”); and PMW Affiliated Holdings, LLC, a Delaware limited liability company (Delaware File No. 7468836) (“**Buyer**”). John Locke and Richard Stanley join in this Agreement solely with respect to Section 5.09 and not with respect to any other section or provision of this Agreement.

### RECITALS

**WHEREAS**, Sellers currently own all of the issued and outstanding shares of common stock, par value \$100.00, of the Company Parent (the “**Shares**”);

**WHEREAS**, Company Parent owned certain shares of capital stock of the entity formerly known as Precision Metal Works, Inc., a Kentucky corporation (Kentucky Organizational No. 0042190) (the “**Company**”);

**WHEREAS**, after the Company adopted certain amendments to its Third Amended and Restated Articles of Incorporation of the Company clarifying, *inter alia*, the capitalization structure of the Company (the “**Charter Amendment**”), Company Parent purchased from Gary Cook, Mark Matthews, Devon Jones, Howard Terry, and Bruce Murray additional issued and outstanding shares of capital stock in the Company (collectively, the “**Pre-Merger Purchase**”) such that Company Parent thereafter owned more than ninety percent (90%) of the issued and outstanding shares of capital stock of all classes of the Company;

**WHEREAS**, after the consummation of the Pre-Merger Purchase, the Company Parent caused the Company to be merged into Company Parent pursuant to Kentucky Revised Statutes § 271B.11-040 (the “**Kentucky Short-Form Merger Statute**”);

**WHEREAS**, pursuant to the Kentucky Short-Form Merger Statute, the Company was merged into the Company Parent with the Company Parent constituting the surviving entity in a merger (the “**Short- Form Merger**”) and the issued and outstanding shares of capital stock of the Company held by shareholders of the Company prior to the Short-Form Merger were extinguished;

**WHEREAS**, immediately following the Short-Form Merger, the Company Parent filed Articles of Amendment with the Secretary of State of the Commonwealth of Kentucky to change the name of the Company Parent from “NTH HOLDING, Ltd” to “Precision Metal Works, Inc.”; and

**WHEREAS**, Sellers now wish to sell to Buyer, and Buyer now wishes to purchase from Sellers, the Shares (the “**Sale**”), subject to the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I DEFINITIONS

The following terms have the meanings specified or referred to in this ARTICLE I: “**Acceleration Payment**” has the meaning set forth in Section

2.08(e).

“**Action**” means any claim, charge, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“**Adjusted EBITDA**” means, with respect to any Calculation Period, the net income before interest, income taxes, depreciation and amortization of the Company Parent for such period, determined in accordance with GAAP but applied and calculated in a manner consistent with the EBITDA calculation derived from Audited Financial Statements for the most recent fiscal year end, (i) adjusted for any non-cash expenses or gains, (ii) adjusted to add back the impact of the General Electric early pay discount in any prior period, (iii) adjusted to add back any management fees or other expenses paid by (A) the Company to Company Parent, Buyer, or any Buyer Affiliate or (B) Company Parent to Buyer or any Buyer Affiliate,

(iv) to add back any allocation of fees for management services provided by Buyer or any of its Affiliates following the Closing, (v) to add back any other fees or expenses paid prior to or in connection with the Closing that were outside the ordinary course of the operation of the Company’s business or the Company Parent’s business prior to the Closing, including, but not limited to, the Transaction Expenses, allocations of overhead or other expenses from Buyer or its Affiliates, and legal fees and costs, (vi) to add back any legal and audit expenses and costs allocated to the Parent Company by Buyer or any Buyer Affiliate to the extent that same exceed the amount paid by the Company in the operation of the Company’s business for the fiscal year ended immediately prior to the Closing Date, and (vii) to add back any other fees or expenses paid that are outside the ordinary course of the operation of the Company’s business or the Company Parent’s business based on the past practices of the Company. A sample calculation of Adjusted EBITDA is set forth on **Exhibit A** and is provided solely as an example for how Adjusted EBITDA is intended to be calculation pursuant to this Agreement. For the avoidance of doubt, Adjusted EBITDA will include rent expense consistent with historical figures and will not include the impact of incremental rent expense related to sale-leaseback of real property entered into in connection with the Closing. Further, for the purposes of calculating the Earn-out Payment, the calculation of Adjusted EBITDA will include EBITDA of the Company Parent’s operations as in existence as of the Closing (and as such operations may be upgraded or expanded from time to time), but will not include the impact of any acquired additions to EBITDA as a result of business acquisitions (“**Acquisitions**”) that occur after the Closing (whether structured as asset acquisitions, stock acquisitions, mergers or otherwise), except to the extent such Acquisitions utilize the Company Parent’s operations as in existence as of the Closing and such utilization adversely impacts the Company Parent’s ability to generate Adjusted EBITDA; however, for the avoidance of doubt, incremental EBITDA growth over that of the acquired entity at the time of Acquisitions, will count towards the computation of Adjusted EBITDA but reductions in EBITDA resulting from Acquisitions will not count against the computation of Adjusted EBITDA.

“**Adjusted EBITDA Threshold**” means, with respect to any Calculation Period, the applicable Adjusted EBITDA threshold amount for such Calculation Period set forth on **Exhibit C**.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control”

(including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble.

“**Ancillary Documents**” means the Escrow Agreement, the Notes, the Security Agreements, the Consulting Agreement, and the Guaranties.

“**Audited Financial Statements**” has the meaning set forth in Section 3.08. “**Balance Sheet**” has the meaning set forth in Section 3.08.

“**Balance Sheet Date**” has the meaning set forth in Section 3.08. “**Basket**” has the meaning set forth in Section 8.04(a).

“**Benefit Plan**” has the meaning set forth in Section 3.22(a). “**Bottom Collar**” has the meaning set forth in Section 2.06(a)(iii).

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in Louisville, Kentucky are authorized or required by Law to be closed for business.

“**Buyer Indemnitees**” has the meaning set forth in Section 8.02.

“**Calculation Periods**” means (a) the period beginning on the Closing Date and ending on September 30, 2023; (b) each of the fiscal years ending on September 30, 2024, 2025, 2026 and 2027, respectively; and (c) the period beginning on October 1, 2027 and ending on June 30, 2028.

“**Cap**” has the meaning set forth in Section 8.04(b).

“**Cash on Hand**” means, as to a particular Person, the aggregate cash balance of such Person as of the applicable time, including all cash, commercial paper, certificates of deposit and other bank deposits, treasury bills, and all other cash equivalents in its accounts, and third party checks deposited or held in such Person’s accounts that have not yet cleared; *provided, however*, that Cash on Hand shall be reduced by (i) the amount of all outstanding checks on draft of such entity that are issued and outstanding at such time and (ii) customer deposits, restricted cash, deposits in escrow with third parties or cash securing letters of credit or other payment obligations, but, with respect to the items in this clauses (i) or (ii), only to the extent not counted as a current liability in the calculation of Estimated Closing Working Capital or Closing Working Capital.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

“**Class A Common Stock**” means the Class A Common Stock of the Company, having no par value per share.





**“Class A Convertible Preferred Stock”** means the Class A Convertible Preferred Stock of the Company, having no par value per share.

**“Class B Common Stock”** means the Class B Common Stock of the Company, having no par value per share.

**“Class B Convertible Preferred Stock”** means the Class B Convertible Preferred Stock of the Company, having no par value per share.

**“Class C Common Stock”** means the Class C Common Stock of the Company, having no par value per share.

**“Closing”** has the meaning set forth in Section 2.07.

**“Closing Adjustment”** has the meaning set forth in Section 2.06(a).

**“Closing Cash”** means the Cash on Hand of the Company Parent (and, to the extent bank accounts remain in the name of the Company, the Company) as of the Effective Time.

**“Closing Date”** has the meaning set forth in Section 2.07.

**“Closing Indebtedness Certificate”** means a certificate executed by an officer of the Company Parent certifying an itemized list of all outstanding Indebtedness as of the open of business on the Closing Date and the Person to whom such outstanding Indebtedness is owed and an aggregate total of such outstanding Indebtedness.

**“Closing Transaction Expenses Certificate”** means a certificate executed by an officer of the Company Parent, certifying the amount of Transaction Expenses remaining unpaid as of the open of business on the Closing Date (including an itemized list of each such unpaid Transaction Expense with a description of the nature of such expense and the Person to whom such expense is owed).

**“Closing Working Capital”** means: (a) the Current Assets of the Company Parent, less (b) the Current Liabilities of the Company Parent, determined as of the open of business on the Closing Date in accordance with GAAP except as otherwise set forth on Schedule 2.06(a)(ii).

**“Closing Working Capital Statement”** has the meaning set forth in Section 2.06(b)(i). **“Code”** means the Internal Revenue Code of 1986, as amended.

**“Company”** has the meaning set forth in the recitals.

**“Company Common Stock”** means, collectively, the Class A Common Stock, the Class B Common Stock and the Class C Common Stock.

**“Company Intellectual Property”** means all Intellectual Property that is owned by the Company Parent.

**“Company IP Agreements”** means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other

Contracts, whether written or oral, relating to Intellectual Property to which the Company Parent is a party, beneficiary or otherwise bound.

**“Company IP Registrations”** means all Company Intellectual Property that is subject to any issuance, registration or application by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including issued patents, registered trademarks, domain names and copyrights, and pending applications for any of the foregoing.

**“Company IT Systems”** means all Software, computer hardware, servers, networks, platforms, peripherals, and similar or related items of automated, computerized, or other information technology (IT) networks and systems (including telecommunications networks and systems for voice, data, and video) owned, leased, licensed, or used (including through cloud-based or other third-party service providers) by the Company Parent.

**“Company Parent Charter”** has the meaning set forth in Section 3.05.

**“Company Parent Charter Documents”** has the meaning set forth in Section 3.05.

**“Company Preferred Stock”** means, collectively, the Class A Convertible Preferred Stock and the Class B Convertible Preferred Stock.

**“Consulting Agreement”** means the Consulting Agreement to be entered into by Buyer and Bartel Global Inc., substantially in the form of **Exhibit B** attached hereto.

**“Contracts”** means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

**“Current Assets”** means accounts receivable, inventory and prepaid expenses, but excluding (a) the portion of any prepaid expense of which the Company Parent received the benefit of prior to the Closing, (b) deferred Tax assets, and (c) receivables from any of the Company Parent’s Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

**“Current Liabilities”** means accounts payable, accrued Taxes and accrued expenses, but excluding (a) payables to any of the Company Parent’s Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates; (b) deferred Tax Liabilities; (c) Transaction Expenses; (d) the current portion of any Indebtedness of the Company Parent; and (e) the current portion of any operating leases of the Company Parent determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

**“D&O Indemnified Party”** has the meaning set forth in Section 5.12(a).



“**D&O Indemnifying Parties**” has the meaning set forth in Section 5.12(b). “**D&O Tail Policy**” has the meaning set forth in Section 5.12(c).

“**Direct Claim**” has the meaning set forth in Section 8.05(c).

“**Disclosure Schedules**” means the Disclosure Schedules delivered by the Company Parent and Buyer concurrently with the execution and delivery of this Agreement.

“**Disputed Amounts**” has the meaning set forth in Section 2.06(c)(iii). “**Dollars**” or “**\$**” means the lawful currency of the United States.

“**Earn-out Calculation**” has the meaning set forth in Section 2.08(b)(i).

“**Earn-out Calculation Delivery Date**” has the meaning set forth in Section 2.08(b)(i). “**Earn-out Calculation Objection Notice**” has the meaning set forth in Section 2.08(b)(ii). “**Earn-out Calculation Statement**” has the meaning set forth in Section 2.08(b)(i).

“**Earn-out Factor**” means twenty percent (20%).

“**Earn-out Payment**” has the meaning set forth in Section 2.08(a).

“**Earn-out Period**” means the period beginning on the Closing Date and ending on June 30, 2028. “**Earn-out Review Period**” has the meaning set forth in Section 2.08(b)(ii).

“**Effective Time**” has the meaning set forth in Section 2.07.

“**Employee Stock Bonus Plan**” means the nth/works Employee Stock Bonus Plan as amended. “**Encumbrance**” means any charge, claim, community property interest, pledge, condition,

equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“**Environmental Claim**” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence of, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“**Environmental Law**” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the



protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient or indoor air, soil, surface water or groundwater, or subsurface strata); or

(b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act of 1910, as amended, 7 U.S.C. §§ 136 et seq.; the Oil Pollution Act of 1990, as amended, 33 U.S.C. §§ 2701 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

“**Environmental Notice**” means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

“**Environmental Permit**” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

“**Environmental Professional**” means an individual licensed by a Governmental Authority to act on behalf of such Governmental Authority to oversee environmental site investigation and remediation.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“**ERISA Affiliate**” means all employers (whether or not incorporated) that would be treated together with the Company Parent as a “single employer” within the meaning of Section 414 of the Code.

“**Escrow Agent**” means Fifth Third Bank, National Association.

“**Escrow Agreement**” means the Escrow Agreement to be entered into by Buyer, Sellers, and the Escrow Agent at the Closing, substantially in the form of **Exhibit D** attached hereto.

“**Escrow Funds**” has the meaning set forth in Section 2.03(a).

“**Estimated Closing Cash**” has the meaning set forth in Section 2.06(a)(ii).

“**Estimated Closing Working Capital**” has the meaning set forth in Section 2.06(a)(ii). “**Estimated Closing Working Capital Adjustment**” has the meaning set forth in

Section 2.06(a)(iii).

**“Estimated Closing Working Capital Statement”** has the meaning set forth in Section 2.06(a)(ii). **“Financial Statements”** has the meaning set forth in Section 3.08.

**“FIRPTA Statement”** has the meaning set forth in Section 6.10.

**“GAAP”** means United States generally accepted accounting principles in effect from time to time. **“Government Contracts”** has the meaning set forth in Section 3.11(a)(viii).

**“Governmental Authority”** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority, including Environmental Professionals (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

**“Governmental Order”** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

**“Guaranty”** or **“Guaranties”** means the Guaranty executed by Live Ventures Incorporated, a Nevada corporation, in favor of Sellers as security for the performance and payment of all obligations under the Note.

**“Hazardous Materials”** means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls and per- and poly-fluoroalkyl substances (PFAS) and other emerging contaminants.

**“Indebtedness”** means, without duplication and with respect to the Company Parent, all

(a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services (other than Current Liabilities taken into account in the calculation of Closing Working Capital), (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments;

(d) obligations under any interest rate, currency swap or other hedging agreement or arrangement;

(e) capital lease obligations; (f) reimbursement obligations under any letter of credit, banker’s acceptance or similar credit transactions; (g) guarantees made by the Company Parent on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (f); and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (g). For purposes of clarity and notwithstanding anything to the contrary set forth in this Agreement, in no event shall deferred Tax Liabilities be construed as “Indebtedness”.

**“Indemnification Escrow Amount”** means \$225,000.

**“Indemnification Escrow Fund”** has the meaning set forth in Section 2.03(a).



**“Indemnified Party”** has the meaning set forth in Section 8.05. **“Indemnifying Party”** has the meaning set forth in Section 8.05. **“Independent**

**Accountant”** has the meaning set forth in Section 2.06(c)(iii). **“Insurance Policies”** has the meaning set forth in Section 3.18.

**“Intellectual Property”** means any and all rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other Governmental Authority-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models) (**“Patents”**); (b) trademarks, service marks, brands, certification marks, logos, trade dress, trade names, and other similar indicia of source or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications for registration, and renewals of, any of the foregoing (**“Trademarks”**); (c) copyrights and works of authorship, whether or not copyrightable, and all registrations, applications for registration, and renewals of any of the foregoing (**“Copyrights”**); (d) internet domain names and social media account or user names (including “handles”), whether or not Trademarks, all associated web addresses, URLs, websites and web pages, social media sites and pages, and all content and data thereon or relating thereto, whether or not Copyrights; (e) mask works, and all registrations, applications for registration, and renewals thereof; (f) industrial designs, and all Patents, registrations, applications for registration, and renewals thereof; (g) trade secrets, know-how, inventions (whether or not patentable), discoveries, improvements, technology, business and technical information, databases, data compilations and collections, tools, methods, processes, techniques, and other confidential and proprietary information and all rights therein (**“Trade Secrets”**); (h) computer programs, operating systems, applications, firmware, and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof (**“Software”**); (i) rights of publicity; and (j) all other intellectual or industrial property and proprietary rights.

**“Intended Tax Treatment”** has the meaning set forth in Section 6.01(c). **“Interim Balance Sheet”** has the meaning set forth in Section 3.08.

**“Interim Balance Sheet Date”** has the meaning set forth in Section 3.08. **“Interim Financial Statements”** has the meaning set forth in Section 3.08.

**“Knowledge”** means, when used with respect to Sellers or the Company Parent, (a) the actual knowledge of Richard L. Stanley, John Locke, and Devon Jones; and (b) the knowledge that each such Person in clause (a) above would have obtained after making reasonable inquiry with respect to the particular matter in question.

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

**“Liabilities”** has the meaning set forth in Section 3.09.



**“Licensed Intellectual Property”** means all Intellectual Property in which the Company Parent holds any rights or interests granted by other Persons, including Sellers or any of their respective Affiliates.

**“Losses”** means losses, damages, liabilities, deficiencies, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that **“Losses”** shall not include punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

**“Material Adverse Effect”** means any event, occurrence, fact, condition or change that is, or could reasonably be expected to (a) become, individually or in the aggregate, materially adverse to the business, results of operations, condition (financial or otherwise) or assets of the Company Parent, or (b) the ability of Sellers to consummate the transactions contemplated hereby on a materially timely basis; *provided, however*, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Company Parent operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement, except pursuant to Section 3.05; (vi) any changes in applicable Laws or accounting rules, including GAAP; or (vii) the public announcement, pendency or completion of the transactions contemplated by this Agreement; *provided further, however*, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Company Parent compared to other participants in the industries in which the Company Parent conducts its businesses (in which case, only the incremental disproportionate adverse effect may be taken into account in determining whether a Material Adverse Effect has occurred).

**“Material Contracts”** has the meaning set forth in Section 3.11(a). **“Material Customers”** has the meaning set forth in Section 3.17(a).

**“Material Suppliers”** has the meaning set forth in Section 3.17(b). **“Multiemployer Plan”** has the meaning set forth in Section 3.22(c).

**“Non-U.S. Benefit Plan”** has the meaning set forth in Section 3.22(a).

**“Note”** or **“Notes”** means the secured Promissory Notes in the aggregate principal amount of \$2,500,000 to be issued at the Closing by the Company Parent to Sellers consistent with each Seller’s respective Pro Rata Share in the form of **Exhibit E** attached hereto.

**“Payoff Letters”** has the meaning set forth in Section 2.03(b).

**“Permits”** means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.



“**Permitted Encumbrances**” has the meaning set forth in Section 3.12(a).

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“**Platform Agreements**” has the meaning set forth in Section 3.14(h).

“**Post-Closing Adjustment**” means the sum of the Post-Closing Working Capital Adjustment and the Post-Closing Cash Adjustment.

“**Post-Closing Cash Adjustment**” has the meaning set forth in Section 2.06(b)(iii)

“**Post-Closing Tax Period**” means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

“**Pre-Closing Tax Period**” means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

“**Pre-Closing Taxes**” has the meaning set forth in Section 6.03.

“**Post-Closing Working Capital Adjustment**” has the meaning set forth in Section 2.06(b)(ii). “**Pro Rata Share**” means, with respect to any Seller, such Seller’s

ownership interest in the

Company Parent immediately prior to the Effective Time determined by dividing (a) the number of Shares owned of record by such Seller immediately prior to the Effective Time, by (b) the total number of Shares issued and outstanding immediately prior to the Effective Time.

“**Purchase Price**” has the meaning set forth in Section 2.02. “**Purchase Price Adjustment Escrow Amount**” means \$1,020,000.

“**Purchase Price Adjustment Escrow Fund**” has the meaning set forth in Section 2.03(a)(iii). “**Qualified Benefit Plan**” has the meaning set forth in Section

3.22(c).

“**R&W Insurance Policy**” means the buyer-side representation and warranty insurance policy to be issued by Archer Transactional, a program of Balance Partners, to Buyer in the form of **Exhibit F** attached hereto.

“**Real Property**” means the real property owned, leased or subleased by the Company Parent, together with all buildings, structures and facilities located thereon.

“**Release**” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient or indoor air, surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).



“**Representative**” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“**Resolution Period**” has the meaning set forth in Section 2.06(c)(ii). “**Review Period**” has the meaning set forth in Section 2.06(c)(i).

“**Security Agreement**” or “**Security Agreements**” means the Security Agreements executed by Buyer and the Company Parent granting a security interest in all of the assets of the Company Parent as collateral for the Notes in favor of the holder of each Note in the form of **Exhibit G** attached hereto.

“**Seller**” has the meaning set forth in the Recitals.

“**Seller Indemnitees**” has the meaning set forth in Section 8.03. “**Short-Form Merger**” has the meaning set forth in the Recitals.

“**Single Employer Plan**” has the meaning set forth in Section 3.22(d).

“**Statement of Objections**” has the meaning set forth in Section 2.06(c)(ii). “**Straddle Period**” has the meaning set forth in Section 6.05.

“**Target Working Capital**” has the meaning set forth in Section 2.06(a)(iii).

“**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“**Tax Claim**” has the meaning set forth in Section 6.06. “**Tax Law**” means Laws with respect to Taxes.

“**Tax Liabilities**” means Liabilities with respect to Taxes.

“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Third-Party Claim**” has the meaning set forth in Section 8.05(a). “**Top Collar**” has the meaning set forth in Section 2.06(a)(iii).

“**Transaction Expenses**” means all fees and expenses incurred by the Company, Company Parent, and Sellers at or prior to the Closing in connection with the preparation, negotiation and execution

of this Agreement and the Ancillary Documents, and the performance and consummation of the transactions



contemplated hereby and thereby, including any unpaid costs of the D&O Tail Policy referenced in Section 5.12(c) and the employer portion of all payroll Taxes payable in respect of the vesting, exercise or cash-out of any stock options, restricted stock or other equity or equity-based incentives. For purposes of clarity, no fee or expense incurred by Buyer or any Affiliate of Buyer prior to the Closing or otherwise related to the Closing shall be construed to be a “Transaction Expense” for purposes of this Agreement.

“**Undisputed Amounts**” has the meaning set forth in Section 2.06(c)(iii). “**Union**” has the meaning set forth in Section 3.23(b).

“**WARN Act**” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

## ARTICLE II PURCHASE AND SALE

**Section 2.01 Purchase and Sale.** Subject to the terms and conditions set forth in this Agreement, at the Closing, Sellers shall sell to Buyer, and Buyer shall purchase from Sellers, the Shares, free and clear of all Encumbrances (other than restrictions on transfer arising under applicable state or federal securities Laws), for the consideration specified in Section 2.02.

**Section 2.02 Purchase Price.** The aggregate purchase price for the Shares shall be \$25,000,000.00, plus or minus the adjustments set forth in Section 2.06 and Section 2.08 (the “**Purchase Price**”).

### **Section 2.03 Transactions to be Effectuated at Closing.**

(a) At the Closing, Buyer shall:

(i) deliver to Sellers the following:

A. the Closing Date Payment less (1) the Purchase Price Adjustment Escrow Amount, (2) the Indemnification Escrow Amount and (3) the aggregate principal amount of the Notes, by wire transfer of immediately available funds to an account designated in writing by Sellers to Buyer no later than two Business Days prior to the Closing Date;

B. the Notes duly executed by the Company Parent;

C. the Security Agreement duly executed by the Company Parent;

D. the Ancillary Documents and all other agreements, documents, instruments or certificates required to be delivered by Buyer at or prior to the Closing pursuant to this Agreement.

E. the Consulting Agreement duly executed by the Company Parent;

F. the Escrow Agreement duly executed by Buyer;

G. a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the managers of Buyer authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;

H. a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder;

I. the Guaranties duly executed by Live Ventures Incorporated; and

J. such other documents or instruments as the Company Parent reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

(ii) pay, on behalf of the Company Parent or Sellers, the following amounts:

A. Indebtedness of the Company Parent to be paid at Closing, by wire transfer of immediately available funds to the accounts and in the amounts specified on the Closing Indebtedness Certificate; and

B. any Transaction Expenses unpaid at Closing, by wire transfer of immediately available funds to the accounts and in the amounts specified on the Closing Transaction Expenses Certificate, including payment to such third parties any Transaction Expenses as set forth on the Closing Transaction Expenses Certificate.

(iii) deposit or cause to be deposited with the Escrow Agent, in accordance with the Escrow Agreement:

A. the Purchase Price Adjustment Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the “**Purchase Price Adjustment Escrow Fund**”), to be held for the purpose of securing the obligations of Sellers in Section 2.06(d); and

B. the Indemnification Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the “**Indemnification Escrow Fund**” and, together with the Purchase Price Adjustment Escrow Fund, the “**Escrow Funds**”) by wire transfer of immediately available funds to accounts designated by the Escrow Agent, to be held for the purpose of securing the indemnification obligations of Sellers set forth in ARTICLE VIII and the obligations of Sellers in Section 2.06(d).

(b) At the Closing, Sellers shall deliver to Buyer:

- (i) stock certificates evidencing the Shares, free and clear of all Encumbrances (other than restrictions on transfer arising under applicable state or federal securities Laws), duly endorsed in blank or accompanied by stock powers or other instruments of transfer duly executed in blank, with all required stock transfer tax stamps affixed thereto;
- (ii) a Security Agreement duly executed by each Seller;
- (iii) the Ancillary Documents and all other agreements, documents, instruments or certificates required to be delivered by Sellers at or prior to the Closing pursuant to this Agreement;
- (iv) the Consulting Agreement duly executed by Bartell Global Inc.;
- (v) the Escrow Agreement duly executed by the Sellers;
- (vi) resignations of the directors and officers of the Company Parent pursuant to Section 5.07;
- (vii) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company Parent certifying that (A) attached thereto are true and complete copies of (1) all resolutions adopted by the Board of Directors of the Company Parent authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby and (2) resolutions of the Sellers, as stockholders of the Company Parent, approving this Agreement, and (B) all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby;
- (viii) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company Parent certifying the names and signatures of the officers of the Company Parent authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder;
- (ix) a good standing certificate (or its equivalent) from the secretary of state or similar Governmental Authority of the jurisdiction under the Laws in which the Company Parent is incorporated;
- (x) at least two Business Days prior to the Closing, the Closing Transaction Expenses Certificate;
- (xi) at least two Business Days prior to the Closing, the Closing Indebtedness Certificate;
- (xii) the Estimated Closing Working Capital Statement contemplated in Section 2.06(a);
- (xiii) the FIRPTA Statement;

(xiv) executed payoff letters for the Indebtedness of the Company Parent and its subsidiaries and any Encumbrances (other than Permitted Encumbrances) affecting the assets or equity interests of the Company Parent and their subsidiaries, which include a per diem interest amount and an authorization to file (or an agreement by such debtor to file) all UCC termination statements and releases necessary to evidence satisfaction and termination of such Indebtedness and Encumbrances (collectively, the “**Payoff Letters**”);

(xv) from each Seller and Company Parent, a duly executed IRS Form W-9 (or its equivalent); and

(xvi) such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

**Section 2.04 Withholding Tax.** Buyer and the Company Parent shall be entitled to deduct and withhold from the Purchase Price all Taxes that Buyer and the Company Parent may be required to deduct and withhold under any provision of Tax Law. All such withheld amounts shall be treated as delivered to Sellers hereunder.

**Section 2.05 Withholding Rights.** Each of the Buyer and the Company Parent shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this such amounts as may be required to be deducted and withheld with respect to the making of such payment under any provision of Tax Law; *provided, however*, that the Person intending to deduct or withhold (other than with respect to compensatory payments) shall use commercially reasonable efforts to notify such Persons of any amounts otherwise payable to such Persons that it intends to deduct and withhold at least five (5) Business Days prior to the due date for any relevant payment, and the Person intending to withhold with respect to such payments shall provide reasonable details regarding the provisions of Law that requires such deduction or withholding and the parties shall work together in good faith to minimize such deduction or withholding. To the extent that amounts are so deducted and withheld by the Buyer, or the Company Parent, as the case may be, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which the Buyer or the Company Parent, as the case may be, made such deduction and withholding.

**Section 2.06 Purchase Price Adjustment.**

(a) Closing Adjustment.

(i) At the Closing, the Purchase Price shall be adjusted in the following manner:

A. either (1) an increase by the Estimated Closing Working Capital Adjustment, if the Estimated Closing Working Capital (as determined in accordance with Section 2.06(a)(ii)) is greater than the Top Collar, or (2) decreased by the Estimated Closing Working Capital Adjustment, if the Estimated Closing Working Capital is less than the Bottom Collar;

B. an increase by the Estimated Closing Cash;

C. a decrease by the outstanding Indebtedness of the Company Parent as of the open of business on the Closing Date (which shall in no event be an amount less than the amounts paid by the Buyer pursuant to Section 2.03(a)(ii)(A)); and

D. a decrease by the amount of unpaid Transaction Expenses of the Company Parent as of the open of business on the Closing Date (which shall in no event be an amount less than the amounts paid by the Buyer pursuant to Section 2.03(a)(ii)(B)).

The net amount after giving effect to the adjustments listed above shall be the “**Closing Date Payment.**”

(ii) At least three Business Days before the Closing, the Company Parent shall prepare and deliver to Buyer a statement setting forth its good faith estimate of Closing Working Capital (the “**Estimated Closing Working Capital**”) and Closing Cash (the “**Estimated Closing Cash**”), which statement shall contain an estimated balance sheet of the Company Parent as of the Closing Date (without giving effect to the transactions contemplated herein), a calculation of Estimated Closing Working Capital, which shall be substantially in the form of, and include those specific items described in, Schedule 2.06(a)(ii) (the “**Estimated Closing Working Capital Statement**”), and a certificate of an officer or employee of the Company Parent certifying that the Estimated Closing Working Capital Statement and Estimated Closing Cash were each prepared in accordance with GAAP, applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such Estimated Closing Working Capital Statement was being prepared and audited as of a fiscal year end.

(iii) The Purchase Price has been determined based on the assumption that the Company has Closing Working Capital of \$10,200,000 (the “**Target Working Capital**”). The “**Estimated Closing Working Capital Adjustment**” shall be an amount equal to (i) the Estimated Closing Working Capital minus \$10,500,000 (the “**Top Collar**”), if Estimated Closing Working Capital is more than the Top Collar; or (ii) \$9,900,000 (the “**Bottom Collar**”) minus the Estimated Closing Working Capital, if the Estimated Closing Working Capital is less than the Bottom Collar. If the Estimated Closing Working Capital is both less than or equal to the Top Collar and greater than or equal to the Bottom Collar, the Estimated Closing Working Capital Adjustment shall be zero.

(b) Post-Closing Adjustments.

(i) Within seventy-five (75) days after the Closing Date, Buyer shall prepare and deliver to Sellers a statement setting forth its calculation of Closing Working Capital and a calculation of the amount of Closing Cash, which statement shall contain a balance sheet of the Company Parent as of the Closing Date (without giving effect to the transactions contemplated herein), a calculation of Closing Working Capital (the “**Closing Working Capital Statement**”) and a certificate of the Chief Financial Officer (or similar officer or employee) of Buyer certifying that the Closing Working Capital Statement, the amount of Closing Cash and the balance sheet of the Company Parent as

of the Closing Date delivered with the Closing Working Capital Statement were prepared in accordance

with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such Closing Working Capital Statement was being prepared and audited as of a fiscal year end as modified pursuant to Schedule 2.06(a)(ii).

(ii) The “**Post-Closing Working Capital Adjustment**” shall be an amount equal to (i) the Closing Working Capital *minus* the Estimated Closing Working Capital if Closing Working Capital is \$300,000 more than the Estimated Closing Working Capital (and such amount shall be limited only to the amount by which the difference between Closing Working Capital and Estimated Closing Working Capital exceeds \$300,000); or (ii) the Estimated Closing Working Capital *minus* the Closing Working Capital if the Estimated Closing Working Capital is \$300,000 more than the Closing Working Capital (and such amount shall be limited only to the amount by which the difference between Estimated Closing Working Capital and Closing Working Capital exceeds \$300,000). Otherwise, the Post-Closing Working Capital Adjustment shall be zero.

(iii) The “**Post-Closing Cash Adjustment**” shall be an amount equal to the Closing Cash minus the Estimated Closing Cash.

(c) Examination and Review.

(i) Examination. After receipt of the Closing Working Capital Statement, Sellers shall have thirty 30 days (the “**Review Period**”) to review the Closing Working Capital Statement. During the Review Period, Sellers and Sellers’ accountants shall have full access to the books and records of the Company Parent, the personnel of, and work papers prepared by, Buyer and/or Buyer’s accountants to the extent that they relate to the Closing Working Capital Statement and to such historical financial information (to the extent in Buyer’s possession) relating to the Closing Working Capital Statement as Sellers may reasonably request for the purpose of reviewing the Closing Working Capital Statement and to prepare a Statement of Objections (defined below).

(ii) Objection. On or prior to the last day of the Review Period, Sellers may object to the Closing Working Capital Statement by delivering to Buyer a written statement setting forth Sellers’ objections in reasonable detail, indicating each disputed item or amount and the basis for Sellers’ disagreement therewith (the “**Statement of Objections**”). If Sellers fail to deliver the Statement of Objections before the expiration of the Review Period, the Closing Working Capital Statement and the Post-Closing Adjustment, as the case may be, reflected in the Closing Working Capital Statement shall be deemed to have been accepted by Sellers. If Sellers deliver the Statement of Objections before the expiration of the Review Period, Buyer and Sellers shall negotiate in good faith to resolve such objections within 30 days after the delivery of the Statement of Objections (the “**Resolution Period**”), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Working Capital Statement with such changes as may have been previously agreed in writing by Buyer and Sellers, shall be final and binding.

(iii) Resolution of Disputes. If Sellers and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute (“**Disputed Amounts**” and any amounts not so disputed, the “**Undisputed Amounts**”) shall be submitted for resolution to Bill Meyer in the Louisville office of Strothman + Co (the “**Independent Accountant**”) who, acting as an expert and not arbitrator, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Working Capital Statement. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties, and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Working Capital Statement and the Statement of Objections, respectively.

(iv) Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be paid by Sellers, on the one hand, and by Buyer, on the other hand, based upon the percentage that the amount actually contested, but not awarded to, Sellers or Buyer, respectively, bears to the aggregate amount actually contested by Sellers and Buyer.

(v) Determination by Independent Accountant. The Independent Accountant shall make a determination as soon as practicable within 30 days (or such other time as the parties hereto shall agree in writing) after their engagement, and their resolution of the Disputed Amounts and their adjustments to the Closing Working Capital Statement and/or the Post-Closing Adjustment shall be conclusive and binding upon the parties hereto.

(d) Payment of Post-Closing Adjustment.

(i) If the Post-Closing Adjustment is a negative number, Buyer and Sellers shall, within five (5) Business Days after the final determination of the Post-Closing Adjustment, jointly instruct the Escrow Agent to disburse from the Purchase Price Adjustment Escrow Fund by wire transfer of immediately available funds (A) to Buyer, the Post-Closing Adjustment, and (B) to each Seller such Seller’s Pro Rata Share of any amounts remaining in the Purchase Price Adjustment Escrow Fund. If the Post-Closing Adjustment is greater than the amount held in the Purchase Price Adjustment Escrow Fund, then Sellers and Buyer shall jointly instruct the Escrow Agent to disburse from the Indemnification Escrow Fund by wire transfer of immediately available funds to Buyer the amount by which the Post-Closing Adjustment exceeds the amount in the Purchase Price Adjustment Escrow Fund (up to the amount in the Indemnification Escrow Fund).

(ii) If the Post-Closing Adjustment is a positive number, Buyer shall, within five (5) Business Days after the final determination of the Post-Closing Adjustment, (A) distribute the applicable Seller’s Pro Rata Share of the Post-Closing Adjustment to such Seller and (B) Sellers and Buyer shall jointly instruct the Escrow Agent to disburse the Purchase Price Adjustment Escrow Fund to such Seller by wire transfer of immediately available funds the applicable Seller’s Pro Rata Share of the Purchase Price Adjustment Escrow Fund.



(c) **Adjustments for Tax Purposes.** Any payments made pursuant to Section 2.06 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

**Section 2.07 Closing.** Subject to the terms and conditions of this Agreement, the closing of the Sale (the “**Closing**”) shall take place on the date hereof, remotely by exchange of documents and signatures (or their electronic counterparts), or at such other time or on such other date or at such other place as the Company Parent and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the “**Closing Date**”). The effective time of the Closing shall be deemed to occur as of 11:59 p.m. Eastern time on the Closing Date (the “**Effective Time**”).

**Section 2.08 Earn-Out.**

(a) **Earn-out Payments.** As additional consideration for the Shares, at such times as provided in Section 2.08(d), Buyer (or, at the direction of Buyer, the Company Parent or another designee of Buyer, so long as Buyer remains an obligor thereof) shall, if the Adjusted EBITDA for the Calculation Period equals or exceeds the Adjusted EBITDA Threshold for such Calculation Period, pay to Sellers with respect to each Calculation Period within the Earn-out Period an amount, if any (each, an “**Earn-out Payment**”), equal to the product of (i) an amount equal to the Adjusted EBITDA for such Calculation Period multiplied by (ii) the Earn-out Factor; provided, that in no event shall Buyer be obligated to pay Sellers more than \$3,000,000 in the aggregate for all Calculation Periods during the Earn-out Period. If the Adjusted EBITDA for a particular Calculation Period does not exceed the applicable Adjusted EBITDA Threshold, no Earn-out Payment shall be due for such Calculation Period.

(b) **Procedures Applicable to Determination of the Earn-out Payments.**

(i) On or before the date which is ninety-five (95) days after the last day of each Calculation Period or five (5) days after the completion of the audit for a Calculation Period ended at the end of the fiscal year, whichever is first (each such date, an “**Earn-out Calculation Delivery Date**”), Buyer shall prepare and deliver to Sellers a written statement (in each case, an “**Earn-out Calculation Statement**”) setting forth in reasonable detail its determination of Adjusted EBITDA for the applicable Calculation Period and its calculation of the resulting Earn-out Payment (in each case, an “**Earn-out Calculation**”).

(ii) Sellers shall have thirty (30) days after receipt of the Earn-out Calculation Statement for each Calculation Period (in each case, the “**Earn-out Review Period**”) to review the Earn-out Calculation Statement and the Earn-out Calculation set forth therein. During the Earn-out Review Period, Sellers and their accountants (not to exceed one accounting firm for all Sellers) shall have the right to inspect Buyer’s and the Company Parent’s books and records upon reasonable prior notice and during normal business hours at the Company Parent’s offices, upon reasonable prior notice and solely for purposes reasonably related to the determinations of Adjusted EBITDA and the resulting Earn-out Payment. Prior to the expiration of the Earn-out Review Period, Sellers may object to the Earn-out Calculation set forth in the Earn-out Calculation Statement for the applicable Calculation Period by delivering a written notice of objection (an “**Earn-out Calculation Objection Notice**”) to Buyer. Any Earn-out Calculation Objection Notice

shall specify the items in the applicable Earn-out Calculation disputed by Sellers and shall describe in

reasonable detail the basis for such objection, as well as the amount in dispute. If Sellers fail to deliver an Earn-out Calculation Objection Notice to Buyer prior to the expiration of the Earn-out Review Period, then the Earn-out Calculation set forth in the Earn-out Calculation Statement shall be final and binding on the parties hereto. If Sellers timely deliver an Earn-out Calculation Objection Notice, Buyer and Sellers shall negotiate in good faith to resolve the disputed items and agree upon the resulting amount of the Adjusted EBITDA and the Earn-out Payment for the applicable Calculation Period. If Buyer and Sellers are unable to reach agreement within thirty (30) days after such an Earn-out Calculation Objection Notice has been given, all unresolved disputed items shall be promptly referred to the Independent Accountant. The Independent Accountant shall be directed to render a written report on the unresolved disputed items with respect to the applicable Earn-out Calculation as promptly as practicable, but in no event greater than thirty (30) days after such submission to the Independent Accountant, and to resolve only those unresolved disputed items set forth in the Earn-out Calculation Objection Notice. In the event that any dispute is referred to the Independent Accountant for resolution pursuant to this Section 2.08, the Adjusted EBITDA and the Earn-out Payment as determined by the Independent Accountant shall not be less than the amounts proposed by Buyer pursuant to this Section 2.08 and shall not be greater than the amounts proposed by Sellers pursuant to this Section 2.08. If unresolved disputed items are submitted to the Independent Accountant, Buyer and Sellers shall each furnish to the Independent Accountant such work papers, schedules and other documents and information relating to the unresolved disputed items as the Independent Accountant may reasonably request. The Independent Accountant shall resolve the disputed items based solely on the applicable definitions and other terms in this Agreement and the presentations by Buyer and Sellers, and not by independent review. The resolution of the dispute and the calculation of Adjusted EBITDA that is the subject of the applicable Earn-out Calculation Objection Notice by the Independent Accountant shall be final and binding on the parties hereto. The fees and expenses of the Independent Accountant shall be borne by Sellers and Buyer in proportion to the amounts by which their respective calculations of Adjusted EBITDA differ from Adjusted EBITDA as finally determined by the Independent Accountant.

(c) **Independence of Earn-out Payments.** Buyer's obligation to pay each of the Earn-out Payments to Sellers in accordance with Section 2.08(a) is an independent obligation of Buyer and is not otherwise conditioned or contingent upon the satisfaction of any conditions precedent to any preceding or subsequent Earn-out Payment and the obligation to pay an Earn-out Payment to Sellers shall not obligate Buyer to pay any preceding or subsequent Earn-out Payment. For the avoidance of doubt and by way of example, if the conditions precedent to the payment of the Earn-out Payment for the first Calculation Period are not satisfied, but the conditions precedent to the payment of the Earn-out Payment for the second Calculation Period are satisfied, then Buyer would be obligated to pay such Earn-out Payment for the second Calculation Period for which the corresponding conditions precedent have been satisfied despite the fact that the Earn-out Payment for the first Calculation Period has not yet been paid by Buyer.

(d) **Timing of Payment of Earn-out Payments.** Any Earn-out Payment that Buyer is required to pay pursuant to Section 2.08(a) hereof shall be paid in full no later than five (5)

Business Days following the date upon which the determination of Adjusted EBITDA for the applicable Calculation Period becomes final and binding upon the parties as provided in

Section 2.08(b)(ii) (including any final resolution of any dispute raised by Sellers in an Earn-out Calculation Objection Notice). Buyer shall pay to each Seller their Pro Rata Share of the applicable Earn-out Payment in cash by wire transfer of immediately available funds pursuant to the written instructions provided by the applicable Seller.

(e) **Acceleration upon Buyer's Election.** At any time after the Closing Date, Buyer may, in its sole discretion, elect to make a payment (the "**Acceleration Payment**") to Sellers in the amount of \$3,000,000 *minus* any Earn-out Payments previously paid by Buyer to Sellers pursuant to this Section 2.08 which, upon payment thereof, shall fully release and discharge Buyer and its successors and assigns from any further liability or obligation pursuant to this Section 2.08.

(f) **Post-closing Operation of the Company Parent.** Subject to the terms of this Agreement and the other Ancillary Documents, subsequent to the Closing, Buyer shall continue to operate the Company Parent in good faith and in a manner consistent with the best practices for the industry and with a view toward maximizing the profitability of the Company Parent during the Calculation Periods and the calculation of the Earn-out Payment, and Buyer shall not take any actions that would have the purpose or effect, directly or indirectly, of avoiding or reducing any of the Earn-out Payments that would otherwise be owed pursuant to this Section 2.08 or otherwise evading or mitigating any of the Earn-out Payments that would otherwise be owed pursuant to this Section 2.08. After the Closing until the later of (i) June 30, 2028 and (ii) the date on which the Notes have been paid and otherwise satisfied in full thereunder, Buyer and its Affiliates shall grant access to Sellers or their authorized agents to relevant books and records of Buyer and the Company Parent and their respective Affiliates at such times as Sellers shall reasonably request for purposes of reviewing the performance of the business operated by, or in connection with, the Company Parent and evaluating Buyer's compliance with this Section 2.08(f). Within thirty (30) days of the Closing Date, Buyer shall deliver to Sellers a true, correct, and accurate consolidated balance sheet of Buyer and its subsidiaries, prepared in accordance with GAAP, reflecting the position of Buyer and its subsidiaries as of 12:01 AM ET on the day after the Closing Date.

(g) **Right of Set-off.** Buyer shall have the right to withhold and set off against any amount otherwise due to be paid pursuant to this Section 2.08 the amount of (i) any Post-Closing Adjustment owed to it pursuant to Section 2.06 (solely to the extent that such amount is not otherwise satisfied from either Purchase Price Adjustment Escrow Fund or the Indemnification Escrow Fund) and (ii) any Losses to which a Buyer Indemnitee may be entitled to recover from Sellers pursuant to Section 8.08 of this Agreement (solely to the extent that such amount is not satisfied from the Indemnification Escrow Fund and to the extent that there is no coverage for such Losses under the R&W Insurance Policy); *provided*, that, prior to exercising its rights set forth in this Section 2.08(g), Buyer will provide prior written notice to Sellers of its intent to exercise such set-off rights and will provide Sellers with reasonable opportunity to meet to discuss and attempt to resolve any such issues.

(h) **No Security.** The parties hereto understand and agree that (i) the contingent rights to receive any Earn-out Payment shall not be represented by any form of certificate or other instrument and do not constitute an equity or ownership interest in Buyer or the Company Parent, (ii) no Seller shall have any rights as a securityholder of Buyer or the Company Parent as a result of such Seller's contingent right to receive any Earn-out Payment hereunder, and (iii) no interest is payable with respect to any Earn-out Payment except in the event that Buyer fails to pay such

Earn- out Payment when such Earn-out Payment becomes due and payable pursuant to this Agreement.

**ARTICLE III**  
**REPRESENTATIONS AND WARRANTIES OF SELLERS AND COMPANY PARENT**

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, Sellers and Company Parent represent and warrant to Buyer that the statements contained in this ARTICLE III are true and correct as of the date hereof.

**Section 3.01 Organization and Authority of Sellers and Trustees of Seller.** Each Seller is a trust validly existing under the Laws of Ontario, Canada. Each Seller and such Seller's trustees have full power and authority to enter into this Agreement and the Ancillary Documents to which such Seller and such Seller's trustees are a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each Seller and such Seller's trustees of this Agreement and the Ancillary Document to which Seller is a party, the performance by each Seller of its obligations hereunder and thereunder, and the consummation by such Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of Seller and such Seller's trustees. This Agreement has been duly executed and delivered by Seller and such Seller's trustees, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of such Seller and such Seller's trustees enforceable against such Seller and such Seller's trustees in accordance with its terms. When the Ancillary Documents to which such Seller or any of its trustees is or will be a party, if any, have been duly executed and delivered by such Seller and such Seller's trustees (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Documents will constitute a legal and binding obligation of such Seller and such Seller's trustees, enforceable against such Persons in accordance with its terms.

**Section 3.02 Organization and Authority of Company Parent.** Company Parent is a corporation duly organized, validly existing and in good standing under the Laws of the Commonwealth of Kentucky. Company Parent has full corporate power and authority to enter into this Agreement and the Ancillary Documents to which Company Parent is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Company Parent of this Agreement and the Ancillary Documents to which Company Parent is a party, the performance by Company Parent of its obligations hereunder and thereunder, and the consummation by Company Parent of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of Company Parent. This Agreement has been duly executed and delivered by Company Parent, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Company Parent enforceable against Company Parent in accordance with its terms. When the Ancillary Documents to which Company Parent is or will be a party, if any, have been duly executed and delivered by Company Parent (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Documents will constitute a legal and binding obligation of Company Parent enforceable against Company Parent in accordance with its terms. The Company Parent is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as conducted by the Company Parent made such licensing or qualification necessary.

**Section 3.03 Organization and Qualification of the Company.** Prior to the consummation of the Short-Form Merger, the Company was a corporation duly organized, validly existing and in good standing under the Laws of the Commonwealth of Kentucky and had full corporate power and authority

to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 3.03 of the Disclosure Schedules sets forth each



jurisdiction in which the Company was licensed or qualified to do business prior to the consummation of the Short-Form Merger, and the Company was duly licensed or qualified to do business and was in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as conducted by the Company prior to the Short-Form Merger made such licensing or qualification necessary.

**Section 3.04 Authority.** Company Parent has full corporate power and authority to enter into and perform its obligations under this Agreement and the Ancillary Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Company Parent of this Agreement and any Ancillary Document to which it is a party and the consummation by the Company Parent of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of the Company Parent, and no other corporate proceedings on the part of the Company Parent are necessary to authorize the execution, delivery and performance of this Agreement or to consummate the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by the Company Parent, and (assuming due authorization, execution and delivery by each other party hereto) this Agreement constitutes a legal, valid and binding obligation of the Company Parent enforceable against the Company Parent in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and by general principles of equity. When each Ancillary Document to which the Company Parent is or will be a party has been duly executed and delivered by the Company Parent (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of the Company Parent enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and by general principles of equity.

**Section 3.05 No Conflicts; Consents.**

(a) The execution, delivery and performance by each Seller of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, including without limitation the Charter Amendment, the Pre-Merger Purchase, and the Short-Form Merger, do not and will not: (i) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation of the Company Parent ("**Company Parent Charter**"), or the by-laws or other organizational documents of the Company Parent (together with the Company Parent Charter, the "**Company Parent Charter Documents**"); (ii) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to such Seller or the Company Parent; or (iii) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of the Company Parent. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to such Seller or the Company Parent in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby.

(b) The execution, delivery and performance by each Seller of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, including the Short-Form Merger, do not and will not (and,

with respect to the Short-Form Merger, did not), except as set forth in Section 3.05(b) of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation

or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Material Contract to which such Seller or the Company Parent is a party or by which such Seller or the Company Parent is bound or to which any of their respective properties and assets are subject or any Permit affecting the properties, assets or business of the Company Parent.

**Section 3.06 Capitalization.**

(a) Immediately prior to the consummation of the Short-Form Merger, with respect to the Company:

(i) The authorized capital stock of the Company consisted of 22,111,000 shares, of which 17,237,235 shares of Company Common Stock and 1,272,487 shares of Company Preferred Stock were issued and outstanding, in the amounts for each class and series of shares as set forth in Section 3.06(a) (i) of the Disclosure Schedules, as of the close of business on the date of this Agreement.

(ii) Section 3.06(a)(ii) of the Disclosure Schedules set forth the name of each Person that is the registered owner of any shares of the Company and the number of shares owned by such Person.

(iii) Except for 453,250 shares of unvested Class A Common Stock issued to employees, (1) no subscription, warrant, option, convertible or exchangeable security, or other right (contingent or otherwise) to purchase or otherwise acquire equity securities of the Company was authorized or outstanding, and (2) there was no commitment by the Company to issue shares, subscriptions, warrants, options, convertible or exchangeable securities, or other such rights or to distribute to holders of any of its equity securities any evidence of indebtedness or asset, to repurchase or redeem any securities of the Company or to grant, extend, accelerate the vesting of, change the price of, or otherwise amend any warrant, option, convertible or exchangeable security or other such right. There are no declared or accrued unpaid dividends with respect to any shares of Company Common Stock.

(iv) All issued and outstanding shares of Company Common Stock were (1) duly authorized, validly issued, fully paid and non-assessable; (2) not subject to any preemptive rights created by statute, the organizational documents of the Company or any agreement to which the Company is a party; and (3) free of any Encumbrances created by the Company in respect thereof. All issued and outstanding shares of Company Common Stock were issued in compliance with applicable Law.

(v) Except for 453,250 shares of unvested Class A Common Stock issued to employees, no outstanding Company Common Stock is subject to vesting or forfeiture rights or repurchase by the Company. There are no outstanding or authorized stock appreciation, dividend equivalent, phantom stock, profit participation or other similar rights with respect to the Company or any of its securities.

(vi) All distributions, dividends, repurchases and redemptions of the capital stock (or other equity interests) of the Company were undertaken in compliance with the organizational documents of the Company then in effect, any agreement to which the Company then was a party and in compliance with applicable Law.

(b) With respect to the Company Parent:

(i) The authorized capital stock of the Company Parent consists of 1,000 shares of common stock (“**Company Parent Common Stock**”), of which 50 shares of Company Parent Common Stock have been issued to The John Locke Family Trust and 50 shares of Company Parent Common Stock have been issued to The Richard Stanley Family Trust. Except for the issued and outstanding shares identified in the preceding sentence, no capital stock of the Company Parent is issued and outstanding.

(ii) (1) there is no subscription, warrant, option, convertible or exchangeable security, or other right (contingent or otherwise) to purchase or otherwise acquire equity securities of the Company Parent authorized or outstanding, and (2) there is no commitment by the Company Parent to issue shares, subscriptions, warrants, options, convertible or exchangeable securities, or other such rights or to distribute to holders of any of its equity securities any evidence of indebtedness or asset, to repurchase or redeem any securities of the Company Parent or to grant, extend, accelerate the vesting of, change the price of, or otherwise amend any warrant, option, convertible or exchangeable security or other such right. There are no declared or accrued unpaid dividends with respect to any shares of Company Parent capital stock.

(iii) All issued and outstanding shares of Company Parent capital stock were (1) duly authorized, validly issued, fully paid and non-assessable; (2) not subject to any preemptive rights created by statute, the Company Parent Charter Documents or any agreement to which the Company Parent is a party; and (3) free of any Encumbrances created by the Company Parent in respect thereof. All issued and outstanding shares of Company Parent Common Stock were issued in compliance with applicable Law.

(iv) No outstanding Company Parent Common Stock is subject to vesting or forfeiture rights or repurchase by the Company Parent. There are no outstanding or authorized stock appreciation, dividend equivalent, phantom stock, profit participation or other similar rights with respect to the Company Parent or any of its securities.

(v) All distributions, dividends, repurchases and redemptions of the capital stock (or other equity interests) of the Company Parent were undertaken in compliance with the Company Parent Charter Documents then in effect, any agreement to which the Company Parent then was a party and in compliance with applicable Law.

### **Section 3.07 Subsidiaries.**

(a) Section 3.07(a) of the Disclosure Schedules (i) contains an accurate and complete list of all subsidiaries of the Company Parent and (ii) sets forth the entire authorized equity interests



of each subsidiary and a complete and correct list of the issued and outstanding equity interests of each subsidiary, including the name of the record and beneficial owner thereof and the number of equity interests held thereby. Other than the Company, the subsidiaries set forth on Section 3.07(a) of the Disclosure Schedules have not had any operations.

(b) Except as set forth on Section 3.07(a) of the Disclosure Schedule, the Company Parent does not own, or have any interest in any shares or have an ownership interest in, any other Person.

**Section 3.08 Financial Statements.** Complete copies of the Company's audited financial statements consisting of the balance sheet of the Company as at December 31 in each of the years 2020, 2021 and 2022 and the related statements of income and retained earnings, stockholders' equity and cash flow for the years then ended (the "**Audited Financial Statements**"), and unaudited financial statements consisting of the balance sheet of the Company as at May 7, 2023 and the related statements of income and retained earnings, stockholders' equity and cash flow for the three-month period then ended (the "**Interim Financial Statements**") and together with the Audited Financial Statements, the "**Financial Statements**") are included in the Disclosure Schedules. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Audited Financial Statements). The Financial Statements are based on the books and records of the Company and fairly present in all material respects the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated. The balance sheet of the Company as of December 31, 2022 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**", and the balance sheet of the Company as of May 7, 2023 is referred to herein as the "**Interim Balance Sheet**" and the date thereof as the "**Interim Balance Sheet Date**". The Company maintains a standard system of accounting established and administered in accordance with GAAP.

**Section 3.09 Undisclosed Liabilities.** The Company Parent has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise ("**Liabilities**"), except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date and (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date.

**Section 3.10 Absence of Certain Changes, Events and Conditions.** Except as set forth on Section 3.10 of the Disclosure Schedules and except for the Charter Amendment, Pre-Merger Purchase, and Short-Form Merger, since the Interim Balance Sheet Date, the business of the Company Parent has been conducted in the ordinary course of business consistent with past practice, and there has not been, with respect to the Company Parent, any:

- (a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;
- (b) amendment of the charter, by-laws or other organizational documents of the Company or the Company Parent;

- (c) split, combination or reclassification of any shares of its capital stock;
- (d) issuance, sale or other disposition of any of its capital stock or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its capital stock;
- (e) declaration or payment of any dividends or distributions on or in respect of any of its capital stock or redemption, purchase or acquisition of its capital stock;
- (f) material change in any method of accounting or accounting practice of the Company or the Company Parent, except as required by GAAP or as disclosed in the notes to the Financial Statements;
- (g) material change in the Company's or the Company Parent's cash management practices and its policies, practices and procedures with respect to collection of accounts receivable, establishment of reserves for uncollectible accounts, accrual of accounts receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;
- (h) intentionally omitted;
- (i) incurrence, assumption or guarantee of any indebtedness for borrowed money except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;
- (j) transfer, assignment, sale or other disposition of any of the assets shown or reflected in the Balance Sheet or cancellation of any debts or entitlements other than in the ordinary course of business;
- (k) transfer or assignment of or grant of any license or sublicense under or with respect to any Company Intellectual Property or Company IP Agreements except non-exclusive licenses or sublicenses granted in the ordinary course of business consistent with past practice;
- (l) abandonment or lapse of or failure to maintain in full force and effect any material Company IP Registration, or failure to take or maintain reasonable measures to protect the confidentiality or value of any Trade Secrets included in the Company Intellectual Property;
- (m) material damage, destruction or loss (whether or not covered by insurance) to its property;
- (n) capital investment in, or loan to, any other Person;
- (o) acceleration, termination, material modification to or cancellation of any Material Contract to which the Company Parent is a party or by which it is bound;
- (p) material capital expenditures;
- (q) imposition of any Encumbrance upon any of the Company Parent properties, capital stock or assets, tangible or intangible;

(r) unless in the ordinary course of business and consistent with past practice and not, individually or in the aggregate, material, (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of its current or former employees, officers, directors, independent contractors or consultants, other than as provided for in any written agreements or required by applicable Law, (ii) change in the terms of employment for any employee, to the extent relating to compensation and or benefits for which the aggregate costs and expenses exceed \$250,000 or any termination of any employees, except for cause, or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, independent contractor or consultant;

(s) hiring or promoting of any person as or to (as the case may be) an officer or hiring or promoting any employee that directly reports to an officer except to fill a vacancy in the ordinary course of business;

(t) except as required by applicable law, adoption, modification or termination of any:

(i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant, (ii) Benefit Plan or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;

(u) loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its stockholders or current or former directors, officers and employees;

(v) entry into a new line of business or abandonment or discontinuance of existing lines of business;

(w) except for the Short-Form Merger, adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(x) purchase, lease or other acquisition of the right to own, use or lease any property or assets for an amount in excess of \$200,000, individually (in the case of a lease, per annum) or \$250,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of inventory or supplies in the ordinary course of business consistent with past practice;

(y) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;

(z) action by the Company Parent to make, change or rescind any material Tax election, amend any material Tax Return in any material respect or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of materially increasing the Tax liability or materially reducing any Tax asset of Buyer in respect of any Post-Closing Tax Period; or



(aa) Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

### **Section 3.11 Material Contracts.**

(a) Section 3.11(a) of the Disclosure Schedules lists each of the following Contracts of the Company Parent (including Contracts that were previously entered into by the Company that became Contracts of the Company Parent by operation of Law as a result of the Short-Form Merger) (such Contracts, together with all Contracts concerning the occupancy, management or operation of any Real Property (including, without limitation, brokerage contracts) listed or otherwise disclosed in Section 3.12(b) of the Disclosure Schedules and all Company IP Agreements set forth in Section 3.14(b) of the Disclosure Schedules, being “**Material Contracts**”):

(i) each Contract of the Company Parent involving aggregate consideration in excess of \$500,000 and which, in each case, cannot be cancelled by the Company Parent without penalty or without more than 90 days’ notice;

(ii) all Contracts that require the Company Parent to purchase its total requirements of any product or service from a third party or that contain “take or pay” provisions;

(iii) all Contracts that provide for the assumption by the Company Parent of any Tax or environmental Liability of any Person;

(iv) all Contracts that relate to the acquisition or disposition by the Company Parent of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(v) all broker, distributor, dealer, manufacturer’s representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts to which the Company Parent is a party;

(vi) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) to which the Company Parent is a party and which are not cancellable without material penalty or without more than 90 days’ notice;

(vii) except for Contracts relating to trade payables, all Contracts relating to Indebtedness (including, without limitation, guarantees) of the Company Parent;

(viii) all Contracts with any Governmental Authority to which the Company Parent is a party (“**Government Contracts**”);

(ix) all Contracts that limit or purport to limit the ability of the Company Parent to compete in any line of business or with any Person or in any geographic area or during any period of time;

(x) any Contracts to which the Company Parent is a party that provide for any joint venture, partnership or similar arrangement by the Company Parent;

(xi) all Contracts between or among the Company Parent on the one hand and a Seller or any Affiliate of a Seller (other than the Company Parent) on the other hand; and

(xii) all collective bargaining agreements or Contracts with any Union to which the Company Parent is a party.

(b) Each Material Contract is valid and binding on the Company Parent in accordance with its terms and is in full force and effect. None of the Company Parent or, to Sellers' Knowledge, any other party thereto is in breach of, or default under (or is alleged to be in breach of or default under), or has provided or received any written or, to Sellers' Knowledge, oral notice of any intention to terminate any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default by the Company Parent or, to Sellers' Knowledge, by any other party under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer.

**Section 3.12 Title to Assets; Real Property.**

(a) Except as set forth in Section 3.12(a) of the Disclosure Schedules, the Company Parent has good and valid (and, in the case of owned Real Property, good and marketable fee simple) title to, or a valid leasehold interest in, all Real Property and personal property and other assets reflected in the Audited Financial Statements or acquired after the Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the Balance Sheet Date. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

(i) liens for Taxes not yet due and payable, as well as any Taxes currently due and payable being contested in good faith by appropriate proceedings and as to which adequate reserves have been established on the Financial Statements;

(ii) mechanics, carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the business of the Company Parent;

(iii) all reservations, covenants, conditions, restrictions, easements, reservations, limitations and other matters of public record;

(iv) any matters not shown by the public records that would be disclosed by an accurate survey of the Real Property.

(v) all applicable zoning and building ordinances, codes and regulations;

(vi) legal highways, roads and rights of way; or

(vii) other than with respect to owned Real Property, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered

into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the business of the Company Parent.

(b) Section 3.12(b)(i) of the Disclosure Schedules lists (i) the street address of each parcel of Real Property; (ii) if such property is leased or subleased by the Company Parent, the landlord under the lease, the rental amount currently being paid, and the expiration of the term of such lease or sublease for each leased or subleased property; and (iii) the current use of such property. With respect to owned Real Property, Sellers have delivered or made available to Buyer true, complete and correct copies of the deeds and other instruments (as recorded) by which the Company Parent acquired such Real Property that are in the possession of Sellers or the Company Parent, and copies of all title insurance policies, opinions, abstracts and surveys in the possession of Sellers or the Company Parent and relating to the Real Property. With respect to leased Real Property, Sellers have delivered or made available to Buyer true, complete and correct copies of any leases affecting the Real Property. Except as set forth in Section 3.12(b)(ii) of the Disclosure Schedules, the Company Parent is not a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased Real Property. The use and operation of the Real Property in the conduct of the Company Parent's business do not violate in any material respect any Law, covenant, condition, restriction, easement, license, permit or agreement to which the Real Property is subject. No material improvements constituting a part of the Real Property encroach on real property owned or leased by a Person other than the Company Parent. There are no Actions pending nor threatened in writing against or affecting the Real Property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

**Section 3.13 Condition and Sufficiency of Assets.** Except as set forth on Section 3.13 of the Disclosure Schedules, to Sellers' Knowledge, the buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of the Company Parent are, structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs and except to the extent that such maintenance or repair for any individual building, plant, structure, furniture, fixture, machinery, equipment, vehicle, or other item of tangible personal property would not exceed \$1,000,000. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property currently owned or leased by the Company Parent, together with all other properties and assets of the Company Parent, are sufficient for the continued conduct of the Company Parent's business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the business of the Company Parent as currently conducted.

**Section 3.14 Intellectual Property.**

(a) Section 3.14(a) of the Disclosure Schedules contains a correct, current, and complete list of: (i) all Company IP Registrations, specifying as to each, as applicable: the title, mark, or design; the record owner and inventor(s), if any; the jurisdiction by or in which it has been issued, registered, or filed; the patent, registration, or application serial number; the issue, registration, or filing date; and the current status; (ii) all unregistered Trademarks included in the Company Intellectual Property; and (iii) all proprietary Software of the Company Parent; and (iv)

all other Company Intellectual Property used or held for use in the Company Parent's business as currently conducted.

(b) Section 3.14(b) of the Disclosure Schedules contains a correct, current and complete list of all Company IP Agreements, including all modifications, amendments, supplements and/or waivers, specifying for each the date, title and parties thereto, and separately identifying the Company IP Agreements: (i) under which the Company Parent is a licensor or otherwise grants to any Person any right or interest relating to any Company Intellectual Property; (ii) under which the Company Parent is a licensee or otherwise granted any right or interest relating to the Intellectual Property of any Person (excluding shrink-wrap, click-wrap, or other similar agreements for commercially available off-the-shelf Software); and (iii) which otherwise relate to the Company Parent's ownership or use of Intellectual Property, in each case identifying the Intellectual Property covered by such Company IP Agreement. Sellers have provided Buyer with true and complete copies (or in the case of any oral agreements, a complete and correct written description) of all Company IP Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Company IP Agreement is valid and binding on the Company Parent in accordance with its terms and is in full force and effect. Neither the Company Parent nor any other party thereto is, or is alleged to be, in breach of or default under, or has provided or received any written or, to Sellers' Knowledge, oral notice of breach of, default under, or intention to terminate (including by non-renewal), any Company IP Agreement.

(c) The Company Parent is the sole and exclusive legal and beneficial, and with respect to the Company IP Registrations, record, owner of all right, title, and interest in and to the Company Intellectual Property, and, to Sellers' Knowledge, has the valid and enforceable right to use all other Intellectual Property used in or necessary for the conduct of the Company Parent's business as currently conducted, in each case, free and clear of Encumbrances other than Permitted Encumbrances. The Company Parent has entered into binding, valid and enforceable, written Contracts with each current and former employee and independent contractor who has developed any material Company Intellectual Property on behalf of the Company Parent (if any) whereby such employee or independent contractor (i) acknowledges the Company Parent's exclusive ownership of all Intellectual Property invented, created, or developed by such employee who has developed any material Intellectual Property on behalf of the Company Parent (if any) or independent contractor within the scope of his or her employment or engagement with the Company Parent; (ii) grants to the Company Parent a present, irrevocable assignment of any ownership interest such employee or independent contractor may have in or to such Intellectual Property; and (iii) irrevocably waives any right or interest, regarding any such Intellectual Property, to the extent permitted by applicable Law. All assignments and other instruments necessary to establish, record, and perfect the Company Parent's ownership interest in the Company IP Registrations have been validly executed, delivered, and filed with the relevant Governmental Authorities and authorized registrars.

(d) Neither the execution, delivery nor performance of this Agreement, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of, or require the consent of any other Person in respect of, the Company Parent's right to own or use any Company Intellectual Property.

(e) All of the Company Intellectual Property and, to Sellers' Knowledge, Licensed Intellectual Property are valid and enforceable, and all Company IP Registrations are subsisting

and in full force and effect. All required filings and fees related to the Company IP Registrations have been timely submitted with and paid to the relevant Governmental Authorities and authorized registrars.

(f) The use of the Company Intellectual Property in the Company Parent's business as currently and formerly conducted has not infringed, misappropriated or otherwise violated the Intellectual Property or other rights of any Person. To Sellers' Knowledge, the use Licensed Intellectual Property in connection with the conduct of the business as currently and formerly conducted has not infringed, misappropriated or otherwise violated, the Intellectual Property or other rights of any Person. To Sellers' Knowledge, no Person has infringed, misappropriated or otherwise violated any Company Intellectual Property or Licensed Intellectual Property.

(g) There are no Actions (including any opposition, cancellation, revocation, review or other proceeding), whether settled, pending or, to Sellers' Knowledge, threatened in writing (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, or other violation by the Company Parent of the Intellectual Property of any Person; (ii) challenging the validity, enforceability, registrability, patentability, or ownership of any Company Intellectual Property or the Company Parent's right, title, or interest in or to any Company Intellectual Property; or (iii) by the Company Parent alleging any infringement, misappropriation or other violation by any Person of the Company Intellectual Property. Neither Sellers nor the Company Parent is aware of any facts or circumstances that could reasonably be expected to give rise to any such Action. The Company Parent is not subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or could reasonably be expected to restrict or impair the use of any Company Intellectual Property or Licensed Intellectual Property.

(h) Section 3.14(h) of the Disclosure Schedules contains a correct, current, and complete list of all social media accounts used in the Company Parent's business. The Company Parent has complied with all terms of use, terms of service, and other Contracts and all associated policies and guidelines relating to its use of any social media platforms, sites, or services (collectively, "**Platform Agreements**"). There are no Actions, whether settled, pending, or, to Sellers' Knowledge, threatened, alleging any (i) breach or other violation of any Platform Agreement by the Company Parent; or (ii) defamation, violation of publicity rights of any Person, or any other violation by the Company Parent in connection with its use of social media.

(i) All Company IT Systems are in good working condition and are sufficient for the operation of the Company Parent's business as currently conducted and as proposed to be conducted. Except as set forth in Section 3.14(i) of the Disclosure Schedules, in the past two years, there has been no malfunction, failure, continued substandard performance, denial-of-service, or other cyber incident, including any cyberattack, or other impairment of the Company IT Systems that has resulted or is reasonably likely to result in disruption or damage to the business of the Company Parent and that has not been remedied. The Company Parent has taken all commercially reasonable steps to safeguard the confidentiality, availability, security, and integrity of the Company IT Systems, including implementing and maintaining appropriate backup, disaster recovery, and Software and hardware support arrangements.

(j) To Sellers' Knowledge, the Company Parent has complied in all material respects with all applicable Laws and all internal or publicly posted policies, notices, and statements concerning the collection, use, processing, storage, transfer, and security of personal information





in the conduct of the Company Parent's business. Except as set forth in Section 3.14(j) of the Disclosure Schedules, in the past two years, the Company Parent has not (i) experienced any actual, alleged, or suspected data breach or other security incident involving personal information in its possession or control or (ii) been subject to or received any written notice of any audit, investigation, complaint, or other Action by any Governmental Authority or other Person concerning the Company Parent's collection, use, processing, storage, transfer, or protection of personal information or actual, alleged, or suspected violation of any applicable Law concerning privacy, data security, or data breach notification, and to Sellers' Knowledge, there are no facts or circumstances that could reasonably be expected to give rise to any such Action.

**Section 3.15 Inventory.** Except as set forth on Section 3.15 of the Disclosure Schedules, all inventory of the Company Parent, whether or not reflected in the Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All such inventory is owned by the Company Parent free and clear of all Encumbrances, and no inventory is held on a consignment basis.

**Section 3.16 Accounts Receivable.** The accounts receivable reflected on the Interim Balance Sheet and the accounts receivable arising after the Interim Balance Sheet Date (a) have arisen from bona fide transactions entered into by the Company Parent (or, to the extent such transactions were prior to the consummation of the Short-Form Merger, the Company) involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; and (b) constitute only valid, undisputed claims of the Company Parent not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice. The reserve for bad debts shown on the Interim Balance Sheet or, with respect to accounts receivable arising after the Interim Balance Sheet Date, on the accounting records of the Company Parent (or, to the extent such transactions were prior to the consummation of the Short-Form Merger, the Company) have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

**Section 3.17 Customers and Suppliers.**

(a) Section 3.17(a)(i) of the Disclosure Schedules sets forth (i) each customer who has paid aggregate consideration to the Company or the Company Parent for goods or services rendered in an amount greater than or equal to \$2,500,000 for each of the two most recent fiscal years (collectively, the "**Material Customers**"); and (ii) the amount of consideration paid by each Material Customer during such periods. Except as set forth in Section 3.17(a)(ii) of the Disclosure Schedules, neither the Company nor the Company Parent has received any written or, to Sellers' Knowledge, oral notice, and has no other Knowledge, that any of its Material Customers has ceased, or intends to cease, to use its goods or services or to otherwise terminate or materially reduce its relationship with the Company Parent (or, prior to the consummation of the Short-Form Merger, the Company).

(b) Section 3.17(b) of the Disclosure Schedules sets forth (i) each supplier to whom the Company or Company Parent has paid consideration for goods or services rendered in an amount greater than or equal to \$2,000,000 for each of the two most recent fiscal years (collectively, the "**Material Suppliers**"); and (ii) the amount of purchases from each Material

Supplier during such periods. The Company Parent (or, prior to the consummation of the Short-Form Merger, the

Company) has not received any written or, to Sellers' Knowledge, oral notice, and has no other Knowledge, that any of its Material Suppliers has ceased, or intends to cease, to supply goods or services to the Company Parent (or, prior to the consummation of the Short-Form Merger, the Company) or to otherwise terminate or materially reduce its relationship with the Company Parent (or, prior to the consummation of the Short-Form Merger, the Company).

**Section 3.18 Insurance.** Section 3.18 of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by Company Parent and relating to the assets, business, operations, employees, officers and directors of the Company Parent (or, to the extent such policy or binder was obtained prior to the consummation of the Short-Form Merger, the Company) (collectively, the "**Insurance Policies**"), and true and complete copies of such Insurance Policies have been made available to Buyer. Such Insurance Policies are in full force and effect and shall remain in full force and effect following the consummation of the transactions contemplated by this Agreement. Neither Sellers nor any of their Affiliates (including the Company) has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each Insurance Policy. The Insurance Policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of the Company Parent. All such Insurance Policies (a) are valid and binding in accordance with their terms and (b) have not been subject to any lapse in coverage. There are no claims related to the business of the Company or the Company Parent pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. None of Sellers or any of their Affiliates (including the Company) is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Company or the Company Parent and are sufficient for compliance with all applicable Laws and Contracts to which the Company Parent is a party or by which it is bound.

**Section 3.19 Legal Proceedings; Governmental Orders.**

(a) Except as set forth in Section 3.19(a) of the Disclosure Schedules, there are no Actions pending or, to Sellers' Knowledge, threatened in writing (i) against or by the Company Parent affecting any of its properties or assets (or by or against Sellers or any of their Affiliates thereof and relating to the Company Parent); or (ii) against or by the Company Parent, Sellers or any of their Affiliates of a Seller that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) Except as set forth in Section 3.19(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company Parent or any of its properties or assets.

**Section 3.20 Compliance With Laws; Permits.**



(a) Except as set forth in Section 3.20(a) of the Disclosure Schedules, the Company Parent has complied, and is now complying, with all Laws applicable to it or its business, properties or assets.

(b) All material Permits required for the Company Parent to conduct its business have been obtained by it and are valid and in full force and effect in all material respects. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Section 3.20(b) of the Disclosure Schedules lists all current Permits issued to the Company Parent (or, to the extent such Permits were issued prior to the consummation of the Short-Form Merger, the Company), including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 3.20(b) of the Disclosure Schedules.

### **Section 3.21 Environmental Matters.**

(a) Except as set forth in Section 3.21 of the Disclosure Schedules, the Company Parent is currently and has been in material compliance with all Environmental Laws and has not, and no Seller has, received from any Person any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) The Company Parent has obtained and is in material compliance with all Environmental Permits (or, to the extent such Environmental Permit was obtained prior to the consummation of the Short-Form Merger, the Company has obtained and is in material compliance with all Environmental Permits) (each of which is disclosed in Section 3.21(b) of the Disclosure Schedules) necessary for the ownership, lease, operation or use of the business or assets of the Company Parent and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by Sellers through the Closing Date in accordance with Environmental Law, and to Sellers' Knowledge, there is no condition, event or circumstance that might prevent or impede, after the Closing Date, the ownership, lease, operation or use of the business or assets of the Company Parent as currently carried out.

(c) No real property currently or formerly owned, operated or leased by the Company is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) Except as set forth in Section 3.21(d) of the Disclosure Schedules there has been no Release of Hazardous Materials in contravention of Environmental Law with respect to the business or assets of the Company Parent or any real property currently or formerly owned, operated or leased by the Company Parent except where such Release was not reportable to Governmental Authorities under Environmental Law, and neither the Company Parent nor any Seller has received an Environmental Notice that any real property currently or formerly owned, operated or leased in connection with the business of the Company Parent (including soils, groundwater, surface water, buildings and other structure located on any such real property) has been contaminated with any Hazardous Material which could reasonably be expected to result in

an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, Sellers or the Company Parent.

(e) Section 3.21(e) of the Disclosure Schedules contains a complete and accurate list of all active or abandoned aboveground or underground storage tanks owned or operated by the Company Parent.

(f) Section 3.21(f) of the Disclosure Schedules contains a complete and accurate list of all off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by the Company Parent or Sellers and any predecessors as to which the Company Parent or Sellers may retain liability, and, to Sellers' Knowledge, none of these facilities or locations has been placed or proposed for placement on the National Priorities List (or CERCLIS) under CERCLA, or any similar state list, and neither Sellers nor the Company Parent has received any Environmental Notice regarding potential liabilities with respect to such off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by the Company Parent or Seller.

(g) Neither Sellers, the Company Parent, nor the Company has retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

(h) Sellers have provided or otherwise made available to Buyer and listed in Section 3.21(h) of the Disclosure Schedules: (i) any and all environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, economic models and other similar documents with respect to the business or assets of the Company Parent or any currently or formerly owned, operated or leased real property which are in the possession or control of the Sellers or Company Parent related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice or the Release of Hazardous Materials; and (ii) any and all material documents concerning planned or anticipated capital expenditures required to reduce, offset, limit or otherwise control pollution and/or emissions, manage waste or otherwise ensure compliance with current or future Environmental Laws (including, without limitation, costs of remediation, pollution control equipment and operational changes).

(i) To Sellers' Knowledge, as of the Closing Date, there exists no condition, event or circumstance concerning the Release or regulation of Hazardous Materials that might, after the Closing Date, prevent, impede or materially increase the costs associated with the ownership, lease, operation, performance or use of the business or assets of the Company Parent as currently carried out.

**Section 3.22 Employee Benefit Matters.**

(a) Section 3.22(a) of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, compensation, employment, consulting, vacation, paid time off (PTO), profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, severance, medical, vision, dental, disability, welfare, Code Section 125 cafeteria, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each "employee benefit plan"

within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to

ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by the Company Parent for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of the Company or Company Parent or any spouse or dependent of such individual, or under which the Company Parent has any Liability, contingent or otherwise (including by virtue of having ERISA Affiliates) (each, a “**Benefit Plan**”). At-will employment agreements that do not provide for severance shall not be considered Benefit Plans for purposes hereof. The Company Parent has separately identified in Section 3.22(a) of the Disclosure Schedules each Benefit Plan that is maintained, sponsored, contributed to, or required to be contributed to by the Company Parent primarily for the benefit of employees outside of the United States (a “**Non-U.S. Benefit Plan**”).

(b) With respect to each Benefit Plan, Sellers have made available to Buyer accurate, current and complete copies of each of the following: (i) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms as set forth in Section 3.22(b)(ii) of the Disclosure Schedules; (iii) where applicable, copies of any trust agreements or other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements and similar agreements, and investment management or investment advisory agreements, now in effect; (iv) copies of summary plan descriptions, summaries of material modifications; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service; (vi) in the case of any Benefit Plan for which a Form 5500 must be filed, a copy of the most recently filed Form 5500, with all corresponding schedules and financial statements attached; (vii) actuarial valuations and reports related to any Benefit Plans with respect to the most recently completed plan year; (viii) the most recent nondiscrimination tests performed under the Code; and (ix) copies of material notices, letters or other correspondence from the Internal Revenue Service, Department of Labor, Department of Health and Human Services, Pension Benefit Guaranty Corporation or other Governmental Authority relating to the Benefit Plan, in each case issued in the past 24 months.

(c) Each Benefit Plan and any related trust (other than any multiemployer plan within the meaning of Section 3(37) of ERISA (each a “**Multiemployer Plan**”)) has been established, administered and maintained in accordance with its terms and in compliance with all applicable Laws (including ERISA, the Code and any applicable local Laws). Each Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code (a “**Qualified Benefit Plan**”) is so qualified, and nothing has occurred that could reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan. Nothing has occurred with respect to any Benefit Plan that has subjected, or could reasonably be expected to subject the Company Parent to a material penalty under Section 502 of ERISA or to tax or penalty under Sections 4975 or 4980H of the Code.

(d) No pension plan (other than a Multiemployer Plan) which is subject to minimum funding requirements, including any multiple employer plan (each, a “**Single Employer Plan**”), in which employees of the Company Parent or any ERISA Affiliate participate or have participated has an “accumulated funding deficiency,” whether or not waived, or is subject to a lien for unpaid contributions under Section 303(k) of ERISA or Section 430(k) of the Code. No



Single Employer Plan covering employees of the Company Parent which is a defined benefit plan has an “adjusted

funding target attainment percentage,” as defined in Section 436 of the Code, less than 80%. All benefits, contributions and premiums relating to each Benefit Plan have been timely paid in accordance with the terms of such Benefit Plan and all applicable Laws and accounting principles, and all benefits accrued under any unfunded Benefit Plan have been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with, GAAP. All Non-U.S. Benefit Plans that are intended to be funded and/or book-reserved are funded and/or book-reserved, as appropriate, based upon reasonable actuarial assumptions.

(e) Neither the Company Parent nor any of its ERISA Affiliates has (i) incurred or reasonably expects to incur, either directly or indirectly, any material Liability under Title I or Title IV of ERISA or related provisions of the Code or applicable local Law relating to employee benefit plans; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; (iii) withdrawn from any Multiemployer Plan; (iv) engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA; (v) incurred taxes under Section 4971 of the Code with respect to any Single Employer Plan; or (vi) participated in a multiple employer welfare arrangement (MEWA).

(f) With respect to each Benefit Plan, (i) no such plan is a Multiemployer Plan except as set forth in Section 3.22(f) of the Disclosure Schedules, and (A) all contributions required to be paid by the Company Parent or its ERISA Affiliates have been timely paid to the applicable Multiemployer Plan, (B) neither the Company Parent nor any ERISA Affiliate has incurred any withdrawal liability under Title IV of ERISA which remains unsatisfied, and (C) a complete withdrawal from all such Multiemployer Plans on the Closing Date would not result in any material liability to the Company Parent and no Multiemployer Plan is in critical, endangered or seriously endangered status or has suffered a mass withdrawal; (ii) no such plan is a “multiple employer plan” within the meaning of Section 413(c) of the Code or a “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA); (iii) no Action has been initiated by the Pension Benefit Guaranty Corporation to terminate any such plan or to appoint a trustee for any such plan; (iv) no such plan or the plan of any ERISA Affiliate maintained or contributed to within the last six (6) years is a Single Employer Plan subject to Title IV of ERISA; and (v) no “reportable event,” as defined in Section 4043 of ERISA, with respect to which the reporting requirement has not been waived, has occurred with respect to any such plan.

(g) Each Benefit Plan that is an “employee benefit plan” within the meaning of Section 3(3) of ERISA can be terminated after the Closing, without material liabilities to the Company Parent other than ordinary administrative expenses typically incurred in such termination event. Except as set forth in Section 3.22(g) of the Disclosure Schedules, the Company Parent has no commitment or obligation and has not made any representations to any employee, officer, director, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement, in connection with the consummation of the transactions contemplated by this Agreement or otherwise.

(h) Other than as required under Sections 601 to 608 of ERISA or other applicable Law, no Benefit Plan provides post-termination or retiree health benefits to any individual for any reason, and neither the Company Parent nor any of its ERISA Affiliates has any Liability to provide post-termination or retiree health benefits to any individual or ever represented, promised or contracted to any individual that such individual would be provided with post-termination or retiree health benefits.

(i) There is no pending or, to Sellers' Knowledge, threatened Action relating to a Benefit Plan (other than routine claims for benefits), and no Benefit Plan has within the three years prior to the date hereof been the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Authority.

(j) Except as required by applicable law, there has been no amendment to any Benefit Plan that would materially increase the annual expense of maintaining such plan above the level of the expense incurred for the most recently completed fiscal year. Except as set forth in Section 3.22(j) of the Disclosure Schedules, the Company Parent has no commitment or obligation and has made no representation to any director, officer, employee, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement.

(k) Each Benefit Plan that is subject to Section 409A of the Code has been administered in material compliance with the requirements of Section 409A of the Code and all applicable regulatory guidance thereunder. The Company Parent does not have any obligation to gross up, indemnify or otherwise reimburse any individual for any excise taxes, interest or penalties incurred pursuant to Section 409A of the Code.

(l) Except with respect to the consummation of the Short-Form Merger and except as set forth in Section 3.22(l) of the Disclosure Schedules, neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, officer, employee, independent contractor or consultant of the Company Parent to severance pay or any other payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation (including stock-based compensation) due to any such individual; (iii) limit or restrict the right of the Company Parent to merge, amend or terminate any Benefit Plan; (iv) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; (v) result in "excess parachute payments" within the meaning of Section 280G(b) of the Code; (vi) require a "gross-up" or other payment to any "disqualified individual" within the meaning of Section 280G(c) of the Code. Sellers have made available to Buyer true results of any Section 280G analysis prepared (whether or not final) with respect to any disqualified individual in connection with the transactions; or (vii) require the Company Parent to pay any transaction bonuses, stay bonuses, retention payments, change in control payments, severance payments or other similar payments, in connection with the transactions contemplated by this Agreement, to any current or former employee, independent contractor or officer of the Company Parent or any of its Affiliates.

### **Section 3.23 Employment Matters.**

(a) Section 3.23(a) of the Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants of the Company Parent as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full-time or part-time and whether an employee, contractor or consultant); (iii) hire or retention date; (iv) current annual base compensation rate or contract fee; (v) commission, bonus or other incentive-based compensation; (vi) for employees, whether the



individual is classified as exempt or non-exempt under federal wage and hour Laws; (vii) for employees, any accrued but unused vacation time; (viii) a description of the fringe benefits provided to each such individual as of the date hereof; and (ix) employment location. As of the date hereof, all compensation, including wages, commissions, bonuses, fees and other compensation, payable to all employees, independent contractors or consultants of the Company Parent for services performed on or prior to the date hereof have been paid in full (or accrued in full on the audited balance sheet contained in the Closing Working Capital Statement), and there are no outstanding agreements, understandings or commitments of the Company Parent with respect to any compensation, commissions, bonuses or fees. Except as provided in Section 3.23(a) of the Disclosure Schedules, each person who is an employee of the Company Parent is employed at will, with no entitlement to severance in the event of termination.

(b) The Company Parent is not, and neither the Company Parent nor the Company has been for the past five years, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, “**Union**”), and there is not, and has not been for the past five years, any Union representing or purporting to represent any employee of the Company Parent, and, to Sellers’ Knowledge, no Union or group of employees is seeking or has sought to organize employees of the Company Parent for the purpose of collective bargaining. There has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting the Company Parent, the Company or any of their employees. The Company Parent has no duty to bargain with any Union.

(c) Except as set forth in Section 3.23(c)(i) of the Disclosure Schedules, the Company Parent is and has been in compliance in all material respects with all applicable Laws pertaining to employment and employment practices, including applicable Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, whistleblower protections, wrongful discharge, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers’ compensation, leaves of absence, paid sick leave and unemployment insurance. All individuals classified and/or treated by the Company Parent as independent contractors or consultants are properly treated as independent contractors under all applicable Laws. All employees of the Company Parent classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified in all material respects. The Company Parent has provided all employees and prospective employees with all disclosures and notices and has received all authorizations and certifications required under the Fair Credit Reporting Act. Except as set forth in Section 3.23(c)(ii) of the Disclosure Schedules, the Company Parent is in compliance with and has complied with all immigration laws, including Form I-9 requirements and any applicable mandatory E-Verify obligations. There are no Actions against the Company Parent pending, or threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor of the Company Parent, including, without limitation, any charge, investigation or claim relating to unfair labor practices, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits,

immigration, wages, hours, overtime compensation, employee classification, child labor, hiring, promotion and

termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave, unemployment insurance or any other employment-related matter arising under applicable Laws.

(d) The Company Parent has not implemented any plant closing or mass layoff of employees as those terms are defined in the WARN Act or any similar state or local Law, and it has no plans to undertake any action that would trigger the WARN Act.

**Section 3.24 Taxes.**

(a) Except as set forth in Section 3.24(a) of the Disclosure Schedules, all Tax Returns required to be filed on or before the Closing Date by the Company Parent or the Company have been, or will be, timely filed, taking into account valid extensions. Such Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due and owing by the Company Parent or the Company (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) The Company Parent and the Company have withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No claim has been made by any taxing authority in writing in any jurisdiction where the Company Parent or the Company do not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction.

(d) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of the Company Parent or the Company.

(e) The amount of the Company Parent's or the Company's Liability for unpaid Taxes for all periods ending on or before December 31, 2022 does not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Financial Statements. The amount of the Company Parent's or Company's Liability for unpaid Taxes for all periods following the end of the recent period covered by the Financial Statements shall not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) as adjusted for the passage of time in accordance with the past custom and practice of the Company Parent or the Company (and which accruals shall not exceed comparable amounts incurred in similar periods in prior years).

(f) Section 3.24(f) of the Disclosure Schedules sets forth:

- (i) those taxable years for which examinations by taxing authorities are presently being conducted; and
- (ii) all deficiencies asserted, or assessments made, against the Company as a result of any examinations by any taxing authority have been fully paid.

(g) Neither the Company Parent nor Company is party to any Action by any taxing authority. There are no pending or threatened in writing Actions by any taxing authority.

(h) Sellers have delivered to Buyer copies of all federal, state, local and foreign income, franchise and similar Tax Returns, examination reports, and statements of deficiencies assessed against, or agreed to by, the Company Parent and the Company for all Tax periods ending after December 31, 2018.

(i) There are no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the assets of the Company Parent.

(j) The Company Parent is not a party to, or bound by, any Tax indemnity, Tax sharing or Tax allocation agreement.

(k) No private letter rulings, technical advice memoranda or similar agreement or rulings have been requested, entered into or issued by any taxing authority with respect to the Company Parent or the Company.

(l) Neither the Company Parent nor the Company has been a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes. The Company Parent has no Liability for Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign Law), as transferee or successor, by contract or otherwise.

(m) The Company Parent will not be required to include any item of income in, or exclude any item or deduction from, taxable income for taxable period or portion thereof ending after the Closing Date as a result of:

(i) any change in a method of accounting under Section 481 of the Code (or any comparable provision of state, local or foreign Tax Laws), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date;

(ii) an installment sale or open transaction occurring on or prior to the Closing Date;

(iii) a prepaid amount received on or before the Closing Date;

(iv) any closing agreement under Section 7121 of the Code, or similar provision of state, local or foreign Law; or

(v) any election under Section 108(i) of the Code.

(n) The Company Parent is not, nor has it been, a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period in Section 897(c)(1)(a) of the Code.

(o) The Company Parent has not been a “distributing corporation” or a “controlled corporation” in connection with a distribution described in Section 355 of the Code.

(p) The Company Parent is not, and has not been, a party to, or a promoter of, a “reportable transaction” within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).



(q) Except as set forth on Section 3.24(r) of the Disclosure Schedules, immediately prior to the Closing, there is currently no limitation on the utilization of net operating losses, capital losses, built-in losses, tax credits or similar items of the Company under Sections 269, 382, 383, 384 or 1502 of the Code and the Treasury Regulations thereunder (and comparable provisions of state, local or foreign Law).

(r) Section 3.24(s) of the Disclosure Schedules sets forth all foreign jurisdictions in which the Company Parent or the Company is subject to Tax, is engaged in business or has a permanent establishment. Neither the Company Parent nor the Company has entered into a gain recognition agreement pursuant to Treasury Regulations Section 1.367(a)-8. Neither the Company Parent nor the Company has transferred an intangible the transfer of which would be subject to the rules of Section 367(d) of the Code.

(s) No property owned by the Company Parent is (i) required to be treated as being owned by another person pursuant to the so-called “safe harbor lease” provisions of former Section 168(f)(8) of the Internal Revenue Code of 1954, as amended, (ii) subject to Section 168(g)(1)(A) of the Code, or (iii) subject to a disqualified leaseback or long-term agreement as defined in Section 467 of the Code.

**Section 3.25 Books and Records.** The minute books and stock record books of the Company and Company Parent, all of which have been made available to Buyer, are correct and have been maintained in accordance with sound business practices. At the Closing, all of those books and records of the Company and Company Parent will be in the possession of the Company Parent.

**Section 3.26 Related Party Transactions.** Except as set forth in Section 3.26 of the Disclosure Schedules, no executive officer, director or employee of the Company Parent or any person owning 5% or more of the Shares (or any of such person’s immediate family members or Affiliates or associates) is a party to any Contract with or binding upon the Company Parent or any of its assets, rights or properties or has any interest in any property owned by the Company Parent or has engaged in any transaction with any of the foregoing within the last twelve (12) months.

**Section 3.27 Restructuring Transactions.** The Charter Amendment, Pre-Merger Purchase, and Short-Form Merger have been undertaken and consummated by all requisite actions, including communications with stockholders, by Sellers, Company Parent, and the Company in accordance with applicable Law.

**Section 3.28 Brokers.** Except for Invision Capital Advisors, LLC, no broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of the Company Parent or the Company.

**Section 3.29 No Other Representations or Warranties.** (a) Except for the representations and warranties made by Sellers and the Company Parent in this ARTICLE III, neither the Company Parent nor any other Person makes any express or implied representation or warranty with respect to the Company Parent, the Company, any subsidiary of the Company or the Company Parent, or their respective businesses, operations, assets, liabilities, conditions (financial or otherwise) or prospects, and Sellers and the Company Parent hereby disclaim any such other representations or warranties. In particular, without limiting the foregoing disclaimer, neither the Company Parent nor any other Person makes or has made any



representation or warranty to Buyer or any of its affiliates or representatives with respect to (i) any financial projection, forecast, estimate, budget or prospective information relating to the Company Parent, the Company, any subsidiary of the Company or the Company Parent, or their respective businesses or, (ii) except for the representations and warranties made by Sellers and the Company Parent in this ARTICLE III, any oral or written information presented to Buyer or any of its affiliates or representatives in the course of their due diligence investigation of the Company Parent and the Company, the negotiation of this Agreement, or in the course of the transactions contemplated hereby.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, Buyer represents and warrants to Sellers that the statements contained in this ARTICLE IV are true and correct as of the date hereof.

**Section 4.01 Organization and Authority.** Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization. Buyer has full limited liability company power and authority to enter into and perform its obligations under this Agreement and the Ancillary Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Buyer of this Agreement and any Ancillary Document to which it is a party and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of Buyer, and no other limited liability company proceedings on the part of Buyer are necessary to authorize the execution, delivery and performance of this Agreement or to consummate the Sale and the other transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by each other party hereto) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and by general principles of equity. When each Ancillary Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and by general principles of equity.

**Section 4.02 No Conflicts; Consents.** The execution, delivery and performance by Buyer of this Agreement and the Ancillary Documents to which it or any of its Affiliates (including, but not limited to, Live Ventures Incorporated) is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) except as set forth in Section 4.02 of the Disclosure Schedules, require the consent, notice or other action by any Person under any Contract to which Buyer is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution, delivery and

performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby.

**Section 4.03 Investment Purpose.** Buyer is acquiring the Shares solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof, Buyer acknowledges that the Shares are not registered under the Securities Act of 1933, as amended, or any state securities laws, and that the Shares may not be transferred or sold except pursuant to the registration provisions of the Securities Act of 1933, as amended or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable.

**Section 4.04 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Buyer.

**Section 4.05 Sufficiency of Funds; Financing.** Buyer has sufficient Cash on Hand or other sources of funds available to it to enable it to make payment of the Purchase Price (including any adjustment amounts that may become payable by Buyer under Section 2.06 of this Agreement) and consummate the transactions contemplated by this Agreement.

**Section 4.06 Solvency.** Immediately after giving effect to the transactions contemplated in this Agreement, each of Buyer and its subsidiaries, including the Company Parent, shall be solvent and shall:

(a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) not have an unreasonably small amount of capital with which to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated in this Agreement with the intent to hinder, delay or defraud either present or future creditors of Buyer or its subsidiaries, including the Company. In connection with the transactions contemplated in this Agreement, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

**Section 4.07 Legal Proceedings.** There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

## ARTICLE V COVENANTS

**Section 5.01** Intentionally Omitted.

**Section 5.02** Intentionally Omitted.

**Section 5.03** Intentionally Omitted.

**Section 5.04** Intentionally Omitted.

**Section 5.05** Intentionally Omitted

**Section 5.06** Intentionally Omitted.

**Section 5.07 Resignations.** Sellers shall cause the Company Parent to deliver to Buyer written resignations, effective as of the Closing Date, of the officers and directors of the Company Parent set forth



on Section 5.07 of the Disclosure Schedules or otherwise requested by Buyer at least five Business Days prior to the Closing.

**Section 5.08 Confidentiality.** From and after the Closing, each Seller shall, and shall cause its Affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Company, except to the extent that such Seller can show that such information (a) is generally available to and known by the public through no fault of Seller, any of its Affiliates or their respective Representatives; or (b) is lawfully acquired by Seller, any of its Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If a Seller or any of its Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, such Seller shall promptly notify Buyer in writing and shall disclose only that portion of such information which such Seller is advised by its counsel in writing is legally required to be disclosed.

**Section 5.09 Restrictive Covenants.**

(a) For a period of twenty-four (24) months from the Closing Date, John Locke and Richard Stanley (each, a “**Restricted Person**” and, together, the “**Restricted Persons**”) shall not, directly or indirectly:

(i) hire, solicit, encourage or induce any person or entity that is or was an employee or independent contractor of Buyer, the Company or any of their Affiliates within two (2) years prior to the date hereof to: (1) become an employee or independent contractor of the Restricted Person, any Affiliate of the Restricted Person, or any competitor of Buyer, the Company or their Affiliates; or (2) terminate or diminish their employment or engagement with Buyer, the Company or their Affiliates, or otherwise interfere with the relationship between Buyer, the Company or their Affiliates and such current or former employee or independent contractor. For purposes of this Section 5.09, “Affiliate” shall include, but not be limited to, Richard Stanley, John Locke, and Bartel Global Inc.; *provided, however*, that the foregoing restriction shall not apply to Mark Matthews, nor to any family member of any Restricted Person;

(ii) contact, solicit, encourage, or induce any person or entity who is a current supplier, vendor, service provider, licensor, lessor, distributor, wholesaler or customer of Buyer, the Company or their Affiliates as of the Closing Date to terminate or reduce their business with Buyer, the Company or their Affiliates, or otherwise interfere with the relationship between Buyer, the Company or their Affiliates and such current, former or prospective supplier, vendor, service provider, licensor, lessor, distributor, wholesaler, customer, or prospective customer as of the Closing Date; or

(iii) engage or render any assistance or advice to any person, entity, or business within the United States of America that offers any products or services competitive or alternative to those offered, sold, or developed by the Company as of the Closing Date or within the twelve (12) months prior to the Closing Date, or which the Company took affirmative steps to offer, sell, or develop as of the Closing Date, including as an owner, member, partner, stockholder, director, manager, officer,

employee, agent, independent contractor, consultant, or advisor, whether as an owner, member, partner, stockholder,



director, manager, officer, employee, agent, independent contractor, consultant, or advisor. Notwithstanding the foregoing, Seller or its Affiliate's performance pursuant to, or in connection with, the Consulting Agreement shall not be a violation of this Section 5.09, and further, nothing in this Agreement shall prohibit any Seller or any Affiliate of any Seller from purchasing or owning less than five percent (5%) of the publicly-traded securities of any corporation as a passive investment.

(b) Each Restricted Person hereby covenants and agrees that, for a period of twenty- four (24) months following the date hereof, such Restricted Person shall not, and such Restricted Person shall cause each of its Affiliates to not, directly or indirectly, either individually or acting through or in concert with another Person or Persons make any negative, derogatory or disparaging statements or communications regarding, Buyer, the Company, their Affiliates with which the Restricted Person has had direct contact with or of which the Restricted Person had actual knowledge prior to the Closing, the business of Buyer, the Company or their respective Affiliates, or any of the products or services of Buyer, the Company or their respective Affiliates; provided that the foregoing shall not restrict or impede (i) any party to this Agreement or any Ancillary Documents from enforcing such Person's rights (or any other party's obligations) thereunder in accordance with this Agreement and applicable Law, or (ii) any Person or any of such Person's Affiliates from making factually true statements to the extent necessary to exercise protected legal rights to the extent that such rights cannot be waived by agreement (including "whistleblowing") or from providing truthful statements in response to any Governmental Authority, as and if required by Law.

(c) The duration of each and every covenant and restriction set forth in this Section 5.09 shall be tolled and extended during any period when the Restricted Person is in violation of any covenant or restriction set forth in this Section 5.09, regardless of whether or not such violation is known to Buyer.

(d) If the duration, geographical extent of, or business activities covered by, this Section 5.09 are in excess of what is valid and enforceable under applicable law, then such provision shall be construed to cover only that duration, geographical extent or activities that are valid and enforceable. Each Restricted Person acknowledges the uncertainty of the law in this respect and expressly stipulates that this Agreement be given the construction which renders its provisions valid and enforceable to the maximum extent (not exceeding its express terms) possible under applicable law.

(e) Each Restricted Person acknowledges and agrees that such Restricted Person is a trustee and beneficiary of a Seller and has received or will receive material consideration in respect of such interests in connection with the consummation of the transactions contemplated under this Agreement, including, without limitation, (i) the Sellers' receipt of the Purchase Price, (ii) payments pursuant to the Notes, and/or (iii) payments pursuant to the Consulting Agreement, and that the transactions contemplated under this Agreement involve the sale of ownership and control of the Company Parent (including as successor to the business of Company).

**Section 5.10 R&W Insurance Policy.** Prior to the Closing, Buyer shall use reasonable best efforts to obtain and bind the R&W Insurance Policy in the form attached hereto as Exhibit F. Sellers and

the Company Parent shall cooperate with Buyer’s efforts and provide assistance as reasonably requested by Buyer to obtain and bind the R&W Insurance Policy. The costs and expenses of the R&W Insurance

Policy, including the total premium, underwriting costs, brokerage commissions, and other fees and expenses of such policy, which amount shall be characterized as a Transaction Expense hereunder, shall be included in the Company Parent's Transaction Expenses and shall be paid in connection with the Closing.

**Section 5.11 Intentionally Omitted.**

**Section 5.12 Directors' and Officers' Indemnification and Insurance.**

(a) Buyer agrees that all rights to indemnification, advancement of expenses and exculpation by the Company and the Company Parent now existing in favor of each Person who is now, or has been at any time prior to the date hereof or who becomes prior to the Effective Time an officer or director of the Company or the Company Parent (each an "**D&O Indemnified Party**") as provided in the Company Parent Charter Documents or the prior governance documents of the Company, in each case as in effect on or prior to the date of this Agreement, or pursuant to any other Contracts in effect on the date hereof and disclosed in Section 5.12 of the Disclosure Schedules, were assumed by the Company Parent in the Short-Form Merger, without further action, and survived the Short-Form Merger and remain in full force and effect in accordance with their terms, and, in the event that any proceeding is pending or asserted or any claim made during such period, until the final disposition of such proceeding or claim.

(b) For six years after the Effective Time, to the fullest extent permitted under applicable Law, Buyer and the Company Parent (the "**D&O Indemnifying Parties**") shall indemnify, defend and hold harmless each D&O Indemnified Party against all losses, claims, damages, liabilities, fees, expenses, judgments and fines arising in whole or in part out of actions or omissions in their capacity as such occurring at or prior to the Effective Time (including in connection with the transactions contemplated by this Agreement), and shall reimburse each D&O Indemnified Party for any legal or other expenses reasonably incurred by such D&O Indemnified Party in connection with investigating or defending any such losses, claims, damages, liabilities, fees, expenses, judgments and fines as such expenses are incurred, subject to the Company Parent's receipt of an undertaking by such D&O Indemnified Party to repay such legal and other fees and expenses paid in advance if it is ultimately determined in a final and non-appealable judgment of a court of competent jurisdiction that such D&O Indemnified Party is not entitled to be indemnified under applicable Law; *provided, however*, that the Company Parent will not be liable for any settlement effected without the Company Parent's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) Prior to the Closing, the Company Parent shall obtain and fully pay for "tail" insurance policies with a claims period of at least six years from the Effective Time with at least the same coverage and amount and containing terms and conditions that are not less advantageous to the directors and officers of the Company Parent as the Company Parent's existing policies with respect to claims arising out of or relating to events which occurred before or at the Effective Time (including in connection with the transactions contemplated by this Agreement) (the "**D&O Tail Policy**"). The Company Parent shall bear the cost of the D&O Tail Policy, and such costs, to the extent not paid prior to the Closing, shall be Transaction Expenses. During the term of the D&O Tail Policy, Buyer shall not (and shall cause the Company Parent not to) take any action following the Closing to cause the D&O Tail Policy to be cancelled or any provision therein to be

amended or waived; provided, that neither Buyer, the Company Parent nor any Affiliate thereof shall be obligated to pay any premiums or other amounts in respect of such D&O Tail Policy.

(d) The obligations of Buyer and the Company Parent under this Section 5.12 shall survive the consummation of the Short-Form Merger and shall not be terminated or modified in such a manner as to adversely affect any D&O Indemnified Party to whom this Section 5.12 applies without the consent of such affected D&O Indemnified Party (it being expressly agreed that the D&O Indemnified Parties to whom this Section 5.12 applies shall be third-party beneficiaries of this Section 5.12, each of whom may enforce the provisions of this Section 5.12).

(e) In the event Buyer, the Company Parent or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in either such case, proper provision shall be made so that the successors and assigns of Buyer or the Company Parent, as the case may be, shall assume all of the obligations set forth in this Section 5.12. The agreements and covenants contained herein shall not be deemed to be exclusive of any other rights to which any Indemnified Party is entitled, whether pursuant to Law, Contract or otherwise. Nothing in this Agreement is intended to, shall be construed to or shall release, waive or impair any rights to directors' and officers' insurance claims under any policy that is or has been in existence with respect to the Company or its officers, directors and employees, it being understood and agreed that the indemnification provided for in this Section 5.12 is not prior to, or in substitution for, any such claims under any such policies.

**Section 5.13 Intentionally Omitted.**

**Section 5.14 Intentionally Omitted.**

**Section 5.15 Closing Conditions.** From the date hereof until the Closing, each party hereto shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in ARTICLE VII hereof.

**Section 5.16 Public Announcements.** Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

**Section 5.17 Further Assurances.** At and after the Effective Time, the officers and directors of the Company Parent shall be authorized to execute and deliver, in the name and behalf of the Company Parent, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company Parent, any other actions and things to vest, perfect or confirm of record or otherwise in the Company Parent any and all right, title and interest in, to and under any of the rights, properties or assets of the Company Parent and the Company acquired or to be acquired by the Company Parent as a result of, or in connection with, the Short-Form Merger.

**Section 5.18 Intentionally Omitted.**

**Section 5.19 Section 280G Approval.**

(a) Prior to the initiation of the stockholder approval solicitation under Section 5.19(b) below, the Company Parent shall have obtained a waiver (a “**Parachute Payment Waiver**”) from each Person who, with respect to the Company Parent, is a “disqualified individual” (within the meaning of Section 280G of the Code and the regulations promulgated thereunder) and who might otherwise receive, have received, or have the right or entitlement to receive any parachute payment under Section 280G of the Code in connection with the transactions contemplated by this Agreement, which Parachute Payment Waiver shall include a waiver of such Person’s right to receive those payments and/or benefits that could constitute “parachute payments” under Section 280G of the Code and regulations promulgated thereunder in connection with the transactions contemplated by this Agreement (the “**Waived Payments**”) unless the Waived Payments are approved by the Company Parent’s stockholders in accordance with Section 280G(b)(5)(B) of the Code.

(b) Prior to the Closing Date, the Company Parent shall solicit the approval of the stockholders of the Company Parent of the Waived Payments in a manner compliant with Section 280G(b)(5)(B) of the Code and Treasury Regulation Section 1.280G-1, Q&A-7 and shall use commercially reasonable efforts to obtain such approval.

## ARTICLE VI TAX MATTERS

### **Section 6.01** Tax Covenants.

(a) Without the prior written consent of Buyer which consent shall not be unreasonably withheld, conditioned or delayed, Sellers (and, prior to the Closing, the Company Parent, its Affiliates and their respective Representatives) shall not, to the extent it may affect, or relate to, the Company Parent make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax asset of Buyer or the Company Parent in respect of any Post-Closing Tax Period. Each Seller agrees that Buyer is to have no liability for any Tax resulting from any such prohibited action of such Seller, the Company Parent, its Affiliates or any of their respective Representatives, and agrees to, severally (in accordance with their Pro Rata Shares) and not jointly indemnify and hold harmless Buyer (and, after the Closing Date, the Company) against any Tax or material reduction of any Tax asset.

(b) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid by Sellers when due. Each Seller shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

(c) The parties acknowledge and agree that the Sale is intended to be treated as a purchase of the shares of capital stock of the Company Parent by the Buyer for federal income tax purposes, whereby gain or loss is realized and recognized by the holders thereof upon receipt of the taxable consideration hereunder in sale and exchange for such shares of capital stock of the Company Parent under Code Sections 1001 and 1011 (the “**Intended Tax Treatment**”). Without



the prior written consent of all other parties (which consent may be withheld in a party's sole discretion), no party shall take, or cause any other Person to take, any action that could prevent or impede the Sale from qualifying for the Intended Tax Treatment, including, without limitation, by making, or attempting to make, any election under Code Section 336 or 338.

**Section 6.02 Termination of Existing Tax Sharing Agreements.** Any and all existing Tax sharing agreements (whether written or not) binding upon the Company Parent shall be terminated as of the Closing Date. After such date, neither the Company Parent nor any of its Representatives shall have any further rights or liabilities thereunder.

**Section 6.03 Tax Indemnification.** Except to the extent treated as a liability in the calculation of Closing Working Capital, or otherwise taken into account in calculating the purchase price hereunder, each Seller shall indemnify the Company Parent, Buyer, and each Buyer Indemnitee and hold them harmless from and against (a) any Loss attributable to any breach of or inaccuracy in any representation or warranty made in Section 3.24; (b) any Loss attributable to any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in ARTICLE VI; (c) all Taxes of the Company Parent or the Company or relating to the business of the Company Parent or the Company for all Pre-Closing Tax Periods ("**Pre-Closing Taxes**"); (d) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company Parent (or any predecessor of the Company Parent) is or was a member on or prior to the Closing Date by reason of a liability under Treasury Regulation Section 1.1502-6 or any comparable provisions of foreign, state or local Law; and (e) any and all Taxes of any person imposed on the Company Parent arising under the principles of transferee or successor liability or by contract, relating to an event or transaction occurring before the Closing Date. The indemnification obligations pursuant to this ARTICLE VI shall be subject to those limitations set forth in Section 8.04.

**Section 6.04 Tax Returns.**

(a) The Company Parent shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns required to be filed by it that are due on or before the Closing Date (taking into account any extensions) and shall timely pay all Taxes that due and payable on or before the Closing Date (taking into account any extensions) and shall timely pay all Taxes that are due and payable on or before the Closing Date. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and shall not take any position which is inconsistent with the Intended Tax Treatment, except to the extent otherwise required by a final determination within the meaning of Code Section 1313.

(b) Buyer shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns required to be filed by the Company Parent after the Closing Date with respect to a Pre-Closing Tax Period and for any Straddle Period. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and shall not take any position which is inconsistent with the Intended Tax Treatment, except to the extent otherwise required by a final determination within the meaning of Code Section 1313, and, if it is an income or other material Tax Return, shall be submitted by Buyer to Sellers (together with schedules, statements and, to the extent requested by Sellers, supporting documentation) at least 45 days prior to the due date (including extensions) of such Tax Return. If a Seller objects to any item on any such Tax Return that relates to a Pre-Closing Tax Period, it shall, within ten days after



delivery of such Tax Return, notify Buyer in writing that it so objects, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection

shall be duly delivered, Buyer and Sellers shall negotiate in good faith and use their reasonable best efforts to resolve such items. If Buyer and Sellers are unable to reach such agreement within 30 days after receipt by Buyer of such notice, the disputed items shall be resolved by the Independent Accountant and any determination by the Independent Accountant shall be final. The Independent Accountant shall resolve any disputed items within 20 days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable to resolve any disputed items before the due date for such Tax Return, the Tax Return shall be filed as prepared by Buyer and then amended to reflect the Independent Accountant's resolution. The costs, fees and expenses of the Independent Accountant shall be borne equally by Buyer and Sellers. The preparation and filing of any Tax Return of the Company Parent that does not relate to a Pre-Closing Tax Period or Straddle Period shall be exclusively within the control of Buyer. Buyer shall be entitled to deduct from the Indemnification Escrow Funds (i) Taxes due with respect to any such Tax Return that relate to Pre-Closing Tax Periods and (ii) Taxes due with respect to any such Tax Return that relate to Straddle Periods that are attributable under Section 6.05 to the portion of such Straddle Period ending on the Closing Date, but only to the extent such Taxes due were not taken into account as liabilities in computing the Closing Working Capital or otherwise taken into account in calculating the Purchase Price hereunder.

**Section 6.05 Straddle Period.** In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Closing Date (each such period, a "**Straddle Period**"), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

- (a) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or
- (iii) required to be withheld, deemed equal to the amount which would be payable if the taxable year ended with the Closing Date; and
- (b) in the case of other Taxes, deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire period.

**Section 6.06 Contests.** Buyer agrees to give written notice to Sellers of the receipt of any written notice by the Company Parent, Buyer or any of Buyer's Affiliates which involves the assertion of any claim, or the commencement of any Action, in respect of which an indemnity may be sought by Buyer pursuant to this ARTICLE VI (a "**Tax Claim**"); *provided*, that failure to comply with this provision shall not affect Buyer's right to indemnification hereunder unless the party from whom indemnification is sought was materially prejudiced by such failure. Sellers shall control the contest or resolution of any Tax Claim; *provided, however*, that Sellers shall obtain the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed) before entering into any settlement of a Tax Claim or ceasing to defend such Tax Claim; and, *provided further*, that Buyer and its Affiliates (including the Company Parent) shall be entitled to participate in the defense of such Tax Claim and to employ counsel of its choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Buyer or such Affiliate.

**Section 6.07 Cooperation and Exchange of Information.** Sellers and Buyer shall provide each other with such cooperation and information as either of them reasonably may request of the other in

filing any Tax Return pursuant to this ARTICLE VI or in connection with any audit or other proceeding in respect of Taxes of the Company Parent or the Company. Such cooperation and information shall include

providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities. Each of Sellers and Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company and the Company Parent for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company or the Company Parent for any taxable period beginning before the Closing Date, Sellers or Buyer (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials.

**Section 6.08 Tax Treatment of Indemnification Payments.** Any indemnification payments pursuant to this ARTICLE VI shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

**Section 6.09 Payments to Buyer.** Any amounts payable to Buyer pursuant to this ARTICLE VI shall be satisfied solely from (i) from the Indemnification Escrow Fund; (ii) the R&W Insurance Policy; and (iii) to the extent such amounts exceed the amount available to Buyer in the Indemnification Escrow Fund, from the Sellers, severally (in accordance with their Pro Rata Shares) and not jointly.

**Section 6.10 FIRPTA Statement.** On the Closing Date, the Company Parent shall deliver to Buyer a certificate, dated as of the Closing Date, certifying to the effect that no interest in Company Parent is a U.S. real property interest (such certificate in the form required by Treasury Regulation Section 1.897- 2(h) and 1.1445-3(c)) (the “FIRPTA Statement”).

**Section 6.11 Survival.** Notwithstanding anything in this Agreement to the contrary, the provisions of Section 3.24 and this ARTICLE VI shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days.

**Section 6.12 Overlap.** To the extent that any obligation or responsibility pursuant to ARTICLE VIII may overlap with an obligation or responsibility pursuant to this ARTICLE VI, the provisions of this ARTICLE VI shall govern with respect to any inconsistency between this ARTICLE VI and ARTICLE VIII.

## **ARTICLE VII CONDITIONS TO CLOSING**

**Section 7.01** Intentionally Omitted.

**Section 7.02** Intentionally Omitted.

**Section 7.03** Intentionally Omitted.

## ARTICLE VIII INDEMNIFICATION

**Section 8.01 Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein (other than any representations or warranties contained in Section 3.24 which are subject to ARTICLE VI) shall survive the Closing and shall remain in full force and effect until the date that is 18 months from the Closing Date; *provided*, that the representations and warranties in Section 3.01, Section 3.02, Section 3.03, Section 3.04, Section 3.05(a), Section 3.06, Section 3.07(a), and Section 3.28, Section 4.01, Section 4.02 and Section 4.04 (collectively, the “**Fundamental Representations**”) shall survive thirty (30) days after the expiration of the applicable statute of limitations. All covenants and agreements of the parties contained herein (other than any covenants or agreements contained in ARTICLE VI which are subject to ARTICLE VI) shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the Indemnified Party to the Indemnifying Party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

**Section 8.02 Indemnification By Sellers.** Subject to the other terms and conditions of this ARTICLE VIII, from and after Closing, Sellers severally in accordance with their Pro Rata Shares and not jointly, shall indemnify and defend each of Buyer and its Affiliates (including the Company Parent) and their respective Representatives (collectively, the “**Buyer Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) Any inaccuracy in or breach of any of the representations or warranties of Sellers, or the Company Parent contained in this Agreement or in any certificate or instrument delivered by or on behalf of the Company Parent pursuant to this Agreement (other than in respect of Section 3.24, it being understood that the sole remedy for any such inaccuracy in or breach thereof shall be pursuant to ARTICLE VI), as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);
- (b) Any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Company Parent pursuant to this Agreement (other than any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in ARTICLE VI, it being understood that the sole remedy for any such breach, violation or failure shall be pursuant to ARTICLE VI);
- (c) Any claim made by any stockholder of the Company relating to the Charter Amendment, the Pre-Merger Purchase, or the Short-Form Merger, including any claim relating to such stockholder’s rights with respect to the merger consideration received in connection with the Short-Form Merger;

(d) All Losses and Liabilities arising out of or relating to the Company's failure to properly withhold any Taxes or report income, in accordance with applicable Law, in connection

with the vesting, exercise or cash-out of any stock options, restricted stock or other equity or equity- based incentives equity grants to employees and service providers of the Company (“**Withholding Losses**”);

(e) All Losses and Liabilities for, arising out of or relating to, Pre-Closing Taxes that are sales or use Taxes; or

(f) Any Transaction Expenses or Indebtedness of the Company outstanding as of the Closing to the extent not paid or satisfied by the Company at or prior to the Closing, or if paid by Buyer at or prior to the Closing, to the extent not deducted in the determination of the Closing Date Payment.

**Section 8.03 Indemnification By Buyer.** Subject to the other terms and conditions of this ARTICLE VIII, from and after Closing, Buyer shall indemnify and defend each of the Sellers and their Affiliates and their respective Representatives (collectively, the “**Seller Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(a) Any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) Any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement (other than ARTICLE VI, it being understood that the sole remedy for any such breach thereof shall be pursuant to ARTICLE VI); or

(c) Any Third-Party Claims based upon, resulting from, or arising out of the operations of the business by Buyer, the Company Parent, or the Company after the Closing or properties, assets, or obligations of Buyer, the Company Parent, or the Company after the Closing.

**Section 8.04 Certain Limitations.** The indemnification provided for in Section 8.02 and Section 8.03 shall be subject to the following limitations:

(a) The Buyer Indemnitees shall not be entitled to indemnification under Section 8.02(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.02(a) exceeds \$100,000 (the “**Basket**”), in which event Sellers shall be required to pay or be liable for all such Losses from the first dollar.

(b) The aggregate amount of all Losses, other than Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in the Fundamental Representations (“**Fundamental Losses**”), for which Sellers shall be liable pursuant to Section 8.02(a) shall not exceed 15% of the Purchase Price (the “**Cap**”).

Notwithstanding the foregoing, the limitations set forth in this Section 8.04(a) shall not apply to Fundamental Losses.



(c) The Buyer Indemnitees shall not be entitled to indemnification under Section 8.02(d) until the aggregate amount of all Withholding Losses in respect of indemnification under Section 8.02(d) exceeds \$35,000 (the “**Withholding Basket**”), in which event Sellers shall be required to pay or be liable for only all such Withholding Losses in excess of the Withholding Basket.

(d) The Seller Indemnitees shall not be entitled to indemnification under Section 8.03(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.03(a) exceeds the Basket, in which event Buyer shall be required to pay or be liable for all such Losses from the first dollar. The aggregate amount of all Losses for which Buyer shall be liable pursuant to Section 8.03(a) shall not exceed the Cap.

(e) The aggregate amount of all Losses for which Sellers shall be liable shall not exceed the Purchase Price.

(f) For purposes of this ARTICLE VIII (including for purposes of determining the existence of any inaccuracy in, or breach of, any representation or warranty and for calculating the amount of any Loss with respect thereto), any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty.

**Section 8.05 Indemnification Procedures.** The party making a claim under this ARTICLE VIII is referred to as the “**Indemnified Party**”, and the party against whom such claims are asserted under this ARTICLE VIII is referred to as the “**Indemnifying Party**”. For purposes of this ARTICLE VIII, (i) if Buyer (or any other Buyer Indemnitee) comprises the Indemnified Party, any references to Indemnifying Party (except provisions relating to an obligation to make payments) shall be deemed to refer to Sellers, and (ii) if Buyer comprises the Indemnifying Party, any references to the Indemnified Party shall be deemed to refer to Sellers.

(a) **Third-Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “**Third-Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 30 calendar days after receipt of such notice of such Third-Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses, or the rights or defenses of the Indemnifying Party are otherwise impaired in any material respect by reason of such failure. Such notice by the Indemnified Party shall describe the Third-Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third-Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense. In the event that the Indemnifying Party assumes the defense of any Third-Party Claim, subject to

Section 8.05(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims

pertaining to any such Third-Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third-Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party. If the Indemnifying Party elects not to compromise or defend such Third-Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third-Party Claim, the Indemnified Party may, subject to Section 8.05(b), pay, compromise, defend such Third-Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third-Party Claim. Sellers and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third-Party Claim, including making available records relating to such Third-Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third-Party Claim.

(b) **Settlement of Third-Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third-Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 8.05(b). If a firm offer is made to settle a Third-Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third-Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third-Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third-Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third-Party Claim, the Indemnifying Party may settle the Third-Party Claim upon the terms set forth in such firm offer to settle such Third-Party Claim; *provided, however*, that the Indemnifying Party shall not settle or compromise a claim by acceding to injunctive or other equitable relief without the express written consent of the Indemnified Party. If the Indemnified Party has assumed the defense pursuant to Section 8.05(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) **Direct Claims.** Any Action by an Indemnified Party on account of a Loss which does not result from a Third-Party Claim (a “ **Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 20 days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 20 days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall

allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged

to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Company Parent's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 20-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

(d) Tax Claims. Notwithstanding any other provision of this Agreement, the control of any claim, assertion, event or proceeding in respect of Taxes of the Company or Company Parent (including, but not limited to, any such claim in respect of a breach of the representations and warranties in Section 3.24 hereof or any breach or violation of or failure to fully perform any covenant, agreement, undertaking or obligation in ARTICLE VI) shall be governed exclusively by ARTICLE VI hereof.

**Section 8.06 Payments; Indemnification Escrow Fund.**

(a) Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this ARTICLE VIII, the Indemnifying Party shall satisfy its obligations within 15 Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such 15 Business Day period.

(b) Any Losses payable to a Buyer Indemnitee pursuant to ARTICLE VIII shall be satisfied: (i) from the Indemnification Escrow Fund; (ii) to the extent the amount of Losses exceeds the amounts available to the Buyer Indemnitee in the Indemnification Escrow Fund, from the R&W Insurance Policy; and (iii) to the extent provided in Section 8.08, from the Sellers, severally and not jointly (in accordance with their Pro Rata Shares);

(c) Upon the termination of the Indemnification Escrow Fund pursuant to the terms of the Escrow Agreement, the Escrow Agent shall pay any amounts remaining in the Indemnification Escrow Fund to the Sellers as set forth in the Escrow Agreement in accordance with their Pro Rata Shares.

**Section 8.07 Tax Treatment of Indemnification Payments.** All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

**Section 8.08 Manner of Payment.** Subject to the limitations set forth elsewhere in this ARTICLE VIII (including Section 8.04):

(a) From and after the Closing, any Losses for which a Buyer Indemnitee is entitled to indemnification pursuant to the terms of Section 8.02(a) shall be solely and exclusively satisfied as follows:

(i) first, from the Indemnification Escrow Fund pursuant to the terms of the Escrow Agreement until the retention amount under the R&W Insurance Policy is met;

(ii) second, by recovery under the R&W Insurance Policy;

(iii) third, to the extent such Losses are not covered by the R&W Insurance Policy for any reason (including the coverage limit being exceeded and coverage being denied), from the Indemnification Escrow Fund; and

(iv) fourth, to the extent the Losses both exceed the Indemnification Escrow Fund and are Fundamental Losses, then by the Sellers, severally and not jointly (in accordance with their Pro Rata Shares).

(b) From and after the Closing, any Losses for which a Buyer Indemnatee is entitled to indemnification pursuant to the terms of Section 8.02(b) through Section 8.02(f), be solely and exclusively satisfied as follows:

(i) first, from the Indemnification Escrow Fund pursuant to the terms of the Escrow Agreement until no portion of the Indemnification Escrow Fund remains; and

(ii) second, by the Sellers, severally and not jointly (in accordance with their Pro Rata Shares).

**Section 8.09 No Effect on R&W Insurance.** Notwithstanding anything to the contrary contained herein, no limitations (including any survival limitations and other limitations set forth in this ARTICLE VIII), qualifications or procedures in this Agreement shall be deemed to limit or modify the ability of Buyer to make claims under or recover under the R&W Insurance Policy; it being understood that any matter for which there is coverage available under the R&W Insurance Policy shall be subject to the terms, conditions and limitations, if any, set forth in the R&W Insurance Policy. In the event that any Losses may be subject to coverage under the R&W Insurance Policy, Buyer shall use its best efforts to recover for such Losses through the R&W Insurance Policy.

**Section 8.10 Exclusive Remedies.** Subject to Section 2.06(b) to Section 2.06(e) and Section 10.12, the parties acknowledge and agree that from and after Closing their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in ARTICLE VI and this ARTICLE VIII. In furtherance of the foregoing, each party hereby waives, from and after Closing, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in ARTICLE VI and this ARTICLE VIII. Nothing in this Section 8.10 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct.

## ARTICLE IX TERMINATION

**Section 9.01** Intentionally Omitted.

**Section 9.02** Intentionally Omitted.

## ARTICLE X MISCELLANEOUS

**Section 10.01** Intentionally Omitted.

**Section 10.02 Expenses.** Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred; *provided, however*, and the Company Parent shall pay all amounts payable to Invision Capital Advisors, LLC.

**Section 10.03 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.03):

If to the Company or Company Parent:

Precision Metal Works, Inc.  
6901 Preston Hwy, Louisville, KY 40219 E-mail:  
rstanley@lhpg.ca  
Attention: Richard Stanley E-mail:  
jlocke@lhpg.ca Attention: John Locke



with a copy to: Dinsmore & Shohl LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, OH 45202  
E-mail: [Jerrad.Howard@Dinsmore.com](mailto:Jerrad.Howard@Dinsmore.com) Attention: Jerrad Howard, Esq.

If to Sellers The Richard Stanley Family Trust Attn: Richard Stanley  
54 Ireland Point Road, Nobel, Ontario, Canada, P0G 1G0 Email: [rstanley@lhpg.ca](mailto:rstanley@lhpg.ca)

The John Locke Family Trust Attn: John Locke  
5065 Wellington Rd. 125, Acton, Ontario, Canada, L7J 2L9 Email: [jlocke@lhpg.ca](mailto:jlocke@lhpg.ca)

with a copy to: Dinsmore & Shohl LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, OH 45202  
E-mail: [Jerrad.Howard@Dinsmore.com](mailto:Jerrad.Howard@Dinsmore.com) Attention: Jerrad Howard, Esq.

If to Buyer: PMW Affiliated Holdings, LLC  
125 E. Warm Springs Road, Suite #102 Las Vegas, NV 89119  
E-mail: [ealthofer@liveventures.com](mailto:ealthofer@liveventures.com); [wipsen@liveventures.com](mailto:wipsen@liveventures.com) Attention: Eric Althofer and Wayne Ipsen

with a copy to: Greenberg Traurig, LLP  
10845 Griffith Peak Drive, Suite 600 Las Vegas, NV 89135  
E-mail: [bonnerm@gtlaw.com](mailto:bonnerm@gtlaw.com) Attention: Michael J. Bonner, Esq.

**Section 10.04 Interpretation.** For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and

Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a 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 provision of this Agreement.

**Section 10.05 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 10.06 Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 10.07 Entire Agreement.** This Agreement and the Ancillary Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

**Section 10.08 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Buyer may, without the prior written consent of Sellers, assign this Agreement or all or any portion of Buyer's rights, interests and obligations hereunder as a collateral assignment to any creditor of Buyer or its Affiliates, in each case, upon notice given to Sellers. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 10.09 No Third-Party Beneficiaries.** Except as provided in Section 5.12, Section 6.03 and ARTICLE VIII, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 10.10 Amendment and Modification; Waiver**. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by Buyer and Sellers. Any failure of Buyer, on the one hand, or the Sellers or the Company Parent, on the other hand, to comply with any obligation, covenant, agreement or condition herein may be waived by Sellers (with respect to any failure by Buyer) or by Buyer (with respect to any failure by the Company Parent or Sellers), respectively, only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

**Section 10.11 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY SHALL BE BROUGHT EXCLUSIVELY IN THE DELAWARE COURT OF CHANCERY IN NEW CASTLE COUNTY, OR IN THE EVENT (BUT ONLY IN THE EVENT) THAT SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER SUCH PROCEEDING, THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF DELAWARE IN EACH CASE LOCATED IN THE CITY OF WILMINGTON AND COUNTY OF DELAWARE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE ANCILLARY DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS

WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO

THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 10.11(c).

**Section 10.12 Specific Performance.** The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity. Each party further agrees that: (i) no such party will oppose the granting of an injunction or specific performance as provided herein on the basis that the other party has an adequate remedy at law or that an award of specific performance is not an appropriate remedy for any reason at law or equity; (ii) no such party will oppose the specific performance of the terms and provisions of this Agreement; and (iii) no other party or any other Person shall be required to obtain, furnish, or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 10.12, and each party irrevocably waives any right it may have to require the obtaining, furnishing, or posting of any such bond or similar instrument.


**Section 10.13 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Stock Purchase Agreement to be executed as of the date first written above by their duly authorized representatives.

**SELLERS:**

THE RICHARD STANLEY FAMILY TRUST

By:   
Name: Richard Stanley  
Title: Trustee

By k-


Name: Mary Ell  
Title: Trustee

-----By:  
ame: John Locke  
Title: Trustee

THE JOHN LOCKE FAMILY TRUST

By: \_\_\_\_ Name: John Locke  
Title: Trustee

By: \_\_\_\_  
ame: Ann Locke Title: Trustee

By:   
Name: Richard Stanley  
Title: Trustee


*[Signature Page 10 Stock Purchase Agreement]*

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*[Signature Page to Stock Purchase Agreement]*

\_\_\_\_\_  
COMPANY PARENT:

PRECISION METAL WORKS, INC.

By:  Name: Richard Stanley Title: President



**BUYER:**

LDrNGS, LLC

By: \_\_\_\_\_  
Eric Althofer Name:  
Title: President

*[Signature Page to Stock Purchase Agreement]*

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—————**IN WITNESS WHEREOF.** John Locke and Richard Stanley have executed this Stock Purchase Agreement as of the date first written above solely for purposes of agreeing to the terms and conditions set forth in Section 5.09 of the Stock Purchase Agreement (and neither John Locke nor Richard Stanley shall be construed to be parties to the Stock Purchase Agreement for any reason other than with respect to Section 5.09 of the Stock Purchase Agreement).

RICHARD STANLEY

\_\_\_\_\_

JOHN LOCKE

\_\_\_\_\_

**IN WITNESS WHEREOF**, John Locke and Richard Stanley have executed this Stock Purchase Agreement as of the date first written above solely for purposes of agreeing to the terms and conditions set forth in Section 5.09 of the Stock Purchase Agreement (and neither John Locke nor Richard Stanley shall be construed to be parties to the Stock Purchase Agreement for any reason other than with respect to Section 5.09 of the Stock Purchase Agreement).

RICHARD STANLEY

\_\_\_\_\_

JOHN LOCKE

\_\_\_\_\_

Schedule 2.06(a)(ii)  
Estimated Closing Working Capital Statement

**Current Assets<sup>1</sup>**

Accounts Receivables (A/R)	\$12,699,400	
Unbilled Tooling A/R	168,250	
Miscellaneous A/R (Scrap)		(Scrap A/R)
Allowance for Doubtful Accounts	(187,579)	
Production Inventories	4,679,251	
Production Inventories SS Surcharge		(SS Surcharge)
Production Inventories Provision	(224,981)	
Tool Crib Inventories	1,337,702	
Tool Crib Provisions	(8,672)	
Other/Prepaid Current Assets	866,938	(should re-allocate Scrap A/R to Misc A/R & SS Surcharge to Inv)
<b>Total Current Assets</b>	<u>19,330,309</u>	

**Current Liabilities<sup>2</sup>**

Accounts Payable	9,677,425
Accrued Liabilities	950,000
Deferred Tooling Revenue	200,000
Accrued Property Taxes	116,269
Accrued Payroll	<u>50,000</u>
<b>Total Current Liabilities</b>	<u>10,993,694</u>

**Closing Estimated Working Capital**

**Target Working Capital**

SPA Sec 2.06(a)(iii)	<u>\$10,200,000</u>	+ -	<u>\$300,000</u>
Excess (shortfall)	<u>(\$1,563,385)</u>		

**Estimated Closing Cash ( Sec 2.06(a)(ii) )**

\$811,207

**EXHIBIT A**

**SAMPLE ADJUSTED EBITDA CALCULATION**

[See attached.]

Stub Period/ Closing Date to Sept 30th <u>2023</u>	Oct 1st to Sept 30th <u>2024</u>	Oct 1st to Sept 30th <u>2025</u>	Oct 1st to Sept 30th <u>2026</u>	Oct 1st to Sept 30th <u>2027</u>	Oct 1st to June 30th <u>2028</u>
350,000	1,200,000	2,750,000	3,750,000	4,750,000	5,750,000
200,000	800,000	800,000	800,000	800,000	800,000
150,000	650,000	650,000	650,000	650,000	650,000
30,000	100,000	100,000	100,000	100,000	100,000
730,000	2,750,000	4,300,000	5,300,000	6,300,000	7,300,000
10,000	30,000	200,000	200,000	200,000	200,000
100,000	500,000	500,000	500,000	500,000	500,000
65,000	300,000	300,000	300,000	300,000	300,000
90,000	450,000	450,000	450,000	450,000	450,000
15,000					
(75,000)	(300,000)	(300,000)	(300,000)	(300,000)	(300,000)
205,000	980,000	1,150,000	1,150,000	1,150,000	1,150,000
935,000	3,730,000	5,450,000	6,450,000	7,450,000	8,450,000
922,500	4,000,000	3,500,000	3,500,000	3,000,000	3,000,000
187,000	0	1,090,000	1,290,000	433,000	

Exhibit A

Audited Net Income

EBITDA Addbacks

Taxes  
Interest  
Depreciation  
Amortization

EBITDA

Adjustments *Adjusted EBITDA Addbacks*

- (i) Adjusted for any non-cash expense or (gain)
- (ii) Any General Electric early pay Discount
- (iii) Corporate Charges from LIVE<sup>1</sup>
- (iii) Rent Frankfort Plant<sup>2</sup>
- (iv) Rent Allmond Plant<sup>3</sup>
- (v) All Fees associated with Sale Leaseback<sup>4</sup>
- (vi) Other

*Adjusted EBITDA Deductions*

Rent  
Allmond  
Plan

Total Adjustments Adjusted EBITDA

EBITDA Threshold

---

t<sup>5</sup>  
Any  
EBITDA  
a

quired<sup>6</sup>  
Other

Earn-Out Payment Rolling Aggregate Earn- Out  
Payment

187,0001,277,0002,567,0003,000,000

1	Any costs or expenses allocated or charged by Buyer or any Affiliate of Buyer (including, but not limited to, costs or expenses related to the Sale).
2	If Buyer or any Affiliate of Buyer sell the Fankfort plant and leases it back to Parent Company or its Affiliates, the rent expense and related costs would be added back to Adjusted EBITDA for purposes of this calculation.
3	If Buyer or any Affiliate of Buyer purchases the Allmond plant and leases it back to Parent Company or its Affiliates, the rent expense and related costs would be added back to Adjusted EBITDA for purposes of this calculation.
4	Any costs and expenses allocated or charged to the Company Parent, including, without limitation, legal, accounting, appraisal, diligence, broker, and environmental costs.
5	Rent expense due under real property leases in effect prior to Closing.
6	If the Parent Company or any of its Affiliates completes an acquisition or other transaction and the Parent Company or its employees, systems, properties, or assets are utilized in connection with the acquisition or management or operation of that business after the acquisition, then the positive incremental EBITDA shall be included as an additional to Adjusted EBITDA for purposes of this calculation.
7	The EBITDA Threshold for the stub period between the Closing and September 30, 2023 will be pro-rated based on the ratio with a numerator equal to the number of days between the Closing Date and September 30, 2023 and a denominator of 365. For instance, assuming Closing occurs on July 17th, the proportion would be 75/365 (20.5%); so, the EBITDA Threshold for the Stub Period would be 20.5% of \$4,500,000, which equals \$922,500



**EXHIBIT B CONSULTING AGREEMENT**

[See attached.]

ACTIVE 687632206v25

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## CONSULTING AGREEMENT

This **CONSULTING AGREEMENT** (this “**Agreement**”) is made and entered as of July 19, 2023 (the “**Effective Date**”) by and between Precision Metal Works, Inc., a Kentucky corporation formerly known as NTH HOLDING, Ltd (the “**Company**”), and Bartell Global Inc., an Ontario, Canada corporation (“**Consultant**”). The Company and Consultant are sometimes hereinafter referred to individually as a “**Party**” and together as the “**Parties**”. The Company is the successor by merger to the business and operations of the entity formerly known as Precision Metal Works, Inc., a Kentucky corporation. Live Ventures Incorporated, a Nevada corporation, joins this Agreement as a party solely with respect to its obligations pursuant to Section 6.

**WHEREAS**, this Agreement is being entered into in connection with the transactions contemplated under that certain Stock Purchase Agreement (the “**Purchase Agreement**”), dated as of the Effective Date, by and among the trustees of The Richard Stanley Family Trust, a trust formed under the Laws of Ontario, Canada; the trustees of The John Locke Family Trust, a trust formed under the Laws of Ontario, Canada (each, a “**Seller**” and, together, the “**Sellers**”); PMW Affiliated Holdings, LLC, a Delaware limited liability company (“**Buyer**”); and the Company, pursuant to which the Buyer purchased from Sellers all of the issued and outstanding capital stock of the Company; and

**WHEREAS**, the Company desires to engage Consultant to provide to the Company certain consulting and other services upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, intending to be legally bound, the Parties agree as follows:

**1. Definitions.** As used in this Agreement, the following terms have the meanings set forth below:

“**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlled” and “controlling” have meanings correlative thereto.

“**Board**” means the board of directors of Company.

“**Note**” shall have the meaning set forth in the Purchase Agreement.

“**Person**” means any natural person, corporation, general partnership, limited partnership, limited liability company or partnership, proprietorship, other business organization, trust, union, association or governmental or regulatory entities, department, agency or authority.

Other capitalized terms used in this Agreement shall have the meanings given to them herein.

**2. Duties.** During the Term, Consultant shall provide those services set forth on Exhibit A attached hereto and incorporated herein (collectively, the “**Services**”).

**3. Compensation.** The Company shall pay Consultant an annual base consulting fee of \$200,000 (the “**Consulting Fee**”) in equal installments in accordance with the Company’s customary

payroll practices, but no less frequently than monthly. The Consulting Fee shall be reviewed at least annually by the Board, and the Board may, but shall not be required to, increase the Consulting Fee during the Term; *provided, however*, that the Consulting Fee shall not be decreased during the Term without Consultant's prior written consent, which Consultant may withhold, condition, or deny for any reason or no reason within Consultant's sole and absolute discretion.

**4. Reimbursement of Expenses.** The Company (or an Affiliate of the Company) will reimburse Consultant for all reasonable out-of-pocket business expenses incurred by Consultant in performing the Services, in accordance with the expense reimbursement policy adopted by the Board.

**5. Term.** This Agreement shall commence on the Effective Date and shall terminate on July 19, 2025 (the "**Initial Term**") unless earlier terminated in accordance with Section 6 hereof. The Initial Term may be extended by mutual consent of the Parties (the "**Extended Term**"). The Initial Term and the Extended Term, if any, are together called the "**Term**".

**6. Termination.** Either Party may terminate this Agreement for any reason or no reason after July 19, 2024 by providing no less than thirty (30) days' written notice to the other Party; *provided, however*, that, in the event that this Agreement is terminated by the Company prior to Sellers' receipt of Earn-out Payments (as defined in the Purchase Agreement) in an aggregate amount equal to \$3,000,000 (the "**Maximum Earn-out Consideration**") from Buyer or its designee (including the Company), the Company shall make a pre-payment to each Seller in an amount equal to fifty percent (50%) of the then-outstanding Principal Amount (as defined in such Note, defined below) under the Subordinated Secured Promissory Note issued by the Company to each Seller as of the date hereof (each, a "**Note**" and, together, the "**Notes**"); *provided, further*, that the Company shall only be required to make such payments to Sellers to the extent permitted under the Subordination Agreement dated as of the Effective Date, by and between Fifth Third Bank, National Association and Sellers. Notwithstanding the foregoing or anything else to the contrary in this Agreement, the Purchase Agreement, or any of the Ancillary Documents (as defined in the Purchase Agreement), in the event that the Company is prohibited from paying the amount that becomes due and payable under the Note in accordance with this Section 6, whether by virtue of the Subordination Agreement or otherwise, Live Ventures Incorporated, a Nevada corporation, shall promptly pay such amount on behalf of the Company to Sellers in accordance with this Section 6. Notwithstanding anything to the contrary set forth in this Agreement, the foregoing provision requiring the Company to make any such prepayment of the Notes to Sellers shall not apply if the Company terminates this Agreement for Cause. For purposes of this Agreement, "**Cause**" shall mean any of the following: (i) Consultant's gross negligence or willful misconduct that results in substantial harm and documented pecuniary loss to the Company; (ii) Consultant's material breach of this Agreement or material breach of any policy of, or other obligation or duty owed to the Company, which breach remains uncured, if subject to cure, for ten (10) days after Consultant receives written notice thereof; *provided, however*, that if the breach outlined in the written notice cannot be cured in ten (10) days, it shall be sufficient for Consultant to undertake to cure the breach set forth in the written notice within such ten (10) day period if Consultant pursues a cure as expeditiously as reasonably possible; *provided, further*, that repeated failure to perform Consultant's duties shall not be subject to cure; (iii) Consultant's violation of law that has, or is likely to, result in material and documented pecuniary loss to the Company; (iv) Consultant's failure to follow company policies or any lawful instructions from the Board or other person or entity to whom Consultant reports, which failure remains uncured, if subject to cure, for ten (10) days after Consultant receives written notice thereof from the Board (provided, that repeated failure to perform his or her duties shall not be subject to cure); (v) Consultant's commission of, or charge with, a felony involving fraud or moral turpitude; (vi) Consultant's misappropriations of funds or property of the Company or engagement in any material act of dishonesty involving the Company; or (vii) Consultant's attempt to obtain a personal profit from any transaction in

that would otherwise be prohibited under the restrictive covenants set forth in Section 5.09 of the Purchase Agreement.

**7. Directors and Officers Liability Insurance.** The Company will maintain at all times during the Term and for a period of no less than five years thereafter (either pursuant to an occurrence-based policy or a tail policy) director's and officer's liability insurance that inures to the benefit of Stanley for the Services performed by Stanley in the capacity as an officer of the Company. Such insurance shall, in each case, be substantially on the same terms and conditions as the insurance provided to directors and officers of Live Ventures Incorporated or its Affiliates.

**8. Access to Information.** The Company shall furnish, or cause to be furnished to Consultant, such information as Consultant reasonably believes is necessary and appropriate in connection with its performance of the Services. During the Term, the Company shall provide Consultant with financial statements reflecting the operations of the Company for each month-end, quarter-end, and year-end period.

**9. Visa/Work Authorization .** To the extent that any employee or contractor of Consultant requires sponsorship or other assistance to obtain a visa or work authorization to perform the Services in connection with this Agreement, the Company shall sponsor or take any other commercially reasonable actions necessary, at the Company's sole cost and expense, in order to allow such employee or contractor of Consultant to obtain a visa or other work authorization so that such employee or contractor of Consultant may perform the Services in connection with this Agreement.

**10. Confidentiality.**

**10.1. Definition of Confidential Information.** The term "**Confidential Information**" means all information of a confidential or proprietary nature (whether or not specifically labeled or identified as "confidential" or "proprietary"), in any form or medium, whether evidenced in writing, electronic data or otherwise, that is developed on or after the Effective Date and which is specific to the Company and its operations, including, without limitation: (i) business information, financial records, projections, budgets, plans, practices, training, marketing, sales practices, cost and pricing structures; (ii) identities and requirements of, and specific contractual arrangements with, suppliers, distributors, customers, independent contractors or other business relations; (iii) know-how, methods, analyses, techniques, systems, formulae, processes, research, records, reports, manuals, documentation, models, and data relating thereto; and (iv) inventions, innovations, improvements, developments, trade secrets, designs, drawings and other intellectual property (whether or not patentable or registrable). Confidential Information shall not include any materials or information developed by Consultant or its employees that is not specific to the Company and its operations or any materials or information developed by Consultant or its employees prior to the Effective Date.

**10.2. Confidentiality Obligations.** During the Term and for a period of two (2) years following termination of this Agreement, Consultant shall, and shall cause its employees and independent contractors to: (a) hold all Confidential Information in strict confidence; (b) not use or disclose any Confidential Information, directly or indirectly, except in the performance of Consultant's duties on behalf of the Company or its Affiliates pursuant to this Agreement (and then only in accordance with the policies of the Company); and (c) promptly deliver to the Company or destroy, at the request and option of the Company, all tangible embodiments or electronic copies of the Confidential Information in the possession or under the control of Consultant. If Consultant is required to produce or disclose any Confidential Information pursuant to the valid order of any court or governmental authority, Consultant shall: (x) promptly notify the Company of such requirement prior to production or disclosure of such Confidential Information; (y) cooperate with the Company to contest such disclosure or seek an appropriate protective

order at the direction of the Company at the Company's sole expense; and (z) thereafter disclose only so much of the Confidential Information as Consultant, in the good faith opinion of Consultant's legal counsel, is legally compelled to disclose or else stand liable for contempt. The foregoing provisions shall not apply to any Confidential Information that is or becomes generally available to the public, unless such Confidential Information is so available due to the actions or omissions of Consultant or its employees or independent contractors.

#### **11. Assignment of Business Ideas.**

11.1. Assignment. The Company will own, and Consultant hereby assigns, and agrees to assign, to the Company, all rights in all Business Ideas that Consultant or its employees or independent contractor originates or develops, in whole or in part, either alone or working with others, in the course of Consultant performing the Services using the Company's assets and that are specific to the Company and its operations. All Business Ideas that are or form the basis for copyrightable works are hereby assigned to the Company and/or shall be assigned to the Company or shall be considered "Works for Hire" as that term is defined by United States copyright law. While employed by the Company, Consultant will promptly disclose all Business Ideas to the Company. Consultant, at any time during or after the term of its engagement with the Company, will promptly execute all documents that the Company may reasonably require to perfect its patent, copyright and other rights to such Business Ideas throughout the world at the Company's sole expense.

11.2. Records. Consultant will keep complete, accurate and authentic accounts, notes, data and records of all Business Ideas in the manner and form requested by the Company. Such accounts, notes, data and records shall be the property of the Company, and, upon its request, Consultant will promptly surrender same to it or, if not previously surrendered upon its request or otherwise, Consultant will surrender the same, and all copies thereof, to the Company upon the conclusion of its engagement with the Company.

11.3. Definition of Business Idea. The term "**Business Ideas**" means all ideas, designs, modifications, formulations, concepts, know-how, Confidential Information, trade secrets, discoveries, inventions, data, software, developments and copyrightable works, whether or not patentable or registrable, which Consultant originates or develops, in whole, either alone or jointly with others, in connection with Consultant's performance of the Services and using the assets of the Company, and which are substantially related to the then-existing business of the Company known to Consultant to be engaged in by Company.

**12. Confidential Information of Others.** Consultant represents and warrants to the Company that Consultant is not subject to any employment, consulting or services agreement, or any restrictive covenants or agreements of any type, which would conflict or prohibit Consultant from fully carrying out Consultant's duties as described in this Agreement. Further, Consultant warrants and represents to the Company that Consultant has not and will not retain or use, for the benefit of the Company, any confidential information, records, trade secrets, or other property of a former employer.

#### **13. Miscellaneous.**

13.1. Notices. Any notice or communication required or permitted under this Agreement will be made in writing and (a) sent by overnight courier or (b) mailed by overnight U.S. express mail, postage prepaid and return receipt requested. Any notice or communication to Consultant will be sent to Consultant at 54 Ireland Point Rd, Nobel, Ontario, Canada, P0G 1G0. Any notice or communication to the Company will be sent to the Company at 125 E. Warm Springs Road, Suite #102, Las Vegas, NV 89119.

Notwithstanding the foregoing, either Party may change the address for notices or communications hereunder by providing written notice to the other in the manner specified in this paragraph.

13.2. Relationships.

13.2.1. Independent Contractor. Nothing herein shall be construed to create a joint venture or partnership between the Parties or an employee/employer relationship. Consultant shall be an independent contractor pursuant to this Agreement. Neither Party shall have any express or implied right or authority to assume or create any obligations on behalf of, or in the name of, the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party. Nothing in this Agreement shall be deemed or construed to enlarge the fiduciary duties and responsibilities, if any, of Consultant or any of its Affiliates.

13.2.2. Business Efforts. The Company acknowledges and agrees that the Consultant shall not necessarily be required to devote full time and business efforts to the duties of the Consultant specified in this Agreement, but instead shall devote only so much of such time and efforts as the Consultant reasonably deems necessary. This Agreement shall not preclude Consultant from engaging in business activities or performing services for its or their own account or for the account of others, and the Company shall not take any action to preclude or restrict Consultant or its employees from engaging in any such business activities or performing such services.

13.2.3. Other Consultants and Advisors. This Agreement shall in no way prohibit or limit the Company or any of its Affiliates from engaging one or more Persons (as defined below) other than the Consultant to advise the Company concerning any matters related to the business, administration and policies of the Company or Affiliate.

13.3. Governing Law and Enforcement. This Agreement will be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the principles of conflicts of laws. Any legal proceeding arising out of or relating to this Agreement will be instituted exclusively in a state or federal court in Wilmington, Delaware.

13.4. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law. However, if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision, and this Agreement will be reformed, construed and enforced as though the invalid, illegal or unenforceable provision had never been herein contained.

13.5. Entire Agreement Waivers; Amendments. This Agreement may not be amended, changed, or modified, except by an agreement in writing signed by all of the Parties. No term or condition of this Agreement shall be deemed to have been waived, except by a statement in writing signed by the Party against whom enforcement of the waiver is sought. Any written waiver shall not be deemed a continuing waiver of such term or condition and shall not constitute a waiver as to any act other than that specifically waived. This Agreement contains the entire agreement and understanding of the Parties relating to the subject matter hereof and merges, replaces, and supersedes all prior and contemporaneous discussions, agreements, and understandings of every nature between Consultant, on the one hand, and the Company, on the other hand.

13.6. Headings. The headings of sections and paragraphs of this Agreement are inserted for convenience only and will not in any way affect the meaning or construction of any provision of this Agreement.

13.7. Counterparts; Facsimile. This Agreement may be executed in electronically and in multiple counterparts (including, without limitation, by means of facsimile, DocuSign, and portable document format (.PDF)), each of which will be deemed to be an original, and all of which together will constitute one and the same agreement.

**{SIGNATURE PAGE FOLLOWS}**

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

**COMPANY:**

PRECISION METAL WORKS, INC.

By: \_\_ Name: \_\_ Title: \_\_

*{SIGNATURE PAGE TO CONSULTING AGREEMENT}*

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**IN WITNESS WHEREOF**, Live Ventures Incorporated has executed this Consulting Agreement as of the date first written above solely for purposes of agreeing to the terms and conditions set forth in Section 6 of the Consulting Agreement.

LIVE VENTURES INCORPORATED

By: \_\_ Name: Eric Althofer  
Title: COO and Managing Director

{SIGNATURE PAGE TO CONSULTING AGREEMENT}

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**CONSULTANT:**

Bartell Global Inc.

By: \_\_ Name: Richard L. Stanley  
Title: \_\_

{SIGNATURE PAGE TO CONSULTING AGREEMENT}

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#### **EXHIBIT A SERVICES**

Richard Stanley (“*Stanley*”) will serve as President and Chief Executive Officer of the Company on a part- time basis. Stanley will have the duties, responsibilities, and authority as the Board shall delegate to such offices and will report to the Board or such other person or persons designated by the Board, who may be one or more of the managers or officers of the parent of the Company.

**EXHIBIT C**

**ADJUSTED EBITDA THRESHOLDS**

The following are each Adjusted EBITDA Threshold for each Calculation Period during the Earn-Out Period for purposes of calculating the Earn-Out Payment:

Calculation Period	Adjusted EBITDA Threshold
Closing Date through and including September 30, 2023	The Adjusted EBITDA Threshold for the stub period between the Closing and September 30, 2023 will be pro-rated. The calculation for this Adjusted EBITDA Threshold shall be equal to (i) the number of days between the Closing Date and September 30, 2023 divided by 365, (ii) <i>multiplied by</i> \$4,500,000.
October 1, 2023 through and including September 30, 2024	\$4,000,000
October 1, 2024 through and including September 30, 2025	\$3,500,000
October 1, 2025 through and including September 30, 2026	\$3,500,000
October 1, 2026 through and including September 30, 2027	\$3,000,000
October 1, 2027 through and including June 30, 2028	\$1,500,000

**EXHIBIT D ESCROW AGREEMENT**

[See attached.]

ACTIVE 687632206v25

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## ESCROW AGREEMENT

This Escrow Agreement dated July 19, 2023 (the “*Escrow Agreement*”) is entered into by and among the trustees of The Richard Stanley Family Trust, a trust formed under the Laws of Ontario, Canada; the trustees of The John Locke Family Trust, a trust formed under the Laws of Ontario, Canada (each, a “*Seller*” and, together, the “*Sellers*”); PMW Affiliated Holdings, LLC, a Delaware limited liability company (“*Buyer*”, and collectively with the Seller, the “*Parties*” and each, a “*Party*”); and Fifth Third Bank, National Association, as escrow agent (the “*Escrow Agent*”).

### RECITALS

A. Sellers and Buyer have entered into a Stock Purchase Agreement dated July 19, 2023 (the “*Purchase Agreement*”), by and among Sellers, Buyer and Precision Metal Works, Inc., a Kentucky corporation formerly known as NTH HOLDING, Ltd (the “*Company Parent*”), whereby Sellers have agreed to sell to Buyer all of the issued and outstanding shares of common stock, par value \$100.00, of the Company Parent on the terms and conditions set forth therein;

B. Pursuant to the terms of the Purchase Agreement, Buyer has agreed to place an amount in cash equal to \$1,245,000 (the “*Escrow Amount*”) consisting of (i) \$1,020,000 deposited pursuant to Section 2.03(a)(iii)(A) of the Purchase Agreement (the “*Purchase Price Adjustment Escrow Fund*”) in a separate escrow account (the “*Purchase Price Adjustment Escrow Account*”) and (ii) \$225,000 deposited pursuant to Section 2.03(a)(iii)(B) of the Purchase Agreement (the “*Indemnification Escrow Fund*”) in a separate escrow account (the “*Indemnification Escrow Account*” and, together with the Purchase Price Adjustment Escrow Account, each, an “*Escrow Account*” and, together, the “*Escrow Accounts*”), for the purpose of securing payment of any potential amounts owing to Buyer, if any, pursuant to Section 2.06(d), Section 6.09 or Section 8.06 of the Purchase Agreement (as applicable and as expressly set forth in the Purchase Agreement);

C. The Parties desire to appoint the Escrow Agent as escrow agent hereunder in the manner hereinafter set forth and the Escrow Agent is willing to act in such capacity; and

D. For the convenience of the Parties, any capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Purchase Agreement; provided, however, that the Escrow Agent will not be responsible to determine or make any inquiry into any term, capitalized or otherwise, not defined herein.

**NOW THEREFORE**, for good and valuable consideration, the receipt and accuracy of which is hereby acknowledged by each Party and the Escrow Agent, the Parties and the Escrow Agent agree as follows:

### ARTICLE 1 ESCROW DEPOSIT

#### Section 1.1 Receipt of Escrow Funds.

(a) The Parties hereby appoint the Escrow Agent as their escrow agent for the purposes set forth herein, and the Escrow Agent hereby accepts such appointment and agrees to act as escrow agent in accordance with the terms and conditions set forth herein.

(b) Promptly upon the execution of this Escrow Agreement, Buyer shall deliver (or cause to be delivered) to the Escrow Agent by wire transfer of immediately available U.S. funds in

accordance with the payment instructions provided by the Escrow Agent, and the Escrow Agent shall acknowledge to the Parties upon receipt of, the Escrow Amount (such amount as increased by any earnings, interest and gains on and proceeds from the investment or reinvestment thereof ("**Earnings**"), is hereinafter referred to as the "**Escrow Funds**").

(c) All signatories to this Escrow Agreement represent and warrant to the Escrow Agent and each other that they have full and complete authority to enter into and execute this Escrow Agreement on behalf of the Party on whose behalf they are signing. Concurrent with the execution of this Escrow Agreement, each of Buyer and Sellers shall deliver to the Escrow Agent an Incumbency Certificate in the form of Exhibit A to this Escrow Agreement. Such Incumbency Certificate establishes the identity of the representatives of such Party (and their contact information) entitled to issue instructions to the Escrow Agent or to otherwise enter into documentation or agreement on behalf of each such Party (each, an "**Authorized Representative**"). In the event of any change in the identity of such representatives, a new Incumbency Certificate shall be executed and delivered to the Escrow Agent, executed on behalf of the appropriate Party by one of the then remaining Authorized Representatives listed on the previously effective Incumbency Certificate. Each of the Parties to this Escrow Agreement acknowledge and agree the Escrow Agent shall be fully protected in relying without inquiry on any then-current Incumbency Certificate delivered to the Escrow Agent in accordance with this Escrow Agreement. In the event instructions are given (other than in writing at the time of execution of this Escrow Agreement), whether in writing, by electronic transmission or otherwise, the Escrow Agent may (but is not obligated to) seek confirmation of such instructions by telephone call back to an Authorized Representative, and the Escrow Agent may rely upon the confirmation of anyone reasonably purporting to be the Authorized Representative. If the Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, the Escrow Agent shall not be required to execute the instruction until all issues have been resolved in its sole discretion. The Parties agree to notify the Escrow Agent of any errors, delays or other problems within five (5) calendar days after receiving notification that a transaction has been executed.

(d) Buyer and Sellers shall each furnish the Escrow Agent with an Internal Revenue Service Form W-8 or Form W-9, properly completed and signed, and such other forms and documents that the Escrow Agent may reasonably request.

#### Section 1.2 Investments.

(a) The Escrow Agent is authorized and directed to deposit, transfer, hold, and invest the Escrow Funds (including any Earnings thereon) in accordance with such written instructions and directions as may from time to time be provided to the Escrow Agent by the Sellers; provided such funds shall be at all times invested in one of the options described in Exhibit B to this Escrow Agreement. In the event that the Escrow Agent does not receive written instructions to invest funds held in the Escrow Accounts, the Escrow Agent shall invest such funds in a Fifth Third BankSafe Deposit Account or a successor or similar product. The Escrow Funds shall at all times remain available for distribution in accordance with Article 2.

(b) The Escrow Agent is hereby authorized and directed to sell or redeem any such investments as it deems necessary to make any payments or distributions required under this Escrow Agreement. The Escrow Agent shall have no responsibility or liability for any loss which may result from any investment or sale of investment made pursuant to this Escrow Agreement. The Parties acknowledge that the Escrow Agent is not providing investment supervision, recommendations, or advice. Any loss or expense incurred as a result of an investment will be borne by the Escrow Funds. The Parties understand that the Escrow Agent is not making any guarantees, including without limitation, a guarantee as to any specific level of performance of each Escrow Account. The Parties further understand and acknowledge that investments are subject to various market, currency, economic, and business risks, and each party

hereby assumes such risks. The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by this Escrow Agreement, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or any such affiliate is acting as agent of the Escrow Agent or for any third person or dealing as principal for its own account.

(c) The Escrow Agent shall send statements to each Party on a monthly basis reflecting activity in each Escrow Account for the preceding month. Although Buyer and Sellers each recognize that they may obtain a broker confirmation or written statement containing comparable information at no additional cost, Buyer and Sellers hereby agree that confirmations of investments are not required to be issued by the Escrow Agent for each month in which a monthly statement is rendered. No statement need be rendered for the Escrow Accounts if no activity occurred for such month.

## ARTICLE 2 DISBURSEMENTS.

Section 2.1 Disbursement of Purchase Price Adjustment Escrow Fund. Within five (5) Business Days after the final determination of the Post-Closing Adjustment in accordance with Section 2.06(d)(i) of the Purchase Agreement, the Parties shall deliver joint written instructions executed by an Authorized Representative of each of Sellers and Buyer with respect to such amount in the form attached hereto as Exhibit C ("**Joint Written Instructions**"); at which time the Escrow Agent shall promptly, and in any event within two (2) Business Days thereafter, disburse the amount specified in the Joint Written Instructions from the Purchase Price Adjustment Escrow Fund pursuant to the Joint Written Instructions.

### Section 2.2 Disbursement of Indemnification Escrow Fund.

(a) Buyer may, from time to time, but in all events not later than January 19, 2025 (the "**Indemnification Escrow Termination Date**"), deliver to the Escrow Agent and, contemporaneously therewith, to Sellers, a written notice (each such notice, a "**Claim Notice**") demanding payment on behalf of any Buyer Indemnitee in connection with any claim for which a Buyer Indemnitee is entitled to indemnification under the Purchase Agreement (a "**Claim**"), which Claim Notice shall state the amount of the Indemnification Escrow Fund to be reserved or paid against the Claim being asserted, including a good faith estimate of such Losses if the Claim is not yet reasonably ascertainable, (the "**Claim Amount**") and all other information required to be provided under the Purchase Agreement related to such Claim. The Escrow Agent shall not inquire into whether a Claim Notice complies with the requirements of the Purchase Agreement or this Escrow Agreement or whether any person constitutes a Buyer Indemnitee. The Escrow Agent shall be permitted to treat any notice claiming to constitute a Claim Notice as a Claim Notice within the meaning of this Escrow Agreement.

(b) Objection Notices. Sellers may reply to any Claim Notice by written notice given to the Escrow Agent with a copy to Buyer, which notice shall state whether Sellers dispute the validity of the Claim Notice or the Claim Amount (a "**Objection Notice**"). If, by the close of business on the 30<sup>th</sup> calendar day after the date of receipt (pursuant to Section 6.2 hereof) by the Escrow Agent of the Claim Notice (the "**Dispute Period**"), the Escrow Agent shall not have received (in accordance with Section 6.2 hereof) an Objection Notice, then Escrow Agent shall be entitled to presume that Sellers have agreed with the Claim Notice. The Escrow Agent shall not have any obligation to verify Sellers' receipt of a Claim Notice. Thereafter, the Escrow Agent shall promptly, and in any event within three (3) Business Days thereafter, pay to Buyer or other person designated in the Claim Notice (the "**Designated Party**") from the Indemnification Escrow Fund the Claim Amount and the Indemnification Escrow Fund shall be reduced to the extent thereof. If the Objection Notice provides that a specified portion of the Claim Amount is a valid Claim, the Escrow Agent shall promptly thereafter disburse to the Designated Party the amount so provided as valid. The Escrow Agent shall not inquire into whether an Objection Notice meets the requirements of



this Escrow Agreement and shall be permitted to treat any notice claiming to constitute an Objection Notice as an Objection Notice within the meaning of this Escrow Agreement.

(c) Resolution of Disputed Claims. If an Objection Notice is given by Sellers in accordance with Section 2.2(b) hereof, then the Claim Amount less any amount admitted in the Objection Notice by Sellers as valid (the “**Disputed Amount**”) that is disbursed to the Designated Party, shall be treated as disputed (a “**Disputed Claim**”). Buyer and Sellers agree to use their commercially reasonable efforts to resolve in good faith any Disputed Claims as promptly as practical. The Disputed Amount shall be held by the Escrow Agent as an undivided portion of the Indemnification Escrow Fund, and Escrow Agent shall hold such portion until the Parties deliver to the Escrow Agent either: (i) Joint Written Instructions; at which time the Escrow Agent shall either (y) promptly, and in any event within two (2) Business Days thereafter, disburse the amount specified in the Joint Written Instructions from the Indemnification Escrow Fund pursuant to the Joint Written Instructions or (z) retain such amount as no longer subject to a Disputed Claim in the Indemnification Escrow Account; or (ii) a judgment, order or decree of an arbitrator, court or other judicial body that decided the disbursement of the Disputed Amount, together with a certificate of the presenting Party to the effect that such judgment is final, non-appealable and from a court of competent jurisdiction or arbitrator having proper authority, upon which certificate the Escrow Agent shall be entitled to conclusively rely without further investigation (a “**Final Order**”). For purposes of the foregoing definition, “**final, non-appealable**” means that such order, judgment or decree has not been reversed, stayed, modified or amended and, as to which (1) the time to appeal, petition for certiorari, or move for reconsideration, reargument or rehearing has expired and no timely appeal, petition for certiorari, or motion for reconsideration, reargument or rehearing is pending, (2) any right to appeal, petition for certiorari, or move for reconsideration, reargument or rehearing has been waived in writing, or (3) if an appeal, petition for certiorari, or motion for reconsideration, reargument or rehearing thereof has been denied, the time to take any further appeal or to further petition for certiorari or move for further reconsideration, reargument or rehearing has expired.

(d) Final Release. Within two (2) Business Days following the Escrow Agent’s receipt of a written request in the form of Exhibit D attached hereto, or otherwise to the satisfaction of the Escrow Agent, executed by an Authorized Representative of Sellers, received at any time on or after the Indemnification Escrow Termination Date, the Escrow Agent shall pay to Sellers an aggregate amount, if any, equal to (x) the then-current balance of the Indemnification Escrow Fund minus (y) the aggregate total of all Disputed Amounts then remaining unresolved and the Claim Amount for which Claim Notices have been submitted and with respect to which the Dispute Period has not expired (such aggregate amount is herein referred to as the “**Retained Amount**”). The Escrow Agent shall thereafter release from the Escrow Funds the Retained Amount as and when it receives Joint Written Instructions or a Final Order with respect to all or any portion of the Retained Amount.

Section 2.3 Effect of Joint Written Instructions. At any time, Buyer and Sellers may deliver Joint Written Instructions to Escrow Agent directing Escrow Agent to disburse the Escrow Funds from any Escrow Account in the manner set forth in such Joint Written Instructions, at which time the Escrow Agent shall promptly (and in any event within two (2) Business Days) release the amount specified in such Joint Written Instructions in accordance with such Joint Written Instructions.

### ARTICLE 3 DUTIES OF THE ESCROW AGENT

Section 3.1 Scope of Responsibility. Notwithstanding any provision to the contrary, the Escrow Agent is obligated only to perform the duties specifically set forth in this Escrow Agreement, which shall be deemed purely ministerial in nature. Under no circumstances will the Escrow Agent be deemed to be a fiduciary to any Party or any other person. The Escrow Agent will not be responsible or liable for the

failure of any Party to perform in accordance with this Escrow Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document (including the Purchase Agreement) other than this Escrow Agreement, whether or not an original or a copy of such agreement has been provided to the Escrow Agent; and the Escrow Agent shall have no duty to know or inquire as to the performance or nonperformance of any provision of any such agreement, instrument, or document. References in this Escrow Agreement to any other agreement, instrument, or document are for the convenience of the Parties, and the Escrow Agent has no duties or obligations with respect thereto. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred or implied from the terms of this Escrow Agreement or any other agreement. The permissive rights of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as duties. No provision of this Escrow Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement.

Section 3.2 Attorneys and Agents. Except in the case of fraud, gross negligence or willful misconduct of the Escrow Agent or any of its employees or agents, the Escrow Agent shall be entitled to rely on and shall not be liable for any action taken or omitted to be taken by the Escrow Agent in accordance with the advice of counsel or other professionals retained or consulted by the Escrow Agent in connection with any disputes hereunder. The Escrow Agent shall be reimbursed as set forth in Section 4.4 for any and all compensation (fees, expenses and other costs) paid and reimbursed to such counsel and professionals. The Escrow Agent may perform any and all of its duties through its agents, representatives, attorneys, custodians, and nominees.

Section 3.3 Reliance. The Escrow Agent shall not be liable for any action taken or not taken by it in accordance with the joint direction or consent of the Parties or their respective agents, representatives, successors, or assigns. The Escrow Agent shall not be liable for acting or refraining to act upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, without further inquiry into the person's or persons' authority.

#### ARTICLE 4 PROVISIONS CONCERNING THE ESCROW AGENT

Section 4.1 Indemnification. The Parties, jointly and severally, shall indemnify, defend and hold harmless the Escrow Agent from and against any and all loss, liability, cost, damage and expense, including, without limitation, attorneys' fees and expenses or other professional fees and expenses which the Escrow Agent may suffer or incur by reason of any action, claim or proceeding brought against the Escrow Agent, arising out of or relating in any way to this Escrow Agreement or any transaction to which this Escrow Agreement relates, unless such loss, liability, cost, damage or expense shall have been finally adjudicated to have been directly caused by the fraud, willful misconduct or gross negligence of the Escrow Agent. The provisions of this Section 4.1 shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

Section 4.2 Exculpation: Limitation of Liability. The Escrow Agent shall not be liable, directly or indirectly, for any (i) damages, losses or expenses arising out of the services provided hereunder, other than damages, losses or expenses which have been finally adjudicated to have directly resulted from the Escrow Agent's fraud, gross negligence or willful misconduct, or (ii) special, indirect or consequential damages or losses of any kind whatsoever (including without limitation lost profits), even if the Escrow Agent has been advised of the possibility of such losses or damages and regardless of the form of action. The Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation

hereunder by reason of any occurrence beyond its control (including, but not limited to, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility).

**Section 4.3 Resignation or Removal.** The Escrow Agent may resign by furnishing written notice of its resignation to the Parties, and the Parties may remove the Escrow Agent by furnishing to the Escrow Agent a joint written notice of its removal along with payment of all fees and expenses to which it is entitled through the date of termination. Such resignation or removal, as the case may be, shall be effective upon the delivery of such notice or upon the earlier appointment of a successor, and the Escrow Agent's sole responsibility thereafter shall be to safely keep the Escrow Funds and to deliver the same to a successor escrow agent as shall be appointed by the Parties, as evidenced by Joint Written Instructions filed with the Escrow Agent or in accordance with a court order. If the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) days following the delivery of such notice of resignation or removal, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Parties.

**Section 4.4 Compensation.** The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached hereto as Exhibit E, which compensation shall be paid one-half by Buyer and one-half by Sellers. The party to be invoiced by the Escrow Agent shall be Buyer. In addition to the foregoing, the Escrow Agent shall be reimbursed upon request for all expenses, disbursements and advances, including reasonable fees of outside counsel, if any, incurred or made by it in connection with the carrying out of its duties under this Escrow Agreement. To the extent any amount due to the Escrow Agent pursuant to this Escrow Agreement is not paid, the Escrow Agent shall notify the Parties hereto and if such amount is not paid within five (5) Business Days of such notice, then the Escrow Agent may deduct the same from the Escrow Funds. Buyer and Sellers shall be jointly and severally liable to the Escrow Agent for the fees payable to the Escrow Agent pursuant to this Section 4.4. This Section 4.4 shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent and shall be in addition to any other rights or remedies available to the Escrow Agent. The Escrow Agent shall have, and is hereby granted, a prior lien with respect to the Escrow Funds with respect to its unpaid fees and expenses. In addition, in the event the Parties fail to pay such amounts, the Escrow Agent shall be entitled to retain out of the portion of the Escrow Funds that would have otherwise been distributed to any Party, the amount of such fees and expenses that are due and payable by such Party to the Escrow Agent. If any amount due to the Escrow Agent hereunder is not paid within 30 days of the date due, the Escrow Agent in its sole discretion may charge interest on such amount up to the highest rate permitted by applicable law.

**Section 4.5 Disagreements.** If any conflict, disagreement or dispute arises between, among, or involving any of the Parties and/or the Escrow Agent concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Escrow Agreement, or the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent is authorized to retain the Escrow Funds until the Escrow Agent (i) receives a Final Order directing delivery of the Escrow Funds, (ii) receives Joint Written Instructions, in which event the Escrow Agent shall be authorized to disburse the Escrow Funds in accordance with such Final Order or Joint Written Instructions, or (iii) files an interpleader action in any court of competent jurisdiction, and upon the filing thereof, the Escrow Agent shall be relieved of all liability as to the Escrow Funds and shall be entitled to recover attorneys' fees, expenses and other costs incurred in commencing and maintaining any such interpleader action. The Escrow Agent shall be entitled to act on any such Final Order or Joint Written Instructions without further question, inquiry, or consent.

Section 4.6 Attachment of Escrow Funds; Compliance with Legal Orders. In the event that any Escrow Funds shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrow Funds, the Escrow Agent is hereby expressly authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any Party or to any other person should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

## ARTICLE 5 TAX MATTERS

Section 5.1 Allocation of Earnings. Except as stated herein, the Escrow Agent does not have any interest in the Escrow Funds but is serving as escrow holder only and having only possession thereof. The Parties agree that for tax reporting purposes, the Earnings shall be reported as earned by the Sellers and the Escrow Agent will report the amount of any and all Earnings on IRS Form 1099-INT to Sellers, in such percentages as set forth on Schedule 1 attached hereto. Sellers shall report the amount of any and all interest or other income during any applicable tax reporting period to the appropriate taxing authorities and Sellers shall pay the income taxes that are due and payable on such Earnings. The Escrow Agent shall have no duty to prepare or file any information reports (including without limitation IRS Forms 1099-B) other than such information reports of interest earned on the Escrow Fund as the Escrow Agent is required to prepare and file in the ordinary course of its business. The Escrow Agent shall have no obligation to report any amounts to the Parties resulting from the deposit of the Escrow Amount or the release of the Escrow Amount as a result of or related to the transactions contemplated by the Purchase Agreement. The Parties shall treat the amounts released to the Sellers pursuant to this Agreement as Buyer's deferred payment of a portion of the Purchase Price to the Sellers pursuant to an installment obligation.

Section 5.2 Withholding. The Escrow Agent shall be entitled to deduct and withhold from any amount distributed or released from the Escrow Funds all taxes which may be required to be deducted or withheld under any provision of applicable tax law. All such withheld amounts shall be treated as having been delivered to the Party entitled to the amount distributed or released in respect of which such tax has been deducted or withheld.

Section 5.3 Tax Indemnity. To the extent that the Escrow Agent becomes liable for the payment of any taxes in respect of income derived from the investment of the Escrow Funds, the Escrow Agent shall satisfy such liability to the extent possible from the Escrow Funds. The Parties, jointly and severally, shall indemnify, defend and hold the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent on or with respect to the Escrow Funds and the investment thereof unless such tax, late payment, interest, penalty or other expense was directly caused by the fraud, gross negligence or willful misconduct of the Escrow Agent. The indemnification provided by this Section 5.3 is in addition to the indemnification provided in Section 4.1 and shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

## ARTICLE 6 MISCELLANEOUS

Section 6.1 Successors and Assigns. This Escrow Agreement shall be binding on and inure to the benefit of the Parties and the Escrow Agent and their respective successors and permitted assigns. No

other person shall have any rights under this Escrow Agreement. No assignment of the interest of any of the Parties (including a collateral assignment) shall be binding unless and until written notice of such assignment shall be delivered to the other Party and the Escrow Agent and shall require the prior written consent of the other Party and the Escrow Agent (such consent not to be unreasonably withheld, conditioned or delayed). Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

Section 6.2 Notices. All notices and communications required or permitted under this Escrow Agreement shall be in writing and addressed as set forth below. Any notice, communication or delivery hereunder shall be deemed to have been duly made and the receiving Party charged with notice (i) if personally delivered, when received, except that if received on a day other than a Business Day, or after 5:00 pm local time on a Business Day for the receiving Party, delivery shall be deemed to occur on the next Business Day, (ii) if sent by electronic transmission, when received, except that if received on a day other than a Business Day, or after 5:00 pm local time on a Business Day for the receiving Party, delivery shall be deemed to occur on the next Business Day, (iii) if mailed, five (5) Business Days after mailing, certified mail, return receipt requested, or (iv) if sent by overnight courier, one (1) Business Day after sending. In the case of notices and communications delivered to the Escrow Agent, such notices or communications shall be deemed to have been given on the date actually received by the Escrow Agent at the address set forth below. It shall be the responsibility of the Parties to notify the Escrow Agent and the other Party in writing of any name or address changes.

If to Sellers:

The Richard Stanley Family Trust Attn: Richard Stanley  
54 Ireland Point Road, Nobel, Ontario, Canada, P0G 1G0 Email: rstanley@lhpg.ca

The John Locke Family Trust Attn: John Locke  
5065 Wellington Rd. 125, Acton, Ontario, Canada, L7J 2L9 Email: jlocke@lhpg.ca

With Copy To:

Dinsmore & Shohl LLP  
255 East Fifth Street, Suite 1900  
Cincinnati, OH 45202 Attn: Jerrad Howard, Esq.  
E-mail: Jerrad.Howard@Dinsmore.com

If to Buyer:

Live Ventures Incorporated  
125 E. Warm Springs Road, Suite #102

Las Vegas, NV 89119  
Attn: Eric Althofer and Wayne Ipsen

E-mail: ealthofer@liveventures.com; wipsen@liveventures.com With Copy To:

Greenberg Traurig, LLP  
10845 Griffith Peak Drive, Suite 600 Las Vegas, NV 89135  
Attn: Michael J. Bonner, Esq E-mail: bonnerm@gtlaw.com

If to Escrow Agent:

Fifth Third Bank, National Association 38 Fountain Square Plaza, MD 1090X9 Cincinnati, OH 45202  
Attn: Michelle Powell Phone: (513) 358-4082  
Email: Michelle.Taylor@53.com

Section 6.3 Governing Law. This Escrow Agreement and any and all transactions related to or arising out of this Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Delaware and the respective rights and obligations of the Parties and the Escrow Agent shall be governed by Delaware law, without regard to principles of conflicts of laws.

Section 6.4 Submission to Jurisdiction. Each Party and the Escrow Agent hereby irrevocably submits to the exclusive jurisdiction of any Delaware state or federal court sitting in New Castle County, Delaware, over any action or proceeding arising out of or relating to this Escrow Agreement and any and all transactions related to or arising out of this Escrow Agreement, and each of the Parties hereby irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in such Delaware state or federal court. Each Party and the Escrow Agent hereby irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the laying of venue in any action or proceeding in any such court as well as any right it may now or hereafter have to remove such action or proceeding, once commenced, to another court on the grounds of forum non conveniens or otherwise. Each Party and the Escrow Agent agrees that a final, non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 6.5 WAIVER OF JURY TRIAL. EACH PARTY AND THE ESCROW AGENT HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS ESCROW AGREEMENT OR THE SUBJECT MATTER HEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL- ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

Section 6.6 Severability. The Parties and the Escrow Agent agree that (i) the provisions of this Agreement shall be severable in the event that for any reason whatsoever any of the provisions hereof are invalid, void or otherwise unenforceable, (ii) such invalid, void or otherwise unenforceable provisions shall

be automatically replaced by other provisions which are as similar as possible in terms to such invalid, void or otherwise unenforceable provisions but are valid and enforceable and (iii) the remaining provisions shall remain enforceable to the fullest extent permitted by law.

Section 6.7 Amendment. This Escrow Agreement may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by each of the Parties and the Escrow Agent.

Section 6.8 Waivers. No waiver by the Escrow Agent of any provision of this Agreement shall be effective unless explicitly set forth in writing and signed by the Escrow Agent. No waiver by Escrow Agent shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after such waiver. The failure of the Escrow Agent or any Party at any time or times to require performance of any provision under this Escrow Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by the Escrow Agent or any Party of any such condition or breach of any term, covenant, representation, or warranty contained in this Escrow Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Escrow Agreement.

Section 6.9 Interpretation. The headings of the Articles and Sections of this Escrow Agreement are for guidance and convenience of reference only and shall not limit or otherwise affect any of the terms or provisions of this Escrow Agreement. All Exhibits attached to this Escrow Agreement are hereby incorporated and made a part of this Escrow Agreement. This Escrow Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The schedules and exhibits referred to herein shall be construed with, and as an integral part of, this Escrow Agreement to the same extent as if they were set forth verbatim herein. For purposes of this Escrow Agreement, “**Business Days**” shall refer to any day other than Saturday, Sunday or any other day on which banks in the state of Ohio are authorized to be closed. Time shall be of the essence in this Escrow Agreement and “person” shall refer to a natural person or an organization or entity, governmental or otherwise, of any kind.

Section 6.10 Further Assurances. No party to this Escrow Agreement is (or will be) a person with whom the Escrow Agent is restricted from doing business under regulations of the Office of Foreign Asset Control (“**OFAC**”) of the Department of the Treasury of the United States of America (including, those persons named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such persons. The Parties acknowledge that prior to the establishment of the Escrow Accounts and from time to time throughout the term of the Escrow Agreement, the Escrow Agent is authorized to establish and effectuate identity verification procedures to obtain information which may be used to confirm the Parties’ identity of such Party and their authorized representatives including without limitation name, address and organizational documents or driver’s license (“**identifying information**”) to the extent required by applicable law or the policies and procedures of the Escrow Agent. The Parties agree to provide the Escrow Agent with and consent to the Escrow Agent obtaining from third parties any such identifying information required as a condition of opening an account with or using any service provided by the Escrow Agent.

Section 6.11 **IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT.** *To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions (which includes the Escrow Agent) to obtain,*

*verify and record information that identifies each person or entity who opens an account, including any deposit or treasury management account. What this means for the Parties: For a non-individual person such as a business entity, a charity, a trust or other legal entity, the Escrow Agent will ask for documentation to verify its formation and existence as a legal entity, including a list of affiliates and subsidiaries, if necessary. The Escrow Agent may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. For an individual person, the Escrow Agent may ask for your name, address, date of birth and other information that will allow the Escrow Agent to identify you. The Escrow Agent may also ask to see the individual's driver's license or other identifying documents. In the event any Party (or their respective Authorized Representatives) violates any of the provisions of the Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318 or the regulations purported thereunder, such event shall constitute a default hereunder and shall entitle Escrow Agent to exercise all of its rights and remedies at law or in equity, including, but not limited to, terminating this Agreement.*

Section 6.12 Counterparts. This Escrow Agreement may be executed and delivered in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. The exchange of copies of this Escrow Agreement and of signature pages by facsimile, electronic signature or by electronic image scan transmission in .pdf format shall constitute effective execution and delivery of this Escrow Agreement as to the Parties and the Escrow Agent and may be used in lieu of the original Escrow Agreement for all purposes. Signatures of the Parties and the Escrow Agent transmitted by facsimile, electronic signature or electronic image scan transmission in .pdf format shall be deemed to be their original signatures for all purposes. The Escrow Agent or any Party that delivers an executed counterpart signature page by facsimile or by electronic scan transmission in .pdf format shall promptly thereafter deliver a manually executed counterpart signature page to each of the other Parties and the Escrow Agent, as applicable; provided, however, that the failure to do so shall not affect the validity, enforceability, or binding effect of this Escrow Agreement.

Section 6.13 Electronic Signatures.

(a) Notwithstanding any other provision in this Escrow Agreement to the contrary, the Escrow Agent and the Parties agree that this Escrow Agreement may be electronically signed. The Escrow Agent and the Parties agree that in the event this Escrow Agreement is executed electronically, the electronic signatures, whether digital or encrypted, of each of the Parties are intended to authenticate this writing and to have the same force and effect as manual signatures. Any signature presented to the Escrow Agent as the valid and original signature of the signer, whether electronic or manual, shall be effective for purposes of this Escrow Agreement. In the event any Party executes this Agreement via electronic signature process (i.e., DocuSign) or provides written instructions to the Escrow Agent pursuant to this Agreement which are executed via electronic signature process, such Party shall provide the Escrow Agent with such audit trail or report as the Escrow Agent shall request in order to verify the authenticity of the execution of such document by an Authorized Representative. Without limitation to the foregoing, the Escrow Agent shall be fully protected in relying on evidence that any document was executed via electronic transmission originating at the e-mail address provided for such individual in any Incumbency Certificate provided pursuant to this Escrow Agreement. The Escrow Agent may (but is not obligated to) seek confirmation of electronic signatures by telephone call back to any Authorized Representative for such Party, and the Escrow Agent may rely upon the confirmation of anyone reasonably purporting to be such Authorized Representative. The Escrow Agent and the Parties further acknowledge and agree that the United States Electronic Signatures in Global and National Commerce Act, P.L. 106-229 (the "**E-Sign Act**") applies to the fullest extent possible to validate their ability to conduct business by electronic means. The Escrow Agent and the Parties each represent, warrant and covenant that electronic signatures are created using software and processes that create valid, enforceable and effective electronic signatures in compliance with the E-Sign Act and all applicable state laws, including applicable Uniform Electronic Transactions Act(s).



(b) Notwithstanding Section 6.3 of this Escrow Agreement, the Escrow Agent and the Parties agree that all questions regarding the validity of electronic signatures shall be governed by the E- Sign Act or, to the extent applicable, by the Uniform Electronic Transactions Act as adopted by the State of Delaware.

Section 6.14 Entire Agreement. This Escrow Agreement constitutes the entire understanding among the Parties and the Escrow Agent, their respective partners, members, trustees, shareholders, officers, directors and employees with respect to the escrow described herein, superseding all negotiations, prior discussions and prior agreements and understandings relating to such subject matter; provided that as among the Parties, the Purchase Agreement shall govern the disbursement of the Escrow Funds.

*[Remainder of Page Left Intentionally Blank; Signature Page Follows. ]*

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed effective as of the date first written above.

THE RICHARD STANLEY FAMILY TRUST

By: \_\_ Name: Richard Stanley  
Title: Trustee

By: \_\_ Name: Mary Ellen Stanley  
Title: Trustee

By: \_\_ Name: John Locke  
Title: Trustee

THE JOHN LOCKE FAMILY TRUST

By: \_\_ Name: John Locke  
Title: Trustee

By: \_\_ Name: Ann Locke  
Title: Trustee

By: \_\_ Name: Richard Stanley  
Title: Trustee

*[Signature Page to Escrow Agreement]*

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PMW AFFILIATED HOLDINGS, LLC

By: \_\_ Name: Eric Althofer  
Title: President

*[Signature Page to Escrow Agreement]*

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FIFTH THIRD BANK, NATIONAL  
ASSOCIATION, as Escrow Agent

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Name: Title:

*[Signature Page to Escrow Agreement]*

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EXHIBIT A-1

CERTIFICATE OF INCUMBENCY

The undersigned, trustees, of The Richard Stanley Family Trust, a trust formed under the Laws of Ontario, Canada, and The John Locke Family Trust, a trust formed under the Laws of Ontario, Canada, hereby certify that the following named persons have been duly appointed, qualified and acting in the capacity set forth opposite his/her/its name, have been authorized by appropriate corporate, limited liability company or other action to execute Escrow Agreements with Fifth Third Bank, National Association or amendments thereto on behalf of the above-named party and to furnish Fifth Third Bank, National Association, as Escrow Agent, with directions relating to any matter concerning Escrow Agreements with Fifth Third Bank, National Association and the funds and/or property held pursuant thereto, the following signature, whether manual or electronic, is the true and genuine signature of said officer and that each person's contact information is current and up-to-date at the date hereof. Electronic signature processes (*i.e.*, DocuSign) shall be considered automatically authenticated if provided from the email address of the undersigned set forth below, although Escrow Agent may (but is not obligated to) seek confirmation of electronic signatures by telephone call back to the signatory. Each of the Authorized Representatives is authorized to issue instructions, confirm funds transfer instructions by callback and effect changes in Authorized Representatives, all in accordance with the terms of the relevant Escrow Agreement.

<b>Name and Title</b>	<b>Signature</b>	<b>Contact Information:</b>
John Locke, as Trustee of the John Locke Family Trust	_____	Office:___ Cell:___ Email:___
Ann Locke, as Trustee of the John Locke Family Trust	_____	Office:___ Cell:___ Email:___
Richard Stanley, as Trustee of the John Locke Family Trust	_____	Office:___ Cell:___ Email:___
Richard Stanley, as Trustee of the Richard Stanley Family Trust	_____	Office:___ Cell:___ Email:___
Mary Ellen Stanley, as Trustee of the Richard Stanley Family Trust	_____	Office:___ Cell:___ Email:___
John Locke, as Trustee of the Richard Stanley Family Trust	_____	Office:___ Cell:___ Email:___

Such persons are hereby authorized to furnish the Escrow Agent with directions relating to any matter concerning this Agreement and the funds and/or property held pursuant thereto.

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IN WITNESS WHEREOF, this Certificate of Incumbency has been executed this \_\_\_\_day of July,  
2023.

**The Richard Stanley Family Trust**

By: \_\_\_\_ Name: Richard Stanley  
Title: Trustee

By: \_\_\_\_ Name: Mary Ellen Stanley  
Title: Trustee

By: \_\_\_\_ Name: John Locke  
Title: Trustee

**The John Locke Family Trust**

By: \_\_\_\_ Name: John Locke  
Title: Trustee

By: \_\_\_\_ Name: Ann Locke  
Title: Trustee

By: \_\_\_\_ Name: Richard Stanley  
Title: Trustee

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EXHIBIT A-2

CERTIFICATE OF INCUMBENCY

The undersigned, President, of PMW Affiliated Holdings, LLC, a Delaware limited liability company, hereby certifies that the following named officers have been duly appointed, qualified and acting in the capacity set forth opposite his/her/its name, have been authorized by appropriate corporate or limited liability company action to execute Escrow Agreements with Fifth Third Bank, National Association or amendments thereto on behalf of the above-named party and to furnish Fifth Third Bank, National Association, as Escrow Agent, with directions relating to any matter concerning Escrow Agreements with Fifth Third Bank, National Association and the funds and/or property held pursuant thereto, the following signature, whether manual or electronic, is the true and genuine signature of said officer and that each person's contact information is current and up-to-date at the date hereof. Electronic signature processes (*i.e.*, DocuSign) shall be considered automatically authenticated if provided from the email address of the undersigned set forth below, although Escrow Agent may (but is not obligated to) seek confirmation of electronic signatures by telephone call back to the signatory. Each of the Authorized Representatives is authorized to issue instructions, confirm funds transfer instructions by callback and effect changes in Authorized Representatives, all in accordance with the terms of the relevant Escrow Agreement.

**Name and Title    Signature    Contact Information:**

Eric Althofer, as President    \_\_\_    Office: (646) 642 - 3771

Cell: (702) 850 - 2656  
Email: ealthofer@liveventures.com

Wayne Ipsen, as Secretary    \_\_\_    Office: (702) 790 - 0239

Cell: (208) 447 - 6102  
Email: wipsen@liveventures.com

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David Verret, as Chief \_\_\_ Financial Officer

Office: (702) 939 - 0231  
Cell: (214) 668-5520  
Email: dverret@liveventures.com

Such officers are hereby authorized to furnish the Escrow Agent with directions relating to any matter concerning this Agreement and the funds and/or property held pursuant thereto.

IN WITNESS WHEREOF, this Certificate of Incumbency has been executed this \_\_\_day of July,  
2023.

**PMW Affiliated Holdings, LLC**

By\_\_

Name: Eric Althofer Title: President

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EXHIBIT B

PERMITTED INVESTMENTS

Fifth Third BankSafe Deposit Account

EXHIBIT C

JOINT WRITTEN INSTRUCTIONS

Date

Fifth Third Bank, National Association 38 Fountain Square Plaza, MD 1090X9 Cincinnati, OH 45202  
Attn: Michelle Powell  
Email: FTIEscrowAgentServices@53.com

Re: Escrow Account No. [], the trustees of The Richard Stanley Family Trust, a trust formed under the Laws of Ontario, Canada; the trustees of The John Locke Family Trust, a trust formed under the Laws of Ontario, Canada (each, a “***Seller***” and, together, the “***Sellers***”); PMW Affiliated Holdings, LLC, a Delaware limited liability company (“***Buyer***”, and collectively with the Seller, the “***Parties***” and each, a “***Party***”); and Fifth Third Bank, National Association, as escrow agent (the “***Escrow Agent***”)

The undersigned hereby give notice (this “***Joint Written Instructions***”) pursuant to Section [] of that certain Escrow Agreement (the “***Escrow Agreement***”), dated [], by and among the Escrow Agent, the trustees of The Richard Stanley Family Trust and the trustees of The John Lock Family Trust (“***Sellers***”) and PMW Affiliated Holdings, LLC (“***Buyer***”), and direct the Escrow Agent to disburse the amount(s) set forth below and in the manner set forth below. Capitalized terms used but not defined in this Joint Written Instructions shall have the meanings ascribed thereto in the Escrow Agreement.

**Disbursement to Sellers:**

Disbursement Amount: [\_\_]

Wiring Instructions: [\_\_]

**Disbursement to Buyer:**

Disbursement Amount: [\_\_]

Wiring Instructions: [\_\_]

IN WITNESS WHEREOF, the undersigned have caused this Joint Written Instructions to be executed and delivered on this [ \_\_] day of [\_\_], 20[\_\_].

**BUYER:**

PMW AFFILIATED HOLDINGS, LLC

By\_\_ Name:  
Title:

**SELLERS:**

THE RICHARD STANLEY FAMILY TRUST

By\_\_ Name:  
Title: Trustee

THE JOHN LOCKE FAMILY TRUST

By\_\_ Name:  
Title: Trustee

ACTIVE 688204810v10

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EXHIBIT D

FINAL DISBURSEMENT REQUEST

Date

Fifth Third Bank, National Association 38 Fountain Square Plaza, MD 1090X9 Cincinnati, OH 45202  
Attn: Michelle Powell  
Email : FTISEscrowAgentServices@53.com

Re: Escrow Account No. [], among the trustees of The Richard Stanley Family Trust, a trust formed under the Laws of Ontario, Canada; the trustees of The John Locke Family Trust, a trust formed under the Laws of Ontario, Canada (each, a “***Seller***” and, together, the “***Sellers***”); PMW Affiliated Holdings, LLC, a Delaware limited liability company (“***Buyer***”, and collectively with the Seller, the “***Parties***” and each, a “***Party***”); and Fifth Third Bank, National Association, as escrow agent (the “***Escrow Agent***”)

The undersigned hereby gives notice (this “***Final Disbursement Request***”) pursuant to Section 2.2(d) of that certain Escrow Agreement (the “***Escrow Agreement***”), dated [], by and among the Escrow Agent, the trustees of The Richard Stanley Family Trust and the trustees of The John Lock Family Trust (“***Sellers***”) and PMW Affiliated Holdings, LLC (“***Buyer***”), and directs the Escrow Agent to disburse the amount(s) set forth below and in the manner set forth below. Capitalized terms used but not defined in this Final Disbursement Request shall have the meanings ascribed thereto in the Escrow Agreement.

**Disbursement to Sellers:**

Disbursement Amount: [ ]<sup>1</sup>

Wiring Instructions: [ ]

IN WITNESS WHEREOF, the undersigned have caused this Final Disbursement Request to be executed and delivered on this [ ] day of [ ], 20[ ].

**SELLERS:**

THE RICHARD STANLEY FAMILY TRUST

By\_\_ Name:  
Title: Trustee

THE JOHN LOCKE FAMILY TRUST

By\_\_ Name:

<sup>1</sup> To be the then-remaining amount of the Escrow Funds, less any Disputed Amount.

Title: Trustee

ACTIVE 688204810v10

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EXHIBIT E

SCHEDULE OF FEES

**Acceptance Fee:   \$3,500**

Initial Fees as they relate to the Escrow Agent acting in the capacity of Escrow Agent, including examination and execution of the Escrow Agreement; acceptance of the Escrow Agent appointment; setting up of an Escrow Account and accounting records; and the coordination of receipt of funds for deposit to the Escrow Account. Acceptance fee is payable at time of Escrow Agreement execution.

**Escrow Agent Annual Administration Fee:   Waived**

For ordinary services of the Escrow Agent, including normal administration of the Escrow Account. Ordinary services include: daily routine account management; investment transactions; cash transaction processing, including wires and check processing; monitoring claim notices pursuant to the agreement; disbursement of the funds in accordance with the agreement; and account statements sent to all applicable parties. Payable in advance, with the first installment payable at the time of Escrow Agreement execution. This fee will not be prorated in the case of early termination in the first year.

***Fifth Third Bank's bid is based on the following assumptions:***

- Number of escrow accounts to be established: 2
- Estimated period of time for Indemnification Escrow Account to be in existence: July 19, 2023 until the Indemnification Escrow Termination Date
- **ALL FUNDS WILL BE INVESTED IN ONE DEPOSIT PRODUCT**

**Documentation Fee:   Waived**

SCHEDULE I

SELLER TAX ALLOCATION

<u>Seller Name</u>	<u>Percentage Allocation</u>
The Richard Stanley Family Trust	50%
The John Locke Family Trust	50%



**EXHIBIT E PROMISSORY NOTE**

[See attached.]

ACTIVE 687632206v25

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## SUBORDINATED SECURED PROMISSORY NOTE

\$1,250,000 July 19, 2023

FOR VALUE RECEIVED, Precision Metal Works, Inc., a Kentucky corporation formerly known as Nth Holding, Ltd. (Kentucky Organization No. 0940452) (“**Maker**”), hereby promises and agrees to pay to the order of The Richard Stanley Family Trust, a trust formed under the Laws of Ontario, Canada (“**Payee**”), or its successors, representatives, or assigns, the principal sum of \$1,250,000 (the “**Principal Amount**”), together with interest thereon as hereinafter provided, in lawful money of the United States of America. Maker has executed and delivered this Subordinated Secured Promissory Note (this “**Note**”) as of the date set forth above (the “**Effective Date**”).

The obligations evidenced by this Subordinated Secured Promissory Note (this “**Note**”) are subordinated to the prior payment in full of the “**Senior Debt**” and the termination of the “**Senior Commitment**” (as such terms are defined in the Subordination Agreement dated July 19, 2023 (the “**Subordination Agreement**”), between Fifth Third Bank, National Association and Payee) pursuant to and to the extent provided in the Subordination Agreement.

This Note is being made pursuant to that certain Stock Purchase Agreement dated as of July 19, 2023 (the “**Agreement**”) by and among Payee, Maker, The John Locke Family Trust, a trust formed under the Laws of Ontario, Canada, and PMW Affiliated Holdings, LLC a Delaware limited liability company (“**Parent**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Agreement.

1. **Maturity Date.** The maturity date of this Note shall be July 18, 2028 (the “**Maturity Date**”).
  2. **Interest Rate; Annual Interest Payments.** From the date set forth above until paid-in-full, this Note shall bear interest on the unpaid balance of the Principal Amount thereof at an interest rate equal to eight percent (8%) per annum (the “**Interest Rate**”), Interest shall be payable by Maker to Payee on the first day of each calendar quarter (October 1, January 1, April 1, and July 1) and on the Maturity Date.
  3. **Payment of Principal; Prepayment.** Maker shall pay the amounts due under this Note in accordance with the following: (a) beginning on the Effective Date, all accrued and unpaid interest on the Principal Amount that is outstanding on the first day of each calendar quarter shall be due and payable on that date; (b) beginning July 1, 2025, \$62,500 of the Principal Amount and all accrued and unpaid interest on the Principal Amount that is outstanding on the first day of each calendar quarter shall be due and payable on the first day of such calendar quarter; and (c) on the Maturity Date, the final payment of the outstanding balance of the Principal Amount, together with all accrued and unpaid interest and other amounts payable under this Note. For purposes of clarity, a schedule of payments that are due pursuant to this Note is attached hereto as **Exhibit A**. When used in this Note, the term “first day of each calendar quarter” shall mean October 1, January 1, April 1, or July 1, as applicable. This Note may be prepaid, in full or in part, without prepayment penalty by Maker. For the avoidance of doubt, in the case of prepayment in full, interest shall accrue and be payable through the date of the prepayment. All payments shall be made by wire transfer of immediately available funds to Payee pursuant to Payee’s written instructions. All payments on this Note shall be first applied to the payment of any of Payee’s expenses or charges payable hereunder; next to accrued and unpaid interest; and then to unpaid Principal Amount, or in such other order as Payee may elect in its sole discretion. In the event that the Consulting Agreement of even date herewith between Maker and Bartell Global Inc., as consultant (the “**Consulting Agreement**”), is terminated by Maker without Cause (as defined in the Consulting Agreement) prior to the receipt by Sellers (as defined in the Agreement) of the Earn-out Payments (as defined in the Agreement) in an aggregate amount equal to \$3,000,000 from
-

Maker, Maker shall make a prepayment to each Seller in an amount equal to 50% of the then-outstanding balance of the Principal Amount of this Note; provided, however, Maker shall only be required to make such prepayment to Sellers to the extent permitted under the Subordination Agreement of even date herewith by and between Fifth Third Bank, National Association and Sellers. Notwithstanding the foregoing or anything else to the contrary in this Note, the Agreement, or any of the Ancillary Documents, Maker's obligations and performance pursuant to this Note are guaranteed by Live Ventures Incorporated pursuant to that certain Guaranty (as defined in the Agreement), and Maker's failure or inability to pay any amount due under this Note, or any prohibition that prevents Maker from paying any amount due under this Note, whether as a result of the Subordination Agreement or otherwise, shall not impair, excuse, or otherwise release Live Ventures Incorporated from its obligation to pay such amount to Payee pursuant to the Guaranty.

4. **Overdue Payments.** Any payment on this Note that is overdue from its due date shall bear interest at the Interest Rate *plus* the lesser of (x) two percent (2%) per annum or (y) the greatest interest rate which may be charged by Payee under applicable law (the "**Default Rate**") until paid.

5. **Default.** The occurrence of any one or more of the following events shall constitute an event of default ("**Event of Default**") under this Note:

- (a) The failure of Maker to pay any amount due under this Note within five days after the date due;
- (b) The failure of Maker to comply with, or to perform any other term, obligation, covenant, or condition contained in this Note or any agreement related to this Note, including, but not limited to, the Security Agreement, the Agreement, and any of the Ancillary Documents (as defined in the Agreement), which failure is not cured within 30 days of written notice from Payee to Maker of such failure; provided, however, if such failure cannot reasonably be cured within such 30 day period and Maker is diligently proceeding to cure such failure, Maker shall have an additional 90 days within which to cure such failure;
- (c) The continuance of an Event of Default (as defined in the Fifth Third Bank loan documents relating to the loan to Maker and Parent from Fifth Third Bank);
- (d) Any material warranty, representation, or statement made or furnished by Maker or on Maker's behalf under this Note, the Agreement, or the Security Agreement is false or misleading in any material respect at the time made or furnished.;
- (e) The appointment of a custodian, trustee, liquidator or receiver for, or for any of the material property of, Maker which appointment is not dismissed within 60 days;
- (f) The insolvency of Maker or an assignment for the benefit of creditors by, or the filing of a petition under any bankruptcy, insolvency or debtor's relief law or for any readjustment of indebtedness, composition, or extension by Maker;
- (g) John Isaac no longer beneficially owns directly or indirectly through one or more controlled entities, at least 40% of the outstanding capital stock of Live Ventures Incorporated; or
- (h) Live Ventures Incorporated, Maker, or any of Maker's direct or indirect subsidiaries or parent companies enter into any "take private" transaction or similar transaction; a merger or consolidation; sale of all or substantially all of its assets, whether in a single transaction or series of transactions; or any change of control.

6. **Remedies.** During the continuance of an Event of Default, the entire unpaid Principal Amount under this Note, all accrued and unpaid interest, and other sums and amounts under this Note, shall automatically and immediately become due and payable, without presentment, notice, protest, or demand of any kind (all of which are expressly waived by Maker as provided below); such amount due and payable shall bear interest at the Default Rate; and Payee may, in its sole discretion, initiate litigation to recover all sums due under this Note or exercise any other remedies that are available under this Note or applicable law. The charging or payment of any interest or delinquent payments shall not be construed as curing or correcting any default by Maker under this Note or as a waiver by Payee of any of its rights or remedies with respect to such default. Anything contained in this Note, the Security Agreement or the Agreement to the contrary notwithstanding, in the event that Maker cures an Event of Default prior to the exercise of remedies by Payee, such Event of Default shall automatically be deemed cured, without the requirement of a waiver from Payee; provided that, however, an Event of Default pursuant to Section 5(g) or 5(h)) of this Note cannot be cured and shall automatically entitle to the exercise of remedies by Payee.

7. **Security Interest; Right to Information.** Maker's obligations hereunder are secured by the Security Agreement (as defined in the Agreement), whereby Maker has granted to Payee a security interest in all of the assets of Maker. For so long as any amount is owed from Maker to Payee pursuant to this Note, Maker shall deliver a balance sheet, income statement, and statement of cash flows to Payee on or before the 15th day of each calendar month setting for the operations of Maker and its direct and indirect subsidiaries for the year-to-date fiscal year of Maker and for the immediately preceding month (collectively, the "**Financial Statements**"). Maker represents and warrants that such Financial Statements shall be prepared in accordance with Generally Accepted Accounting Principles and shall be true, correct, and accurate and fairly reflect the operations of Maker and its direct and indirect subsidiaries for the applicable periods set forth in the Financial Statements.

8. **Unconditional Obligations.** The obligations and liabilities of Maker under this Note are continuing, absolute, and unconditional, and shall remain in full force and effect until all amounts due hereunder have been paid in full.

9. **Offset Rights.**

(a) If while this Note is outstanding the Post-Closing Adjustment is a negative number and the Purchase Price Adjustment Escrow Fund is insufficient to cover the entire amount payable by Sellers to Buyer pursuant to Section 2.06(d)(i) of the Agreement (the amount of such deficiency, the "**Adjustment Escrow Fund Deficiency Amount**"), the then-outstanding principal amount of this Note shall be automatically debited, reduced and offset by an amount equal to the Adjustment Escrow Fund Deficiency Amount (but not below zero) by written notice to Payee (less any interest that accrued on such Adjustment Escrow Fund Deficiency Amount from the date of issuance of this Note through and including the date on which such automatic debit, reduction and offset occurs). For clarification purposes, the foregoing shall not relieve Payee (or Sellers' if Sellers are not Payee) of Payee (or Sellers' if Sellers are not Payee) obligation to pay the remaining amount of the Post Closing Adjustment (if any) pursuant to Section 2.06(d)(i) of the Agreement unless Maker or any of its Affiliates (as defined in the Agreement) exercise its right pursuant to this Section 9.

(b) If while this Note is outstanding Sellers shall become liable for Losses under Article VIII of the Agreement, subject to the limitations, adjustments, procedures (including any procedures regarding order of recovery) and provisions set forth therein (the amount of such Losses, the "**Loss Amount**"), the then-outstanding principal amount of this Note shall be automatically debited, reduced and offset by an amount equal to the Loss Amount (but not below zero) by written notice to Payee (less any interest that accrued on such Loss Amount from the date of issuance of this Note through and including the date on which such automatic debit, reduction and offset

occurs). For clarification purposes, the foregoing shall not relieve Payee (or Sellers' if Sellers are not Payee) of Payee (or Sellers' if Sellers are not Payee) obligation to pay the remaining amount of the Post Closing Adjustment (if any) pursuant to Section 2.06(d)(i) of the Agreement unless Maker or any of its Affiliates (as defined in the Agreement) exercise its right pursuant to this Section 9.

10. **No Waiver.** Delay or failure of the holder to exercise any or all of its rights and remedies shall not constitute a waiver of the right to exercise the same at that or any other time. The receipt of any payment after such payment is due and payable shall not be construed as a waiver of any default, and the receipt by the holder of less than the full amount of any payment shall be construed as being on account of such payment, and the holder may accept such payment without prejudice to the holder's right to recover the balance of the amounts due under this Note or the holder's right to pursue any other available remedies. No endorsement or statement on any check or any letter accompanying any check or payment shall be deemed an accord and satisfaction, and the holder may accept such check or payment without prejudice to the holder's right to recover the balance of the amounts due under this Note or to pursue any other available remedies. All rights and remedies of the holder hereof upon default hereunder shall be cumulative to the greatest extent permitted by law.

11. **Costs of Collection.** Maker agrees to pay all costs of collection when incurred, whether suit be brought or not, including reasonable attorneys' fees and costs of suit and preparation therefore, and to perform and comply with each of the covenants, conditions, provisions, and agreements of Maker contained in this Note.

12. **Maximum Legal Rate.** Maker and Payee agree that no payment or other consideration made or agreed to be made by Maker to Payee pursuant to this Note shall, at any time, be in excess of the maximum rate of interest permissible by law. In the event such payments of interest or other consideration provided for in this Note shall result in an effective rate of interest which, for any period of time, is in excess of the limit of the usury or any other law applicable to the obligations evidenced hereby, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto, be applied to the Principal Amount immediately upon receipt of such monies by Payee with the same force and effect as though the Maker had specifically designated such and Payee had agreed to accept such extra payments as a Principal Amount payment, without premium.

13. **Notices.** All notices, requests, or other communications required or permitted to be delivered hereunder shall be delivered in writing to such address as a Party may from time to time specify in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

14. **Severability.** The invalidity or unenforceability of any provision of this Note shall not impair the validity or enforceability of any other provision of this Note. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

15. **Governing Law.** This Note shall be governed by, and construed in accordance with, the laws of the state of Delaware without regard to its conflict of laws rules.

16. **Waivers of Notices; Releases.** Maker hereby waives presentment, demand, notice of dishonor, protest, notice of protest, and nonpayment, and further waives all exemptions to which Maker may now or hereafter be entitled under the laws of the state of Delaware or any other state or of the United States, and further agrees that the holder of this Note shall have the right, without notice, to deal in any way

and at any time with Maker without waiving any rights the holder of this Note may have hereunder or by virtue of the laws of any state of the United States.

**17. Waiver of Jury Trial.**

(a) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE BROUGHT EXCLUSIVELY IN THE DELAWARE COURT OF CHANCERY IN NEW CASTLE COUNTY, OR IN THE EVENT (BUT ONLY IN THE EVENT) THAT SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER SUCH PROCEEDING, THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF DELAWARE IN EACH CASE LOCATED IN THE CITY OF WILMINGTON AND COUNTY OF DELAWARE, AND MAKER AND PAYEE EACH IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(b) MAKER AND PAYEE ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS NOTE IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY. MAKER AND PAYEE CERTIFY AND ACKNOWLEDGE THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS NOTE BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

18. **Assignment; Successors.** This Note shall bind Maker and Maker's successors and permitted assigns. Maker shall not assign or transfer Maker's obligations under this Note without first obtaining the written consent of Payee, who may withhold consent at Payee's sole discretion. Any assignment or transfer by Maker of this Note, or any of Maker's obligations under this Note, without obtaining Payee's prior written consent shall be deemed void *ab initio*. The rights of Payee under this Note, including the right to receive payment under this Note, may be transferred or assigned (i) between Payees or (ii) by Payee to a beneficiary of Payee, in whole or in part, without the prior written consent of Maker.

**IN WITNESS WHEREOF**, Maker has executed and delivered this Note as of the Effective Date.

**PRECISION METAL WORKS, INC.,**  
a Kentucky Corporation

By: \_\_ Name: \_\_ Title: \_\_

{SIGNATURE PAGE TO SECURED PROMISSORY NOTE}

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**EXHIBIT A SCHEDULE OF PAYMENT**

	5	Years	The Richard Stanley Family Trust Note				Monthly Payments		
			Interest rate	8.00%	0.02000000	Factor			
					Balloon Payment		500,000		% of
			Seller's Note		\$1,250,000		Annual		Principal
	# of	Qtrly	Interest	Principal	Loan	Interest	Principal	Total	Paid
Year	Quarterly	Payment			Value				
1-Oct-23	1	20,604	20,604	-	1,250,000				
1-Jan-24	2	25,000	25,000	-	1,250,000				
1-Apr-24	3	25,000	25,000	-	1,250,000				
1-Jul-24	4	25,000	25,000	-	1,250,000	95,604	-	95,604	
1-Oct-24	5	25,000	25,000	-	1,250,000				
1-Jan-25	6	25,000	25,000	-	1,250,000				
1-Apr-24	7	25,000	25,000	-	1,250,000				
1-Jul-24	8	25,000	25,000	-	1,250,000	100,000	-	100,000	
1-Oct-24	9	87,500	25,000	62,500	1,187,500				
1-Jan-25	10	86,250	23,750	62,500	1,125,000				
1-Apr-25	11	85,000	22,500	62,500	1,062,500				
1-Jul-25	12	83,750	21,250	62,500	1,000,000	92,500	250,000	342,500	20%
1-Oct-25	13	82,500	20,000	62,500	937,500				
1-Jan-26	14	81,250	18,750	62,500	875,000				
1-Apr-26	15	80,000	17,500	62,500	812,500				
1-Jul-26	16	78,750	16,250	62,500	750,000	72,500	250,000	322,500	20%
1-Oct-26	17	77,500	15,000	62,500	687,500				
1-Jan-27	18	76,250	13,750	62,500	625,000				
1-Apr-27	19	75,000	12,500	62,500	562,500				
1-Jul-27	20	73,750	11,250	62,500	500,000	52,500	250,000	302,500	20%
				750,000					
						413,104	750,000	1,163,104	60%



	5	Years	The John Locke Family Trust Note				Monthly Payments		
			Interest rate		8.00%	0.02000000	Factor		
						Balloon Payment		500,000	% of
			Seller's Note		\$1,250,000		Annual		Principal
	# of	Qtrly	Interest	Principal	Loan		Interest	Principal	Total
Year	Quarterly	Payment			Value				Paid
	1	20,604	20,604	-	1,250,000				
	2	25,000	25,000	-	1,250,000				
	3	25,000	25,000	-	1,250,000				
1	4	25,000	25,000	-	1,250,000	95,604	-	95,604	
	5	25,000	25,000	-	1,250,000				
	6	25,000	25,000	-	1,250,000				
	7	25,000	25,000	-	1,250,000				
2	8	25,000	25,000	-	1,250,000	100,000	-	100,000	
	9	87,500	25,000	62,500	1,187,500				
	10	86,250	23,750	62,500	1,125,000				
	11	85,000	22,500	62,500	1,062,500				
3	12	83,750	21,250	62,500	1,000,000	92,500	250,000	342,500	20%
	13	82,500	20,000	62,500	937,500				
	14	81,250	18,750	62,500	875,000				
	15	80,000	17,500	62,500	812,500				
4	16	78,750	16,250	62,500	750,000	72,500	250,000	322,500	20%
	17	77,500	15,000	62,500	687,500				
	18	76,250	13,750	62,500	625,000				
	19	75,000	12,500	62,500	562,500				
5	20	73,750	11,250	62,500	500,000	52,500	250,000	302,500	20%
				750,000					
						413,104	750,000	1,163,104	60%

**EXHIBIT F**  
**R&W INSURANCE POLICY**  
[See attached.]



POLICY NUMBER: ATRW-000006 BUYER'S REPRESENTATIONS AND WARRANTIES

**INSURANCE POLICY**

NOTICE: [INSERT NEVADA NOTICES]

NOTICE: THIS POLICY IS ISSUED BY BALANCE PARTNERS, LLC, AS THE AUTHORIZED AGENT FOR THE INSURERS IDENTIFIED IN DECLARATION 10. THE INSURER IS OBLIGATED TO PROVIDE THE INSURANCE COVERAGE IN ACCORDANCE WITH THE TERMS OF THE POLICY.

NOTICE: SUBJECT TO THE TERMS AND CONDITIONS OF THIS POLICY, COVERAGE IS LIMITED TO CLAIMS THAT THE NAMED INSURED REPORTS TO THE INSURER IN ACCORDANCE WITH THE POLICY. PLEASE READ THIS POLICY CAREFULLY AND DISCUSS IT WITH YOUR INSURANCE AGENT, LEGAL COUNSEL, OR BROKER.

NOTICE: CLAIM EXPENSES AND PROSECUTION COSTS COVERED UNDER THIS POLICY ARE PART OF LOSS AND ARE SUBJECT TO THE RETENTION AND THE LIMIT OF LIABILITY.

NOTICE: THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND. IF THE RETENTION HAS BEEN COMPLETELY EXHAUSTED, THEN, IN ACCORDANCE WITH AND SUBJECT TO THE TERMS AND CONDITIONS OF THIS POLICY, THE INSURER SHALL REIMBURSE THE INSURED FOR CLAIM EXPENSES AND PROSECUTION COSTS COVERED UNDER THIS POLICY.

**DECLARATIONS**

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Declaration 1: Named Insured

PMW Affiliated Holdings, LLC c/o Live Ventures  
Incorporated  
125 E. Warm Springs Road, Suite #102 Las Vegas, NV 89119  
Attention: Eric Althofer and Wayne Ipsen Email:  
[ealthofer@liveventures.com](mailto:ealthofer@liveventures.com); [wipsen@liveventures.com](mailto:wipsen@liveventures.com)

Additional Insureds

The Buyer Indemnitees, including the Company following Closing, and the future Affiliates (only to the extent they become Affiliates) of the Named Insured (provided the foregoing shall exclude Representatives consisting of financial advisors, counsel, accountants and other agents of the Purchaser)

Collectively, the Named Insured and the Additional Insureds and the respective successors and permitted assigns, and each of their respective direct and indirect

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subsidiaries, equityholders, stockholders, shareholders, owners, members, beneficiaries, general or limited partners, officers, directors, managers, and employees are collectively referred to herein as the “Insureds”, and “Insured” means any one of them.

Declaration 2: Acquisition Agreement

Stock Purchase Agreement among the trustees of The Richard Stanley Family Trust, the trustees of The John Locke Family Trust, Precision Metal Works, Inc. (formerly known as NTH HOLDING, Ltd), as Company Parent, and PMW Affiliated Holdings, LLC, as Buyer, dated as of July 19, 2023.

Declaration 3: Insured Matters

- A. The representations and warranties set forth in Article III of the Acquisition Agreement, other than the Fundamental Representations or Tax Representations, and similar representations and warranties in the Ancillary Documents (collectively, the “General Representations”);
  - B. The representations and warranties set forth in Section 3.01 (*Organization and Authority of Seller*), Section 3.02 (*Organization and Authority of Company Parent*) Section 3.03 (*Organization and Qualification of the Company*), Section 3.04 (*Authority*), Section 3.05(a) (*No Conflicts: Consents*), Section 3.06 (*Capitalization*), Section 3.07(a) (*Subsidiaries*) and Section 3.28 (*Brokers*) of the Acquisition Agreement and similar representations and warranties in the Ancillary Documents (collectively, the “True Fundamental Representations”) and the representations and warranties set forth in Section 3.08 (*Financial Statements*), Section 3.12(a) (*Title to Assets*); Section 3.25. (*Books and Records*); Section 3.26 (*Related Party Transactions*) and Section 3.27 (*Restructuring Transactions*) of the Acquisition Agreement and similar representations and warranties in the
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Ancillary Documents (collectively, together with the True Fundamental Representations, the “Fundamental Representations”);

C. The representations and warranties set forth in Section 3.24 (Taxes) of the Acquisition Agreement and similar representations and warranties in the Ancillary Documents (collectively, “Tax Representations”) (together with the General Representations and the Fundamental Representations, the “Insured Representations”); and

D. The Pre-Closing Tax Indemnity.

Declaration 4:

Policy Period

From July 19, 2023 (“Inception”) until July 19, 2026 11:59 p.m. at the local time of the Named Insured (the “Expiry Date”); provided that the Expiry Date with respect to the (i) the Fundamental Representations, (ii) the Tax Representations, (iii) the Pre-Closing Tax Indemnity, and (iv) the Ancillary Documents shall be July 19, 2029 11:59 p.m. at the local time of the Named Insured; provided that where representations and warranties in the Ancillary Documents are similar to or analogous to the General Representations, the Expiry Date shall be July 19, 2026 11:59 p.m. at the local time of the Named Insured.

Declaration 5:

Limit of Liability

\$5,000,000, in the aggregate.

Declaration 6:

Retention

\$225,000, in the aggregate (the “Initial Retention”), dropping to the lesser of (i) \$125,000 in the aggregate or (ii) the then- remaining Retention (the “Dropdown Retention”) on the Retention Dropdown Date; *provided that*, the Retention at all times will be \$0 for True Fundamental Representations; *provided further that*, if a Breach involves both a True Fundamental Representation and any other representation (including any other Fundamental Representation), then the Initial Retention or

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Dropdown Retention will apply, as applicable.

Declaration 7: Premium Non-Terrorism Portion : \$144,000 Terrorism Portion : \$0.00

Premium: \$144,000

Declaration 8: Insurance Broker McGill Global Risk Solutions LLC  
75 Rockefeller Plaza, Suite 23B 15 West 51<sup>st</sup> Street  
New York, NY 10019 NV SL Lic. No. 3513969

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Declaration 9: Brokerage Commission

The Premium is inclusive of an insurance brokerage commission payment to the Insurance Broker in the amount of \$23,760 (16.5% of the Premium).

Surplus Lines Tax

The Premium does not include any state surplus lines taxes, stamp taxes, or other state taxes, fees, or surcharges. It is the Insurance Broker's responsibility to collect any such applicable taxes or charges from the Insured and to remit such applicable taxes or charges to the state of the Named Insured identified in Declaration 1.

Declaration 10: Insurers and Quota Share Percentage

**Insurer  
of Liability      Quota Share Limit**

Old Republic Union Insurance Company	30%
Homesite Insurance Company (American Family Insurance)	20%
Lloyd's Syndicate 1084 (Chaucer)	20%
Lloyd's Syndicate 1458 (Renaissance Re)	10%
Palomar Excess & Surplus Insurance Company	10%

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Convex Insurance UK  
Limited

10%



\_\_\_\_\_Declaration 11: Underwriter Balance Partners LLC

Exhibits to the Policy:

Exhibit A: No Claims Declaration Exhibit B: Acquisition Agreement Exhibit C: Claims Notice

\_\_\_\_\_Exhibit D: Ancillary Documents Dated: [ ], 2023

At: Box 2550  
Huntington, NY 11743

By: \_\_\_\_\_  
Balance Partners LLC Authorized Representative



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POLICYHOLDER DISCLOSURE  
NOTICE OF TERRORISM INSURANCE COVERAGE (COVERAGE INCLUDED)

Coverage for acts of terrorism is included in your policy. You are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2015, the definition of act of terrorism has changed. As defined in Section 102(1) of the Act: The term "act of terrorism" means any act that is certified by the Secretary of the Treasury—in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Terrorism Risk Insurance Act, as amended. However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020 of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Terrorism Risk Insurance Act, as amended, contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism is \$0, and does not include any charges for the portion of losses covered by the United States government under the Act.

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## **BUYER'S REPRESENTATIONS AND WARRANTIES INSURANCE POLICY**

This Buyer's Representation and Warranty Insurance Policy, including its Declarations, any exhibits, attachments, or endorsements attached to it, is issued by the Underwriter as the authorized agent of the Insurer. The Policy is the entire agreement between the Insurer and the Insureds. In consideration of the payment of the Premium, the Insurer, the Underwriter and the Insureds agree as follows.

### **SECTION 1: DEFINITIONS**

All capitalized terms used but not defined in this Policy (including the Declarations) shall have the meaning assigned to such term in the Acquisition Agreement. As used in this Policy, the following terms have the meanings set forth below:

- A. Acquisition means the acquisition, merger, consolidation, exchange or other combination contemplated by the Acquisition Agreement.
  - B. Acquisition Agreement means the agreement stated in Declaration 2, an executed copy of which is attached as Exhibit B. The Acquisition Agreement includes its schedules, exhibits or other attachments and is part of the Policy.
  - C. Actual Knowledge of a person means, (i) with respect to a particular fact, event or condition, that such person had an actual, personal, conscious knowledge and awareness of such fact, event or condition, and (ii) with respect to a Breach, Loss or Third Party Claim, that such person had an actual, personal, conscious knowledge and awareness of (x) the relevant underlying fact, event or condition and (y) that such underlying fact, event or condition actually constitutes a Breach, Loss or Third Party Claim, as applicable. Actual Knowledge does not include any constructive, implied or imputed knowledge, nor does it include any actual, implied, constructive or imputed knowledge of any other person or entity, including, without limitation, any outside advisor, employee, accountant, consultant, attorney, counsel, or agents (or any other person or entity), nor does it require any duty or obligation of inquiry, except to the extent expressly required by the terms of the No Claims Declaration. The Insurer shall bear the burden of proving (with the burden of proof being, in each case, the burden which would be required before the applicable arbitral panel or court of law in which the Underwriting Representative would be required to prove such Actual Knowledge) that the applicable person had Actual Knowledge.
  - D. Additional Insureds shall have the meaning set forth in Declaration 1.
  - E. Affiliate shall have the meaning set forth in the Acquisition Agreement.
  - F. Breach means:
    - (i) any breach of, or misrepresentation of, or inaccuracy or misstatement in, any of the representations and warranties set forth in Article III of the Acquisition Agreement, on and as of the signing of the Acquisition
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Agreement or on and as of the Closing Date (other than representations and warranties that speak to a specific date, in which case as of such date);

- (ii) any breach of, or misstatement or inaccuracy in the representations and warranties set forth in the documents identified on Exhibit D (collectively, the "Ancillary Documents"); or
- (iii) the incurrence of any amounts for which the Insureds could be entitled to indemnification pursuant to or any event that gives rise to the Pre-Closing Tax Indemnity.

Breach shall be determined without regard to or giving effect to the aggregate Limitations Provisions or Materiality Qualifiers, as if such words, clauses or phrases, as applicable, were deleted from the applicable provision in the Acquisition Agreement or the Ancillary Documents.

For purposes of this Policy, the following changes shall be deemed made to the Acquisition Agreement:

- (i) In Section 3.14, in the last sentence of section (b), the phrase "to the Company's Knowledge" shall be deemed to be inserted immediately before the phrase "any other party thereto";
- (ii) In Section 3.21(b) and 3.21(i), the word "immediately" shall be deemed inserted immediately before the phrase "after the Closing Date" in each instance.

G. Business Day shall have the meaning given in the Acquisition Agreement.

H. Buyer Indemnitees shall have the meaning given it in the Acquisition Agreement.

I. Claim Expenses means the reasonable fees, expenses, costs, disbursements, charges, and other amounts, including fees, costs, charges disbursements and expenses of attorneys, other professionals, accountants, consultants, and experts (it being understood and agreed that (i) representation of the Insureds by Greenberg Traurig LLP is reasonable at its rates at the time of representation, (ii) once the Insureds have provided reasonable support for their Claim Expenses the burden shall be on the Insurer to demonstrate that such Claim Expenses are unreasonable, and (iii) that Claim Expenses shall also include all reasonable fees and expenses paid by the Insured to their counsel, accountants or other advisors in connection with providing reports, analysis, updates, or other information regarding claim status, defense status, budget, or strategy to the Insurer at the Insurer's request) and any appeal, attachment or similar bonds (and any broker fees associated with such bonds, without obligations by the Insurers to apply for or furnish any such bonds) incurred by or on behalf of the Insureds in the investigation, mitigation, prevention, adjustment, defense, prosecution, negotiation, settlement or appeal of (1) any matters related to a Breach or Third Party Claim and the prosecution of any counterclaims in connection with such defense, arising out of the same facts and circumstances, as well as any reasonable fees, costs and expenses payable to Greenberg Traurig LLP in connection with the foregoing, (2) any matters related to a potential Third Party Claim (including the investigation of the underlying facts and circumstances thereof), but only in the event that such potential

Third Party Claim is thereafter made and reported to the Claim Representative in accordance with the terms hereof), and (3) any Pre-Closing Taxes. Claim Expenses do not include any salaries, benefits or other compensation (other than reimbursement for out-of-pocket expenses) for directors, officers, employees or consultants of any of the Insureds (other than attorneys, advisors, accountants, consultants, experts or other professionals specifically retained in connection with the investigation, negotiation, adjustment, settlement, defense or appeal of such Third Party Claim or potential Third Party Claim).

- J. Claim Notice means a claim notice in the form attached hereto as Exhibit C.
- K. Company shall have the meaning set forth in the Acquisition Agreement.
- L. Deal Team Members means Eric Althofer and Wayne Ipsen.
- M. Declarations means, collectively, those items set forth as Declaration 1 through Declaration 11 on the pages labeled as "Declarations."
- N. Expiry Date means the applicable expiration date set forth in Declaration 4.
- O. Finance Party means a lender, or a collateral agent acting on behalf of a lender or lenders, of the Insured or the Company.
- P. Fraud means actual and intentional fraud under the laws of the State of Delaware.
- Q. Inception Date means the inception date of the Policy, which is the start date of the Policy Period set forth in Declaration 4.
- R. Insured Representations means the representations and warranties identified in Declaration 3.
- S. Insurer means the Insurers set forth in Declaration 10.
- T. Limit of Liability means the limit stated in Declaration 5, which is the Insurer's maximum aggregate limit of liability under this Policy for all Loss. The Retention is not part of the Limit of Liability.
- U. Limitation Provision means any dollar cap, dollar basket, dollar threshold, deductible, de minimums amount, aggregate limitation, time limitation, notice, procedural requirements, statute of limitations, liability limitations, survival periods or any other similar limitations set forth in or imposed by (i) the Acquisition Agreement, (ii) the Ancillary Documents or (iii) any statute of limitations applicable to breach of contract claims or other similar time limitations imposed by applicable law, in each case, that limit or potentially limit a claim or recovery for a Breach.
- V. Loss means the aggregate of (i) "Losses" (as defined in the Acquisition Agreement) incurred, suffered or sustained by any Insured to the extent resulting from, arising out of, or related to any Breach or Third Party Claim; (ii) any Claim Expenses; and (iii) any Prosecution Costs, in each case determined without regard or giving effect to the Limitation Provisions or Materiality Qualifiers, as if such words, clauses or phrases, as

applicable, were deleted from the applicable provision in the Acquisition Agreement or the Ancillary Documents.

For the avoidance of doubt, Loss shall include (a) all deductibles or co-insurance paid by any Insured under any other insurance policies related to a Breach (b) the settlement amount with respect to a Third-Party Claim which (if such allegations were true) would be a Breach, subject to the Insurer's right to consent, if applicable (such consent not to be unreasonably withheld, conditioned or delayed), under this Policy, (c) any third party collection or similar third party costs arising out of the Insureds' recovery under such other insurance policies related to a Breach, (d) any increase in any applicable insurance premium as a result of any recovery under such other insurance policies related to a Breach; and (e) any portion of a Loss that is a fine or penalty, subject to Section 3.D of this Policy.

- W. Materiality Qualifier means all references to material, materiality, material respects, Material Adverse Effect or words of similar import or effect, except for (i) the use of the term "Material Adverse Effect" in Section 3.10(a) of the Acquisition Agreement and (ii) the use of the words "Material" or "material" in the definitions of "Material Adverse Effect", "Material Contract", "Material Customer", and "Material Supplier."
- X. Most Favorable Jurisdiction means the jurisdiction most favorable to insurability where (i) the act, error or omission giving rise to the Breach, alleged Breach or the Loss took place, (ii) the Third Party Claim was made, (iii) any relief was awarded, (iv) the Insured is incorporated or has its principal place of business; (v) the governing law of the Acquisition Agreement or this Policy; or (vi) any Insurer domiciled in the United States is incorporated or has its principal place of business. Notwithstanding the foregoing, this Most Favorable Jurisdiction definition may not be applied to the Insurers in a manner which would require the Insurers to violate any law that applies to this Policy; provided the Insurers shall use commercially reasonable efforts to take all actions reasonably necessary to be taken in order to apply this definition in a manner that would give effect to the definition and the intention of the parties without violating any such law.
- Y. No Claims Declaration means the No Claims Declaration attached to the Policy as Exhibit A.
- Z. Policy means this insurance policy including the Declarations, these terms and conditions, and the attached Exhibits.
- AA. Policy Period means the relevant period of time stated in Declaration 4.
- AB. Pre-Closing Tax Indemnity means the indemnity for any Pre-Closing Taxes set forth in Section 6.03 of the Acquisition Agreement, except to the extent (i) such Taxes are transfer Taxes payable by reason of the transactions contemplated under the Acquisition Agreement, (ii) such Taxes were expressly identified in the Disclosure Schedules and it is reasonably apparent on its face that such matter would reasonably be expected to give rise to Pre-Closing Taxes, or (iii) such Taxes were accurately and specifically accrued or reserved on the Interim Balance Sheet, or, for periods since the date of the Interim Balance Sheet, were accurately accrued or reserved on the formal books and records of the Company as of the Closing Date, in each case, to the extent it is reasonably apparent that such reserves relate to such Taxes and to the extent that

such books and records have been made available to the Insureds for review prior to the Closing.

AC. Premium means the amount of premium stated in Declaration 7.

AD. Prosecution Costs means any reasonable fees, costs, charges, disbursements, and expenses (including the reasonable fees, costs, charges and expenses of attorneys, accountants, consultants, experts, and other professionals, as well as broker fees and premiums for any appeal bond, attachment bond or similar bond and any broker fees associated with such bonds, but without any obligation to apply for or furnish any such bonds (it being understood and agreed that (i) representation of the Insureds by Greenberg Traurig LLP at its rates at the time of representation is reasonable and (ii) once the Insureds have provided reasonable support for their Prosecution Costs, the burden shall be on the Insurer to demonstrate that such Prosecution Costs are unreasonable)) incurred by or on behalf of any of the Insureds in connection with (i) the Insureds' mitigation (including in connection with any actions taken in connection with Section VIII), adjustment, settlement, defense, prosecution, pursuit, investigation (after the Insured obtains a reasonable belief that a Breach has occurred), negotiation, prosecution or appeal of a claim for indemnification against the Sellers for any Breach or (ii) the Insureds' mitigation or investigation of any Breach in the event no indemnification claim is made against the Sellers. Prosecution Costs do not include any salaries, benefits or other compensation of any employee, officer, director, member or partner of the Insureds incurred in the ordinary course of the business unrelated to a Breach (other than part time employees and consultants retained in connection with the matters described in this definition and other than fees and expenses paid to attorneys, in their capacities as such, that also serve as officers or directors of the Insureds). Prosecution costs also do not include the costs or expenses associated with pursuing the Insurers for coverage under the Policy in litigation, arbitration, or other dispute resolution process.

AE. Purchase Price Adjustment means the purchase price or similar adjustment provision set forth in Section 2.06(b) of the Acquisition Agreement.

AF. Recovered Amounts means, in relation to any Loss, the net amount actually recovered (after any reasonable costs and expenses incurred in connection with such recovery) during the Policy Period by any of the Insureds from an unaffiliated third party other than (x) the Insurers or (y) any amounts actually paid pursuant to the Acquisition Agreement or the Ancillary Documents, in each case, as a direct consequence of the matter which gives rise to such Loss. For the avoidance of doubt, Recovered Amounts include recoveries or benefits directly resulting from any Tax Benefit; any indemnity (other than pursuant to the Acquisition Agreement or the Ancillary Documents); or other insurance policies (net of any costs of collection and any deductibles, retentions, co-insurance, retro-premium adjustments, or other self-insurance), provided that such recoveries have arisen directly as a result of the matter giving rise to such Loss. For the avoidance of doubt, Recovered Amounts shall not include and shall be reduced by  
(a) any deductibles or retentions paid or borne by the Insureds under other insurance policies (b) amounts recoverable under any such other insurance policy if such policy does not pay the Insureds in respect of such Loss, (c) any increase in premium under such policies directly attributable to the Loss giving rise to such offsetting recoveries,  
(d) amounts actually received from or on behalf of any Seller (to the extent such Loss would be a Loss covered under this Policy) except for Fraud by any Seller or Company,



or (e) any costs, taxes, and expenses incurred by any Insured directly related to the recovery of such offsetting recoveries.

AG. Retention means the amount stated in Declaration 6.

AH. Retention Dropdown Date means the date that is the 12-month anniversary of the Closing.

II. Sellers means, collectively, the persons or entities designated as "Stockholder" in the Acquisition Agreement.

AJ. Specified Person shall mean (i) any person who is the chief executive officer or chief financial officer of the Named Insured or who holds a functionally equivalent position to any of the foregoing at the Named Insured (other than in the case of any such person who was the chief executive officer or chief financial officer of the Company or any of its Subsidiaries or who holds a functionally equivalent position to any of the foregoing at the Company or any of its Subsidiaries immediately prior to the Closing) and (ii) any Deal Team Member (to the extent such person is employed by the Named Insured or any Affiliate of the Named Insured).

AK. Tax Benefit means any net reduction in taxes actually realized in the form of reduced cash taxes payable or an increased right to a Tax refund received in cash or used to offset other Taxes payable in cash, in each case as a result of a Loss that has been paid under this Policy equal to the positive difference, if any, between (i) the Insureds' liability for taxes in the year the Loss is incurred not taking into account such Loss or the payment under this Policy of such Loss and (ii) the Insureds' liability for taxes in such year taking into account the Loss and taking into account any taxable income or tax detriment (e.g., any loss or reduction in tax basis or any other negative tax basis adjustment) realized by the Insureds as a result of the receipt of, or right to receive, any payment under this Policy (treating such payment as having been received in the year of the Loss) on account of such Loss, with the Loss treated as the last item of expense or deduction realized for such year, net of any reasonable expenses, including taxes, incurred in connection with claiming such expense or deduction and net of any taxes attributable to receipt of any payments under this Agreement.

AL. Third Party Claim means any audit, examination, claim, notice, complaint, arbitration (or other alternative dispute resolution process), proceeding, investigation, subpoena, lawsuit, litigation, hearing, demand or similar action or assertion of rights made or legal action brought against, or the initiation of a tax or regulatory audit or examination of, any Insured by any person or entity (other than (i) an Affiliate of any of the Insureds, (ii) any other Insured (except for an officer, director, employee or agent of the Company) or (iii) the Insurers acting in connection with this Policy) which, if successful, would reasonably be expected to result in Loss (other than Losses that would be Claim Expenses or Prosecution Costs).

AM. Underwriter means the entity stated in Declaration 11 of the Declarations. The Underwriter is not an Insurer and shall not be liable for the payment of any Loss under this Policy.

## **SECTION 2: INSURING AGREEMENT**

The Insurer shall indemnify the Insureds for, or pay on their behalf, any and all Loss reported to the Insurer in accordance with the terms of this Policy.

### **SECTION 3: EXCLUSIONS**

The Insurer has no obligation to pay for that portion of Loss to the extent (and only to the extent) such portion arises out of or results from:

- A. any Breach of which any Deal Team Member had Actual Knowledge prior to the Inception Date;
- B. (i) the monetary amount by which any "defined benefit plan" as such term is defined in Section 3(35) of the Employee Retirement Income Security Act of 1974 ("ERISA") that is subject to Title IV of ERISA is unfunded or underfunded, or any required additional or increased contributions with respect thereto, to the extent such defined benefit plan is maintained, sponsored, contributed to or required to be contributed to, by and of the Company;
- C. the actual or alleged existence of, or exposure to, any form of asbestos, Polychlorinated Biphenyls, or Chlorofluorocarbons;
- D. any punitive or exemplary damages or civil or criminal fines or criminal penalties except, in each case, to the extent (i) actually paid or awarded against any Insured in connection with a Third Party Claim pursuant to a (a) a final settlement consented to in writing by the Insurer where such consent is required under Section 6(C) of this Policy (or any other final settlement in which such consent is not required pursuant to Section 6(C) of this Policy); (b) a final and non-appealable order of a governmental or regulatory agency; or (c) a judgment of a court of competent jurisdiction or award of an arbitrator, arbitration panel or similar body and (ii) that any such punitive or exemplary damages, criminal fines or criminal penalties are insurable under the law of any Most Favorable Jurisdiction that most favors coverage for such punitive or exemplary damages or civil or criminal fines or criminal penalties; provided, however, this exclusion shall not apply to Prosecution Costs or Claim Expenses;
- E. minority shareholder claims (i) arising from dissenters rights from the pre-closing Short Form Merger (including arising from the merger consideration therefor), or  
(ii) arising from the Charter Amendment, or the form of or solicitation of proxies with respect thereto;
- F. liabilities for sales Tax in Alabama, Iowa, Ohio, Oklahoma, Tennessee and Texas;
- G. the failure to pay gross receipts Tax in Ohio or Texas;
- H. the unavailability in any taxable period beginning after the Closing Date of any federal or state income tax net operating loss carryforward of the Company from any Pre-Closing Tax Period; provided that this exclusion shall not exclude any liability for Taxes by or with respect to the Company for any Pre-Closing Tax Period;

- I. the misclassification of the following positions as "exempt" under the Fair Labor Standards Act of 1938: General Accountant, Planner, Customer Service, MIS, and Buyer (other than Senior Buyer) positions;
- J. The eligibility for, and forgivability of, any loans received by the Company pursuant to the Paycheck Protection Program; and
- K. The eligibility for, and utilization of, any employee retention credits under the CARES Act.

The Insurer has no obligation to pay Loss to the extent (and only to the extent) such portion is for:

- A. amounts actually paid pursuant to the Purchase Price Adjustment, provided that if the Acquisition Agreement provides that any indemnification made for a Breach shall be deemed an adjustment to the purchase price, such provision shall not itself constitute a post-closing purchase price adjustment (with the intent of this provision to merely be to avoid "double counting" and not to limit any right to recover for Loss arising out of or resulting from any Breach in excess of the amount of such Loss taken into account in the Final Calculation of the Cash Consideration).

If only part of the Loss is excluded under this Section 3, the Insurer is liable for the portion of the Loss which is not excluded, and the Insurer shall bear the burden of proving the application and extent of such exclusion. Further, if any Loss is increased by any matter in this Section III, then any exclusion herein shall apply only in relation to such increase.

#### **SECTION 4: LIMIT OF LIABILITY, RETENTION, PREMIUM, OFFSETS**

- A. Limit of Liability. The Insurer's aggregate liability under this Policy shall not exceed the Limit of Liability. Claim Expenses and Prosecution Costs are part of, and not in addition to, the Limit of Liability. The payment by the Insurers of Claim Expenses and Prosecution Costs erodes the Limit of Liability on a dollar-for-dollar basis. Loss incurred within the Retention shall not erode the Limit of Liability.
- B. Retention.
  - i. The Retention is an aggregate one. The Insurer is only liable for Loss (or the aggregate of all individual Losses) in excess of the Retention, which shall be eroded only by Loss which would be covered by this Policy but for the Retention (regardless of whether such amounts are borne or paid, as applicable by the Insureds or their Affiliates and it being agreed that even if all or a portion of such Loss (or the aggregate of all individual Losses) is indemnified by the Sellers or their affiliates, such amounts shall erode the Retention). The Insurer and the Insureds agree that it is the intent of the parties hereto that any Loss (or any portion thereof) that exceeds the Retention shall be subject to recovery under this Policy (subject to the terms and conditions herein) and shall

not be conditioned upon seeking recovery under the Acquisition Agreement or from any other third-party with respect to any Loss. Any amounts that an Insured may ultimately recover from the Seller in compensation for the Retention shall be for the sole benefit of the Insureds and shall neither constitute an offsetting recovery nor be reimbursable to the Insurer.

- ii. To the extent that a Deal Team Member has Actual Knowledge of the facts and circumstances giving rise to a Breach prior to the Retention Dropdown Date (a "Known Claim"), the Initial Retention shall continue to apply to any Losses in respect of such Known Claim. Notwithstanding the foregoing, Losses in respect of Known Claims are Losses that shall be applied in determining whether the Dropdown Retention has been eroded. The amount of the Initial Retention represents the maximum aggregate amount of the Retention under this Policy.
- iii. The Retention applicable to a Breach of True Fundamental Representations shall be \$0; provided that, where a Breach arises out of both a Breach of a True Fundamental Representation and any other Representation, then the Initial Retention or Dropdown Retention shall apply, as applicable.

C. Premium. The Premium is non-refundable and fully-earned on the Closing Date.

D. Offsetting Recoveries. Loss shall be reduced by any Recovered Amounts. For the avoidance of doubt, to the extent any Recovered Amounts are actually received or actually realized after payment by the Insurer hereunder, such Recovered Amounts shall be applied in the following order: first, to reimburse the Insureds for any costs and expenses incurred in connection with such recovery of such Recovered Amounts or increased insurance cost as a result of such recovery; second, to reimburse the Insureds for any Loss borne by them in excess of the Limit of Liability; and third, to reduce any Loss incurred by the Insureds which is covered under this Policy (provided that the Limit of Liability shall be reinstated to the extent of the amount so reduced). The Insurer shall not delay payment of a covered Loss under this Policy in connection with any determination of the applicability of or dispute regarding any Recovered Amount (including the applicability of or dispute regarding a Tax Benefit).

E. Non-Monetary Remedies. Any Loss payable by the Insurers shall only be in the form of a monetary payment and the Insurers shall not be obliged to seek, pursue or satisfy on behalf of the Insureds any non-monetary remedies or any injunctive or equitable or other non-monetary relief (except for the monetary portion of Loss, Claim Expenses and Prosecution Costs related thereto); provided however, that any Loss in economic value of the Company caused by (i) any Breach involving or relating to a Third Party Claim seeking non-monetary, injunctive or equitable or other non-monetary relief; (ii) any Claim Expenses, Prosecution Costs, or Breach otherwise involving or relating to non-monetary, injunctive or equitable or other non-monetary relief, shall, in each case, constitute Loss and be covered, subject to the other terms and conditions of this Policy.

## SECTION 5: CLAIM NOTICE, PAYMENT OF LOSS

- A. Claim Notice. The Named Insured shall, or shall cause to, deliver a Claim Notice to the Underwriter at the address in Section 5.F below, signed by an authorized representative of the Named Insured, as soon as reasonably practicable after any Specified Person has Actual Knowledge of any (i) Breach, (ii) Third Party Claim and/or (iii) Loss, and in any event during the Policy Period or within 60 days after the Expiry Date. The Delivery of such Claim Notice to the Underwriter shall be deemed notice to the Insurer. Attached to the Claim Notice shall be a description, after reasonable inquiry, of the facts, circumstances and issues leading up to the delivery of the Claim Notice (in light of the information reasonably available to a Specified Person at the time of the Claim Notice), including a specific reference to the implicated Insured Representations (to the Actual Knowledge of a Specified Person at that time). The Insurer acknowledges that the Insured may have incomplete knowledge of a Breach or the facts and circumstances underlying such Breach or a Third Party Claim at the time that a Claim Notice is delivered to the Underwriter and that any Claim Notice provided hereunder may reflect such incomplete knowledge. In no event may a Claim Notice be delivered to the Insurer later than the expiration of the Policy Period or after 60 days from the Expiry Date. If, however, a Claim Notice pursuant to clause (i) or (ii) of this Section 5(a) is delivered to the Insurer during the Policy Period or within 60 days after the Expiry Date, then any subsequent Loss arising out of or resulting from the Breach, matter or Third Party Claim identified in such Claim Notice shall be deemed reported at the time such Claim Notice was received by the Insurer. A Claim Notice may be supplemented at any time, subject to the terms and conditions of this Policy, for an Insured after it is first submitted. The failure to list every potentially implicated Insured Representations shall not preclude the Insured from seeking thereafter recovery under the Policy with respect to such Insured Representation not referenced. With respect to any documents or information that are protected by the attorney-client privilege, work product doctrine, or other privileges, the Insurer shall cooperate in good faith with the Insured to preserve the privileged status of any such document or information. Without limiting any of the foregoing cooperation obligations of the Insurer or Insureds, nothing in this Policy shall be construed to require the waiver of any Fifth Amendment or similar protection or require any action that could reasonably be expected to cause the loss of the attorney-client privilege, work-product doctrine, or other privileges as to any document, information, or communication. No information contained in any Claim Notice shall be deemed an admission by any Insured to any third party of any matter whatsoever (including any violation of law or breach of contract), and any such information is disclosed solely for purposes of this Policy. The Insurer shall operate in good faith to preserve the privileged and/or confidential status of any such information.
- B. Deficiency. Any deficiency in the timeliness, sufficiency, or other requirements of Section 5.A of the notice shall not relieve the Insurer of its obligations under this Policy, except to the extent that the Insurer has been materially prejudiced by the deficiency, and only to the extent of such prejudice, so long as any such notice from the Insured is provided during the Policy Period or within 60 days after the Expiry Date.

- C. Correspondence. Subsequent to delivery of a Claim Notice, upon the Insurer's reasonable written request, the Named Insured shall, so long as not prohibited by applicable law, provide the Insurer (through the Underwriter) with a copy of any formal and written correspondence between, and any pleading or other material documents delivered or filed by or on behalf of, any of the Insureds, or their respective representatives, and any other person or entity relating to such Claim Notice, to the extent in the Named Insured's possession.
- D. Underwriter's Response. As soon as reasonably practicable after the Underwriter receives a Claim Notice, and in any event within forty-five (45) Business Days after the Underwriter receives a Claim Notice, the Underwriter will respond on behalf of the Insurer by acknowledging or denying coverage for the Breach, Loss or claimed erosion of the Retention (including providing reasons in the case where the Underwriter has denied such claimed Breach, Loss or claimed erosion of the Retention) or, if the Underwriter is not in a position to determine whether the Breach, Loss or claimed erosion of the Retention is covered by this Policy, by requesting such additional information as will assist the Underwriter (including an explanation as to the reasons why such information is required) and the Insurer in making a coverage determination or reserving rights as to coverage under this Policy (it being understood and agreed that failure to deliver any such additional information shall not relieve the Insurer of its obligations under this Policy). The Underwriter shall use commercially reasonable efforts to respond to any Claim Notice in a manner which provides the Insured sufficient time to satisfy any litigation deadline or other similar deadlines of which the Insurer has knowledge relating to the matters which are the subject of the Claim Notice. The Underwriter shall acknowledge receipt of a Claim Notice within ten (10) Business days of receipt.
- E. Equivalent Notice. If the Named Insured gives the Underwriter notice during the Policy Period of facts or circumstances that would reasonably be expected to give rise to a Third Party Claim or Breach (including notice of any matter under active investigation by any Specified Person that would reasonably be expected to give rise to a Third Party Claim, Breach or Loss), then any actual Third Party Claim or Breach and subsequent Loss arising out of such facts and circumstances, shall be deemed to have been reported to the Underwriter within the Policy Period. Such notice shall comply with all other notice requirements of this Section 5 of this Policy.
- F. Payment of Loss. Any Loss paid by the Insurer pursuant to this Policy shall be paid to the Named Insured as representative of all the Insureds or to such other person or entity as the Named Insured instructs the Insurer in writing pursuant to Section 5.E of this Policy. Once the Insureds' Loss exceeds the applicable Retention, the Insurer shall (i) within 60 days of the Insurers' receipt of an invoice, pay Claim Expenses and Prosecution Costs and; and (ii) pay Loss other than Claim Expenses and Prosecution Costs within a reasonable time not to exceed 60 days. The Insureds agree that the Insurers are authorized to rely on all written instructions of the Named Insured with respect to payment of Loss.
- G. Notice. Any notice (including a Claim Notice) or other communication concerning the subject matter of this Policy shall be made in writing and shall be effective upon receipt, and (i) if to any of the Insureds, shall be delivered to the Named

Insured at the address set forth below, and (ii) if to the Insurer or the Underwriter, shall be delivered to it at the following address:

For Claim Notices:

claims@balanceuw.com

All Other Notices:

If to Named Insured:

Live Ventures Incorporated  
125 E. Warm Springs Road, Suite #102 Las Vegas, NV 89119  
Attention: Eric Althofer and Wayne Ipsen  
E-mail: [ealthofer@liveventures.com](mailto:ealthofer@liveventures.com); wipsen@liveventures.com

with a copy (unless otherwise directed in writing by the Named Insured) to:

Greenberg Traurig, LLP  
10845 Griffith Peak Drive, Suite 600 Las Vegas, NV 89135  
E-mail: [bonnerm@gtlaw.com](mailto:bonnerm@gtlaw.com) Attention: Michael J. Bonner, Esq.

If to Insurer or Underwriter:

Balance Partners LLC Box 2550  
Huntington, NY 11743  
Email: inquiries@balanceuw.com

For purposes of convenience only and not as a condition precedent to any rights under this Policy, a copy of any such notice or other communication shall be sent simultaneously to the Insurance Broker at its mailing address set forth in Declaration 8, unless otherwise directed in writing by the Named Insured.

#### **SECTION 6: CLAIM EXPENSES, THIRD PARTY CLAIMS, AND SETTLEMENT CONSENT**

- A. Claim Expenses and Prosecution Costs. Claim Expenses and Prosecution Costs are part of Loss and are subject to the Limit of Liability.
- B. Third Party Claims and Claims Participation. The Insurer does not assume any duty to defend the Insureds with respect to any Third Party Claim or otherwise. The Insureds shall, to the extent permitted by the Acquisition Agreement, defend and contest any Third Party Claim with counsel consented to by the Insurer in writing (such consent not to be unreasonably withheld, conditioned or delayed); provided that such consent shall not be required for any representation of the Insureds by Greenberg Traurig LLP. Subject to any limitations in the Acquisition

Agreement, the Insurer shall be entitled to effectively associate (at its sole cost and expense, which, for the avoidance of doubt, shall not reduce the Limit of Liability hereunder) in the defense, prosecution, negotiation and settlement of any Third Party Claim or any matter that appears to the Insurer reasonably likely to involve the Insurer or this Policy, provided that, subject to the consent rights expressly given to the Insurer in this Policy, the Insureds (or the Sellers to the extent provided in the Acquisition Agreement) shall control all decisions with respect to the investigation, defense, prosecution, negotiation and settlement of any Third Party Claim.

- C. Settlements and Judgments. With respect to any Third Party Claim, only Loss (other than Claim Expenses or Prosecution Costs) resulting from settlements or stipulated judgments consented to by the Insurer in writing (such consent not to be unreasonably withheld, conditioned or delayed), or resulting from a final judgment by a court of competent jurisdiction, arbitral panel, or similar adjudicative body shall erode the Retention or be recoverable as Loss; provided that with respect to any settlement or stipulated judgment that is solely within the Retention, the consent of the Insurer shall not be required if the amount of settlement is less than or equal to 50% of the Initial Retention or the Dropdown Retention, as applicable, if any, and so long as the Insureds notify the Insurer in writing within a reasonable period following such settlement or stipulated judgment. Notwithstanding anything herein to the contrary, the Insurer shall not use as the sole basis for denying its consent to any settlement or stipulated judgment (whether in respect of a Third Party Claim, direct claim or other Breach) the granting by the Insureds of an irrevocable and unconditional full and complete waiver and release to any person so long as, at the time of such waiver, the Insurers would not reasonably be expected to have any recoveries through subrogation against such person.

## **SECTION 7. COVENANTS OF THE INSURED**

- A. Mitigation. With respect to any Loss or potential Loss, to the extent (and only to the extent) required by applicable law, the Named Insured shall, and to the extent reasonably practicable shall cause their respective Affiliates to, take all commercially reasonable actions within their control to mitigate any Loss or potential Loss after any Specified Person has Actual Knowledge of any event which would reasonably be expected to give rise to any Loss; provided that the failure of the Insured to so mitigate shall only reduce the rights of the Insured to recover for Loss under this Policy to the extent (and only to the extent) of the Loss that would have been avoided by such mitigation and the burden of proving such amount shall be on the Insurer and shall not otherwise diminish or delay coverage hereunder; provided further, that the Insureds shall not be required or obligated to
- (i) seek recovery or recourse under the Acquisition Agreement or the Ancillary Documents from the Sellers except as provided in Section 8.A of this Policy in connection with the subrogation rights of the Insurers; (ii) seek recovery or recourse against any person that the Insurer does not have a right of subrogation against pursuant to Section 8.A of this Policy; or (iii) commence or threaten any legal action or proceeding, and provided further that the Insurers shall not delay payment of Loss under this Policy while the Insureds pursue such mitigation; provided further that such mitigation is not (x) reasonably expected to be materially detrimental or (y) actually materially detrimental to the Insureds. If the Insurer believes that the Insureds are in breach of this Section 7.A, the Insurer shall provide prompt written notice thereof to the Insureds and provide the Insureds with



a reasonable opportunity to cure (if curable). For the avoidance of doubt, any fees, costs and expenses incurred by the Insureds in connection with any action taken pursuant to this Section 7.A shall be considered Losses (subject to the terms, conditions and exclusions of this Policy). If the Insurers reasonably believe that any Insured must use additional commercially reasonable efforts to mitigate any Loss or potential Loss, the Insurer shall request such action of such Insured promptly in writing. Notwithstanding any other provisions of this Policy, in the event of a sales tax audit in the Commonwealth of Kentucky relating to a pre-closing period, the Insured shall, or shall cause its Affiliates to, use commercially reasonable efforts to promptly obtain from customers exemption certificates to support such pre-closing sales that may have been exempt under applicable tax laws and regulations.

- B. Cooperation and Information. The Insureds shall use commercially reasonable efforts to, and to the extent reasonably practicable shall cause their respective Affiliates to, cooperate with the Insurer and, upon reasonable written request of the Underwriter, provide the Underwriter with reasonably accurate information, assistance, and cooperation reasonably requested in writing by the Insurers in connection with any Claim Notice or other matter relating to this Policy. Such cooperation shall include, at the Insurers' sole cost and expense (which shall not reduce the Limit of Liability hereunder) and to the extent reasonably practicable, permitting the Insurer to examine, photocopy and/or take extracts from the books, records, data, files and information of the Insureds and their respective Affiliates and access to the Insureds' and their respective Affiliates' representatives over whom the Insureds' have control for interviews and depositions under oath during normal business hours and at reasonable locations. The provision of such information shall be subject to existing confidentiality agreements by and among the Insureds and the Underwriter. With respect to any documents or information that are protected by the attorney-client privilege, work product doctrine, or other privileges, the Insurer shall cooperate in good faith with the Insured to preserve the privileged status of any such document or information, including, but not limited to signing any non-disclosure agreement or joint defense agreement deemed necessary by counsel for the Insured to preserve such privilege.
- C. Acquisition Agreement. The Insureds shall not, and to the extent reasonably possible shall cause their respective Affiliates not to, (i) amend, supplement or rescind the Acquisition Agreement (or enter into any agreement or arrangement that would have such an effect), (ii) give any consent or waiver thereunder or (iii) grant any authority to take any of the actions in clauses (i) or (ii) above, in each case, without the prior written consent of the Insurer (such consent not to be unreasonably withheld, conditioned or delayed) if such amendment, supplement, rescission, agreement, arrangement, consent, waiver or grant would reasonably be expected to actually prejudice the Insurer or its rights or liability under this Policy.
- D. Maintenance of Due Diligence Records. Until the later of 90 days after (i) the expiration of the Policy Period and (ii) the final resolution of all claims or disputes relating to this Policy, the Named Insured shall, and to the extent practicable shall cause their respective Affiliates to, maintain all of their respective materials relating to the due diligence conducted in connection with the Acquisition; provided that the Insureds may destroy documents in the ordinary course of their business

consistent with past practice and their document retention guidelines so long as such destruction is not done with the intent to harm the Insurer (with the Insurer bearing the burden of proving such intent).

- E. Other Insurance Coverage. The coverage provided under this Policy shall be excess over any other valid, applicable and collected insurance of the Company. Notwithstanding the foregoing, any amounts payable on account of a Breach or Third Party Claim to the Insured under a deductible, retention or similar provision of any valid, collectible, applicable and collected insurance shall be applied to satisfy the Retention under this Policy. The Named Insured shall use commercially reasonable efforts to investigate and shall inform the Insurer, whether any other insurance, bond, or indemnity may offer cover for the matters set forth in any Claim Notice; provided that any dispute as to the applicability of, or delay in obtaining, coverage pursuant to such insurance, bond or indemnity shall not be a basis for delay or refusal of payment hereunder. The Insured shall not be obligated to first pursue claims for Breach against any other insurance policy, the Sellers or any other source of recovery prior to being eligible for payment under this Policy; provided that it is understood that the foregoing shall not limit the Insurer's rights of subrogation pursuant to and to the extent provided in Section 8 of this Policy.
- F. Reimbursements. After any payment by the Insurer in connection with this Policy,
  - (i) if it is determined or agreed by a court or an arbitrator in a final, non-appealable determination that all or any portion of the amount paid did not constitute Loss or is excluded from coverage under this Policy or (ii) if such payment constituted a Recovered Amount, then the Insureds or such Affiliates shall reasonably promptly, and in no event later than 60 days after such determination or receipt, reimburse or refund to the Insurer the amount overpaid. Notwithstanding anything to the contrary contained herein, to the extent that the Limit of Liability is exceeded, there shall be no requirement to reimburse the Insurers as provided herein for any amounts in excess of the amount such Loss exceeded the Limit of Liability. Without duplication of any amounts taken into account in the definition of Recovered Amounts, the amount of such reimbursement shall be net of any increase in premiums and reasonable costs and expenses (including Taxes) incurred by the Insureds in connection with obtaining such amount and net of any applicable withholding taxes. The Limit of Liability shall be reinstated immediately with respect to any such reimbursement by the amount received by the Insurer or the Underwriter.
- G. Failure to Comply. Any failure of the Insureds to comply with any of the provisions of Section 5, 6, 7 or 8 shall not relieve the Insurer of its obligations under this Policy except to the extent the Insurer is actually prejudiced thereby (with the Insurer bearing the burden of proving of such prejudice) and then only to the extent of such prejudice; provided that any Claim Notice must be delivered within the Policy Period or within 60 days of the expiration of the Policy Period.

## **SECTION 8. SUBROGATION**

- A. If the Insurer makes any payment to the Insured under this Policy, the Insurer shall be subrogated to (or may require the Insured to assign to the Insurer) the Insured's rights of recovery against any person for, and to the extent of, such payment, other

than (i) the Company and any shareholder, partner, or member of the Company,

(ii) any Insured or any of their respective Affiliates, (iii) any direct or indirect member, shareholder, director, officer or partner of any person set forth in clause

(i) or (ii), except, in the case of clause (i), if such person was a member, shareholder, director, officer or partner (or functional equivalent of such position), Affiliate, principal, attorney, employee, agent, advisor, consultant, accountant or any other person or entity acting in a representative capacity of any such person prior to the Closing, (iv) customers, clients, sales representatives, or suppliers of any Insured without the express written consent of the Named Insured (such consent not to be unreasonably withheld, conditioned or delayed) until the aggregate amount of all such Losses exceeds the \$500,000, and (v) subject to the provisions of Section 8.B below, any Seller or any direct or indirect shareholders, member, director, officer, partner (or functional equivalent of such a position), Affiliate, principal, employee, of any Seller (with Sellers, the "Seller Protected Parties"), in each case arising out of or relating to such payment. At the Insurer's sole cost and expense, the Insured shall take all commercially reasonable action requested in writing by the Insurer to secure the rights and remedies of the Insurer in subrogation. If the Insured is unable to assign its rights of recovery to the Insurer, the Insured shall allow the Insurer, or any Affiliate of the Insurer, to prosecute such rights in the name of the Insured at the Insurer's sole cost and expense. The Insured or its respective Affiliates shall not intentionally and knowingly waive any rights that could affect any such subrogation or assignment.

- B. The Insurer hereby waives and shall not be entitled to subrogate against the Seller Protected Parties, except in the event that the payment under the Policy of Loss arose out of such Seller's Fraud, with the Insurer having the burden of proving such Fraud. The Insurers shall only be entitled to subrogate against the Seller who perpetrated such Fraud and the Fraud of such Seller shall not be imputed to another Person.
- C. Any amounts recovered by the Insurer as a result of subrogation or assignment of rights shall be applied in the following priority: (1) to reimburse the Insurer for any reasonable costs and expenses incurred in connection with such recovery, (2) to reimburse the Insured for any Loss it has incurred in excess of the Limit of Liability and which provided the basis for such subrogation or assignment recovery, (3) to reimburse the Insurer in respect of any Loss which the Insurer has paid and which provided the basis for such subrogation or assignment recovery (such reimbursement shall replenish the Limit of Liability hereunder), and (4) the remainder of such recovered amounts shall be paid to the Named Insured.
- D. The Insurer shall bear all costs incurred in connection with any subrogation efforts or actions taken by the Insurer and the Insurer shall promptly reimburse the Insured and their respective Affiliates for any reasonable costs incurred in connection with any subrogation efforts in connection with this Section 8 of this Policy. The Insured shall defend at its own expense, and be liable for, any counterclaim, cross-claim, or third party action asserted in connection with any assignment or subrogation claim pursued by the Insurer, except to the extent that such counterclaim or third party action: arises out of, results from, or relates to (i) the same facts and allegations as the assignment or subrogation claim or would itself constitute a Third Party Claim, or (ii) actions taken by the Insurer in connection with such subrogation or assignment claim, in which event the Insurer

shall defend and indemnify the Insured with respect to such counterclaim, cross- claim, or third party action.

#### **SECTION 9. DISPUTE RESOLUTION; CHOICE OF LAW; RULES OF CONSTRUCTION**

- A. Any dispute between the Insurer and the Insureds hereunder shall be, at the Named Insured's sole election, submitted to (i) a court of competent jurisdiction through commencement of a judicial proceeding, or (ii) arbitration through the American Arbitration Association in New York, New York for confidential, binding arbitration under and in accordance with its commercial arbitration rules then in effect. With regard to any specific arbitration, the parties thereto shall agree on whether there shall be one arbitrator or three arbitrators. If such parties cannot agree on the number of arbitrators, there shall be three arbitrators. The arbitrator(s) shall be disinterested, shall have knowledge of the legal, financial, business, corporate or insurance issues relevant to the matters in dispute and shall otherwise be chosen in the manner provided in such commercial arbitration rules. The arbitration dispute resolution mechanisms are intended to be the sole and exclusive dispute resolution mechanisms for any dispute arising between the Insurer and the Insureds hereunder and shall survive the cancellation or termination of this Policy and the exhaustion of the Limit of Liability.
- B. The construction, validity and performance of this Policy shall be interpreted under the laws of the State of Delaware, without reference to conflicts-of-laws principles that would require or allow for the application of the law of any other jurisdiction. For purposes of this Policy, the Acquisition Agreement shall be interpreted under the laws of the jurisdiction chosen therein or, where no jurisdiction is so chosen, by the laws of the State of Delaware, without reference to conflicts-of-laws principles that would require or allow for the application of the law of any other jurisdiction. Nothing in this Section 9(B) shall affect or override the definition and use in this Policy of the defined term "Most Favorable Jurisdiction".
- C. This Policy shall be construed in the manner most consistent with the relevant terms and conditions of this Policy without regard to authorship of language and without any presumption in favor of either party. The descriptions in the headings of this Policy are solely for convenience, and form no part of the interpretation or the terms and conditions of coverage. The words "include" or "including" in this Policy shall be deemed to be followed by the words "without limitation".

#### **SECTION 10. ACKNOWLEDGEMENTS AND REPRESENTATIONS**

- A. This Policy has been negotiated among, and agreed to by, informed and knowledgeable parties, at arm's-length and represented by legal counsel.
- B. By accepting this Policy, the Named Insured acknowledges and agrees that that the Insurer shall be entitled to rely exclusively upon any written notice given by the Named Insured and that the Insurer shall not be liable in any manner for any action taken or not taken in reliance upon any notice given by the Named Insured.
- C. The Underwriter is authorized to act on behalf of the Insurer with respect to all matters relating to this Policy, including the negotiation and acceptance of any terms and conditions of this Policy (including any Exhibits or Endorsements)

hereunder), the giving and receipt of any notices and consents to or from the Insureds as provided for in Section 5 of this Policy and the management of any matters that are subject to a Claim Notice. Each Insurer shall be bound by the communications made by the Underwriter to the Insureds. The Insureds may rely on communications made by the Underwriter as the authorized representative for all Insurers for any claim reported under this Policy.

#### **SECTION 11. SERVICE OF SUIT**

- A. Subject to any provision in this Policy requiring or allowing for arbitration, in the event of failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer, at the request of the Named Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Section 11 constitutes or should be understood to constitute a waiver of the Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon the following:

Lloyd's America, Inc.  
Attention: Legal Department  
280 Park Avenue, East Tower, 25<sup>th</sup> Floor New York, NY 10017

The Insurer will abide by the final decision of such court or of any appellate court in the event of any appeal.

- B. Further, pursuant to any statute of any state, territory or district of the United States that makes provision therefor, the Insurer hereby designates the Superintendent, Commissioner, Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insureds or any beneficiary hereunder arising out of this Policy, and hereby designates the above named General Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

#### **SECTION 12. GENERAL PROVISIONS**

- A. Cancellation and Renewal. This Policy may not be cancelled by the Insured or the Insurer, except as provided in the Binder Agreement.
- B. Waiver and Amendment. The terms of this Policy may not be waived or amended except pursuant to a written endorsement executed and issued by the Insurer and consented to by the Named Insured.
- C. Assignment. Without the prior written consent of the Insurer (such consent not to be unreasonably withheld, conditioned or delayed), the Insured may only assign this Policy to (i) an Affiliate of the Insured, (ii) any subsequent purchaser, assignee, transferee or successor in interest of the Insureds or any of its Affiliates (whether

by merger, consolidation, acquisition, reorganization or sale of all or substantially all assets of the Insured or any of its Affiliates and, in each case, whether such purchaser, assignee, transferee or successor in interest acquires all or substantially all of the business or assets acquired pursuant to the Acquisition Agreement (it being understood that any such assignment shall become effective upon written notice to the Insurer), or (iii) to a Finance Party by way of granting of security or providing collateral provided that the Insured notified the Insurer of such assignment within 30 Business Days of such assignment.

- D. Entire Agreement. This Policy constitutes the entire agreement and understanding concerning the subject matter of this Policy and supersedes any prior oral or written agreements, discussions or other communications entered into between the Insurer and/or its Affiliates (including their respective representatives), on the one hand, and the Insureds and/or their respective Affiliates (including their respective representatives), on the other hand, concerning the subject matter of this Policy.
- E. Economic Sanctions. Coverage shall only be provided and payment of loss under this policy shall only be made in full compliance with enforceable United Nations economic and trade sanctions and the trade and economic sanction laws or regulations of the European Union and the United States of America, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").
- F. War and Civil War Exclusion: This Policy does not cover Loss directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.
- G. Interpretation. The descriptions and headings and sub headings of this Policy are solely for convenience and form no part of the terms and conditions of coverage. Words importing the singular include the plural and vice versa, words importing a gender include every gender. The word "including" or similar expression in this Policy shall be deemed to mean "including without limitation". The word "person(s)", wherever it appears, means legal or natural person(s), including corporations, limited liability companies, limited partnerships, partnerships and other unincorporated associations or entities, unless otherwise specified or the context otherwise requires. References in this Policy to a "Declaration", a "clause", a "Section" or an "Exhibit" shall mean the Declarations, a clause, a Section or an Exhibit of or to this Policy unless otherwise stated. "USD", "USD\$" and "\$" all refer to United States dollars. The word "entity" shall be deemed to include any government or political subdivision, whether federal, state, local or foreign, or any agency or instrumentality of any such government or political subdivision, or any federal, state, local or foreign court or arbitrator. The word "or" is not an exclusive concept and may include both of the matters separated by the word "or".

## EXHIBIT A

### NO CLAIMS DECLARATION

Balance Partners LLC Box 2550  
Huntington, NY 11743

Re: **Project Cold Press Policy No. ATRW-000006 No Claims Declaration**

On behalf of the Insured, I acknowledge this No Claims Declaration is required to be given in relation to the Representations and Warranties Insurance Policy No. ATRW-000006 issued by the Underwriter to the Insured. Capitalized and/or bolded terms in this No Claims Declaration shall have the respective meanings assigned to them in the Policy.

After reasonable inquiry of the Deal Team Members, I hereby declare on behalf of the Insured and on behalf of the Deal Team Members as follows :

- a) At least one Deal Team Member has read the Acquisition Agreement, the due diligence reports prepared in connection with the Acquisition and referenced in Paragraph (b) below, and this Policy;
  - b) The Underwriter has been provided with complete copies of the Acquisition Agreement and any formal, final (or, if not final, the most current draft of) written due diligence reports prepared by the Insureds' third-party advisors in connection with the Acquisition; and
  - c) To my Actual Knowledge, no Deal Team Member has any Actual Knowledge of any Breach, except as provided below:
-

The signing of this No and without any oth aration is given by me without incurring any personal liability personal liability .

Sign Name: Date:

Print Name: Eric Althofer



July 19, 2023

**EXHIBIT B**

**ACQUISITION AGREEMENT**

## **EXHIBIT C**

### **Form of Claim Notice**

Reference is hereby made to the Representations and Warranties Insurance Policy, Policy No. ATRW-000006, issued by Balance Partners LLC, as authorized agent for the Insurer, to the Insureds (the "Policy"). All capitalized terms used but not defined in this Claim Notice shall have the respective meanings assigned thereto in the Policy.

Pursuant to the terms and conditions of the Policy, the undersigned Named Insured hereby reports that (check all that apply):

- a) Preliminary Notice. An Insured is aware of a Breach or a matter which could reasonably be expected to give rise to a Breach. Attached hereto is a full description, after reasonable inquiry, of such Breach or matter, including without limitation the representations and/or warranties which may have been breached, a description of such Breach or possible Breach, the date any Insured first learned of such Breach, fact or circumstance, and the amount of Loss which could reasonably be expected to result.
- b) Third Party Demand. An Insured is aware of a Third Party Demand that was asserted against \_\_\_\_ by \_\_\_\_ in the amount of \$\_\_ on \_\_\_\_\_. Attached hereto is a full description, after reasonable inquiry, of all material facts, circumstances and issues relating to such Third Party Demand, including without limitation the representations and/or warranties which allegedly contain a Breach, the facts alleged in the Third Party Demand, the date any Insured first learned of such Third Party Demand, and the amount of Loss which could reasonably be expected to result.
- c) Loss. A \$\_\_ Loss occurred on \_\_\_\_\_. Attached hereto is a full description, after reasonable inquiry, of all material facts, circumstances and issues relating to such Loss, including without limitation the representations and/or warranties which allegedly contain a Breach and the date any Insured first learned of such Loss.

PMW Affiliated Holdings, LLC By:

\_\_\_\_\_  
Name: Title:

## **EXHIBIT D**

### **Ancillary Documents**

1. the consulting agreement contemplated by Section 2.03(b)(iv) of the Acquisition Agreement.

**EXHIBIT G SECURITY AGREEMENT**

[See attached.]

ACTIVE 687632206v25

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## SECURITY AGREEMENT

This **SECURITY AGREEMENT** (this “**Agreement**”), dated as of July 19, 2023 (the “**Effective Date**”), is made by Precision Metal Works, Inc., a Kentucky corporation formerly Nth Holding, Ltd (Kentucky Organization No. 0940452), whose address is 6901 Preston Highway, Louisville, Kentucky 40219 (the “**Grantor**”), in favor of The Richard Stanley Family Trust, a trust formed under the laws of Ontario, Canada (the “**Secured Party**”).

**WHEREAS**, Grantor and Secured Party are parties to that certain Stock Purchase Agreement (the “**Purchase Agreement**”), dated as of the Effective Date, by and among Grantor, Secured Party, the trustees of The John Locke Family Trust, a trust formed under the Laws of Ontario, Canada, and PMW Affiliated Holdings, LLC, a Delaware limited liability company (“**Buyer**”), pursuant to which Buyer has agreed to purchase from Secured Party and The John Locke Family Trust all of the issued and outstanding shares of capital stock of Grantor.

**WHEREAS**, in connection with such transaction, Grantor has issued to Secured Party that certain Secured Promissory Note in the principal amount of \$1,250,000 (the “**Note**”).

**WHEREAS**, Grantor has agreed to secure its payment and performance of its obligations under the Note (the “**Obligations**”) by granting to Secured Party a security interest in all of the assets of Grantor as set forth herein.

**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties agree as follows:

1. **Definitions.** Unless otherwise defined herein, terms used herein that are defined in the Uniform Commercial Code as in effect from time to time in the Commonwealth of Kentucky (the “**UCC**”) shall have the meanings assigned to them in the UCC. However, if a term is defined in Article 9 of the UCC differently than in another Article of the UCC, the term has the meaning specified in Article 9.

2. **Grant of Security Interest.** For value received, Grantor hereby grants to Secured Party, to secure the payment and performance in full of all of the Obligations, a security interest in and pledges and collaterally assigns to Secured Party the following properties, assets, and rights of Grantor, wherever located, whether Grantor now has or hereafter acquires an ownership or other interest or power to transfer, and all proceeds and products thereof, and all books and records relating thereto (all of the same being hereinafter called the “**Collateral**”): all personal and fixture property of every kind and nature including all goods (including inventory, equipment, and any accessions thereto), instruments (including promissory notes), documents (whether tangible or electronic), accounts, chattel paper (whether tangible or electronic), money, deposit accounts, letters of credit, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), securities and all other investment property, supporting obligations, and other contracts rights or rights to the payment of money, insurance claims and proceeds, tort claims, and all general intangibles (including all payment intangibles) (and all proceeds from any of the foregoing).

3. **General Covenants.** Grantor represents, warrants, and covenants as follows:

3.1. Except for the interest of Secured Party, the Permitted Encumbrances (as defined in the Purchase Agreement), and the security interest granted to Fifth Third Bank, National Association as of the Effective Date, Grantor is the sole owner of the Collateral, free from any and all liens, security interests, encumbrances, claims, and interests.

1.1. Except for the interest of Secured Party, the Permitted Encumbrances, and the security interest granted to Fifth Third Bank, National Association as of the Effective Date, no security agreement, financing statement, equivalent security, or lien instrument or continuation statement covering any of the Collateral is on file or of record in any public office.

1.2. Grantor shall not create, permit, or suffer to exist, and shall take such other action as is necessary to remove, any claim to or interest in or lien or encumbrance upon the Collateral, other than the security interest granted hereby, the Permitted Encumbrances, and the security interest granted to Fifth Third Bank, National Association as of the Effective Date, and shall defend the right, title, and interest of Secured Party in and to the Collateral against all claims and demands of all persons and entities at any time claiming the same or any interest therein.

1.3. Grantor's principal place of business is located at the address set forth at the beginning of this Agreement; other than 111 Commerce Blvd., Frankfort, KY 40601 and 4701 Allmond Ave., Louisville, KY 40209, Grantor has no other places of business, and, unless Secured Party consents in writing to a change in the location of the Collateral prior to such a change in location, the Collateral shall be kept at that address.

1.4. At least thirty (30) days prior to the occurrence of any of the following events, Grantor shall deliver to Secured Party, at the address first set forth above, notice of such impending events: (i) a change in Grantor's principal place of business; (ii) the opening or closing of any place of business; or (iii) a change in Grantor's name, identity, or corporate structure.

1.5. Subject to any limitation stated therein or in connection therewith, all information furnished by Grantor concerning the Collateral or otherwise in connection with the obligations, is or shall be at the time the same is furnished, accurate, correct, and complete in all material respects.

1.6. The Collateral is and shall be used primarily for business purposes.

4. **Insurance.** Grantor shall have and maintain insurance at all times with respect to the Collateral in the same or more coverage amounts and types of insurance as have historically been in effect with respect to Grantor's business as is further set forth on Section 3.18 of the Disclosure Schedules to the Purchase Agreement.

5. **Inspection.** Grantor shall, upon 48 hours prior written notice, at all reasonable times and from time to time, allow Secured Party, by or through any of its officers, agents, attorneys, or accountants, to examine and inspect the Collateral and Grantor's books and records relating thereto wherever located; provided, however, in the absence of an Event of Default, Grantor shall conduct no more than 2 inspections in any 12 month period. Grantor shall perform, do, make, execute, and deliver all such additional and further acts, things, deeds, assurances and instruments as Secured Party may reasonably require to more completely vest in and assure to Secured Party its rights hereunder and in or to the Collateral.

6. **Preservation and Disposition of Collateral.**

6.1. Grantor shall keep the Collateral free from any and all liens, security interests, encumbrances, claims, and interests other than the Permitted Encumbrances and the security interest granted to Fifth Third Bank, National Association, on the Effective Date. Grantor shall advise Secured Party promptly, in writing and in reasonable detail, (i) of any encumbrance upon or claim asserted against any of the Collateral; and (ii) of the occurrence of any other event that would have a material effect upon the aggregate value of the Collateral or upon the security interest of Secured Party.

1.7. Grantor shall not sell or otherwise dispose of the Collateral other than in the ordinary course of business; *provided, however,* that until an Event of Default, Grantor may use the Collateral in any lawful manner not inconsistent with this Agreement or with the terms or conditions of any policy of insurance thereon.

1.8. Grantor shall keep the Collateral in good condition and shall not misuse, abuse, secrete, waste, or destroy any of the same in any material respect.

1.9. Grantor shall not use the Collateral in violation of any statute, ordinance, regulation, rule, decree, or order, which violation would result in a material adverse effect on the business of Grantor or its ability to repay the Note.

1.10. Grantor shall pay, promptly prior to delinquency, all taxes, assessments, charges, or levies upon the Collateral or in respect to the income or profits therefrom, except that no such charge need be paid if (i) the validity thereof is being contested in good faith by appropriate proceedings; (ii) such proceedings do not involve any danger of sale, forfeiture, or loss of any Collateral or any interest therein; and (iii) such charge is adequately reserved against in accordance with generally accepted accounting principles.

1.11. At its option, Secured Party may discharge taxes, liens, security interests, or other encumbrances at any time levied or placed on the Collateral and may pay for the reasonable maintenance and preservation of the Collateral. Grantor agrees to reimburse Secured Party upon demand for any payment made or any reasonable expense incurred (including reasonable attorneys' fees) by Secured Party pursuant to the foregoing authorization. Should Grantor fail to pay said sum to Secured Party upon demand, interest shall accrue thereon, from the date of demand until paid in full, at the then applicable interest rate set forth in the Note.

7. **Transfer of Collateral.** Except for the Permitted Encumbrances, Grantor shall not sell, offer to sell, assign, lease, license, or otherwise transfer, or grant, create, permit, or suffer to exist any option, security interest, lien, or other encumbrance in, any part of the Collateral (except for sales or leases of inventory, or the sale or disposal of worn out, obsolete equipment or no longer necessary in the conduct of its business in the ordinary course of business), without prior written approval from Secured Party.

8. **Perfection of Security Interest.** Grantor agrees that at any time and from time to time, at the expense of Grantor, Grantor will promptly execute and deliver all further instruments and documents, obtain such agreements from third parties, and take all further action, that may be necessary or desirable, or that Secured Party may request, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted or purported to be granted hereby or to enable Secured Party to exercise and enforce its rights and remedies hereunder or under any other agreement with respect to any Collateral. Grantor hereby authorizes Secured Party to file or record any document necessary to perfect, continue, amend, or terminate its security interest in the Collateral, including, but not limited to, any financing statements, including amendments, authorized to be filed under the UCC, without signature of Grantor where permitted by law, including the filing of a financing statement describing the Collateral as all assets now owned or hereafter acquired by Grantor, or words of similar effect. Grantor also hereby ratifies any previously filed documents or recordings regarding the Collateral, including but not limited to, any and all previously filed financing statements.

9. **Remedies.** If an Event of Default (as defined in the Note) shall have occurred and be continuing, Secured Party may do any or all of the following: (a) declare all Obligations immediately due and payable; (b) enter Grantor's property where the Collateral is located and take possession of the Collateral without demand or legal process; (c) require Grantor to assemble and make available the Collateral at a specific time and place designated by Secured Party; (d) sell, lease, or otherwise dispose of



the Collateral at any public or private sale in accordance with the law; and (e) enforce payment of the Obligations and exercise any rights and remedies available to Secured Party under law, including, but not limited to, those rights and remedies available to Secured Party under Article 9 of the UCC.

10. **Secured Party Rights.** Any and all rights of Secured Party provided by this Agreement are in addition to any and all rights available to Secured Party by law, and shall be cumulative and may be exercised simultaneously. No delay, omission, or failure on the part of Secured Party to exercise or enforce any of its rights or remedies, either granted under this Agreement or by law, shall constitute an estoppel or waiver of such right or remedy or any other right or remedy. Any and all rights of Secured Party provided by this Agreement shall inure to the benefit of its successors and assigns.

11. **Waiver of Defenses.** Except as otherwise provided in this Agreement or the Note, Grantor waives presentment, demand for payment, and notice of nonpayment or protest of any instrument evidencing any of the Obligations. Grantor agrees that its liability hereunder and the security interest hereby created shall not be affected or impaired in any way by any of the following acts and things (which Secured Party may do from time to time without notice to Grantor): (a) by any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification, or other disposition of any of the Obligations, or any evidence thereof or any Collateral therefor; (b) by any acceptance or release of Collateral for or guarantors of any of the Obligations; (c) by any failure, neglect, or omission to realize upon or protect any of the Obligations, or to obtain, perfect, enforce, or realize upon any collateral therefor, or to exercise any lien upon or right of appropriation of any moneys, credits or property toward the liquidation of any of the Obligations; or (d) by any application of payments or credits upon any of the Obligations. Secured Party shall not be required, before exercising its rights under this Agreement, to first resort for payment of any of the Obligations to any other persons or entities; it's or their properties or estates; or any collateral, property, liens or other rights or remedies whatsoever. Grantor agrees not to exercise any right of contribution, recourse, subrogation, or reimbursement available to Grantor against any other person or property, unless and until all Obligations and all other debts, liabilities, and obligations owed by Grantor to Secured Party have been paid and discharged. Grantor expects to derive benefits from the transactions resulting in the creation of the Obligations and Secured Party may rely conclusively on the continuing warranty, hereby made, that Grantor continues to be benefited by such transactions and Secured Party shall have no duty to inquire into or confirm the receipt of any such benefits, and this Agreement shall be effective and enforceable by Secured Party without regard to the receipt, nature or value of any such benefits.

12. **Continuing Security Interest.** This Agreement shall (a) create a continuing security interest in the Collateral and shall remain in full force and effect until the full satisfaction of the Obligations (other than contingent obligations for which no claim has been asserted); (b) be binding upon Grantor and its successors and assigns; and (c) inure to the benefit of, and be enforceable by, Secured Party and its successors and assigns.

13. **Severability.** If any of the provisions in this Agreement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of the other provisions in this Agreement.

14. **Waiver; Modification.** No waiver, modification or amendment of, or any other change to, this Agreement will be effective unless done so in a separate writing signed by Secured Party.

15. **Notices.** Any notice or other communication required or permitted to be given under this Agreement shall be given and shall become effective as set forth in the Purchase Agreement.

16. **Entire Agreement.** This Agreement (including all documents referred to herein) represents the entire agreement between Grantor and Secured Party, and supersedes all previous

understandings and agreements between Grantor and Secured Party, whether oral or written, regarding the subject matter hereof.

17. **Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Delaware without regard to its conflict of laws rules.

{SIGNATURE PAGE FOLLOWS}

**IN WITNESS WHEREOF**, the undersigned Grantor and Secured Party have executed this Security Agreement as of the Effective Date.

**GRANTOR:**

PRECISION METAL WORKS, INC.,  
a Kentucky corporation

By:\_\_\_ Name:\_\_\_ Title:\_\_\_

**SECURED PARTY:**

THE RICHARD STANLEY FAMILY TRUST

By:\_\_\_ Name: Richard Stanley  
Title: Trustee

By:\_\_\_ Name: Mary Ellen Stanley  
Title: Trustee

By:\_\_\_ Name: John Locke  
Title: Trustee

## SUBORDINATED SECURED PROMISSORY NOTE

\$1,250,000 July 19, 2023

FOR VALUE RECEIVED, Precision Metal Works, Inc., a Kentucky corporation formerly known as Nth Holding, Ltd. (Kentucky Organization No. 0940452) (“**Maker**”), hereby promises and agrees to pay to the order of [The Richard Stanley Family Trust/The John Locke Family Trust], a trust formed under the Laws of Ontario, Canada (“**Payee**”), or its successors, representatives, or assigns, the principal sum of \$1,250,000 (the “**Principal Amount**”), together with interest thereon as hereinafter provided, in lawful money of the United States of America. Maker has executed and delivered this Subordinated Secured Promissory Note (this “**Note**”) as of the date set forth above (the “**Effective Date**”).

The obligations evidenced by this Subordinated Secured Promissory Note (this “**Note**”) are subordinated to the prior payment in full of the “**Senior Debt**” and the termination of the “**Senior Commitment**” (as such terms are defined in the Subordination Agreement dated July 19, 2023 (the “**Subordination Agreement**”), between Fifth Third Bank, National Association and Payee) pursuant to and to the extent provided in the Subordination Agreement.

This Note is being made pursuant to that certain Stock Purchase Agreement dated as of July 19, 2023 (the “**Agreement**”) by and among Payee, Maker, [The John Locke Family Trust/The Richard Stanley Family Trust], a trust formed under the Laws of Ontario, Canada, and PMW Affiliated Holdings, LLC a Delaware limited liability company (“**Parent**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Agreement.

1. **Maturity Date.** The maturity date of this Note shall be July 18, 2028 (the “**Maturity Date**”).
2. **Interest Rate; Annual Interest Payments.** From the date set forth above until paid-in-full, this Note shall bear interest on the unpaid balance of the Principal Amount thereof at an interest rate equal to eight percent (8%) per annum (the “**Interest Rate**”), Interest shall be payable by Maker to Payee on the first day of each calendar quarter (October 1, January 1, April 1, and July 1) and on the Maturity Date.
3. **Payment of Principal; Prepayment.** Maker shall pay the amounts due under this Note in accordance with the following: (a) beginning on the Effective Date, all accrued and unpaid interest on the Principal Amount that is outstanding on the first day of each calendar quarter shall be due and payable on that date; (b) beginning July 1, 2025, \$62,500 of the Principal Amount and all accrued and unpaid interest on the Principal Amount that is outstanding on the first day of each calendar quarter shall be due and payable on the first day of such calendar quarter; and (c) on the Maturity Date, the final payment of the outstanding balance of the Principal Amount, together with all accrued and unpaid interest and other amounts payable under this Note. For purposes of clarity, a schedule of payments that are due pursuant to this Note is attached hereto as Exhibit A. When used in this Note, the term “first day of each calendar quarter” shall mean October 1, January 1, April 1, or July 1, as applicable. This Note may be prepaid, in full or in part, without prepayment penalty by Maker. For the avoidance of doubt, in the case of prepayment in full, interest shall accrue and be payable through the date of the prepayment. All payments shall be made by wire transfer of immediately available funds to Payee pursuant to Payee’s written instructions. All payments on this Note shall be first applied to the payment of any of Payee’s expenses or charges payable hereunder; next to accrued and unpaid interest; and then to unpaid Principal Amount, or in such other order as Payee may elect in its sole discretion. In the event that the Consulting Agreement of even date herewith between Maker and Bartell Global Inc., as consultant (the “**Consulting Agreement**”), is terminated by Maker without Cause (as defined in the Consulting Agreement) prior to the receipt by Sellers (as defined in the Agreement) of the Earn-out Payments (as defined in the Agreement) in an aggregate amount equal to \$3,000,000 from

Maker, Maker shall make a prepayment to each Seller in an amount equal to 50% of the then-outstanding balance of the Principal Amount of this Note; provided, however, Maker shall only be required to make such prepayment to Sellers to the extent permitted under the Subordination Agreement of even date herewith by and between Fifth Third Bank, National Association and Sellers. Notwithstanding the foregoing or anything else to the contrary in this Note, the Agreement, or any of the Ancillary Documents, Maker's obligations and performance pursuant to this Note are guaranteed by Live Ventures Incorporated pursuant to that certain Guaranty (as defined in the Agreement), and Maker's failure or inability to pay any amount due under this Note, or any prohibition that prevents Maker from paying any amount due under this Note, whether as a result of the Subordination Agreement or otherwise, shall not impair, excuse, or otherwise release Live Ventures Incorporated from its obligation to pay such amount to Payee pursuant to the Guaranty.

4. **Overdue Payments.** Any payment on this Note that is overdue from its due date shall bear interest at the Interest Rate *plus* the lesser of (x) two percent (2%) per annum or (y) the greatest interest rate which may be charged by Payee under applicable law (the "**Default Rate**") until paid.

5. **Default.** The occurrence of any one or more of the following events shall constitute an event of default ("**Event of Default**") under this Note:

(a) The failure of Maker to pay any amount due under this Note within five days after the date due;

(b) The failure of Maker to comply with, or to perform any other term, obligation, covenant, or condition contained in this Note or any agreement related to this Note, including, but not limited to, the Security Agreement, the Agreement, and any of the Ancillary Documents (as defined in the Agreement), which failure is not cured within 30 days of written notice from Payee to Maker of such failure; provided, however, if such failure cannot reasonably be cured within such 30 day period and Maker is diligently proceeding to cure such failure, Maker shall have an additional 90 days within which to cure such failure;

(c) The continuance of an Event of Default (as defined in the Fifth Third Bank loan documents relating to the loan to Maker and Parent from Fifth Third Bank);

(d) Any material warranty, representation, or statement made or furnished by Maker or on Maker's behalf under this Note, the Agreement, or the Security Agreement is false or misleading in any material respect at the time made or furnished.;

(e) The appointment of a custodian, trustee, liquidator or receiver for, or for any of the material property of, Maker which appointment is not dismissed within 60 days;

(f) The insolvency of Maker or an assignment for the benefit of creditors by, or the filing of a petition under any bankruptcy, insolvency or debtor's relief law or for any readjustment of indebtedness, composition, or extension by Maker;

(g) John Isaac no longer beneficially owns directly or indirectly through one or more controlled entities, at least 40% of the outstanding capital stock of Live Ventures Incorporated; or

(h) Live Ventures Incorporated, Maker, or any of Maker's direct or indirect subsidiaries or parent companies enter into any "take private" transaction or similar transaction; a merger or consolidation; sale of all or substantially all of its assets, whether in a single transaction or series of transactions; or any change of control.

6. **Remedies.** During the continuance of an Event of Default, the entire unpaid Principal Amount under this Note, all accrued and unpaid interest, and other sums and amounts under this Note, shall automatically and immediately become due and payable, without presentment, notice, protest, or demand of any kind (all of which are expressly waived by Maker as provided below); such amount due and payable shall bear interest at the Default Rate; and Payee may, in its sole discretion, initiate litigation to recover all sums due under this Note or exercise any other remedies that are available under this Note or applicable law. The charging or payment of any interest or delinquent payments shall not be construed as curing or correcting any default by Maker under this Note or as a waiver by Payee of any of its rights or remedies with respect to such default. Anything contained in this Note, the Security Agreement or the Agreement to the contrary notwithstanding, in the event that Maker cures an Event of Default prior to the exercise of remedies by Payee, such Event of Default shall automatically be deemed cured, without the requirement of a waiver from Payee; provided that, however, an Event of Default pursuant to Section 5(g) or 5(h)) of this Note cannot be cured and shall automatically entitle to the exercise of remedies by Payee.

7. **Security Interest; Right to Information.** Maker's obligations hereunder are secured by the Security Agreement (as defined in the Agreement), whereby Maker has granted to Payee a security interest in all of the assets of Maker. For so long as any amount is owed from Maker to Payee pursuant to this Note, Maker shall deliver a balance sheet, income statement, and statement of cash flows to Payee on or before the 15th day of each calendar month setting for the operations of Maker and its direct and indirect subsidiaries for the year-to-date fiscal year of Maker and for the immediately preceding month (collectively, the "**Financial Statements**"). Maker represents and warrants that such Financial Statements shall be prepared in accordance with Generally Accepted Accounting Principles and shall be true, correct, and accurate and fairly reflect the operations of Maker and its direct and indirect subsidiaries for the applicable periods set forth in the Financial Statements.

8. **Unconditional Obligations.** The obligations and liabilities of Maker under this Note are continuing, absolute, and unconditional, and shall remain in full force and effect until all amounts due hereunder have been paid in full.

9. **Offset Rights.**

(a) If while this Note is outstanding the Post-Closing Adjustment is a negative number and the Purchase Price Adjustment Escrow Fund is insufficient to cover the entire amount payable by Sellers to Buyer pursuant to Section 2.06(d)(i) of the Agreement (the amount of such deficiency, the "**Adjustment Escrow Fund Deficiency Amount**"), the then-outstanding principal amount of this Note shall be automatically debited, reduced and offset by an amount equal to the Adjustment Escrow Fund Deficiency Amount (but not below zero) by written notice to Payee (less any interest that accrued on such Adjustment Escrow Fund Deficiency Amount from the date of issuance of this Note through and including the date on which such automatic debit, reduction and offset occurs). For clarification purposes, the foregoing shall not relieve Payee (or Sellers' if Sellers are not Payee) of Payee (or Sellers' if Sellers are not Payee) obligation to pay the remaining amount of the Post Closing Adjustment (if any) pursuant to Section 2.06(d)(i) of the Agreement unless Maker or any of its Affiliates (as defined in the Agreement) exercise its right pursuant to this Section 9.

(b) If while this Note is outstanding Sellers shall become liable for Losses under Article VIII of the Agreement, subject to the limitations, adjustments, procedures (including any procedures regarding order of recovery) and provisions set forth therein (the amount of such Losses, the "**Loss Amount**"), the then-outstanding principal amount of this Note shall be automatically debited, reduced and offset by an amount equal to the Loss Amount (but not below zero) by written notice to Payee (less any interest that accrued on such Loss Amount from the date of issuance of this Note through and including the date on which such automatic debit, reduction and offset

occurs). For clarification purposes, the foregoing shall not relieve Payee (or Sellers' if Sellers are not Payee) of Payee (or Sellers' if Sellers are not Payee) obligation to pay the remaining amount of the Post Closing Adjustment (if any) pursuant to Section 2.06(d)(i) of the Agreement unless Maker or any of its Affiliates (as defined in the Agreement) exercise its right pursuant to this Section 9.

10. **No Waiver.** Delay or failure of the holder to exercise any or all of its rights and remedies shall not constitute a waiver of the right to exercise the same at that or any other time. The receipt of any payment after such payment is due and payable shall not be construed as a waiver of any default, and the receipt by the holder of less than the full amount of any payment shall be construed as being on account of such payment, and the holder may accept such payment without prejudice to the holder's right to recover the balance of the amounts due under this Note or the holder's right to pursue any other available remedies. No endorsement or statement on any check or any letter accompanying any check or payment shall be deemed an accord and satisfaction, and the holder may accept such check or payment without prejudice to the holder's right to recover the balance of the amounts due under this Note or to pursue any other available remedies. All rights and remedies of the holder hereof upon default hereunder shall be cumulative to the greatest extent permitted by law.

11. **Costs of Collection.** Maker agrees to pay all costs of collection when incurred, whether suit be brought or not, including reasonable attorneys' fees and costs of suit and preparation therefore, and to perform and comply with each of the covenants, conditions, provisions, and agreements of Maker contained in this Note.

12. **Maximum Legal Rate.** Maker and Payee agree that no payment or other consideration made or agreed to be made by Maker to Payee pursuant to this Note shall, at any time, be in excess of the maximum rate of interest permissible by law. In the event such payments of interest or other consideration provided for in this Note shall result in an effective rate of interest which, for any period of time, is in excess of the limit of the usury or any other law applicable to the obligations evidenced hereby, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto, be applied to the Principal Amount immediately upon receipt of such monies by Payee with the same force and effect as though the Maker had specifically designated such and Payee had agreed to accept such extra payments as a Principal Amount payment, without premium.

13. **Notices.** All notices, requests, or other communications required or permitted to be delivered hereunder shall be delivered in writing to such address as a Party may from time to time specify in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

14. **Severability.** The invalidity or unenforceability of any provision of this Note shall not impair the validity or enforceability of any other provision of this Note. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

15. **Governing Law.** This Note shall be governed by, and construed in accordance with, the laws of the state of Delaware without regard to its conflict of laws rules.

16. **Waivers of Notices; Releases.** Maker hereby waives presentment, demand, notice of dishonor, protest, notice of protest, and nonpayment, and further waives all exemptions to which Maker may now or hereafter be entitled under the laws of the state of Delaware or any other state or of the United States, and further agrees that the holder of this Note shall have the right, without notice, to deal in any way

and at any time with Maker without waiving any rights the holder of this Note may have hereunder or by virtue of the laws of any state of the United States.

**17. Waiver of Jury Trial.**

(a) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE BROUGHT EXCLUSIVELY IN THE DELAWARE COURT OF CHANCERY IN NEW CASTLE COUNTY, OR IN THE EVENT (BUT ONLY IN THE EVENT) THAT SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER SUCH PROCEEDING, THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF DELAWARE IN EACH CASE LOCATED IN THE CITY OF WILMINGTON AND COUNTY OF DELAWARE, AND MAKER AND PAYEE EACH IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(b) MAKER AND PAYEE ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS NOTE IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY. MAKER AND PAYEE CERTIFY AND ACKNOWLEDGE THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS NOTE BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

18. **Assignment; Successors.** This Note shall bind Maker and Maker's successors and permitted assigns. Maker shall not assign or transfer Maker's obligations under this Note without first obtaining the written consent of Payee, who may withhold consent at Payee's sole discretion. Any assignment or transfer by Maker of this Note, or any of Maker's obligations under this Note, without obtaining Payee's prior written consent shall be deemed void *ab initio*. The rights of Payee under this Note, including the right to receive payment under this Note, may be transferred or assigned (i) between Payees or (ii) by Payee to a beneficiary of Payee, in whole or in part, without the prior written consent of Maker.



—————**IN WITNESS WHEREOF**, Maker has executed and delivered this Note as of the Effective Date.

**PRECISION METAL WORKS, INC., a Kentucky  
Corporation**

By: \_\_ Name:  
Title:

{SIGNATURE PAGE TO SECURED PROMISSORY NOTE}

**EXHIBIT A SCHEDULE OF PAYMENT**

**CREDIT AND SECURITY AGREEMENT**

**Dated as of July 19, 2023**

**among**

**FIFTH THIRD BANK, NATIONAL ASSOCIATION,**

**as Lender, and**

**PRECISION METAL WORKS, INC.**

**and**

**PMW AFFILIATED HOLDINGS, LLC**

**as Borrowers**

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## **Exhibits**

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## CREDIT AND SECURITY AGREEMENT

This Credit and Security Agreement (as amended, modified or supplemented from time to time, this “**Agreement**”) made as of July 19, 2023, between Fifth Third Bank, National Association (“**Lender**”), and Precision Metal Works, Inc., a Kentucky corporation (“**Metals**”) and PMW Affiliated Holdings, LLC, a Delaware limited liability company (“**Holdings**”; Metals and Holdings are collectively referred to as “**Borrowers**” and individually as “**Borrower**”).

Borrowers may, from time to time, request Loans from Lender, and the parties wish to provide for the terms and conditions upon which such Loans or other financial accommodations, if made by Lender, shall be made.

In consideration of any Loan (including any Loan by renewal or extension) hereafter made to Borrowers by Lender, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Borrowers, the parties agree as follows:

### 1. DEFINITIONS

1.01 **Certain Defined Terms.** Except as otherwise expressly provided in this Agreement, the following terms shall have the meanings given them in this **Section 1.01**:

“**Account**”, “**Account Debtor**”, “**Chattel Paper**”, “**Commercial Tort Claims**”, “**Deposit Accounts**”, “**Documents**”, “**Electronic Chattel Paper**”, “**Equipment**”, “**Fixtures**”, “**General Intangibles**”, “**Goods**”, “**Instruments**”, “**Inventory**”, “**Investment Property**”, “**Letter-of-Credit Right**”, “**Proceeds**”, “**Security**”, “**Security Certificate**”, and “**Tangible Chattel Paper**” shall have the respective meanings assigned to such terms in the Uniform Commercial Code.

“**Acquisition**”, by any Person, means the acquisition by such Person, in a single transaction or in a series of related transactions, of either (a) all or substantially all of the property of, or a line of business, division of or other business unit of, another Person or (b) at least a majority voting power of all outstanding Equity Interests of such Person, in each case whether or not involving a merger or consolidation with such other Person.

“**Affiliate**” means any Person (a) which directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, a Borrower; (b) which beneficially owns or holds 10% or more of the voting control or Equity Interests of a Borrower, or  
(c) 10% or more of the voting control or Equity Interests of which is beneficially owned or held by a Borrower.

“**Anti-Corruption Laws**” means all laws, rules, and regulations of any jurisdiction applicable to any Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977 and the rules and regulations thereunder and the U.K. Bribery Act 2010 and the rules and regulations thereunder.

“**Anti-Money Laundering Laws**” means any and all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules applicable to a Loan Party, its

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Subsidiaries or Affiliates related to terrorism financing or money laundering, including any applicable provision of the Patriot Act and The Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act," 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

**"Anti-Terrorism Laws"** has the meaning set forth in **Section 9.22(c)**.

**"Applicable Margin"** means, at any time, the applicable percentage per annum (expressed in basis points) set forth on Schedule 1.01-A.

**"Availability"** means, at any time, the amount, if any, by which the Borrowing Base exceeds the sum of (a) the outstanding principal balance of the Revolving Loans; plus (b) the Letter of Credit Obligations.

**"Availability Reserve"** means, as of any date of determination, one or more amounts or a percent of a specified category or item that Lender, in its Permitted Discretion, establishes from time to time to reduce availability under the Borrowing Base (a) to reflect events, conditions, contingencies or risks which affect the assets, business or prospects of a Borrower, or the Collateral or its value, or the enforceability, perfection or priority of Lender's Lien in the Collateral, (b) to reflect Lender's judgment that any collateral report or financial information relating to a Borrower and furnished to Lender may be incomplete, inaccurate or misleading in any material respect, (c) in respect of any state of facts which does or would with notice or passage of time or both, constitute an Event of Default, (d) to reflect liability, contingent or otherwise, of Lender or any affiliate of Lender to any third party in connection with any Bank Product, (e) to reflect conditions, contingencies or risks in connection with Bank Products offered by Lender or any Affiliate of Lender to a Borrower, (f) for rent at locations leased by a Borrower and for storage, processing, and other charges of third-parties in possession of Collateral, including, but, not limited to, a reserve equal to \$96,000, which shall remain in effect until a landlord agreement in respect of Preston Highway, Jefferson County, KY has been received by Lender, in form an substance acceptable to Lender in its sole discretion (g) for payroll, taxes, fees, assessments, and other governmental charges with respect to the Collateral or any Borrower, (h) for holding insurance or sale proceeds for application under Section 2.07(f), and (i) if applicable, a reserve of \$3,000 (or such other amount determined by Lender) for each employee of any Borrower or any Subsidiary located in the State of Wisconsin to cover potential wage and benefit obligations under the Wisconsin Wage Payment and Collection Law (and any successor).

**"Bank Product Agreement"** means any agreement, instrument or document executed and delivered by a Borrower to Lender or any affiliate of Lender in connection with any Bank Product.

**"Bank Products"** means any service or facility extended to a Borrower by Lender or any affiliate of Lender, or procured for a Borrower from any third party by Lender or any affiliate of Lender by means of a full-recourse agreement or other credit support extended to such third party including: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) purchase cards, (e) ACH transactions, (f) cash management, including controlled disbursement, accounts or services, (g) letters of credit, or (h) Hedging Agreements.

**“Beneficial Ownership Certification”** means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

**“Beneficial Ownership Regulation”** means 31 CFR § 1010.230.

**“Blocked Account”** means an account established by a Borrower in Lender’s name maintained with Lender or with another financial institution acceptable to Lender.

**“Borrowing Base”** means, at any time, the lesser of:

- (a) The Maximum Revolving Loan Limit; or
- (b) The sum of:
  - (i) 85.0% of Borrowers’ Eligible Accounts; plus
  - (ii) the lesser of (A) 85.0% of the Net Orderly Liquidation Value of Borrowers’ Eligible Inventory, (B) 75.0% of the lower of cost or market value of Borrower’s Eligible Inventory or (C) \$5,000,000, comprised of not more than \$2,000,000 in work-in-process Eligible Inventory; minus
  - (iii) the Hedging Obligation Reserve; minus
  - (iv) the Availability Reserve.

**“Borrowing Base Certificate”** means a certificate, in substantially the form attached hereto as **Exhibit B** (as may be modified from time to time by Lender in its Permitted Discretion) setting forth the Borrowing Base and the component calculations thereof.

**“Business Day”** means (a) with respect to all notices and determinations, including payment dates, in connection with the Tranche Rate, any day that commercial banks in New York, New York are required by law to be open for business and that is a U.S. Government Securities Business Day, which means any day other than a Saturday, Sunday, or day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities and (b) in all other cases, any day on which commercial banks in New York, NY or Cincinnati, Ohio are required by Law to be open for business; *provided* that, notwithstanding anything to the contrary in this definition of “Business Day”, at any time during which a Hedging Agreement with the Lender is then in effect with respect to all or a portion of the Obligations, then the definitions of “Business Day” and “Banking Day”, as applicable, pursuant to such Hedging Agreement shall govern with respect to all applicable notices and determinations in connection with such portion of the Obligations arising under such Hedging Agreement. Periods of days referred to in the Loan Documents will be counted in calendar days unless Business Days are expressly prescribed.

**“Capital Expenditure Loans”** has the meaning specified in **Section 2.05**.

**“Capital Expenditures”** means with respect to any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including expenditures for

capitalized lease obligations) by Borrowers and their Subsidiaries during such period that are required by GAAP, to be included in or reflected by the property, plant and equipment or similar fixed asset accounts on the balance sheet of Borrowers and their Subsidiaries.

**“Change in Law”** means the occurrence, after the Closing Date, of any of the following:

(a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority or the compliance therewith by the Lender or its applicable lending office or such Lender’s holding company, if any); provided that notwithstanding anything herein to the contrary, (i) the Dodd Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines and directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

**“Change of Control”** means the occurrence of any of the following events:

(a) Holdings ceases to own and control 100% of the Equity Interests of Metals;

(b) Live Ventures ceases to own and control less than 51.0% of the outstanding Equity Interests of Holdings at any time;

(c) Devon Jones shall cease to actively manage each Borrower’s day-to-day business activities and a replacement officer is not retained by such Borrower within 180 days of such cessation with the consent of the Lender (not to be unreasonably withheld, conditioned or delayed);

(d) Jon Isaac becomes an officer or director of any Loan Party at any time during the term of this Agreement; or

(e) the occurrence of an event of default under paragraph (g) or (h) of the definition of “Event of Default” (as defined in the Seller Note).

**“Closing Date”** means the date of this Agreement.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the rules and regulations thereunder, all as in effect from time to time.

**“Collateral”** means all of the property of each Borrower described in **Section 5**, together with all other real or personal property of any Loan Party or any other Person now or hereafter pledged to Lender to secure, either directly or indirectly, repayment of any of the Obligations.

**“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.

**“Conforming Changes”** means, with respect to the use, administration of, or any conventions associated with the Tranche Rate or any proposed Successor Rate, as applicable, any changes to the terms of this Agreement related to the timing, frequency, and methodology of determining rates and making payments of interest, including changes to the definition of Business Day, lookback periods or observation shift, prepayments, and borrowing, conversion, or continuation notices, and other technical, administrative, or operational matters, as may be appropriate, in the discretion of the Lender, to reflect the adoption and implementation of such applicable rate and to permit the administration thereof by the Lender in an operationally feasible manner and, to the extent feasible, consistent with market practice.

**“Controlled Group”** means a controlled group of corporations as defined in 26 U.S.C. §

1563.

Credit.

**“Credit Extension”** means (a) a borrowing of a Loan or (b) the

issuance of a Letter of **“Daily Simple SOFR”** means a rate based on

SOFR with interest accruing on a simple

daily basis in arrears with a methodology and conventions selected by Lender.

**“Default”** means any event or condition, the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.

**“Default Period”** means the period of time commencing on the day an Event of Default occurs and continuing through the date the Event of Default has been cured or waived.

**“Default Rate”** means an interest rate up to 2% per annum in excess of the interest rate otherwise payable hereunder.

**“Dilution”** means, with respect to any period, the percentage obtained by dividing (a) the difference of (i) non-cash credits against Accounts (including, but not limited to returns, adjustments and rebates) of Borrowers for such period, plus pending or probable, but not yet applied, non-cash credits against Accounts of Borrowers for such period, as determined by Lender in its Permitted Discretion, minus (ii) markdowns, discounts, rebates, credits and other items reducing accounts receivable expensed for such period by Borrowers and reported as “A/R Reserve, Markdowns/Returns” or otherwise reserved on Borrowers’ balance sheet, by (b) gross invoiced sales of Borrowers for such period.

**“Dilution Amount”** means the Dilution Percentage of the face amount (less maximum discounts, credits and allowances which may be taken by or granted to Account Debtors in connection therewith in the ordinary course of Borrowers’ business) of Borrowers’ Accounts.

**“Dilution Percentage”** means one percentage point for each whole or partial percentage point by which Dilution (as determined by Lender in good faith based on the results of the most recent 12 month period for which Lender has conducted a field audit of Borrowers) exceeds 5%.

**“Disposition”** or **“Dispose”** means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any casualty or condemnation) of any property (including any Equity Interest), or part thereof, by any 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 Interests that, by their terms (or by the terms of any security or other Equity Interest into which they are convertible or for which they are exchangeable) or upon the happening of any event or condition, (a) mature or are 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 Obligations), (b) are redeemable at the option of the holder thereof (other than solely for Equity Interests that are not Disqualified Equity Interests) (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 Obligations), in whole or in part, (c) provide for the scheduled payment of dividends in cash or (d) are or become 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 180 days after the Maturity Date.

**“EBITDA”** means, for any period, the sum of Borrowers’ and their Subsidiaries’ (without duplication):

(a) net income after taxes for such period (excluding extraordinary gains or losses as approved by Lender);

(b) plus, to the extent subtracted in calculating net income after taxes for such period (i) Interest Expense for such period; (ii) income tax expense for such period; (iii) depreciation and amortization for such period; (iv) any extraordinary non-cash losses for such period, (v) any extraordinary cash losses for such period in an aggregate amount for any four (4) fiscal quarter period not to exceed, when combined with the amount added back pursuant to clause (xii) for such period, the Overall Cap, and otherwise to the extent approved by Lender in its sole discretion, (vi) fees, costs, expenses and indemnities arising under the Management Agreement, (vii) fees, costs, expenses, indemnities and any reimbursements in connection with any amendments to the Loan Documents and supplements thereto occurring after the Closing Date, including, without limitation, reasonable attorneys’ fees and costs, appraisal fees, filing fees and title fees), in an aggregate amount not to exceed \$250,000 for any four (4) fiscal quarter period, (viii) reasonable and documented fees, costs, expenses and reimbursements incurred in connection with any Permitted Acquisition, whether or not consummated, including, without limitation, professional fees, earn-out and contingent consideration obligations and adjustments thereof and purchase price adjustments, provided, that the aggregate amount of such fees, costs and expenses in respect of all Permitted Acquisitions (whether or not consummated) shall not exceed \$200,000 for any single Permitted Acquisition or \$600,000 in the aggregate in respect of all Permitted Acquisitions during the term of this Agreement, (ix) any proceeds actually received in respect of business interruption or similar insurance policies, (x) losses realized in connection with any sale or disposition of any assets other than in the ordinary course of business or the disposition of any securities or the extinguishment of any Indebtedness, in each case determined in accordance with GAAP, (xi) one- time, non-recurring fees, charges, costs and expenses in respect of restructuring, severance, relocation, integration, facilities opening, business optimization, signing, retention or completion

bonuses, recruiting, transition, closure/consolidation of facilities and curtailments or modifications to pension and post-retirement employee benefit plans (including any settlement of pension liabilities), including one-time expenses related to enhanced accounting function or other transaction costs in an aggregate amount not to exceed for any four (4) fiscal quarter period, when combined with the amounts added back pursuant to clause (v) for such period, the Overall Cap,

(xii) one-time, non-recurring reasonable and documented transaction expenses and closing fees (including fees and expenses of legal counsel) related to the transactions hereby and reasonable and documented fees, costs, expenses and reimbursements incurred in connection with the Purchase Transaction, including, without limitation, professional fees, earn-out and contingent consideration obligations and adjustments thereof and purchase price adjustments, provided, that the aggregate amount of such fees, costs and expenses shall not exceed \$869,455 and (xiii) the aggregate amount of early payment discounts received from Haier US Appliance Solutions, Inc, in an aggregate amount not to exceed \$452,000;

(c) minus to the extent included in calculating net income after taxes for such period (i) any extraordinary or non-cash gains which have been added in calculating net income after taxes for such period, and (ii) any gains realized in connection with any sale or disposition of any assets other than in the ordinary course of business or the disposition of any securities or the extinguishment of any Indebtedness, in each case determined in accordance with GAAP.

The “Overall Cap” shall mean, for any period, ten percent (10%) of EBITDA for such period (determined prior to giving effect to the applicable EBITDA addbacks set forth in clauses (b)(v) and (b)(xii) above).

For purposes of calculating EBITDA for any period in which any Loan Party shall have made a Permitted Acquisition, EBITDA for such period shall be calculated after giving pro forma effect thereto in form and substance satisfactory to Lender in its reasonable discretion for such period including pro-forma adjustments arising out of events which are directly attributable to such Permitted Acquisition, are factually supportable, and are expected to have a continuing impact.

“**Eligible Account**” means all Accounts owing to a Borrower which are acceptable to Lender, in its Permitted Discretion, for lending purposes, net of any discounts, credits, or allowances and net of the Dilution Amount, but excluding any Account having any of the following characteristics:

- (a) Accounts which remain unpaid for more than 120 days after their invoice date or for more than 60 days after their due date;
- (b) Accounts owing by a single Account Debtor, including a currently scheduled Account, if 25% of the balance owing by said Account Debtor is ineligible as a result of clause (a) above;
- (c) Accounts which are not due and payable within 60 days after their invoice dates;
- (d) Accounts with respect to which the Account Debtor is a director, officer, employee or agent of a Borrower or is a Parent, a Subsidiary or an Affiliate of a Borrower;



(e) Accounts with respect to which payment by the Account Debtor is or becomes conditional upon the Account Debtor's approval of the Goods or services, or is otherwise subject to any repurchase obligation or return right, as with sales made on a, guaranteed sale, sale on approval, sale or return or consignment basis;

(f) Accounts which are owed by an Account Debtor which (i) does not maintain its chief executive office in the United States of America or Canada, or (ii) is not organized under the laws of the United States of America, any State of the United States of America, or Canada unless, in either case, such Account is either backed by a letter of credit acceptable to Lender which is in the possession of, has been assigned to and is directly drawable by Lender, or insured pursuant to a credit insurance policy acceptable to Lender and such insurance has been assigned to Lender, provided amounts in excess of such letter of credit or insurance with respect to any Account Debtor shall not be included in Eligible Accounts;

(g) Accounts with respect to which the Account Debtor is (i) the United States of America or any department, agency or instrumentality thereof, unless such Borrower assigns its right to payment of such Accounts to Lender in accordance with the Assignment of Claims Act of 1940, as amended, or (ii) any country other than the United States of America or any department, agency or instrumentality thereof;

(h) The face amount of any Accounts with respect to which a Borrower is or may become liable to the Account Debtor for Goods sold or services rendered by such Account Debtor to such Borrower, but only to the extent of the maximum aggregate amount of such Borrower's liability to such Account Debtor;

(i) Accounts with respect to which (i) the Goods giving rise thereto have not been shipped and delivered to and accepted as satisfactory by the Account Debtor, or (ii) the services performed have not been completed and accepted as satisfactory by the Account Debtor;

(j) Accounts with respect to which possession or control of the Goods sold is held, maintained or retained by a Borrower, or by any agent or custodian of a Borrower, for the account of or subject to further or future direction from the Account Debtor as with sales made on a bill-and-hold basis (unless the Account Debtor has executed a setoff waiver in form and substance acceptable to Lender);

(k) Accounts which are owing by any Account Debtor involved as a debtor in any bankruptcy or other state or federal insolvency proceeding, whether voluntary or involuntary;

(l) Accounts which arise in any manner other than the sale of inventory or services in the ordinary course of such Borrower's business;

(m) Accounts with respect to which the Account Debtor is located in a state which requires such Borrower, as a precondition to commencing or maintaining an action in the courts of that state, either to (i) receive a certificate of authority to do business and be in good standing in such state, or (ii) file a notice of business activities report or similar

report with such state's taxing authority, unless (A) such Borrower has taken one of the actions described in clauses (i) or (ii), (B) the failure to take one of the actions described in either clause (i) or (ii) may be cured retroactively by such Borrower at its election, or (C) such Borrower has proven, to Lender's satisfaction, that it is exempt from any such requirements under any such state's laws;

(n) Accounts with respect to which any of the representations and warranties contained in this Agreement relating to or specifically concerning Accounts are untrue in any material respect (for purposes of clarification, the materially qualifier in this clause (n) shall not be deemed to modify any representations and warranties with respect to any clause in the definition of Eligible Accounts other than this clause (n));

(o) Accounts which are not subject to a first priority lien in favor of Lender;

(p) Accounts for which the Account Debtor has paid a deposit to such Borrower, but only to the extent of such deposit;

(q) Accounts for which such Borrower has failed to deliver to Lender such documents as Lender may have requested pursuant to **Section 7.01**;

(r) Accounts which, when added to a particular Account Debtor's other indebtedness to Borrowers, exceeds 20%, or the applicable limit set forth on Schedule 1.01- B, of all Accounts of Borrowers (except that Accounts excluded from Eligible Accounts solely by reason of this clause (r) shall be Eligible Accounts to the extent of such credit limit);

(s) Accounts which are subject to markdowns, discounts, rebates, credits or other items reducing accounts receivable, but only to the extent of the amount accrued by such Borrower for such markdowns, discounts, rebates, credits or other items reducing accounts receivable, as reported by such Borrower as A/R Reserve, Markdowns/Returns or otherwise reserved on such Borrower's balance sheet;

(t) Accounts with respect to Mabe, S.A. de C.V., Leiser, S. de R.L. de C.V., Mabe Mexico, S. de R.L. de C.V., Mabesa, S. de R.L. de C.V., Consorcio Manufacturero, S.A. de C.V., MCM Americas, S.A. de C.V., Mabe Canada Inc. or any other Account subject to a supply chain finance or factoring arrangement, without the prior written consent of Lender; and

(u) Accounts that remain open after the applicable Account Debtor has made a partial payment in respect of the applicable invoice.

Notwithstanding the foregoing, no Accounts acquired in connection with the Purchase Transaction or any Permitted Acquisition shall be included as Eligible Accounts until, with respect to a Permitted Acquisition, a field examination and/or appraisal with respect thereto has been completed to the satisfaction of the Lender; provided further, the field examinations and appraisals in connection with the Permitted Acquisitions shall not count against the limited number of field examinations or appraisals for which expense reimbursement by Borrowers is required under this Agreement.

“**Eligible Inventory**” means Inventory of a Borrower which meets, and so long as it continues to meet, the following requirements:

(a) it is owned by such Borrower, such Borrower has the right to subject it to a security interest in favor of Lender and it is subject to a first priority perfected security interest in favor of Lender and to no other claim, lien, security interest or encumbrance whatsoever, other than Permitted Liens;

(b) it is located on one of the premises listed on Schedule 9.02 (or other locations of which Lender has been advised in writing pursuant to **Section 10.02(a)**), such locations are within the United States and is not in transit (other than between such Borrower’s United States facilities);

(c) if held for sale or lease or furnishing under contracts of service, it is (except as Lender may otherwise consent in writing) new and unused and free from defects which would, in Lender’s sole determination determined in its Permitted Discretion, materially and adversely, affect its market value;

(d) it is not stored with a bailee, consignee, warehouseman, processor or similar party unless Lender has given its prior written approval and such Borrower has caused any such bailee, consignee, warehouseman, processor or similar party to issue and deliver to Lender, in form and substance acceptable to Lender, such Uniform Commercial Code financing statements, warehouse receipts, waivers and other documents as Lender shall require in its Permitted Discretion;

(e) it is not stored at a leased location unless Lender has received a landlord lien waiver, in form and substance acceptable to Lender, with respect to such location or an Availability Reserve has been established for such location in an amount determined by Lender in its Permitted Discretion (it being understood that the Availability Reserve for a leased location shall be an amount equal to three (3) months’ rent and other monthly charges for such location plus all past due rent and other charges for such location);

(f) Lender has determined in good faith, in accordance with Lender’s customary business practices, that it is not unacceptable due to age, type, category, quality, or quantity;

(g) it is not Slow-Moving Inventory, or obsolete Inventory;

(h) it is not Inventory manufactured or distributed by a Borrower pursuant to a license unless the applicable licensor has executed a written agreement, in form and substance acceptable to Lender, permitting Lender to exercise Lender’s rights and remedies against such inventory;

(i) it is not supplies, packaging, waste, paints, powders or scrap; and

(j) it is not Inventory with respect to which any of the representations and warranties contained in this Agreement relating to or specifically concerning Inventory are untrue in any material respect (for purposes of clarification, the materially qualifier in this

clause (j) shall not be deemed to modify any representations and warranties with respect to any clause in the definition of Eligible Inventory other than this clause (j)).

Notwithstanding the foregoing, no Inventory acquired in connection with any Permitted Acquisition shall be included as Eligible Inventory until a field examination and/or appraisal with respect thereto has been completed to the satisfaction of the Lender; provided further, the field examinations and appraisals in connection with the Permitted Acquisitions shall not count against the limited number of field examinations or appraisals for which expense reimbursement by Borrowers is required under this Agreement.

**“Enforcement Costs”** means all fees, costs and expenses described in **Section 4.05(e)** (Costs and Expenses) paid or incurred by or on behalf of Lender.

**“Environmental Laws”** means all federal, state, district, local and foreign laws, rules, regulations, ordinances, and consent decrees relating to health, safety, hazardous substances, pollution and environmental matters, as now or at any time hereafter in effect, applicable to a Borrower’s business or facilities owned or operated by a Borrower, including laws relating to emissions, discharges, releases or threatened releases of pollutants, contamination, chemicals, or hazardous, toxic or dangerous substances, materials or wastes into the environment (including ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

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

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended, modified or restated from time to time.

**“ERISA Affiliate”** means any Person who for purposes of Title IV of ERISA is a member of a Borrower’s Controlled Group, or under common control with a Borrower, within the meaning of Section 414 of the Code.

**“Event of Default”** has the meaning specified in **Section 13.01**.

**“Excess Availability”** means, as of any date of determination by Lender, the sum of (a) the lesser of (i) the Maximum Revolving Loan Limit and (ii) the Borrowing Base, minus (b) the outstanding Revolving Loans and Letter of Credit Obligations, in each case as of the close of business on such date. For purposes of calculating Excess Availability, all accounts payable which

remain unpaid more than 30 days after the due dates thereof as of the Closing Date will be treated as additional Revolving Loans outstanding on such date.

**“Excluded Account”** means (a) trust accounts (to the extent of amounts held therein in trust in the ordinary course of business on behalf of third parties who are not Loan Parties or Affiliates of Loan Parties) and (b) payroll and payroll tax withholding accounts to the extent solely and exclusively used for payment of payroll (funded in the ordinary course of business to satisfy the applicable Borrower’s next scheduled payroll disbursements) and federal, state and local employee payroll withholding tax deposits and disbursements.

**“Excluded Property”** means:

(a) any lease, license, contract or agreement to which any Loan Party is a party (including any such lease, license, contract or agreement in respect of Equipment that is subject to a Permitted Lien), and any of its rights or interests thereunder, if and to the extent that a security interest therein is prohibited by or in violation of (i) any applicable Law, or (ii) a term, provision or condition of any such lease, license, contract or agreement (unless in each case, such applicable Law, term, provision or condition would be rendered ineffective with respect to the creation of such security interest pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions or any other applicable federal, state or local law) of any relevant jurisdiction or any other applicable Law), provided, however, that the foregoing shall cease to be treated as “Excluded Property” (and shall constitute Collateral) immediately at such time as the contractual or legal prohibition shall no longer be applicable and to the extent severable, such security interest shall attach immediately to any portion of such lease, license, contract or agreement not subject to the prohibitions specified in clauses (i) or (ii) above, provided, further that Excluded Property shall not include any proceeds of any such lease, license, contract or agreement;

(b) any application to register trademarks in the U.S. Patent and Trademark Office (the “PTO”) based upon Grantor’s “intent to use” such trademark (but only if the grant of security interest to such “intent to use” trademark violates of 15 U.S.C. § 1060(a)) unless and until a “Statement of Use” or “Amendment to Allege Use” is filed in the PTO with respect thereto, at which point Collateral shall include, and the security interest granted hereunder shall attach to, such application; and

(c) any Excluded Account and the funds on deposit therein to the extent such funds are described in the definition of Excluded Account with respect to such account type;

provided, however, that Excluded Property shall not include any proceeds (or right to receive proceeds) of any of the assets described in the foregoing clauses (a) through (c) or any goodwill of any Loan Party’s business associated therewith or attributable thereto.

**“Excluded Swap Obligation”** means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any

thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act at the time the guarantee of or grant of security interest by such Loan Party becomes effective with respect to such related Swap Obligation (such determination being made after giving effect to any applicable keepwell, support, or other agreement for the benefit of the applicable Loan Party).

**"Excluded Taxes"** means, with respect to Lender or any other recipient of any payment to be made by or on account of any obligation of Borrowers or any Guarantor hereunder or under any other Loan Document, any taxes on or measured by overall net income (however denominated), franchise taxes (in lieu of net income taxes) and branch profits taxes, in each case imposed on it by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of Lender, in which its applicable Lending Office is located.

**"Facility Amount"** means, as of any date of determination, the sum of (a) the Maximum Revolving Loan Limit, plus (b) the average outstanding principal balance of the Term Loans for the six-month period immediately prior to such date of determination.

**"Fiscal Year"** means each 12 month accounting period of Borrowers, which ends on September 30<sup>th</sup> of each year, other than September 30, 2023, which shall refer to the 9 month period then ended.

**"Fixed Charge Coverage"** means, as of any date of determination, the ratio of: (a) Operating Cash Flow for such period, to (b) Fixed Charges for such period. Fixed Charge Coverage shall be calculated as follows: (i) for the test periods ending September 30, 2023 through March 31, 2024, Fixed Charge Coverage shall be calculated on a cumulative basis for the period beginning July 1, 2023, and ending as of the last day of each such test period, and (ii) as of the test period ending June 30, 2024, and for each test period thereafter, Fixed Charge Coverage shall be tested on a trailing four (4) fiscal quarter basis.

**"Fixed Charges"** means, for any period, without duplication, the sum of: (a) paid or scheduled payments of principal during the applicable period with respect to all Indebtedness of Borrowers (other than payments of Revolving Loans); plus (b) paid or scheduled payments of principal during the applicable period with respect to all capitalized lease obligations of Borrowers; plus (c) Interest Expense but excluding non-cash PIK interest; plus (d) any pre-payments of Indebtedness (other than in respect of the Obligations); provided that, "Fixed Charges" as used herein shall be calculated without giving pro forma effect to any Permitted Acquisition or other Investment permitted hereunder for historical periods other than historical Fixed Charges related to Indebtedness which is in place and not repaid or terminated in connection with such Permitted Acquisition or Investment.

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

**“Governmental Authority”** means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

**“Guarantor”** means each Person now or in the future who agrees to guaranty the Obligations.

**“Hazardous Materials”** means any hazardous, toxic or dangerous substance, materials and wastes, including hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, biological substances, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (including materials which include hazardous constituents), sewage, sludge, industrial slag, solvents and/or any other similar substances, materials, or wastes and including any other substances, materials or wastes that are or become regulated under any Environmental Law (including any that are or become classified as hazardous or toxic under any Environmental Law).

**“Hedging Agreement”** means any agreement, device or arrangement providing for payments which are related to fluctuations of interest rates, exchange rates, forward rates, commodities, or equity prices, including, without limitation, any transaction, device, agreement or arrangement (a) that is or is the functional equivalent of a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (b) which is a type of transaction that is similar to any transaction referred to in clause (a) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, or any combination of these transactions, which transactions may be evidenced by an ISDA Master Agreement between one or more Borrowers and Lender or any affiliate of Fifth Third Bancorp, and any schedules, confirmations and documents and other confirming evidence between the parties confirming transactions thereunder, all whether now existing or hereafter arising, and in each case as amended, modified or supplemented from time to time.

**“Hedging Obligation”** means any and all obligations of a Loan Party to Lender or any affiliate of Fifth Third Bancorp, whether absolute, contingent or otherwise and howsoever and whensoever (whether now or hereafter) created, arising, evidenced or acquired (including all

renewals, extensions and modifications thereof and substitutions therefore), under or in connection with (a) any and all Hedging Agreements, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Hedging Agreement.

**“Hedging Obligation Reserve”** means, as of any date of determination, such amounts as the Lender may from time to time establish and adjust to reduce availability under the Borrowing Base to reflect Borrowers’ Hedging Obligations.

**“Indebtedness”** of a Person means at any time the sum at such time of: (a) indebtedness of such Person for borrowed money or for the deferred purchase price of property or services; (b) any obligations of such Person in respect of letters of credit, banker’s or other acceptances or similar obligations issued or created for the account of such Person; (c) lease indebtedness, liabilities and other obligations of such Person with respect to capital leases; (d) obligations of third parties which are being guarantied or indemnified against by such Person or which are secured by the property of such Person; (e) [reserved]; (f) [reserved]; (g) earn-out obligations, seller notes and similar payment obligations, including earn-out obligations or deferred payments in connection with any Acquisition, but not including any working capital adjustments or purchase price adjustments arising in connection with an Acquisition, in each case solely to the extent earned, due and payable; (h) any obligations, liabilities or indebtedness, contingent or otherwise, under or in connection with, transactions, agreements or documents now existing or hereafter entered into, which provides for an interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross currency rate swap, currency option, or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging fluctuations in interest or exchange rates, loan, credit exchange, security or currency valuations or commodity prices; but excluding trade and other accounts payable in the ordinary course of business in accordance with customary trade terms and which are not more than ninety (90) days overdue (as determined in accordance with customary trade practices) or which are being disputed in good faith by such Person and for which adequate reserves are being provided on the books of such Person in accordance with GAAP consistently applied; (i) all obligations of any such Person in respect of Disqualified Equity Interests; and (j) any other obligation for borrowed money or other financial accommodation which, in accordance with GAAP, would be shown as a liability on the balance sheet of such Person.

**“Indemnified Party”** has the meaning specified in **Section 15.01**. **“Indemnified Taxes”** means Taxes other than Excluded Taxes.

**“Index Floor”** has the meaning given to such term in the definition of “Tranche Rate”. **“Intellectual Property”** has the meaning specified in **Section 9.19**.

**“Interest Expense”** means, for any period, for Borrowers and their Subsidiaries, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses (excluding closing costs associated with this transaction) in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets during such period, plus (b) all payments made under interest rate Hedging Agreements during such period to the extent not included in clause (a) of this definition, minus (c) all payments received under interest



rate Hedging Agreements during such period, plus (d) the portion of rent expense with respect to such period under capital leases that is treated as interest in accordance with GAAP.

**“Interest Period”** means, with respect to any Tranche Rate Loan, any continuous period of one month as selected from time to time by Borrowers by irrevocable notice (in writing, by telecopy, telex, electronic mail or cable) given to Lender not less than three Business Days prior to the first day of each respective Interest Period; provided that: (A) each such period occurring after such initial period shall commence on the day on which the immediately preceding period expires; (B) the final Interest Period shall be such that its expiration occurs on or before the Maturity Date; and (C) if for any reason Borrowers shall fail to timely select a period, then such Loans shall continue as, or revert to, Reference Rate Loans.

**“Laws”** means all ordinances, statutes, rules, regulations, orders, injunctions, writs, or decrees of any Governmental Authority.

**“Lending Office”** means the office or offices of Lender described on Schedule 15.02, or such other office or offices as Lender may from time to time notify Borrowers.

**“Letter of Credit”** means any Letter of Credit issued on behalf of a Borrower in accordance with this Agreement.

**“Letter of Credit Fee Amount”** means 2.0% per annum on the aggregate undrawn face amount of all Letters of Credit outstanding.

**“Letter of Credit Obligations”** means, as of any date of determination, the sum of (a) the aggregate undrawn face amount of all Letters of Credit, plus (b) the aggregate unreimbursed amount of all drawn Letters of Credit not already converted to Loans hereunder.

**“Letter of Credit Sublimit”** means \$1,500,000.00.

**“Lien”** means any security interest, mortgage, deed of trust, pledge, lien, charge, judgment lien, assignment, financing statement, encumbrance, title retention agreement or analogous instrument or device, including the interest of each lessor under any capitalized lease and the interest of any bondsman under any payment or performance bond, in, of or on any assets or properties of a Person, whether now owned or subsequently acquired and whether arising by agreement or operation of law, all whether perfected or unperfected.

**“Live Ventures”** means Live Ventures Incorporated, a Nevada corporation.

**“Loan Documents”** means this Agreement and all other agreements, instruments and documents including guaranties, mortgages, trust deeds, pledges, powers of attorney, consents, assignments, contracts, notices, security agreements, leases, financing statements, Hedging Agreements and all other writings heretofore, now or from time to time hereafter executed by or on behalf of a Borrower or any other Person and delivered to Lender or to any parent, affiliate or Subsidiary of Lender in connection with the Obligations or the transactions contemplated hereby, as each of the same may be amended, modified or supplemented from time to time.

**“Loan Party”** means each Borrower and each Guarantor.

**“Loans”** means all loans and advances made by Lender to or on behalf of Borrowers hereunder.

**“Lock Box”** means a post office box designated by, and under the exclusive control of, Lender, at a financial institution acceptable to Lender.

**“Machinery & Equipment Term Loan”** has the meaning specified in **Section 2.03**. **“Management Agreement”** means the Advisory

Services Agreement, dated as of the

Closing Date, among the Metals, Holdings and Live Ventures, as amended, restated, supplemented or otherwise modified from time to time in accordance with the Management Fee Subordination Agreement.

**“Management Fee Subordination Agreement”** means the Management Fee Subordination Agreement, dated as of the date hereof, among Borrowers, Lender and Live Ventures.

**“Material Adverse Effect”** means any of the following: (a) a material adverse change in, or material adverse effect upon, the business, financial condition, operations, performance, or properties of either: (i) Borrowers taken as a whole; or (ii) the Loan Parties taken as a whole; (b) a material impairment of the ability of either a Borrower or the Loan Parties taken as a whole, to perform their respective obligations under the Loan Documents; or (c) a material adverse effect upon: (i) the legality, validity, binding effect or enforceability of any Loan Document to which any Loan Party is a party against either: (A) any Borrower; or (B) the Loan Parties taken as a whole; or (ii) the rights and remedies of Lender under or in respect of any Loan Document.

**“Maturity Date”** means July 19, 2026.

**“Maximum Revolving Loan Limit”** means \$15,000,000.00, as may be increased from time to time in accordance with the terms hereof.

**“Multiemployer Plan”** means a multiemployer plan (as defined in Section 4001(a)(3) of ERISA) to which a Borrower or any ERISA Affiliate contributes or is obligated to contribute.

**“Net Cash Proceeds”** means the aggregate cash or cash equivalent proceeds received by any Loan Party in respect of any Disposition or Event of Loss, net of (a) direct costs incurred in connection therewith (including legal, accounting and sale commissions paid to a Person that is not an Affiliate of a Loan Party), (b) taxes paid or payable as a result thereof, (c) the amount necessary to retire any Indebtedness secured by a Permitted Lien on the related property that is senior to Lender’s Lien on such property, and (d) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller’s indemnities and representations and warranties to any purchaser in respect of such Disposition or Event of Loss undertaken by Holdings or any of its Subsidiaries in connection with such Disposition or Event of Loss; provided that upon release of any such reserve, the amount released shall be considered Net Cash Proceeds; it being understood that “Net Cash Proceeds” shall include any cash or cash equivalents received upon the sale or other disposition of any non-cash consideration received by any Loan Party or any Subsidiary in any Disposition or Event of Loss.

**“Net Orderly Liquidation Value”** means the net orderly liquidation value of Equipment, raw materials Inventory, work in process Inventory and finished goods Inventory, as applicable, as determined by Lender in its Permitted Discretion from time to time based upon one or more appraisals prepared by third party appraisers, and otherwise in form and substance, satisfactory to Lender.

**“Notice of Conversion”** means a notice of conversion with respect to any Loan hereunder, which notice shall be in form and substance, and delivered by Borrowers to Lender in a manner, acceptable to Lender in its sole discretion.

**“Obligations”** means, in each case, whether now in existence or hereafter arising: (a) the principal of and interest on (including interest accruing after the filing of any bankruptcy or similar petition) the Loans, (b) the Letter of Credit Obligations, (c) each Loan Party’s obligations in connection with Bank Products, (d) Enforcement Costs, (e) Hedging Obligations of any Loan Party, and (f) all other fees and commissions (including attorneys’ fees and expenses), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Loan Parties and each of their respective Subsidiaries to Lender or to any parent, affiliate or Subsidiary of Lender of every kind, nature and description, direct or indirect, primary or secondary, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, whether several, joint, or joint and several, and whether or not evidenced by any note and including interest and fees that accrue after the commencement by or against any Loan Party or any Subsidiary thereof of any bankruptcy or similar proceeding, naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided, however, Obligations shall not include any Excluded Swap Obligation.

**“OFAC”** means the United States Office of Foreign Assets Control.

**“Operating Cash Flow”** means, for any period, the sum of (without duplication): (a) EBITDA; minus (b) Capital Expenditures not financed made by Borrowers and their Subsidiaries (excluding the initial \$100,000 of unfinanced Capital Expenditures incurred after the Closing Date which was prefunded on the Closing Date funds flow); minus (c) all payments in cash for taxes made by Borrowers and their Subsidiaries; minus (d) cash dividends paid or accrued and cash withdrawals paid or accrued to Owners or other Affiliates by Borrowers and their Subsidiaries, minus (e) all payments in cash for fees, costs, expenses and indemnities arising under the Management Agreement made by Borrowers and their Subsidiaries.

**“Other Taxes”** means all present or future stamp, intangible or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

**“Owner”** means with respect to each Borrower, each Person having legal or beneficial title to an ownership interest in such Borrower or a right to acquire such an interest.

**“Parent”** means any Person now or at any time or times hereafter owning or controlling (alone or with any other Person) at least a majority of the issued and outstanding equity of a Borrower and, if a Borrower is a partnership, the general partner of such Borrower.

“**Patriot Act**” means Title III of Pub. L. 107 56 (signed into law October 26, 2001). “**PBGC**” means the Pension Benefit Guaranty Corporation.

“**Pension Plan**” means a pension plan (as defined in Section 3(2) of ERISA) maintained for employees of a Borrower or any ERISA Affiliate and covered by Title IV of ERISA.

“**Permitted Acquisition**” means an Acquisition consummated after the Closing Date where each of the following are fully and timely satisfied:

- (i) Borrowers provide Lender at least ten (10) days’ prior written notice of the closing thereof;
- (ii) no Default or Event of Default has occurred and is continuing or would exist after giving effect to such Acquisition on a pro forma basis;
- (iii) the acquired entity is located in the United States and in the same or similar line of business as that of Borrowers, or a business ancillary thereto;
- (iv) the target of such Acquisition must have had positive EBITDA for the twelve (12) month period preceding such Acquisition;
- (v) such Acquisition does not result in a Change of Control and, if such acquisition includes a merger with a Loan Party, such Loan Party is the surviving entity;
- (vi) Lender has received satisfactory historical financials (audited if available) and pro forma financials (determined by Lender in its reasonable discretion) on the target;
- (vii) to the extent that all or a portion of the consideration for such Permitted Acquisition is funded from any source other than the proceeds of Qualified Equity Interests (excluding proceeds derived from any Curative Equity) received for the sole purpose of satisfying such consideration, total consideration (determined at the time of purchase thereof and including assumption of liabilities and the good faith estimate by Borrowers of the maximum amount of any deferred purchase price obligations (including, without duplication, any earnout payments and any seller notes)) (the “**Total Consideration**”) for any single transaction does not exceed Two Million and no/100 Dollars (\$2,000,000) and for all such transactions does not exceed Six Million and no/100 Dollars (\$6,000,000) in the aggregate during the term of this Agreement;
- (viii) the acquired entity becomes a Borrower hereunder contemporaneously with the closing of any such Acquisition in compliance with Sections 11.04 and grants to Lender Liens on its assets to secure the Obligations pursuant to Section 5;
- (ix) with respect to any Acquisition where the total consideration exceeds Two Million and no/100 Dollars (\$2,000,000) and all or a portion of such consideration is paid from any source other than the proceeds of Qualified Equity Interests (excluding proceeds derived from any Curative Equity) received for the sole purpose of satisfying such consideration, Borrowers shall have provided a quality of earnings report with respect to the acquired Person;

(x) all representations and warranties contained herein and in the other Loan Documents shall be true and correct in all material respects (except those which are qualified by materiality, which shall be true and correct in all respects) with the same effect as though such representations and warranties had been made on and as of the date of such acquisition (both before and after giving effect thereto), unless stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects (except those which are qualified by materiality, which shall be true and correct in all respects) as of such earlier date;

(xi) after giving effect to such Acquisition, Borrowers shall be in pro forma compliance with the financial covenants set forth in Section 12;

(xii) immediately after giving effect to (i) the initial closing of such Acquisition and the payment of the purchase price due thereunder, and (ii) the payment of all fees due upon such date, Borrowers have Excess Availability of not less than \$2,000,000.00; and

(xiii) Borrowers shall have delivered to Lender a certificate signed by a duly authorized officer of Borrowers, in form and substance satisfactory to Lender, certifying as to compliance with this definition, including applicable pro forma calculations of financial requirements.

Notwithstanding the foregoing, no Accounts or Inventory acquired in connection with any Permitted Acquisition shall be included as Eligible Accounts or Eligible Inventory until a field examination and/or appraisal with respect thereto has been completed to the satisfaction of the Lender; provided further, the field examinations and appraisals in connection with Permitted Acquisitions shall not count against the limited number of field examinations or appraisals for which expense reimbursement by Borrowers is required under this Agreement.

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

**“Permitted Liens”** means: (a) statutory Liens of landlords, carriers, warehousemen, processors, mechanics, materialmen or suppliers incurred in the ordinary course of business and securing amounts not overdue by more than 30 days or which are being contested in good faith and by appropriate proceedings and for which a Borrower has maintained adequate reserves in accordance with GAAP; (b) Liens or security interests in favor of Lender; (c) zoning restrictions and easements, licenses, covenants and other restrictions affecting the use of real property that do not individually or in the aggregate have a Material Adverse Effect; (d) Liens in connection with purchase money indebtedness with respect to Equipment and capitalized leases otherwise permitted pursuant to this Agreement, provided, that such Liens attach only to the assets the purchase of which was financed by such purchase money indebtedness or which is the subject of such capitalized leases; (e) Liens set forth on Schedule 1.01-C; (f) Liens specifically permitted by Lender in writing; (g) involuntary Liens securing amounts less than \$250,000 and which are released or for which a bond acceptable to Lender, in its sole discretion, has been posted within ten (10) days of its creation; (h) Liens for taxes, assessments and other government charges or levies not yet due and payable or which are being contested in good faith and by appropriate proceedings and for which a Borrower has maintained adequate reserves in accordance with GAAP; (i) Liens consisting of deposits or pledges made in the ordinary course of business in connection with workers’ compensation, unemployment, social security and similar laws, or to

secure the performance of statutory obligations, bids, leases, government contracts, trade contracts, and other similar obligations (exclusive of obligations for the payment of borrowed money); (j) licenses (with respect to intellectual property and other property), leases and subleases granted to third parties and not interfering in any material respect with ordinary conduct of business of a Borrower; (k) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods; (l) Liens of collecting banks under the UCC on items in the course of collection, statutory Liens and rights of set-off of banks; (m) Liens arising from filing UCC financing statements relating solely to leases not prohibited by this Agreement; (n) pledges and deposits in the ordinary course of business securing insurance premiums or reimbursement obligations or indemnification obligations under insurance policies or self-insurance arrangements, in each case payable to insurance carriers that provide insurance to any Borrower or any of its Subsidiaries; (o) Liens on cash and cash equivalents on deposit with Lender and Affiliates of Lender securing obligations owing to such Persons under any treasury, depository, overdraft or other cash management services agreements or arrangements with any Borrower or any Subsidiary of Borrowers; (p) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by any Borrower or any of its Subsidiaries which arrangements are (i) made in the ordinary course of business and (ii) not prohibited by this Agreement; (q) judgment Liens in respect of judgments that do not constitute an Event of Default; (r) Liens securing the Seller Note; and (s) Liens securing Indebtedness permitted pursuant to Section 11.02(l), provided that with respect to this clause (s), (i) such Lien does not encumber Accounts or Inventory, (ii) such Lien is not created in contemplation of or in connection with such Permitted Acquisition, (iii) such Lien will not encumber or restrict any property of any Borrower or any Loan Party other than Liens existing on property at the time of the acquisition thereof by such Borrower or a Loan Party, and (iv) such Lien shall secure only those obligations of the acquired company that it secured on the date of such Permitted Acquisition.

**“Person”** means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity, party or foreign or United States government (whether federal, state, county, city, municipal or otherwise), including any instrumentality, division, agency, body or department thereof.

**“Plan”** means an employee benefit plan (as defined in Section 3(3) of ERISA) maintained for employees of a Borrower.

**“Pledged Collateral”** means, collectively, Pledged Debt and Pledged Equity Interests. **“Pledged Debt”** means all debt owed or owing

to a Borrower or any Subsidiary of a

Borrower by any other Person (in each case to the extent not constituting Excluded Property), and all Instruments, Chattel Paper or other documents, if any, representing or evidencing such debt.

**“Pledged Equity Interests”** means all Equity Interests (other than Equity Interests constituting Excluded Property) owned or held by or on behalf of a Borrower in any Person, and all Security Certificates, Instruments and other documents, if any, representing or evidencing such Equity Interests.

**“Purchase Agreement”** means that certain Stock Purchase Agreement dated as of July 19, 2023 by and among Sellers, as seller, Richard Stanley and John Locke, as Seller Principals,

Precision Metal Works, Inc., (formerly known as NTH Holding , Ltd), a Kentucky corporation, as Company Parent and Holdings, as buyer.

**“Purchase Transaction Documents”** means collectively the Purchase Agreement and any and all other agreements, documents or instruments (together with any and all amendments, modifications, and supplements thereto, restatements thereof, and substitutes therefor) previously, now or hereafter executed and delivered by Borrowers, Sellers, or any other Person in connection with the Purchase Transaction.

**“Purchase Transaction”** means the sale and transfer of 100% of the outstanding Equity Interests of Metals from Sellers to Holdings.

**“Qualified Equity Interests”** means Equity Interests other than Disqualified Equity Interests.

**“Reference Rate”** means the greater of (a) 3.0% and (b) Lender’s publicly announced prime rate (which is not intended to be Lender’s lowest or most favorable rate in effect at any time) in effect from time to time.

**“Reference Rate Loans”** means the Loans bearing interest with reference to the Reference Rate.

**“Reportable Event”** means a reportable event (as defined in Section 4043 of ERISA), other than an event for which the 30-day notice requirement under ERISA has been waived in regulations issued by the PBGC.

**“Revolving Loans”** has the meaning specified in **Section 2.01**. **“Sanctions”** has the meaning set forth in

**Section 9.22(b).**

**“Seller Note”** means (i) that certain Subordinated Secured Promissory Note dated as of the Closing Date, executed and delivered by Metals to the RS Trust, evidencing indebtedness in the original principal amount of One Million Two Hundred Fifty Thousand and no/100 Dollars (\$1,250,000.00), and (ii) that certain Subordinated Secured Promissory Note dated as of the Effective Date, executed and delivered by Metals to the JL Trust, evidencing indebtedness in the original principal amount of One Million Two Hundred Fifty Thousand and no/100 Dollars (\$1,250,000.00).

**“Sellers”** means The Richard Stanley Family Trust, a trust formed under the Laws of Ontario, Canada (the **“RS Trust”**), and The John Locke Family Trust, a trust formed under the Laws of Ontario, Canada (the **“JL Trust”**).

**“Slow-Moving Inventory”** means any Inventory in excess of the most recent 12 months of sales or usage for such Inventory (other than newly developed products manufactured or introduced within the last 6 months) and any Inventory that has not been produced within the prior 12 months.

**“SOFR”** means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate published by the Federal Reserve Bank of New York (or a successor administrator) on the administrator’s website (or any successor source for the secured overnight financing rate identified as such by the administrator) at approximately 2:30 p.m. (New York City time) on the immediately succeeding Business Day.

**“Spread Adjustment”** means a mathematical or other adjustment to an alternate benchmark rate selected pursuant to Section 4.04(c) of the Agreement and such adjustment may be positive, negative, or zero subject to the specific Spread Adjustments set forth in Section 4.04(c).

**“Subordinated Debt”** means Indebtedness of any Borrower that is subordinated to the Obligations pursuant to a written subordination agreement in form and substance reasonably satisfactory to Lender.

**“Subordinated Debt Documents”** means any and all promissory notes, agreements, documents or instruments now or at any time evidencing, securing, guarantying or otherwise executed and delivered in connection with the Subordinated Debt, as the same may from time to time be amended, restated, supplemented or modified.

**“Subordination Agreement”** means (i) that certain subordination agreement by and among RS Trust, JL Trust, Borrowers and the Lender, as the same may be from time to time amended, restated, supplemented or modified and (ii) each other subordination agreement entered into in favor of Lender in respect of any Subordinated Debt, as the same may be from time to time amended, restated, supplemented or modified.

**“Subsidiary”** means as to any Person, any corporation, partnership, limited liability company or other entity of which more than 50% of the outstanding Equity Interests having ordinary voting power to elect a majority of the board of directors (or equivalent governing body) or other managers of such corporation, partnership, limited liability company or other entity is at the time owned by (directly or indirectly) or the management is otherwise controlled by (directly or indirectly) such Person (irrespective of whether, at the time, Equity Interests of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any contingency).

**“Successor Rate”** shall mean any successor index rate determined pursuant to Section 4.04(c) from time to time, including any applicable Spread Adjustment.

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

**“Tax Distributions”** means, with respect to any taxable period for which a Borrower is part of a consolidated, combined, affiliated, unitary or similar income tax group for U.S. federal and/or applicable state or local income tax purposes for which another Person is the common parent, cash distributions in an amount not to exceed the amount of any U.S. federal, state and/or



local income taxes that such Borrower would have paid for such taxable period had such Borrower been a stand-alone corporate taxpayer and not otherwise paid or payable by such Borrower.

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

“**Term Loans**” means, collectively, the Machinery & Equipment Term Loan and the Capital Expenditure Loans.

“**Term SOFR**” means, with respect to a Tranche Rate Loan for any Interest Period, the forward-looking SOFR rate administered by CME Group, Inc. (or other administrator selected by the Lender) and published on the applicable Bloomberg LP screen page (or such other commercially available source providing such quotations as may be selected by the Lender), fixed by the administrator thereof two Business Days prior to the commencement of the applicable Interest Period (provided, however, that if Term SOFR is not published for such Business Day, then Term SOFR shall be determined by reference to the immediately preceding Business Day on which such rate is published), rounded upwards, if necessary, to the next 1/8<sup>th</sup> of 1% and adjusted for reserves if Lender is required to maintain reserves with respect to the relevant Loans, all as determined by Lender in accordance with this Agreement and Lender’s loan systems and procedures periodically in effect.

“**Termination Date**” means the earliest of (a) the Maturity Date, (b) the date Borrowers terminate this Agreement, or (c) the date the Lender accelerates payment of the Obligations pursuant to **Section 13.02**.

“**Tranche Rate**” means, with respect to any Interest Period, the greater of (a) 0.75% (the “**Index Floor**”) and (b) Term SOFR relating to quotations for one month. Each determination by Lender of the Tranche Rate shall be conclusive and binding in the absence of manifest error. Notwithstanding anything to the contrary contained in the Agreement, at any time during which a Hedging Agreement is then in effect with respect to all or a portion of the Obligations bearing interest based upon the Tranche Rate, any Successor Rate, the Index Floor and the provision that rounds up the Tranche Rate to the next 1/8<sup>th</sup> of 1% shall be disregarded and no longer of any force and effect with respect to such portion of the Obligations that are subject to such Hedging Agreement.

“**Tranche Rate Loans**” means any Loans that accrue interest by reference to the Tranche Rate for an Interest Period elected by Borrowers in accordance with Section 4.04(a) of this Agreement and the other terms of this Agreement.

“**Tranche Rate Replacement Date**” has the meaning ascribed to it in Section 4.04(c) of this Agreement.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code as in effect in the State of Illinois.

### **1.02 Other Definitional Terms; Rules of Interpretation.**

The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in the Uniform Commercial Code and not otherwise defined herein have the meanings assigned to them in the Uniform Commercial Code. References to Articles, Sections, subsections, Exhibits, Schedules and the like, are to Articles, Sections and subsections of, or Exhibits or Schedules attached to, this Agreement unless otherwise expressly provided. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. Unless the context in which used herein otherwise clearly requires, “or” has the inclusive meaning represented by the phrase “and/or”. Defined terms include in the singular number the plural and in the plural number the singular. Reference to any agreement (including the Loan Documents), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof (and, if applicable, in accordance with the terms hereof and the other Loan Documents), except where otherwise explicitly provided, and reference to any promissory note includes any promissory note which is an extension or renewal thereof or a substitute or replacement therefor. Reference to any law, rule, regulation, order, decree, requirement, policy, guideline, directive or interpretation means as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect on the determination date, including rules and regulations promulgated thereunder. Periods of days referred to in this Agreement will be counted in calendar days unless Business Days are expressly prescribed.

### **1.03 Accounting Terms.**

All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP. If at any time any change in GAAP would, in either case, affect the computation of any financial ratio or financial requirement set forth in any Loan Document, and either Borrowers or Lender shall so request, Lender and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; *provided*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) the Loan Parties shall provide to Lender financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP; *provided, further*, that (i) any election under Accounting Standards Codification 825-10-25 (previously referred to as Statement of Financial Accounting Standards 159) (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Loan Party at “fair value”, as defined therein shall be disregarded for all purposes herein and (ii) the effect of any changes to GAAP that would require leases which are, or would have been, classified as operating leases under GAAP as it exists on the Closing Date to be classified and accounted for as capital leases under the revised GAAP (including by reason of adoption of FASB Accounting Standards Update 2016-02) shall be disregarded for all purposes herein. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, the Loan Parties shall not, without the prior written consent of Lender, cause or permit any change in application of GAAP, or any method of GAAP utilized, by the Loan Parties in their financial statements after the Closing Date.

## 2. LOANS.

### 2.01 Revolving Loans.

Subject to the terms and conditions of the Loan Documents, from time to time prior to the Termination Date, Lender shall make revolving loans and advances (the “**Revolving Loans**”) in a principal amount at any time outstanding not in excess of Availability.

### 2.02 Requests for Revolving Loans.

(a) A request for a Revolving Loan shall be made or shall be deemed to be made, each in the following manner: Borrowers shall give Lender same day notice, no later than 12:00 P.M. (Chicago, Illinois local time) for such day, of its request for a Revolving Loan as a Reference Rate Loan, and at least three Business Days prior notice of its request for a Revolving Loan as a Tranche Rate Loan, in which notice Borrowers shall specify the amount of the proposed borrowing and the proposed borrowing date; provided, however, that no such request may be made during a Default Period. Borrowers shall deliver to Lender, on each day on which Borrowers request a Revolving Loan, an advance request form in Lender’s then current form. In the event that Borrowers maintain a controlled disbursement account at Lender, each check presented for payment against such controlled disbursement account and any other charge or request for payment against such controlled disbursement account shall constitute a request for a Revolving Loan as a Reference Rate Loan. As an accommodation to Borrowers, Lender may permit telephone requests for Revolving Loans and electronic transmittal of instructions, authorizations, agreements or reports to Lender by Borrowers in which case an advance request form is not required. Unless Borrowers specifically direct Lender in writing not to accept or act upon telephonic or electronic communications from Borrowers, Lender shall have no liability to any Borrower for any loss or damage suffered by such Borrower as a result of Lender’s honoring of any requests, execution of any instructions, authorizations or agreements or reliance on any reports communicated to it telephonically or electronically and purporting to have been sent to Lender by Borrowers and Lender shall have no duty to verify the origin of any such communication or the authority of the Person sending it.

(b) Each request by a Borrower for a wire transfer, ACH transfer, or other withdrawal made through use of Lender’s Web Express system (or any successor platform) from deposit accounts maintained with Lender will be deemed a request for a Revolving Loan.

(c) Each Borrower hereby irrevocably authorizes Lender to disburse the proceeds of each Revolving Loan requested by such Borrower, or deemed to be requested by such Borrower, as follows: (i) the proceeds of each Revolving Loan requested under **Section 2.02(a)** shall be disbursed by Lender in lawful money of the United States of America in immediately available funds, (ii) in the case of the initial borrowing, in accordance with the terms of the written disbursement letter from Borrowers, and (iii) in the case of each subsequent borrowing, by wire transfer or Automated Clearing House (ACH) transfer to such bank account as may be agreed upon by such Borrower and Lender from time to time, or elsewhere if pursuant to a written direction from such Borrower.

2.03 **Machinery & Equipment Term Loan.**

Subject to the terms and conditions of the Loan Documents, on the date that the conditions to the initial Loans are satisfied, Lender shall make a term loan to Borrowers in an amount equal to \$4,952,000.00 (the “**Machinery & Equipment Term Loan**”). Amounts repaid with respect to the Machinery & Equipment Term Loan may not be reborrowed.

2.04 **[Reserved].**

2.05 **Capital Expenditure Term Loans.**

(a) Subject to the terms and conditions of the Loan Documents, Lender agrees to make advances to Borrowers from time to time prior to the expiration of the Draw Period (each a “**Capital Expenditure Loan**”) in an aggregate principal amount not to exceed, at Lender’s option, (i) 80.0% of the purchase price (exclusive of sales taxes, delivery charges and other "soft" costs related to such purchase) of Equipment to be purchased with the proceeds of such Capital Expenditure Loan, or (ii) 85.0% of the Net Orderly Liquidation Value of Equipment to be purchased with the proceeds of such Capital Expenditure Loan, in each case which Equipment is reasonably acceptable to Lender, and upon which Lender shall have a first priority perfected security interest; provided, however, that the aggregate amount advanced for such purchases shall not exceed \$2,750,000.00.

(b) Borrowers shall comply with the following procedures in requesting Capital Expenditure Loans:

(i) All requests for Capital Expenditure Loans shall include a copy of an invoice for the equipment to be acquired, a description of the equipment to be acquired, the amount of the request, and all other documents or agreements as reasonably required by Lender. Upon Lender’s request, Borrowers shall provide Lender evidence reasonably satisfactory to Lender of payment for the Equipment acquired with a Capital Expenditure Loan, including a bill of sale.

least \$100,000.00.

(ii)

Each Capital Expenditure Loan shall be in a minimum amount of at

(iii) All requests for Capital Expenditure Loans shall be made at least

three (3) Business Days prior to the requested date of such advance.

(iv) All requests for Capital Expenditure Loans shall be made during the period from the Closing Date through the November 30, 2025 anniversary of Closing Date (the “**Draw Period**”).

2.062.07 **[Reserved]. Repayments.**

The Obligations shall be repaid as follows:

(a) Repayment of Revolving Loans. Borrowers shall repay the Revolving Loans and all other Obligations (other than the Term Loans) on the Termination Date. Borrowers may from time to time voluntarily prepay the Revolving Loans (without a reduction in the Maximum Revolving Loan Limit) in whole or in part subject to the terms and conditions of this Agreement. If any such payment due date is not a Business Day, then such payment may be made on the next succeeding Business Day and such extension of time shall be included in the computation of the amount of interest and fees due hereunder. Subject to all of the terms, conditions and limitations of this Agreement, amounts repaid in respect of the Revolving Loans may be reborrowed.

(b) Repayment of Machinery & Equipment Term Loan. Borrowers shall repay the principal balance of the Machinery & Equipment Term Loan in equal monthly principal installments of \$58,952.38 payable on the first day of each month commencing August 1, 2023; provided, that Borrowers shall repay any remaining outstanding principal balance of the Machinery & Equipment Term Loan on the Termination Date. If any such payment due date is not a Business Day, then such payment may be made on the next succeeding Business Day and such extension of time shall be included in the computation of the amount of interest and fees due hereunder.

(c) [Reserved].

(d) Repayment of Capital Expenditure Term Loans.

Borrowers shall repay the Capital Expenditure Loans in monthly installments equal to the following:

(i)	Beginning on July 1, 2024 and continuing on the first day of each month thereafter, until such Capital Expenditure Loans are paid in full	An amount equal to the aggregate Capital Expenditure Loans advanced on or before June 30, 2024 divided by 60;
(ii)	Beginning on July 1, 2025 and continuing on the first day of each month thereafter, until such Capital Expenditure Loans are paid in full	An amount equal to the aggregate Capital Expenditure Loans advanced after June 30, 2024 and on or before June 30, 2025 divided by 60; and
(iii)	Beginning on January 1, 2026 and continuing on the first day of each month thereafter, until such Capital Expenditure Loans are paid in full	An amount equal to the aggregate Capital Expenditure Loans advanced after June 30, 2025 and on or before the last day of the Draw Period divided by 60.

The principal payments required in each of the forgoing subsections are cumulative. Borrowers shall repay any remaining outstanding principal balance of all Capital Expenditure Loans on the Termination Date. If any such payment due date is not a Business Day, then such payment may be made on the next succeeding Business Day and such extension of time shall be included in the computation of the amount of interest and fees due hereunder.

(e) [Reserved].

(f) Mandatory Prepayments.

(i) Overadvances. If at any time Availability (after giving effect to all applicable sublimits within the Borrowing Base) is less than \$0.00, Borrowers shall promptly, and without the necessity of demand by Lender, pay to Lender such amount as may be necessary to eliminate such excess and Lender shall apply such payment to the Revolving Loans (without a reduction in the Maximum Revolving Loan Limit) to eliminate such excess.

(ii) Sales of Assets. Upon receipt of the proceeds of Disposition of any Equipment or real property of a Borrower which is subject to a Lien in favor of Lender, Borrowers shall pay the Net Cash Proceeds thereof to Lender as a mandatory prepayment of the applicable Term Loan (as determined by Lender, but to the extent such asset was identified as the target of a Capital Expenditure Loan, such amounts shall first be applied the corresponding Capital Expenditure Loan), such payment to be applied against the remaining installments of principal in the inverse order of their maturities until such Term Loan is repaid in full, and then against the remaining installments of principal of the remaining Term Loans in the inverse order of their maturities until such Term Loans are repaid in full, then against the Revolving Loans (without a reduction in the Maximum Revolving Loan Commitment) until repaid in full, and then against the other Obligations then due and owing, as determined by Lender, in its sole discretion. Notwithstanding the foregoing, provided a Default Period is not in effect, no prepayment need be made from sales proceeds of assets received on account of a Borrower's Equipment or real property subject to a Lien in favor of Lender if and to the extent such proceeds are applied to the replacement of such assets within one hundred eighty (180) days of receipt thereof (or enters into a binding commitment therefor within said one hundred eighty (180) day period and subsequently purchases such replacement assets within three hundred sixty (360) days after the date of receipt of such Net Cash Proceeds) and, prior to the purchase of replacement assets, at Lender's option, such proceeds are maintained in an escrow account or an Availability Reserve is implemented in the amount of such proceeds.

(iii) Events of Loss. If any Equipment or real property of a Borrower which is subject to a Lien in favor of Lender is damaged, destroyed or taken by condemnation in whole or in part, such Borrower shall pay the Net Cash Proceeds thereof to Lender as a mandatory prepayment of the applicable Term Loan (as determined by Lender, but to the extent such asset was identified as the target of a Capital Expenditure Loan, such amounts shall first be applied the corresponding Capital Expenditure Loan), such payment to be applied against the remaining installments of principal in the inverse order of their maturities until such Term Loan is repaid in full, and then against the remaining installments of principal of the remaining Term Loans in the inverse order of their maturities until such Term Loans are repaid in full, then against the Revolving Loans (without a reduction in the Maximum Revolving Loan Commitment) until repaid in full, and then against the other Obligations then due and owing, as determined by Lender, in its sole discretion. Notwithstanding the foregoing, provided a Default Period is not in effect, no prepayment need be made from insurance proceeds received on account of damage or destruction of a Borrower's assets if and to the extent that such insurance proceeds are applied to the repair or replacement of such assets within one hundred eighty (180) days of receipt thereof (or enters into

a binding commitment therefor within said one hundred eighty (180) day period and subsequently purchases such replacement assets within three hundred sixty (360) days after the date of receipt of such Net Cash Proceeds) and, prior to the repair or replacement of such assets, at Lender's option, such proceeds are maintained in an escrow account or an Availability Reserve is implemented in the amount of such proceeds.

Notwithstanding the forgoing, if a Default Period does not then exist, no prepayment need be made under clauses (ii) and (iii) above from the initial \$100,000 of aggregate Net Cash Proceeds received by the Loan Parties in any Fiscal Year for each of clause (ii) and (iii).

## **2.08<sup>1</sup>Bank Products.**

Each Borrower may request, and Lender or its affiliates may, in their sole and absolute discretion, provide, Bank Products although no Borrower is required to do so. In the event a Borrower requests Lender and/or its affiliates to procure or provide Bank Products, then each Borrower jointly and severally agrees with Lender and/or such affiliates, as applicable, to pay when due all indebtedness, liabilities and obligations with respect to Bank Products and further agrees to indemnify and hold Lender and/or such affiliates harmless from any and all indebtedness, liabilities, obligations, losses, costs and expenses (including reasonable attorney's fees) now or hereafter owing to or incurred by Lender (including those under agreements of indemnifications or assurances provided by Lender to its affiliates) and/or its affiliates with respect to Bank Products, all as the same may arise, other than solely with respect to any obligation for which Lender is being indemnified by a Borrower, to the extent resulting directly from the gross negligence or willful misconduct of Lender (as finally determined by a court of competent jurisdiction). In the event Borrowers shall not have paid to Lender and/or its affiliates such amounts, Lender may cover such amounts by an advance under the Revolving Loan, which advance shall be deemed to have been requested by a Borrower. Each Borrower acknowledges and agrees that (a) all indebtedness, liabilities and obligations with respect to Bank Products provided by Lender or its affiliates, and all of its agreements under this **Section 2.08**, are part of the Obligations secured by the Collateral, and (b) the obtaining of Bank Products from Lender or its affiliates (i) is in the sole and absolute discretion of Lender or its affiliates and (ii) is subject to all rules and regulations of Lender or its affiliates.

## **3. LETTERS OF CREDIT.**

### **3.01<sup>1</sup>General Terms.**

#### **(a) Issuance.**

(i) Subject to the terms and conditions of the Agreement, Lender agrees to incur, from time to time prior to the Termination Date, upon the request of a Borrower and for such Borrower's or any Subsidiary's account, Letter of Credit Obligations with respect to Letters of Credit issued by Lender for such Borrower's or any Subsidiary's account. A Borrower shall give Lender at least five Business Days prior written notice requesting the incurrence of any Letter of Credit Obligation. The notice shall be accompanied by a completed Letter of Credit application. Notwithstanding anything contained herein to the contrary, Letter of



Credit applications by such Borrower and communications by Lender may be made and transmitted pursuant to electronic codes and security measures mutually agreed upon and established by and between Borrowers and Lender. Each Borrower hereby authorizes Lender to accept, act upon, and treat as genuine and original (but without any obligation of Lender to do any of the foregoing) applications, authorizations, and other requests regardless of the manner communicated, including those sent or communicated via overnight courier, certified or non-certified mail, fax, email, electronic code, or phone, so long as Lender does not have actual knowledge that a particular application, authorization, or other request is not authorized by Borrowers.

(ii) The aggregate face amount of all such Letter of Credit Obligations shall not at any time exceed the least of (i) the Letter of Credit Sublimit, and (ii) the Borrowing Base less the aggregate outstanding Revolving Loans.

(iii) Borrowers are responsible for preparing and approving the text of each Letter of Credit, notwithstanding any drafting recommendations or forms provided by Lender. Lender will have no liability with respect to Letter of Credit terms or conditions that (A) are erroneous, ambiguous, inconsistent, insufficient, ineffective, or illegal, (B) require Lender to respond to a demand in fewer than three Business Days, or (C) require or allow the a Borrower to sign, issue, or present a document. Notwithstanding anything to the contrary in the Agreement, Lender's obligation to issue, amend, or extend the expiration date of a Letter of Credit is subject to its review and approval of the proposed terms of the Letter of Credit (and any amendment thereof) in its sole discretion. Borrowers represent and warrant to Lender that Borrowers are familiar with, and understands, applicable Law and letter of credit practice. If requested by Lender, Borrowers will execute, deliver, and submit a letter of credit application and reimbursement agreement on Lender's standard forms in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of the Agreement and the terms and conditions of any such letter of credit application or reimbursement agreement, the terms and conditions of the Agreement will control. Notwithstanding anything to the contrary in the Agreement but subject to Borrowers' ultimate responsibility as set forth above in this paragraph (a), Lender's obligation to issue, amend, or extend the expiration date of a Letter of Credit is subject to its review and approval of the proposed terms of the Letter of Credit (and any amendment thereof) in its sole discretion.

(b) Expiration Date. Except for Evergreen Letters of Credit that are subject to the terms and conditions set forth below in this paragraph (b), no Letter of Credit shall have an expiration date that is later than the earlier of (i) one year following the date of issuance thereof (or, in the case of any extension of the expiration date thereof, whether automatic or by amendment, one year after the then-current expiration date of such Letter of Credit) and (ii) the date that is five Business Days before the Termination Date, and Lender shall not be under any obligation to incur Letter of Credit Obligations in respect of any Letter of Credit having an expiration date that is later than the Termination Date. If any Borrower so requests in any notice requesting the issuance of a Letter of Credit (or the amendment

of an outstanding Letter of Credit), Lender may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an “**Evergreen Letter of Credit**”), provided that any such Evergreen Letter of Credit shall permit Lender to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “**Non-Extension Notice Date**”) in each such twelve-month period to be agreed upon by such Borrower and Lender at the time such Letter of Credit is issued. Unless otherwise directed by Lender, Borrowers shall not be required to make a specific request to Lender for any such extension.

(c) Reimbursement and Interim Interest.

(i) If Lender shall make any payment in respect of a Letter of Credit, Borrowers shall reimburse Lender in respect of such payment by paying to Lender an amount equal to such payment not later than 12:00 noon, Cincinnati, Ohio time, on (A) the Business Day that Borrowers receive notice of such payment, if such notice is received before 10:00 am, Cincinnati, Ohio time, or (B) the Business Day immediately following the day that Borrowers receive such notice, if such notice is not received prior to such time.

(ii) If Lender shall make any payment on a Letter of Credit then, unless Borrowers shall reimburse such payment in full on the date such payment is made, the unpaid amount thereof shall: (A) be deemed to be a Revolving Loan under Section 2.01 of this Agreement, regardless of whether a Default or Event of Default has occurred and is continuing and notwithstanding Borrowers’ failure to satisfy the conditions precedent set forth in Section 14.02 and (B) bear interest, for each day from and including the date such payment is made to but excluding the date that Borrowers reimburse such payment, at the rate per annum then applicable to Reference Rate Loans; provided that, if Borrowers fail to reimburse such payment when due pursuant to paragraph (c)(i) above, then the unpaid amount thereof shall bear interest, for each day from and including the date such payment is made to but excluding the date that Borrowers reimburse such payment, at the Default Rate.

(d) Limitations. In addition to, and without limiting, any other provision of this Agreement or any other Loan Document, Lender shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment, or decree of any Governmental Authority or arbitrator shall enjoin or restrain, or purport to enjoin or restrain, Lender from issuing such Letter of Credit, or any Law applicable to Lender shall prohibit, or request that Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon Lender with respect to such Letter of Credit any restriction, reserve, or capital requirement (for which Lender is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon Lender any unreimbursed loss, cost, or expense that was not applicable on the Closing Date and that Lender in good faith deems material to it; or

- (ii) the issuance of such Letter of Credit would violate one or more policies of Lender.

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

(e) Cash Collateral.

(i) If Borrowers are required to provide cash collateral for any Letter of Credit Obligations pursuant to the Agreement prior to the Termination Date, Borrowers will pay to Lender cash or cash equivalents acceptable to Lender (“**Cash Collateral**”) in an amount equal to 105% of the Letter of Credit Obligations plus accrued and unpaid interest thereon. Such Cash Collateral shall be held by Lender and pledged to, and subject to the control of, Lender. Borrowers hereby pledge and grant to Lender a security interest in all such Cash Collateral and all proceeds thereof, as security for the payment of all amounts due in respect of the Letter of Credit Obligations and other Obligations, whether or not then due. The Agreement, including this paragraph (e)(i), shall constitute a security agreement under applicable Laws.

(ii) If any Letter of Credit Obligations, whether or not then due and payable, shall for any reason be outstanding on the Termination Date, Borrowers shall either (A) provide Cash Collateral therefor in the manner described, and subject to the terms and conditions as set forth, above, or (B) cause all such Letters of Credit and guaranties thereof, if any, to be canceled and returned.

(iii) From time to time after funds are deposited as Cash Collateral by Borrowers, whether before or after the Termination Date, Lender may apply such funds then held by it to the payment of any amounts, and in such order as Lender may elect, as shall be or shall become due and payable by Borrowers to Lender with respect to such Letter of Credit Obligations of Borrowers and, upon the satisfaction in full of all Letter of Credit Obligations of Borrowers, to any other Obligations then due and payable.

(iv) No Borrower nor any Person claiming on behalf of or through Borrowers shall have any right to withdraw any of the Cash Collateral, except that upon the termination of all Letter of Credit Obligations and the payment of all amounts payable by Borrowers to Lender in respect thereof, any remaining Cash Collateral shall be applied to other Obligations then due and owing and upon payment in full of such Obligations any remaining amount shall be paid to Borrowers or as otherwise required by Law. Interest earned, if any, on Cash Collateral shall be held as additional collateral.

(f) Fees and Expenses. In addition to the Letter of Credit Fees payable pursuant to Section 4.05(c) of this Agreement, Borrowers shall pay to Lender, on demand, such fees

as are set forth from time to time in Lender's fee schedule for letters of credit. Borrowers acknowledge that Lender may modify such fee schedule at any time and will communicate such new fee schedule information to Borrowers as required in the notice provision hereunder. Such new fees will be effective 30 days after such notice and shall apply as of such date to all existing and future Letters of Credit issued by Lender. In the event of any inconsistency between the fees set forth in this Agreement and the fees set forth in such fee schedule, the fees set forth in this Agreement will control.

(g) Obligations Absolute. The obligation of Borrowers to reimburse Lender for payments made with respect to any Letter of Credit Obligation shall be absolute, unconditional, and irrevocable, without necessity of presentment, demand, protest, or other formalities. Such obligations of Borrowers shall be paid strictly in accordance with the terms hereof under all circumstances, including the following:

(i) any lack of validity or enforceability of any Letter of Credit or the Agreement or the other Loan Documents or any other agreement;

(ii) the existence of any claim, setoff, defense, or other right that Borrowers or any of any Borrower's Affiliates may at any time have against a beneficiary or any transferee of any Letter of Credit (or any Persons or entities for whom any such transferee may be acting), Lender, or any other Person, whether in connection with the Agreement, the Letter of Credit, the transactions contemplated herein or therein, or any unrelated transaction (including any underlying transaction between Borrowers or any of their Affiliates and the beneficiary for which the Letter of Credit was procured);

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

(iv) payment by Lender (except as otherwise expressly provided in paragraph (i)(ii)(C) below) under any Letter of Credit or guaranty thereof against presentation of a demand, draft, certificate, or other document that does not comply with the terms of such Letter of Credit or such guaranty;

(v) the fact that a Default or an Event of Default has occurred and is continuing; or

(vi) any other circumstance or event whatsoever, whether or not similar to any of the foregoing.

(h) Indemnification; Nature of Lender's Duties.

(i) In addition to amounts payable as elsewhere provided in the Agreement, Borrowers hereby agree to pay and to protect, indemnify, and save harmless Lender from and against any and all claims, demands, liabilities, damages, losses, costs, charges, and expenses (including reasonable attorneys' fees and allocated costs of internal counsel) that Lender may incur or be subject to as a

consequence, direct or indirect, of (A) the issuance of any Letter of Credit or guaranty thereof, or (B) the failure of Lender seeking indemnification or of Lender to honor a demand for payment under any Letter of Credit or guaranty thereof as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority, in each case other than to the extent as a result of the gross negligence or willful misconduct of Lender (as finally determined by a court of competent jurisdiction).

(ii) As between Lender and Borrowers, Borrowers assume all risks of the acts and omissions of, or misuse of any Letter of Credit by, beneficiaries of any Letter of Credit. In furtherance and not in limitation of the foregoing, to the fullest extent permitted by Laws, Lender shall not be responsible for: (A) the form, validity, sufficiency, accuracy, genuineness, or legal effect of any document issued by any party in connection with the application for and issuance of any Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent, or forged; (B) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, that may prove to be invalid or ineffective for any reason; (C) failure of the beneficiary of any Letter of Credit to comply fully and strictly with the conditions required in order to demand payment under such Letter of Credit; provided that, in the case of any payment by Lender under any Letter of Credit or guaranty thereof, Lender shall be liable for direct damages (as opposed to consequential or punitive damages, claims in respect of which are hereby waived by Borrowers to the extent permitted by Law) to the extent such payment was made solely as a result of its gross negligence or willful misconduct (as finally determined by a court of competent jurisdiction) in determining that the demand for payment under such Letter of Credit or guaranty thereof complies on its face with any applicable requirements for a demand for payment under such Letter of Credit or guaranty thereof;

(D) errors, omissions, interruptions, or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, or otherwise, whether or not they may be in cipher; (E) errors in interpretation of technical terms; (F) any loss or delay in the transmission or otherwise of any document required in order to make a payment under any Letter of Credit or guaranty thereof or of the proceeds thereof; (G) the credit of the proceeds of any drawing under any Letter of Credit or guaranty thereof; and (H) any consequences arising from causes beyond the control of Lender. None of the above shall affect, impair, or prevent the vesting of any of Lender's rights or powers hereunder or under the Agreement.

(iii) Nothing contained herein shall be deemed to limit or to expand any waivers, covenants, or indemnities made by Borrowers in favor of Lender in any letter of credit application, reimbursement agreement, or similar document, instrument, or agreement between Borrowers and Lender.

(iv) The provisions of this paragraph (i) shall survive the payment of the Obligations and any termination of the Agreement.

(i) Letters of Credit Issued for account of Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, Borrowers shall be obligated as set forth herein for any and all drawings under such Letter of Credit. Borrowers hereby acknowledge that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of Borrowers, and that Borrowers' businesses derive substantial benefits from the businesses of such Subsidiaries.

(j) Rules of Practice. Unless otherwise expressly agreed by Lender and Borrowers when a Letter of Credit is issued by it, (i) the rules of the International Standby Practices, ICC Publication No. 590 (as amended, supplemented, restated, and/or republished from time to time, the "**ISP**") shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (as amended, supplemented, restated, and/or republished from time to time, the "**UCP**") shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, Lender shall not be responsible to Borrowers for, and Lender's rights and remedies against Borrowers shall not be impaired by, any action or inaction of Lender required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or the Agreement, including the Laws or any order of a jurisdiction where Lender or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the International Chamber of Commerce Banking Commission, the Bankers Association for Finance and Trade, or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such laws or practice rules.

### 3.02 Reimbursement Agreement.

In connection with the execution of this Agreement and prior to the issuance of any Letter of Credit, Borrowers and Lender will enter into a Letter of Credit Reimbursement Agreement (the "**Reimbursement Agreement**"). To the extent any of the terms of this Agreement conflict with the terms of the Reimbursement Agreement, the terms of this Agreement will control.

## 4. INTEREST, FEES AND CHARGES.

### 4.01 Interest Rate.

Each Reference Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Reference Rate *plus* the Applicable Margin. Each Tranche Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Tranche Rate for such Interest Period *plus* the Applicable Margin.

### 4.02 Default Interest Rate.

During a Default Period, at Lender's option, each Loan shall bear interest at the Default Rate, effective as of the date of election by Lender, which interest shall be payable on demand. The decision of Lender to not impose the Default Rate shall be made by the Lender, in its sole discretion, and shall not be a waiver of any of its other rights and remedies.

#### 4.03 Interest Payments.

Interest on Reference Rate Loans shall be due and payable on the first day of each month in arrears and on the Termination Date. Interest accruing on each Tranche Rate Loan shall be due and payable in arrears on the last day of each Interest Period and on the Termination Date.

#### 4.04 Tranche Rate Provisions.

(a) Tranche Rate Election. Subject to the provisions of this Agreement, Borrowers may request that Loans permitted to be made hereunder be Tranche Rate Loans and that outstanding portions of Loans made hereunder be converted to Tranche Rate Loans. Each request for a Tranche Rate Loan shall be irrevocable and Borrowers shall be bound thereby. In the case of any conversion of a Reference Rate Loan to a Tranche Rate Loan, any conversion of an existing Tranche Rate Loan to a new Tranche Rate Loan with a different Interest Period, or any conversion of a Tranche Rate Loan to a Reference Rate Loan, such election must be made pursuant to a Notice of Conversion. In addition to the other provisions of this Agreement, as a condition to any Tranche Rate election hereunder, on or before the date on which the applicable Tranche Rate Loan is to be advanced or converted hereunder, in each case in accordance with Lender's loan policies and procedures periodically in effect, Borrowers shall notify Lender of each of the following: (i) the requested amount of such Tranche Rate Loan, (ii) the Interest Period that Borrowers have elected to apply to such Tranche Rate Loan, and (iii) the date of the requested advance or conversion. In the absence of a Notice of Conversion submitted to Lender not later than noon Cincinnati, Ohio time (or such later time acceptable to Lender in its sole discretion) on the Business Day on which such Interest Period expires, Borrowers will be deemed to have requested that the Tranche Rate Loan then maturing be continued as a Tranche Rate Loan for the same Interest Period commencing on the date on which such expiring Interest Period ends. If a Borrower requests a new Loan but fails to submit a Notice of Borrowing as required by this paragraph, and if Borrowers would otherwise be entitled to elect a Tranche Rate Loan under the terms of this Agreement, Borrowers will be deemed to have elected to have such principal amount bear interest as a Tranche Rate Loan with a Tranche Interest Period of one month, commencing on the date of the advance. Unless otherwise permitted by Lender in its sole discretion: (A) in no event may the last day of any Interest Period exceed the Maturity Date, (B) in no event may any new Interest Period commence with respect to any Tranche Rate Loan requested to be converted hereunder prior to the expiration of the applicable Interest Period then in effect with respect to such Tranche Rate Loan, (C) there may be no more than five Tranche Rate Loans outstanding at any one time, and (D) if required by Lender in its sole discretion at any time and from time to time, each request for a Tranche Rate Loan, whether by original issuance or conversion, shall be in a minimum amount of \$25,000.

(b) Temporary Replacement of the Tranche Rate and Tenor Replacement. In the event, prior to commencement of any Interest Period relating to a Tranche Rate Loan, Lender shall determine that no Successor Rate has been determined in accordance with Section 4.04(c) and either: (i) the Tranche Rate is unavailable, unrepresentative, or unreliable, (ii) the Tranche Rate as determined by Lender will not adequately and fairly reflect the cost to Lender of funding the Tranche Rate Loans for such Interest Period, or (iii) the making or funding of Tranche Rate Loans has become impracticable; then, in any such case, Lender shall promptly provide notice of such determination to Borrowers (which shall be conclusive and binding on Borrowers absent

manifest error), and (A) any request for a Tranche Rate Loan or for a conversion to or continuation of a Tranche Rate Loan shall be automatically withdrawn and shall be deemed a request for a Reference Rate Loan, (B) each Tranche Rate Loan will automatically, on the last day of the then current Interest Period relating thereto, become a Reference Rate Loan, and (C) the obligations of Lender to make Tranche Rate Loans shall be suspended until Lender determines that the circumstances giving rise to such suspension no longer exist, in which event Lender shall so notify Borrowers. If a Successor Rate has been determined in accordance with Section 4.04(c) and Lender determines that any of the circumstances described in clauses (i)-(iii) of this paragraph has occurred, then clauses (A)-(C) of this paragraph shall apply as if each reference to Tranche Rate therein were a reference to the Successor Rate.

At any time (including in connection with the implementation of a Successor Rate), the Lender may remove any tenor of a Tranche Rate that is unavailable, non-representative, or not in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, in the Lender's sole discretion, for Tranche Rate settings; *provided* however that the Lender may reinstate such previously removed tenor for Tranche Rate settings, if the Lender determines in its sole discretion that such tenor has become available and representative again.

(c) Tranche Rate Replacement.

Notwithstanding anything to the contrary herein or in any other Loan Document (and any Rate Contract shall be deemed not to be a "Loan Document" for purposes of this Section 4.04(c)), but without limiting Section 4.04(b) above, if the Lender determines (which determination shall be conclusive and binding on Borrowers absent manifest error) that any of the circumstances described in Section 4.04(b)(i)-(iii) has occurred and is unlikely to be temporary or the administrator of the Tranche Rate or a Governmental Authority having or purporting to have jurisdiction over the Lender or such administrator has made a public statement identifying a specific date (the "**Scheduled Unavailability Date**") after which the Tranche Rate will no longer be representative or made available or used for determining the interest rate of loans or otherwise cease or will no longer be in compliance or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Benchmarks, and there is no successor administrator satisfactory to the Lender, then on a date and time determined by the Lender (the "**Tranche Rate Replacement Date**"), but no later than the Scheduled Unavailability Date, the Tranche Rate will be replaced hereunder and under any other Loan Document with Daily Simple SOFR.

(i) If the Successor Rate is based on Daily Simple SOFR, interest shall be due and payable on a monthly basis.

(ii) Notwithstanding anything to the contrary herein, if the Lender determines that the Successor Rate designated in Section 4.04(c)(i) above is not available or administratively feasible, or if any of the circumstances described in Section 4.04(b)(i) with regard to the Tranche Rate has occurred with respect to a Successor Rate then in effect, the Lender may replace the Tranche Rate or any then current Successor Rate in accordance with this Section 4.04(c) with another alternative benchmark rate and a Spread Adjustment, giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated



credit facilities and any recommendations of a relevant Governmental Authority, and which Spread Adjustment or method for calculating such Spread Adjustment shall be published on an information service as selected by the Lender from time to time in its reasonable discretion. Any such alternative benchmark rate and Spread Adjustment shall constitute a Successor Rate hereunder. Any such amendment shall become effective on the date set forth in a written notice provided by the Lender to Borrowers (such date to be five or more Business Days after the date of such notice).

(iii) Notwithstanding anything to the contrary herein, if the Successor Rate would be less than the Index Floor, the Successor Rate will be deemed to be the Index Floor for the purposes of this Agreement and the other Loan Documents. Further, if the interest rate to be replaced is rounded upwards to the next 1/8th of 1% under the terms of this Agreement or any Loan Document, the Successor Rate shall also be rounded up to the next 1/8th; *provided further* that this provision governing the Index Floor and rounding shall not apply to any portion of a Loan subject to a Hedging Agreement.

(iv) The Lender does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, or any other matter related to the Tranche Rate or any Successor Rate, including the selection of such rate, any related Spread Adjustment, or any Conforming Changes, or whether the composition or characteristics of any Successor Rate and Spread Adjustment or Conforming Changes will be similar to, or produce the same value or economic equivalence of, the initial Tranche Rate.

(v) Notwithstanding anything to the contrary contained herein, if, after the Closing Date, Borrowers enter into a Hedging Agreement with respect to all or part of an Advance and the floating interest rate under the Hedging Agreement is Daily Simple SOFR, the Lender may replace the Tranche Rate hereunder for such Advance or part of an Advance with Daily Simple SOFR and a Spread Adjustment without the consent of any other party hereto; *provided further* that, if subsequent thereto, the Lender and Borrowers amend such Hedging Agreement to include, or terminate such Hedging Agreement and enter into a new Hedging Agreement with, a floating interest rate thereunder of the original Tranche Rate, then the Lender may further replace Daily Simple SOFR with the original Tranche Rate (and a Spread Adjustment, if applicable) hereunder without the consent of any other party hereto; and, in either such event, (A) such rate shall be a Successor Rate hereunder, and (B) the Lender shall provide written notice thereof to Borrowers.

(d) Illegality. Notwithstanding any other provisions hereof, if any Law shall make it unlawful for Lender to make, fund or maintain Tranche Rate Loans, Lender shall promptly give notice of such circumstances to Borrowers. In such an event, (i) the commitment of Lender to make Tranche Rate Loans, continue Tranche Rate Loans as Tranche rate Loans or convert Reference Rate Loans to Tranche Rate Loans shall be immediately suspended and (ii) all outstanding Tranche Rate Loans shall be converted automatically to Reference Rate Loans on the last day of the Interest Period thereof or at such earlier time as may be required by Law.

(e) Tranche Rate Breakage Fee. Upon (i) any default by Borrowers in making any borrowing of, conversion into or conversion of any Tranche Rate Loan following Borrowers' delivery to Lender of any applicable request for a Tranche Rate Loan or Notice of Conversion or

(ii) any payment of a Tranche Rate Loan on any day that is not the last day of the Interest Period applicable thereto (regardless of the source of such prepayment and whether voluntary, by acceleration or otherwise), Borrowers shall promptly pay Lender an amount equal to the amount of any losses, expenses and liabilities (including any loss (including interest paid) in connection with the re-employment of such funds) that Lender sustains as a result of such default or such payment.

(f) Increased Costs. If, after the Closing Date, any Change in Law: (i) shall impose, modify or deem applicable any reserve (including any reserve imposed by the Board of Governors of the Federal Reserve System, or any successor thereto, but excluding any reserve included in the determination of the Tranche Rate pursuant to the provisions of this Agreement), special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by Lender, or (ii) shall impose on Lender any other condition affecting its Tranche Rate Loans, any of its notes issued pursuant hereto (if any) or its obligation to make Tranche Rate Loans; and the result of anything described in these clauses (i) and (ii) above is to increase the cost to (or to impose a cost on) Lender of making or maintaining any Tranche Rate Loan, or to reduce the amount of any sum received or receivable by Lender under this Agreement or under any of its notes issued pursuant hereto (if any) with respect thereto, then upon demand by Lender, Borrowers shall promptly pay directly to Lender such additional amount as will compensate Lender for such increased cost or such reduction, so long as such amounts have accrued on or after the day that is nine months prior to the date on which Lender first made demand therefor (except that, if the occurrence giving rise to such increased cost or reduction is retroactive, then the nine month period referred to above shall be extended to include the period of retroactive effect thereof).

(g) Conforming Changes. In connection with the use, implementation or administration of the Tranche Rate, including any temporary or permanent replacement for the Tranche Rate, Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. Lender will promptly notify Borrowers of the effectiveness of any Conforming Changes in connection with the use, implementation or administration of the Tranche Rate or any temporary or permanent replacement of the Tranche Rate.

#### 4.05 Fees And Charges.

(a) Closing Fee. Borrowers shall pay to Lender a closing fee of \$227,020, which fee shall be fully earned and payable on the date of disbursement of the initial Loans hereunder.

(b) Unused Line Fee. Borrowers shall pay to Lender an unused line fee of 0.375% per annum of the difference between (i) the Maximum Revolving Loan Limit and (ii) the sum of (A) the average daily balance of the Revolving Loans plus (B) the Letter of Credit Obligations for each month, which fee shall be fully earned by Lender and payable monthly in arrears on the first Business Day of each month. Said fee shall be calculated on the basis of a 360 day year.

(c) Letter of Credit Fee. Borrowers shall remit to Lender a Letter of Credit fee equal to the Letter of Credit Fee Amount, which fee shall be payable monthly in arrears on the last Business Day of each month for commercial Letters of Credit and payable in advance at issuance and annually thereafter for standby Letters of Credit. The Letter of Credit Fee shall be calculated on the basis of a 360 day year.

(d) Termination Fee. If, during the term of this Agreement, Borrowers (x) prepay all of the Obligations and terminate Lender's commitment to make Loans or (y) the Obligations are accelerated under **Section 13.02**, then Borrowers shall pay to Lender as a termination fee, in addition to the payment of all other Obligations, an amount equal to (i) 2.0% of the Facility Amount if such prepayment occurs two years or more prior to the Maturity Date, or  
(ii) 1.0% of the Facility Amount if such prepayment occurs less than two years, but at least one years prior to the Maturity Date.

(e) Costs and Expenses. Borrowers shall reimburse Lender for all reasonable and documented costs and expenses, including expenses and fees of third-party service providers, legal expenses and reasonable and documented attorneys' fees for outside counsel, incurred by Lender in connection with the (i) documentation and consummation of this transaction, any Bank Product Agreement and any other transactions between Borrowers or any Borrower and Lender in connection with any credit, loan or lease provided by Lender to a Borrower or Borrowers, including amendments to this Agreement or any Loan Document, Uniform Commercial Code and other public record searches and filings, overnight courier or other express or messenger delivery, appraisal costs, surveys, title insurance and environmental audit or review costs; (ii) collection, protection or enforcement of any rights in or to the Collateral; (iii) collection of any Obligations;  
(iv) the realization upon, disposition or sale of, any or all of the Collateral; (v) administration, monitoring, processing and servicing of the Loans, the Loan Documents, and the Collateral; and  
(vi) enforcement of any of Lender's rights under this Agreement or any other Loan Document (including any costs and expenses of any third party provider engaged by Lender for such purposes). Borrowers shall also pay all normal service charges with respect to all accounts maintained by each Borrower with Lender and any additional services requested by a Borrower from Lender.

(f) Capital Adequacy Charge. If Lender shall have determined that any Change in Law affecting Lender or any lending office of Lender or Lender's holding company, if any, regarding capital or liquidity requirements, does or shall have the effect of reducing the rate of return on Lender's (or Lender's holding company, if any) does or shall have the effect of reducing the rate of return on Lender's capital as a consequence of this Agreement, Lender's commitment, the Loans made or Letters of Credit issued by Lender or Lender's obligations hereunder to a level below that which Lender (or Lender's holding company, if any) could have achieved but for such adoption, change or compliance (taking into consideration Lender's policies with respect to capital adequacy and liquidity) by a material amount, then from time to time, after submission by Lender to Borrowers of a written demand therefor together with the certificate described below, Borrowers shall pay to Lender within ten (10) days of demand such additional amount or amounts as will compensate Lender for such reduction, such written demand to be made promptly following such determination. A certificate of Lender claiming entitlement to payment as set forth above shall be conclusive in the absence of manifest error. Such certificate shall set forth the nature of the occurrence giving rise to such reduction, the amount of the additional amount or amounts to be

paid to Lender, and the method by which such amount was determined. In determining such amount, Lender may use any reasonable averaging and attribution method, applied on a non-discriminatory basis; provided that if the Lender fails to give such notice within one hundred eighty (180) days after it obtains knowledge of such Change in Law, the Lender shall, with respect to compensation payable pursuant to this Section, only be entitled to payment for costs incurred from and after the date one hundred eighty (180) days prior to the date that the Lender does give such notice. A certificate of Lender claiming entitlement to payment as set forth above shall be conclusive in the absence of manifest error. Such certificate shall set forth the nature of the occurrence giving rise to such reduction, the amount of the additional amount or amounts to be paid to Lender, and the method by which such amount was determined. In determining such amount, Lender may use any reasonable averaging and attribution method, applied on a non-discriminatory basis.

#### **4.06Maximum Interest.**

It is the intent of the parties that the rate of interest and other charges to each Borrower under the Loan Documents shall be lawful; therefore, if for any reason the interest or other charges payable under this Agreement are found by a court of competent jurisdiction, in a final determination, to exceed the limit which Lender may lawfully charge such Borrower, then the obligation to pay interest and other charges shall automatically be reduced to such limit and, if any amount in excess of such limit shall have been paid, then such amount shall be refunded to such Borrower.

#### **4.07Authorization to Make Revolving Loans.**

Each Borrower hereby authorizes Lender, in its sole discretion, to charge any of such Borrower's accounts or advance Revolving Loans to make any payments of principal, interest, fees, costs or expenses required to be made under the Loan Documents.

#### **4.08Computation of Interest and Fees.**

All interest accruing on the outstanding principal amount of the Loans and fees hereunder outstanding from time to time shall be calculated on the basis of actual number of days elapsed in a 360-day year, which results in more interest charged than if interest were calculated based on a 365-day year.

#### **4.09Taxes.**

(a) Any and all payments by a Borrower to or on account of any obligation of Borrowers hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, *provided* that, if a Borrower shall be required by any applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then: (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this **Section 4.09(a)**), Lender receives an amount equal to the sum it would have received had no such deductions been made; (ii) such Borrower shall make such deductions; and (iii) such Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Without limiting the provisions of **Section 4.09(a)**, each Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Each Borrower shall jointly and severally indemnify Lender, within ten days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Taxes imposed or asserted on or attributable to amounts payable under this **Section 4.09**) paid by Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrowers by Lender shall be conclusive absent manifest error.

(d) If requested in writing by Lender, each Borrower shall deliver to Lender, as soon as practicable after any payment of Indemnified Taxes or Other Taxes by such Borrower to a Governmental Authority, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Lender.

(e) If Lender receives a refund of any Taxes or Other Taxes as to which it has been indemnified by Borrowers or with respect to which Borrowers have paid additional amounts pursuant to this **Section 4.09**, it shall pay to the applicable Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this **Section 4.09** with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that each Borrower, upon the request of Lender, agrees to repay the amount paid over to such Borrower (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to Lender in the event Lender is required to repay such refund to such Governmental Authority. This subsection (e) shall not be construed to require Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to a Borrower or any other Person.

#### 4.10 **Payments Generally.**

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

## **5. COLLATERAL.**

### **5.01Grant of Security Interest to Lender.**

As security for the payment of all Loans now or in the future made by Lender to Borrowers or any Borrower hereunder and for the payment or other satisfaction of all other Obligations, each Borrower hereby grants to Lender a continuing security interest in all of such Borrower's right, title, and interest in the following property, whether now or hereafter existing, acquired or arising and wherever now or hereafter located: (a) all Accounts (whether or not Eligible Accounts) and all Goods whose sale, lease or other disposition by such Borrower has given rise to Accounts and have been returned to, or repossessed or stopped in transit by, such Borrower; (b) all Chattel Paper, Instruments, Documents and General Intangibles (including all patents, patent applications, trademarks, trademark applications, trade names, trade secrets, goodwill, copyrights, copyright applications, registrations, licenses, software, franchises, customer lists, tax refund claims, claims against carriers and shippers, guarantee claims, contract rights, payment intangibles, security interests, security deposits and rights to indemnification); (c) all Inventory (whether or not Eligible Inventory); (d) all Goods (other than Inventory), including Equipment, vehicles and Fixtures; (e) all Goods on consignment; (f) all Investment Property; (g) all Deposit Accounts, bank accounts, deposits and cash; (h) all Letter-of-Credit Rights; (i) Commercial Tort Claims listed on Schedule 5.01; (j) any other property of such Borrower now or hereafter in the possession, custody or control of Lender or any agent or any parent, affiliate or Subsidiary of Lender or any participant with Lender in the Loans, for any purpose (whether for safekeeping, deposit, collection, custody, pledge, transmission or otherwise); and (k) all additions and accessions to, substitutions for, and replacements, products and Proceeds of the foregoing property, including proceeds of all insurance policies insuring the foregoing property, and all of such Borrower's books and records relating to any of the foregoing and to such Borrower's business; provided, that the Collateral shall not include any Excluded Property.

### **5.02Other Security.**

Lender, in its sole discretion, without waiving or releasing any obligation, liability or duty of any Borrower under the Loan Documents or any Event of Default, may at any time or times hereafter, but shall not be obligated to, pay, acquire or accept an assignment of any security interest, lien, encumbrance or claim asserted by any Person in, upon or against the Collateral, provided, that Lender may take such actions with respect to Permitted Liens only during a Default Period. All sums paid by Lender in respect thereof and all costs, fees and expenses including reasonable attorney fees, all court costs and all other charges relating thereto incurred by Lender shall constitute Obligations, payable by Borrowers to Lender on demand and, until paid, shall bear interest at the highest rate then applicable to Loans hereunder.

### **5.03Possessory Collateral.**

Promptly upon a Borrower's receipt of any portion of the Collateral evidenced by an agreement, Instrument or Document, including any Tangible Chattel Paper and any Investment Property consisting of certificated securities with a value in excess of \$100,000 at any time outstanding, such Borrower shall deliver the original thereof to Lender together with an appropriate endorsement or other specific evidence of assignment thereof to Lender (in form and

substance acceptable to Lender). If an endorsement or assignment of any such items shall not be made for any reason, Lender is hereby irrevocably authorized, as such Borrower's attorney and agent-in-fact, to endorse or assign the same on such Borrower's behalf.

#### **5.04 Electronic Chattel Paper.**

To the extent that a Borrower obtains or maintains any Electronic Chattel Paper, such Borrower shall create, store and assign the record or records comprising the Electronic Chattel Paper in aggregate amount in excess of \$100,000 at any time outstanding in such a manner that (a) a single authoritative copy of the record or records exists which is unique, identifiable and except as otherwise provided in clauses (d), (e) and (f) below, unalterable, (b) the authoritative copy identifies Lender as the assignee of the record or records, (c) the authoritative copy is communicated to and maintained by the Lender or its designated custodian, (d) copies or revisions that add or change an identified assignee of the authoritative copy can only be made with the participation of Lender, (e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy and (f) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

#### **5.05 Possession of Collateral.**

Until otherwise notified to the contrary in writing by Lender during a Default Period, each Borrower shall have the right, except as otherwise provided in this Agreement, to make dispositions of assets as permitted pursuant to **Section 11.01**, and in the ordinary course of such Borrower's business, to (a) sell, lease or furnish under contracts of service any of such Borrower's Inventory normally held by such Borrower for any such purpose; (b) use and consume any raw materials, work in process or other materials normally held by such Borrower for such purpose; and (c) dispose of worn-out, obsolete or unuseful assets so long as, to the extent required under **Section 2.07(f)(ii)** all of the Net Cash Proceeds thereof are paid to Lender for application to the Obligations (except (i) for such proceeds which are required to be delivered to the holder of a Permitted Lien which is prior in right of payment to the Obligations, and (ii) to the extent not required to be so paid under **Section 2.07(f)(ii)** such proceeds are used by such Borrower to replace such assets); provided, however, that a sale in the ordinary course of business shall not include any transfer or sale in satisfaction, partial or complete, of a debt owed by such Borrower.

#### **5.06 Pledged Collateral.**

(a) **Registration in Nominee Name; Denominations.** Each Borrower hereby agrees that without limiting Article 5, during a Default Period, Lender shall have the right (in its sole and absolute discretion) to hold, where applicable, Pledged Collateral in the Lender's own name as pledgee, the name of its nominee (as pledgee or as sub-agent) or the name of such Borrower, endorsed or assigned, where applicable, in blank or in favor of Lender; provided, that at such time as the applicable Default Period is no longer continuing, all such Pledged Collateral shall revert to the name of such Borrower, and the Lender shall, at Borrowers' request and sole cost and expense, take all actions reasonably necessary to effectuate the same.

(b) **Distributions.** So long as no Default Period then exists, Borrowers shall be entitled to receive any and all dividends, interest or principal in respect of Pledged Collateral

provided all such payments received with respect thereto are deposited into an account maintained with Lender to the extent required pursuant to Section 6.1. During a Default Period, Lender shall have the right to receive (for application to the Obligations) all dividends, interest or principal in respect of Pledged Collateral and to the extent that any thereof is received by or on behalf of a Borrower, it shall be held in trust for the benefit of Lender and shall be forthwith delivered to Lender upon demand in the same form as so received (with any necessary endorsement). Any and all money and other property paid over to or received by Lender pursuant to this clause shall be retained by Lender in an account to be established in the name of Lender, under its sole dominion and control and shall be applied to the Obligations in accordance with the terms of this Agreement.

(c) Voting Rights. Subject to the next sentence, Borrowers shall be entitled to exercise any and all voting and other consensual rights to which it is entitled in connection with any Pledged Collateral provided such voting and other consensual rights are not exercised in a manner that would knowingly and intentionally result in an Event of Default. During a Default Period and upon three (3) days' prior written notice to Borrowers of Lender's intention to exercise such rights, Lender shall be exclusively vested with all rights of Borrowers to exercise the voting and consensual rights and powers with respect to Pledged Collateral.

(d) Control. If at any time any Pledged Equity Interests do not constitute Securities or if any Pledged Equity Interests constituting Securities are not evidenced by a Security Certificate, each Borrower shall take such actions and execute such documents, at Borrowers' expense, as reasonably requested by Lender which are necessary to establish Lender's control thereof or otherwise perfect the security interest therein.

#### **5.07 Assignment of Insurance.**

As additional security for the payment and performance of the Obligations, each Borrower hereby assigns to the Lender any and all monies (including proceeds of insurance and refunds of unearned premiums) due or to become due under, and all other rights of such Borrower with respect to, any and all policies of insurance now or at any time hereafter covering the Collateral or any evidence thereof or any business records or valuable papers pertaining thereto, and each Borrower hereby directs the issuer of any such policy to pay all such monies directly to the Lender (subject to Borrowers' rights in such monies under **Section 2.07(f)(iii)**). At any time, whether or not a Default Period exists, the Lender may (but need not), in the Lender's name or in the applicable Borrower's name, execute and deliver proof of claim, receive all such monies, endorse checks and other instruments representing payment of such monies, and adjust, litigate, compromise or release any claim against the issuer of any such policy. Any monies received as payment for any loss under any insurance policy mentioned above (other than liability insurance policies) or as payment of any award or compensation for condemnation or taking by eminent domain, shall be paid over to the Lender to be applied to the Obligations or released to the applicable Borrower pursuant to **Section 2.07(f)(iii)**. Any such repairs, replacements, or restorations shall be effected in a timely manner and Borrowers shall make all required repairs, replacements and restorations in a manner that Borrowers reasonably believe will cause the operating efficiency and the value thereof to be preserved and maintained in all material respects.



#### **5.08Preservation of Collateral and Perfection of Security Interests.**

(a) Each Borrower shall, at Lender's reasonable request, at any time and from time to time, authenticate, execute and deliver to Lender such financing statements, documents and other agreements and instruments (and pay the cost of filing or recording the same in all public offices deemed necessary or desirable by Lender) and do such other acts and things or use reasonable efforts to cause third parties to do such other acts and things as Lender may deem necessary or desirable, in its reasonable discretion, in order to establish and maintain a valid, attached and perfected security interest in the Collateral in favor of Lender (free and clear of all other liens, claims, encumbrances and rights of third parties whatsoever, whether voluntarily or involuntarily created, except Permitted Liens) to secure payment of the Obligations, and in order to facilitate the collection of the proceeds of Collateral. Each Borrower irrevocably hereby makes, constitutes and appoints Lender (and all Persons designated by Lender for that purpose) as such Borrower's true and lawful attorney and agent-in-fact to execute and file such financing statements, documents and other agreements and instruments and do such other acts and things as may be necessary to preserve and perfect Lender's security interest in the Collateral. Each Borrower further ratifies and confirms the prior filing by Lender of any and all financing statements which identify such Borrower as debtor, Lender as secured party and any or all Collateral as collateral. Upon the request of Lender, each Borrower agrees to execute and deliver to Lender Grants of Security Interest in Trademarks and Patents and Grants of Security Interest in Copyrights for registered trademarks and patents that constitute Collateral, in forms reasonably acceptable to Lender.

(b) At any time upon Lender's request, Borrowers will execute and deliver, or cause to be executed and delivered, such other agreements, documents and instruments as may be required by Lender to perfect the security interests of Lender in those Accounts of an account debtor with its chief executive office or principal place of business in Canada, to the extent that an Event of Default then exists or such Accounts constitute more than five percent (5%) of all Eligible Accounts, in accordance with the applicable laws of the province or territory of Canada in which such chief executive office or principal place of business is located, and take, or cause to be taken, such other and further actions as Lender may request to enable Lender, as secured party with respect thereto, to collect such accounts under the applicable federal, provincial or territorial laws of Canada.

### **6. COLLECTIONS.**

#### **6.01Lockbox and Blocked Account.**

(a) Unless Lender permits Borrowers to use Lender's remote deposit system, each Borrower shall direct all of its Account Debtors to make all payments on the Accounts directly to the Lock Box. Lender may revoke the Loan Parties' ability to use the remote deposit system at any time.

(b) Each Borrower shall establish a Blocked Account for the deposit of all payments received by such Borrower, including payments received in the Lock Box or payments deposited through Lender's remote deposit system. Each Borrower shall promptly deposit in the Blocked Account all other payments received by such Borrower on Accounts in the identical form in which

such payments were received, whether by cash or check. If a Borrower, any Affiliate or Subsidiary of a Borrower, any shareholder, officer, director, employee or agent of a Borrower or any Affiliate or Subsidiary of a Borrower, or any other Person acting for or in concert with a Borrower shall receive any monies, checks, notes, drafts or other payments relating to or as Proceeds of Accounts or other Collateral, such Borrower and each such Person shall promptly upon receipt thereof, shall remit the same (or cause the same to be remitted) in kind to the Blocked Account. The financial institution with which the Blocked Account is established shall acknowledge and agree, in a manner reasonably satisfactory to Lender, that the amounts on deposit in such Lock Box and Blocked Account are the sole and exclusive property of Lender, that such financial institution will follow the instructions of Lender with respect to disposition of funds in the Lock Box and Blocked Account without further consent from such Borrower, that such financial institution has no right to setoff against the Lock Box or Blocked Account or against any other account maintained by such financial institution into which the contents of the Lock Box or Blocked Account are transferred, and that such financial institution shall wire, or otherwise transfer in immediately available funds to Lender in a manner satisfactory to Lender, funds deposited in the Blocked Account on a daily basis as such funds are collected.

(c) Each Borrower agrees that all payments made to such Blocked Account or otherwise received by Lender, whether in respect of the Accounts or as Proceeds of other Collateral or otherwise (except for proceeds of Collateral which are required to be delivered to the holder of a Permitted Lien which is prior in right of payment), will be applied on account of the Obligations in accordance with the terms of this Agreement; provided that, so long as no Default Period is in effect, payments received by Lender shall not be applied to the unmatured portion of the Tranche Rate Loans, but shall be held in a cash collateral account maintained by Lender, until the earlier of (i) the last Business Day of the Interest Period applicable to such Tranche Rate Loan and (ii) the occurrence of an Event of Default; provided further, that so long as no Default Period is in effect, the immediately available funds in such cash collateral account may be disbursed, at Borrowers' discretion, to Borrowers so long as after giving effect to such disbursement, Borrowers' Availability, equals or exceeds the outstanding Revolving Loans at such time.

(d) Each Borrower agrees to pay all customary fees, costs and expenses in connection with opening and maintaining the Lock Box and Blocked Account. All of such fees, costs and expenses if not paid by Borrowers, may be paid by Lender and in such event all amounts paid by Lender shall constitute Obligations hereunder, shall be payable to Lender by Borrowers upon demand, and, until paid, shall bear interest at the highest rate then applicable to Loans hereunder.

(e) All checks, drafts, instruments and other items of payment or Proceeds of Collateral shall be endorsed by the applicable Borrower to Lender for application to the Obligations in accordance with the terms of this Agreement, and, if that endorsement of any such item shall not be made for any reason, Lender is hereby irrevocably authorized to endorse the same on such Borrower's behalf. For the purpose of this section, each Borrower irrevocably hereby makes, constitutes and appoints Lender (and all Persons designated by Lender for that purpose) as such Borrower's true and lawful attorney and agent-in-fact (i) to endorse such Borrower's name upon said items of payment and/or Proceeds of Collateral and upon any Chattel Paper, Document, Instrument, invoice or similar document or agreement relating to any Account of such Borrower or Goods pertaining thereto; (ii) to take control in any manner of any item of payment or Proceeds

thereof; and (iii) to have access to any lock box or postal box into which any of such Borrower's mail is deposited, and open and process all mail addressed to such Borrower and deposited therein.

#### **6.02 Collection of Accounts.**

Lender may, at any time and from time to time during a Default Period, whether before or after notification to any Account Debtor and whether before or after the maturity of any of the Obligations, (a) enforce collection of any of Borrowers' Accounts or other amounts owed to a Borrower by suit or otherwise; (b) exercise all of each Borrower's rights and remedies with respect to proceedings brought to collect any Accounts or other amounts owed to such Borrower; (c) surrender, release or exchange all or any part of any Accounts or other amounts owed to each Borrower, or compromise or extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder; (d) sell or assign any Account of each Borrower or other amount owed to each Borrower upon such terms, for such amount and at such time or times as Lender deems advisable; (e) prepare, file and sign each Borrower's name on any proof of claim in bankruptcy or other similar document against any Account Debtor or other Person obligated to such Borrower; and (f) do all other acts and things which are necessary, in Lender's sole discretion, to fulfill each Borrower's obligations under the Loan Documents and to allow Lender to collect the Accounts or other amounts owed to such Borrower. In addition to any other provision hereof, Lender may at any time, during a Default Period, at Borrowers' expense, notify any parties obligated on any of the Accounts to make payment directly to Lender of any amounts due or to become due thereunder.

#### **6.03 Application of Collected Funds.**

(a) For purposes of determining the amount of Loans available for borrowing purposes, the balance in the Blocked Account as of the end of a Business Day, shall, without duplication, be applied at the beginning of the next Business Day against the Revolving Loans or the other Obligations to the extent required to be applied to such Obligations under this Agreement).

(b) For purposes of determining the Borrowing Base, that portion of the balance in the Blocked Accounts as of the end of a Business Day consisting of payments on Accounts, shall, without duplication, be applied to reduce the total amount of Eligible Accounts set forth in the most recent Borrowing Base Certificate delivered to Lender by Borrowers as the same may have been previously adjusted pursuant to this **Section 6.03(b)**.

(c) For purposes of calculating interest and fees, Lender shall apply all collected and available funds one Business Day after application of the proceeds set forth in **Section 6.03(a)**.

#### **6.04 Account Statements.**

On a monthly basis, Lender shall deliver to Borrowers an account statement showing all Loans, charges and payments, which shall be deemed final, binding and conclusive upon Borrowers unless Borrowers notify Lender in writing, specifying any error therein, within 30 days of the date such account statement is sent to Borrowers and any such notice shall only constitute an objection to the items specifically identified.

7. COLLATERAL, AVAILABILITY AND FINANCIAL REPORTS AND SCHEDULES

7.01 Borrowing Base Certificate and Periodic Reports.

(a) Borrowers shall deliver to Lender an executed Borrowing Base Certificate on a periodic basis, but in no event less frequently than monthly within 20 days of month- end. Each Borrowing Base Certificate delivered to Lender shall (i) be accompanied by copies of Borrowers' sales journal, cash receipts journal and credit memo journal for the relevant period, (ii) reflect the activity of Borrowers with respect to Accounts since the most recent Borrowing Base Certificate, (iii) [reserved], (iv) include a list of all Accounts, and (v) contain such additional information concerning Accounts and Inventory as may be reasonably requested by Lender including, but only if specifically requested by Lender, copies of all invoices prepared in connection with such Accounts.

(b) Borrowers shall deliver to Lender, in addition to any other reports, as soon as practicable and in any event within 20 days after the end of each calendar month: (i) a detailed trial balance of Borrowers' Accounts, in form and substance reasonably satisfactory to Lender including the names and addresses of all Account Debtors of Borrowers, and (ii) a summary and detail of accounts payable (such Accounts and accounts payable divided into such time intervals as Lender may require in its sole discretion), including a listing of any held checks.

(c) Borrowers shall deliver to Lender within 20 days after the end of each calendar month a perpetual inventory and Lender's standard form of Inventory report then in effect or the form most recently requested from Borrowers by Lender, for Borrowers by each category of Inventory, together with a description of the change in each category of Inventory since the previous report.

7.02 Compliance Certificate.

Within 30 days (or 60 days with from the Closing through December 31, 2023) after each testing date for the financial covenants in Section 12, Borrowers shall deliver to Lender a compliance certificate in the form of Exhibit A, which certifies compliance with the Section 12 and provides a reasonably detailed calculation of the financial covenants contained in Section 12.

7.03 Financial Statements.

Borrowers shall deliver to Lender the following financial information, all of which shall be prepared in accordance with GAAP: (a) no later than 30 days after each calendar month (or 60 days with from the Closing through December 31, 2023), copies of internally prepared financial statements, including balance sheets and statements of income, retained earnings and cash flow of Borrowers, and a detailed general ledger trial balance, certified by the Chief Financial Officer of each Borrower together with a memorandum comparing variances of each of the foregoing against projections provided to Lender hereunder and an explanation of such variances with such backup documentation as may be required by Lender; and (b) no later than 120 days after the end of each of Borrowers' Fiscal Years, audited annual financial statements with an unqualified opinion (other than any qualification issued solely as a result of the upcoming maturity of the Loans) by

independent certified public accountants selected by Borrowers and reasonably satisfactory to Lender, which financial statements shall be accompanied by copies of any management letters sent to Borrowers by such accountants.

**7.04 Annual Projections.**

As soon as practicable and in any event not less than 30 days after the beginning of each Fiscal Year, Borrowers shall deliver to Lender projected balance sheets, statements of income and cash flow for Borrowers, for each of the 12 months during such Fiscal Year, which shall include the assumptions used therein, together with appropriate supporting details as reasonably requested by Lender.

**7.05 Public Reporting.**

Promptly upon the filing thereof, Borrowers shall deliver to Lender copies of all registration statements and annual, quarterly, monthly or other regular reports which Borrowers or any of their Subsidiaries files with the Securities and Exchange Commission, as well as promptly providing to Lender copies of any reports and proxy statements delivered to its shareholders.

**7.06 Other Information.**

Promptly following request therefor by Lender, such other business or financial data, reports, appraisals and projections as Lender may reasonably request.

**8. TERMINATION.**

**8.01 Original Term.**

This Agreement shall be in effect from the date hereof until the Termination Date. Subject to the payment of the termination fee set forth in **Section 4.05(d)**, if any, Borrowers may terminate this Agreement upon 10 days' prior written notice and payment in full of the Obligations (other than contingent Obligations which expressly survive termination of this Agreement and for which no claim has been made).

**8.02 Termination of Agreement.**

Lender shall not make any additional Loans on or after the Termination Date and this Agreement shall terminate on the date thereafter that the Obligations are paid in full (other than contingent Obligations which expressly survive termination of this Agreement and for which no claim has been made) and all Letters of Credit have expired or been cash collateralized acceptable to Lender (in an amount not to exceed 105% of the face amount of such outstanding Letters of Credit). The termination of this Agreement shall not affect Lender's or any Loan Party's rights, or any of the Obligations having their inception prior to the effective date of such termination, and the provisions hereof shall continue to be fully operative until all transactions entered into, rights or interests created or Obligations have been fully and paid, disposed of, concluded or liquidated. The security interests, Liens, and rights granted to Lender herein shall continue in full force and effect until all of the Obligations have been paid and performed in full. At such time as Borrowers have repaid all of the Obligations and this Agreement has terminated, Lender, at Borrowers'

request, agrees to deliver a release, in form and substance satisfactory to Lender, of all obligations and liabilities of Lender and its officers, directors, employees, agents, parents, Subsidiaries and Affiliates to Borrowers (excluding obligations that expressly survive the termination of this Agreement), and if Borrowers are obtaining new financing from another lender ("Refinancing Lender"), Borrowers shall use commercially reasonable efforts to deliver such lender's indemnification of Lender, in form and substance satisfactory to Lender, for checks or other payment items which Lender has credited to any Borrower's account, but which subsequently are dishonored for any reason or for automatic clearinghouse or wire transfers not yet posted to such Borrower's account. If Borrowers are unable to obtain such indemnification from Refinancing Lender, Lender shall be entitled to require cash collateral from Borrowers in an amount satisfactory to Lender in its reasonable discretion to satisfy such dishonored payment items and automatic clearinghouse and wire transfers not yet posted to a Borrower's account.

## **9. REPRESENTATIONS AND WARRANTIES.**

Each Borrower represents and warrants to Lender as follows:

### **9.01 Financial Statements and Other Information.**

The financial statements and other information delivered or to be delivered by Borrowers to Lender at or prior to the Closing Date fairly present in all material respects the financial condition of Borrowers at the respective dates thereof, subject in the case of unaudited statements to changes resulting from audit and normal year-end adjustment, and there has been no Material Adverse Effect with respect to a Borrower since the date of the financial statements delivered to Lender most recently prior to the Closing Date. All written information now or heretofore furnished by a Borrower to Lender is true and correct in all material respects as of the date with respect to which such information was furnished.

### **9.02 Locations.**

The office where each Borrower keeps its books, records and accounts (or copies thereof) concerning the Collateral, each Borrower's principal place of business and all of each Borrower's other places of business, locations of Collateral and post office boxes and locations of bank accounts are as set forth on Schedule 9.02 and at other locations within the continental United States (or Mexico if approved by Lender) of which Lender has been advised by a Borrower in accordance with **Section 10.02(a)**. The Collateral, including the Equipment (except any part thereof which a Borrower shall have advised Lender in writing consists of Collateral normally used in more than one state) is kept, or, in the case of vehicles, based, only at the addresses set forth on Schedule 9.02, and at other locations within the continental United States (or Mexico if approved by Lender) of which Lender has been advised by a Borrower in writing in accordance with **Section 10.02(a)**.

### **9.03 Loans by Borrowers.**

No Borrower has made any loans or advances to any Affiliate or other Person except for (i) advances authorized hereunder to employees, officers and directors of a Borrower for travel and other expenses arising in the ordinary course of a Borrower's business, (ii) short-term loans and advances to employees of a Borrower, in the form of a paycheck advance arising in the

ordinary course of a Borrower's business in an aggregate amount not to exceed \$100,000; (iii) loans or advances between Borrowers, and (iv) loans or advances permitted pursuant to **Section 11.06**.

#### 9.04 **Accounts and Inventory.**

Each Account or item of Inventory which a Borrower shall, expressly or by implication, request Lender to classify as an Eligible Account or as Eligible Inventory, respectively, shall, as of the time when such request is made, conform in all respects to the requirements of such classification as set forth in the respective definitions of "Eligible Account" and "Eligible Inventory" as set forth herein.

#### 9.05 **Liens.**

Each Borrower is the lawful owner of all Collateral now purportedly owned by such Borrower, free from all liens, claims, security interests and encumbrances whatsoever, whether voluntarily or involuntarily created and whether or not perfected, other than the Permitted Liens.

#### 9.06 **Organization, Authority and No Conflict.**

Each Borrower is an entity of the type set forth on Schedule 9.06, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation. Each Borrower's jurisdiction of incorporation, organization or formation, federal employer identification number and organization identification number are correctly set forth on Schedule 9.06. Each Borrower is duly qualified and in good standing in all states where the nature and extent of the business transacted by it or the ownership of its assets makes such qualification necessary or, if such Borrower is not so qualified, such Borrower may cure any such failure without losing any of its rights, incurring any liens or material penalties, or otherwise affecting Lender's rights, in each case to the extent that failure to so qualify would not be reasonably expected to result in a Material Adverse Effect. Each Borrower has the right and power and is duly authorized and empowered to enter into, execute and deliver the Loan Documents and perform its obligations hereunder and thereunder. Each Borrower's execution, delivery and performance of the Loan Documents does not conflict with the provisions of the organizational documents of such Borrower, any statute, regulation, ordinance or rule of law, or any agreement, contract or other document binding on such Borrower, except for conflicts with agreements, contracts or other documents which would not have a Material Adverse Effect, and such Borrower's execution, delivery and performance of the Loan Documents will not result in the imposition of any lien or other encumbrance upon any of such Borrower's property (other than Permitted Liens) under any existing indenture, mortgage, deed of trust, loan or credit agreement or other agreement or instrument by which such Borrower or any of its property may be bound or affected. If a Borrower is a partnership or limited liability company, such Borrower has not expressly elected to have its Equity Interests treated as "Securities" under and as defined in Article 8 of the Uniform Commercial Code.

#### 9.07 **Litigation.**

Except as disclosed to Lender on Schedule 9.07, there are no actions or proceedings which are pending or, to the best of each Borrower's knowledge, threatened in writing against a Borrower

which are reasonably likely to have a Material Adverse Effect. No Borrower has any Commercial Tort Claims with an aggregate value in excess of \$100,000 pending other than those set forth on Schedule 5.01 and those of which Lender has been advised by a Borrower in writing in accordance with **Section 10.02(c)**.

**9.08 Compliance with Laws and Maintenance of Permits.**

Each Borrower has obtained all governmental consents, franchises, certificates, licenses, authorizations, approvals and permits, the lack of which would have a Material Adverse Effect. Each Borrower is in compliance in all material respects with all applicable federal, state, local and foreign statutes, orders, regulations, rules and ordinances (including Environmental Laws and statutes, orders, regulations, rules and ordinances relating to taxes, employer and employee contributions and similar items, securities, ERISA or employee health and safety) the failure to comply with which would have a Material Adverse Effect.

**9.09 Affiliate Transactions.**

Except as set forth on Schedule 9.09 or otherwise permitted pursuant to **Section 11.09**, no Borrower is conducting, permitting or suffering to be conducted, transactions with any Affiliate other than transactions with Affiliates for the purchase or sale of Inventory or services in the ordinary course of business pursuant to terms that are no less favorable to such Borrower than the terms upon which such transactions would have been made had they been made to or with a Person that is not an Affiliate.

**9.10 Names and Trade Names.**

Each Borrower's name has always been as set forth on the first page of this Agreement and no Borrower uses any trade names, assumed names, fictitious names or division names in the operation of its business, except as set forth on Schedule 9.10.

**9.11 Equipment.**

Except for Permitted Liens, each Borrower has good and merchantable title to and ownership of all of its Equipment. No Equipment is a Fixture to real estate unless such real estate is owned by a Borrower and is subject to a mortgage in favor of Lender, or if such real estate is leased, is subject to a landlord's agreement in favor of Lender on terms acceptable to Lender, or an accession to other personal property unless such personal property is subject to a first priority lien in favor of Lender (subject to Permitted Liens).

**9.12 Enforceability.**

The Loan Documents to which each Borrower is a party are the legal, valid and binding obligations of such Borrower and are enforceable against such Borrower in accordance with their respective terms subject to limitations as to enforceability which might result from bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and subject to limitations on the availability of equitable remedies.



9.13 **Solvency.**

Each Borrower is, after giving effect to the transactions contemplated hereby, solvent, able to pay its debts as they become due, has capital sufficient to carry on its business, now owns property having a value both at fair valuation and at present fair saleable value greater than the amount required to pay its debts, and will not be rendered insolvent by the execution and delivery of the Loan Documents or by completion of the transactions contemplated hereunder or thereunder.

9.14 **Indebtedness.**

Except as set forth on Schedule 9.14 and as permitted by **Section 11.02**, no Borrower is obligated (directly or indirectly), for any loans or other Indebtedness other than the Loans.

9.15 **Margin Security and Use of Proceeds.**

No Borrower owns any margin securities, and none of the proceeds of the Loans hereunder shall be used for the purpose of purchasing or carrying any margin securities or for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase any margin securities or for any other purpose not permitted by Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

9.16 **Parent, Subsidiaries and Affiliates.**

Except as set forth on Schedule 9.16, no Borrower has any Parents, Subsidiaries or divisions, nor is any Borrower engaged in any joint venture or partnership with any other Person.

9.17 **No Defaults.**

To the Borrowers' knowledge, no Borrower is in default under any material contract, lease or commitment to which it is a party or by which it is bound. No Borrower knows of any dispute regarding any contract, lease or commitment which would have a Material Adverse Effect.

9.18 **Employee Matters.**

There are no controversies pending or, to Borrowers' knowledge, threatened in writing between a Borrower and any of its employees, agents or independent contractors other than employee grievances arising in the ordinary course of business which would not, in the aggregate, have a Material Adverse Effect, and each Borrower is in compliance with all federal and state laws respecting employment and employment terms, conditions and practices except for such non-compliance which would not have a Material Adverse Effect.

9.19 **Intellectual Property.**

(a) **Intellectual Property Rights.** Set forth on Schedule 9.19 is a complete list of all patents, applications for patents, trademarks, applications to register trademarks, service marks, applications to register service marks, mask works, trade dress and copyrights for which a Borrower is the owner of record (the "**Intellectual Property**"). Except as disclosed on Schedule

9.19, (i) [reserved], (ii) no Person other than a Borrower owns or has been granted any right in the Intellectual Property, (iii) all Intellectual Property is valid, subsisting and enforceable, except to the extent such invalidity or unenforceability would have a Material Adverse Effect and (iv) each Borrower has taken all commercially reasonable action necessary to maintain and protect the Intellectual Property. The use of such Intellectual Property by a Borrower and the operation of its businesses does not infringe any valid and enforceable intellectual property rights of any other Person, except to the extent any such infringement could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To Borrowers' knowledge, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by a Borrower infringes upon any rights held by any other Person, except to the extent any such infringement could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as specifically disclosed on Schedule 9.19, no claim or litigation regarding any of the foregoing is pending or, to Borrowers' knowledge, threatened, and no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code is pending or, to Borrowers' knowledge, proposed, which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Licensed Intellectual Property. No Borrower possesses any licenses of Intellectual Property other than (i) as set forth on Schedule 9.19, and (ii) readily available, non-negotiated licenses of computer software and other intellectual property used solely for performing accounting, word processing and similar administrative tasks.

#### 9.20 Environmental Matters.

No Borrower has generated, used, stored, treated, transported, manufactured, handled, produced or disposed of any Hazardous Materials, on or off its premises (whether or not owned by it) in any manner which at any time violates in any material respect any Environmental Law or any license, permit, certificate, approval or similar authorization thereunder and the operations of each Borrower comply in all material respects with all Environmental Laws and all licenses, permits, certificates, approvals and similar authorizations thereunder. Other than as set forth on Schedule 9.20, to the best of Borrower's knowledge, there has been no investigation, proceeding, complaint, order, directive, claim, citation or notice by any governmental authority or any other Person, nor is any pending or to the best of Borrowers' knowledge threatened with respect to any non-compliance with or violation of the requirements of any Environmental Law by any Borrower or the release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials or any other environmental, health or safety matter, which affects any Borrower or its business, operations or assets or any properties at which any Borrower has transported, stored or disposed of any Hazardous Materials. No Borrower has any material liability (contingent or otherwise) in connection with a release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials. Borrowers hereby represent and warrant that any and all liabilities and obligations associated with the reports, assessments and other matters identified on Schedule 9.20 are immaterial and that all such liabilities and obligations are being indemnified by the Seller pursuant to Article VIII of the Purchase Agreement.

## 9.21 ERISA Matters.

Except as disclosed to the Lender in writing prior to the date hereof, neither any Borrower nor any ERISA Affiliate (a) maintains or has maintained any Pension Plan, (b) contributes or has contributed to any Multiemployer Plan or (c) provides or has provided post-retirement medical or insurance benefits with respect to employees or former employees (other than benefits required under Section 601 of ERISA, Section 4980B of the IRC or applicable state law). No Borrower has received any notice or has any knowledge to the effect that it is not in material compliance with any of the requirements of ERISA, the IRC or applicable state law with respect to any Plan. No Reportable Event exists in connection with any Pension Plan. Each Plan which is intended to qualify under the IRC is so qualified, and no Borrower has knowledge that any fact or circumstance exists which may have an adverse effect on the Plan's tax qualified status. Neither any Borrower nor any ERISA Affiliate has (i) any accumulated funding deficiency (as defined in Section 302 of ERISA and Section 412 of the IRC) under any Pension Plan, whether or not waived, (ii) any liability under Section 4201 or 4243 of ERISA for any withdrawal, partial withdrawal, reorganization or other event under any Multiemployer Plan or (iii) any liability or knowledge of any facts or circumstances which could result in any liability to the PBGC, the Internal Revenue Service, the Department of Labor or any participant in connection with any Plan (other than routine claims for benefits under the Plan).

## 9.22 Anti-Corruption Laws; Anti-Money Laundering Laws; Sanctions; Anti- Terrorism Laws.

(a) No Loan Party nor any of its Subsidiaries nor, to their knowledge, any director, officer, employee, agent, affiliate or representative of any Loan Party or any of its Subsidiaries has taken any action, directly or indirectly, that would result in a violation by such persons of Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions.

(b) No Loan Party nor any of its Subsidiaries nor, to their knowledge, any director, officer, employee, agent, affiliate or representative of any Loan Party or any of its Subsidiaries, is a Person that is, or is owned 50% or more, individually or in the aggregate, directly or indirectly, by one or more, or controlled by, a Person that is: (i) subject to any sanctions administered or enforced by OFAC or the U.S. State Department (collectively, "**Sanctions**"), or (ii) located, organized, or resident in a country or territory that is, or whose government is, the target of Sanctions (including Crimea, Cuba, Iran, North Korea, and Syria).

(c) No Loan Party nor any of its Subsidiaries nor, to their knowledge, any director, officer, employee, agent, affiliate or representative of any Loan Party or any of its Subsidiaries, is a Person that is, or is owned or controlled by, a Person that is: (i) an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act of the United States (50 U.S.C. App. §§ 1 et seq.), or (ii) in violation of (A) the Trading with the Enemy Act, (B) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) or any enabling legislation or executive order relating thereto or (C) the Patriot Act (collectively, the "**Anti-Terrorism Laws**").

(d) Each of the Borrowers and their Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance by Borrowers and their

Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Anti- Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions.

**9.23****Disclosure.**

Each Borrower has disclosed to Lender all agreements, instruments and corporate or other restrictions to which such Borrower and any Subsidiary thereof are subject, and all other matters known to them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No financial statement, material report, material certificate or other material information furnished (whether in writing or orally) by or on behalf of a Borrower or any Subsidiary thereof to Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished), taken together as a whole, contains any untrue material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, pro forma financial information, estimated financial information and other projected or estimated information, such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being recognized by the Lenders that projections are not to be viewed as facts and that the actual results during the period or periods covered by such projections may vary from such projections). As of the Closing Date, all of the information included in the Beneficial Ownership Certification is true and correct.

**9.24****Officer/Director Issues.**

Jon Isaac is not an officer or director of any Loan Party.

**9.25****Purchase Transaction.**

Borrowers have delivered to Lender true and correct photocopies of the Purchase Agreement and each of the other Purchase Agreement Documents, executed, delivered and/or furnished on or before the Closing Date in connection with the Purchase Agreement Transaction. Neither the Purchase Agreement nor any of the other Purchase Agreement Documents have been modified, changed, supplemented, canceled, amended or otherwise altered or affected, except as otherwise disclosed to Lender in writing on or before the Closing Date. Contemporaneously with the initial funding of the Loans hereunder, the Purchase Agreement Transaction has been effected, closed and consummated pursuant to, and in accordance with, the terms and conditions of the Purchase Agreement and with all applicable Laws. Borrowers, the Seller and all other necessary Persons, as appropriate, have made such filings as may be required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and have provided such supplemental information that may be required by such Act, with respect to the sale contemplated by the Purchase Agreement Transaction. The waiting periods under such Act have terminated or expired.

**9.26****Dissolved Subsidiaries.**

Each of NTH/Works Acquisition Co. LLC, a Kentucky limited liability company and NTH/Works Investments Mexico LLC, a Kentucky limited liability company have been dissolved, with no assets, operations, liabilities or business opportunities, and no value and no Loan Party

and no Loan Party will reinstate either entity or transfer any assets or business opportunities of any kind to either entity.

**9.27 Federal Reserve Regulations.**

No part of the proceeds of any Loan or Letter of Credit has been used or will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

**9.28 Investment Company Act.**

No Borrower is an “investment company” or a company “controlled” by an “investment company” or a “subsidiary” of an “investment company” within the meaning of the Investment Company Act of 1940.

**10. AFFIRMATIVE COVENANTS.**

Until payment and satisfaction in full of all Obligations (other than contingent indemnification obligations for which no claim has been made) and termination of this Agreement, each Borrower covenants and agrees as follows:

**10.01 Maintenance of Records.**

Each Borrower shall at all times keep accurate and complete (in all material respects) books, records and accounts with respect to all of such Borrower’s business activities, in accordance with GAAP, and shall keep such books, records and accounts, and any copies thereof, only at the addresses indicated for such purpose on Schedule 9.02.

**10.02 Notices.**

Each Borrower shall provide written notice to Lender of the following:

(a) Locations. Promptly upon becoming aware of (but in no event less than 10 days prior to the occurrence thereof) the proposed opening of any new place of business or new location of Collateral, the closing of any existing place of business or location of Collateral, any change of in the location of such Borrower’s books, records and accounts (or copies thereof), the opening or closing of any post office box, the opening or closing of any bank account or, if any of the Collateral consists of Goods of a type normally used in more than one state, the use of any such Goods in any state other than a state in which such Borrower has previously advised Lender that such Goods will be used.

(b) Eligible Accounts and Inventory. Promptly upon becoming aware thereof, if any Account or Inventory identified by such Borrower to Lender as an Eligible Account or Eligible Inventory becomes ineligible for any reason to the extent (i) representing in excess of ten percent (10%) of Eligible Accounts or Eligible Inventory, as applicable, or (ii) Availability is less than \$500,000.

(c) Litigation and Proceedings. Promptly upon becoming aware thereof, (i) of any litigation, arbitration, governmental investigation or other actions or proceedings which are pending or threatened in writing against such Borrower or any Subsidiary of such Borrower or to which any of the properties of any thereof is subject which could be reasonably expected to have a Material Adverse Effect, and (ii) of any Commercial Tort Claims of such Borrower which may arise of an aggregate value in excess of \$100,000.

(d) Names and Trade Names. Within 10 days of the change of such Borrower's name or the use of any trade name, assumed name, fictitious name or division name not previously disclosed to Lender in writing.

(e) ERISA Matters. Promptly upon (i) the occurrence of any Reportable Event which might result in the termination by the PBGC of any Pension Plan covering any officers or employees of such Borrower, any benefits of which are, or are required to be, guaranteed by the PBGC, (ii) receipt of any notice from the PBGC of its intention to seek termination of any Pension Plan or appointment of a trustee therefore, (iii) its intention to terminate or withdraw from any Pension Plan, (iv) the institution of any steps by any member of the Controlled Group or any other Person to terminate any Pension Plan, (v) the failure of such Borrower or any ERISA Affiliate of any member of the Controlled Group or any other Person to make a required contribution to any Pension Plan (if such failure is sufficient to give rise to a Lien under Section 302(f) of ERISA) or to any Multiemployer Plan, (vi) the taking of any action with respect to a Pension Plan which could result in the requirements that such Borrower furnish a bond or other security to the PBGC or such Pension Plan, (vii) the occurrence of any event with respect to any Pension Plan or Multiemployer Plan which could result in the incurrance by any ERISA Affiliate or any member of the Controlled Group of any material liability, fine or penalty (including any claim or demand for withdrawal liability or partial withdrawal from any Multiemployer Plan), (viii) any material increase in the contingent liability of such Borrower with respect to any post-retirement welfare plan benefit (other than such benefits required by law), or (ix) any notice that any Multiemployer Plan is insolvent, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of an excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

(f) Environmental Matters. Promptly upon becoming aware of any investigation, proceeding, complaint, order, directive, claim, citation or notice with respect to any non-compliance with or violation of the requirements of any Environmental Law by such Borrower or the generation, use, storage, treatment, transportation, manufacture handling, production or disposal of any Hazardous Materials or any other environmental, health or safety matter which affects such Borrower or its business operations or assets or any properties at which such Borrower has transported, stored or disposed of any Hazardous Materials unless the foregoing could not reasonably be expected to have a Material Adverse Effect.

(g) Default; Material Adverse Change. Promptly of (i) any Material Adverse Effect, (ii) the occurrence of any Event of Default hereunder, or (iii) the occurrence of any event which, if uncured, will become an Event of Default after notice or lapse of time (or both).

All of the foregoing notices shall be provided by Borrowers to Lender in writing and shall describe the steps being taken by Borrowers or any Subsidiary of Borrowers affected thereby with respect thereto.

#### **10.03 Compliance with Laws and Maintenance of Permits.**

Each Borrower shall maintain all governmental consents, franchises, certificates, licenses, authorizations, approvals and permits, the lack of which would have a Material Adverse Effect and each Borrower shall remain in compliance with all applicable federal, state, local and foreign statutes, orders, regulations, rules and ordinances (including Environmental Laws and statutes, orders, regulations, rules and ordinances relating to taxes, employer and employee contributions and similar items, securities, ERISA or employee health and safety) the failure with which to comply would have a Material Adverse Effect. Following any determination by Lender that there is non-compliance, or any condition which requires any action by or on behalf of such Borrower in order to avoid non-compliance, with any Environmental Law, at Borrowers' expense cause an independent environmental engineer acceptable to Lender to conduct such tests of the relevant site(s) as are appropriate and prepare and deliver a report setting forth the results of such tests, a proposed plan for remediation and an estimate of the costs thereof.

#### **10.04 Inspection and Audits.**

Each Borrower shall permit Lender, or any Persons designated by it, upon reasonable advance notice to such Borrower if no Default Period then exists, to call at such Borrower's places of business at any reasonable times, and, without hindrance or delay, to inspect the Collateral and to inspect, audit, check and make extracts from such Borrower's books, records, journals, orders, receipts and any correspondence and other data relating to such Borrower's business, the Collateral or any transactions between the parties hereto, and shall have the right to make such verification concerning such Borrower's business as Lender may consider reasonable under the circumstances. Each Borrower shall furnish to Lender such information relevant to Lender's rights under the Loan Documents as Lender shall at any time and from time to time reasonably request. Lender, through its officers, employees or agents shall have the right, at any time and from time to time, in Lender's name, to verify the validity, amount or any other matter relating to any of such Borrower's Accounts, by mail, telephone, telecopy, electronic mail, or otherwise, provided that prior to the occurrence of an Event of Default, Lender shall conduct such verification in the name of a nominee of Lender or in such Borrower's name. Each Borrower authorizes Lender to discuss the affairs, finances and business of such Borrower with any officers, employees or directors of such Borrower or with its Parent or any Affiliate or the officers, employees or directors of its Parent or any Affiliate, and to discuss the financial condition of such Borrower with such Borrower's independent public accountants (provided that, a representative of such Borrower shall have been afforded the opportunity to be present for such discussion) upon reasonable advance notice to such Borrower and at reasonable times during business hours not more frequently than once per Fiscal Year (provided that such annual limitation shall not apply during a Default Period). Any such discussions shall be without liability to Lender or to the applicable Borrower's independent public accountants. For each inspection or audit conducted by Lender hereunder, Borrowers shall pay to Lender (a) fees at Lender's then-current per diem rate, plus (b) all costs and out-of-pocket expenses incurred by Lender; provided, however, that, notwithstanding the foregoing or anything else contained herein, while no Default Period exists Borrowers shall have no obligation to pay for

more than two field exams or audits per calendar year or more than two Inventory appraisals per calendar year. All such fees, costs and expenses shall constitute Obligations hereunder, shall be payable on demand and, until paid, shall bear interest at the highest rate then applicable to Loans hereunder.

#### 10.05 **Insurance.**

(a) Each Borrower will obtain and at all times maintain insurance with insurers reasonably acceptable to the Lender, in such amounts, on such terms (including any deductibles) and against such risks in such amounts and against such risks as is usually carried by companies engaged in similar business and owning similar properties in the same general areas in which such Borrower operates. Without limiting the generality of the foregoing, each Borrower will at all times maintain liability insurance, business interruption insurance including coverage for force majeure and keep all tangible Collateral insured against risks of fire (including so-called extended coverage), theft, collision (for Collateral consisting of motor vehicles) and such other risks and in such amounts as the Lender may reasonably request, with any loss payable to the Lender to the extent of its interest, and all policies of such insurance shall contain a lender's loss payable endorsement for the Lender's benefit or an endorsement showing Lender as additional insured.

(b) If a Borrower at any time or times hereafter shall fail to obtain or maintain any of the policies of insurance required above or to pay any premium relating thereto, then Lender, without waiving or releasing any obligation or default by such Borrower hereunder, may (but shall be under no obligation to) obtain and maintain such policies of insurance and pay such premiums and take such other actions with respect thereto as Lender deems advisable upon notice to such Borrower. Such insurance, if obtained by Lender, may, but need not, protect Borrowers' interests or pay any claim made by or against such Borrower with respect to the Collateral. Such insurance may be more expensive than the cost of insurance such Borrower may be able to obtain on its own and may be cancelled only upon such Borrower providing evidence that it has obtained the insurance as required above. All sums disbursed by Lender in connection with any such actions, including court costs, expenses, other charges relating thereto and reasonable attorneys' fees, shall constitute Loans hereunder, shall be payable on demand by Borrowers to Lender and, until paid, shall bear interest at the highest rate then applicable to Loans hereunder.

UNLESS BORROWERS PROVIDE LENDER WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS AGREEMENT, LENDER MAY PURCHASE INSURANCE AT BORROWERS' EXPENSE TO PROTECT LENDER'S INTERESTS IN THE COLLATERAL. THIS INSURANCE MAY, BUT NEED NOT, PROTECT BORROWERS' INTERESTS IN THE COLLATERAL. THE COVERAGE THAT LENDER PURCHASES MAY NOT PAY ANY CLAIM THAT BORROWERS MAKE OR ANY CLAIM THAT IS MADE AGAINST BORROWERS IN CONNECTION WITH THE COLLATERAL. BORROWERS MAY LATER CANCEL ANY INSURANCE PURCHASED BY LENDER, BUT ONLY AFTER PROVIDING LENDER WITH EVIDENCE THAT BORROWERS HAVE OBTAINED INSURANCE AS REQUIRED BY THIS AGREEMENT. IF LENDER PURCHASES INSURANCE FOR THE COLLATERAL, BORROWERS WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES LENDER MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION



OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO THE OBLIGATIONS SECURED BY THIS AGREEMENT. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE BORROWERS MAY BE ABLE TO OBTAIN ON BORROWERS' OWN.

#### 10.06 Collateral.

Each Borrower shall keep the Collateral in good condition, repair and order, ordinary wear and tear excepted, and shall make all required repairs to the Equipment and replacements thereof in a manner that Borrowers reasonably believe will cause the operating efficiency and the value thereof to be preserved and maintained in all material respects. Subject to the limitations on inspection rights set forth in **Section 10.04**, each Borrower shall permit Lender to examine any of the Collateral at any time and wherever the Collateral may be located and, each Borrower shall, promptly upon request therefor by Lender, deliver to Lender any and all evidence of ownership of any of the Equipment including certificates of title and applications of title to the extent constituting Collateral. Each Borrower shall, at the request of Lender, indicate on its records concerning the Collateral a notation, in form satisfactory to Lender, of the security interest of Lender hereunder.

#### 10.07 Use of Proceeds.

All monies and other property obtained by Borrowers from Lender pursuant to this Agreement shall be used solely for (i) the business purposes of Borrowers, (ii) Permitted Acquisitions, (iii) the Purchase Transaction, and (iv) the payment of fees, costs and expenses in connection with the negotiation, execution and delivery of this Agreement and the other Loan Documents. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

#### 10.08 Taxes.

Each Borrower shall file all required federal and material state and local tax returns and pay all of its federal and material state and local taxes when due, subject to any extensions granted by the applicable taxing authority, including taxes imposed by federal, state or municipal agencies, and shall cause any liens for taxes to be promptly released; provided, that each Borrower shall have the right to contest the payment of such taxes in good faith by appropriate proceedings so long as (a) the amount so contested is shown on such Borrower's financial statements; (b) such Borrower keeps on deposit with Lender (such deposit to be held without interest) or a reserve is maintained against such Borrower's availability to borrow money under **Section 2.01**, in either case, in an amount of money which, in the sole judgment of Lender, is sufficient to pay such taxes and any interest or penalties that may accrue thereon; (c) if such Borrower fails to prosecute such contest with reasonable diligence, Lender may apply the money so deposited in payment of such taxes. If a Borrower fails to pay any such taxes and in the absence of any such contest by such Borrower, Lender may (but shall be under no obligation to) advance and pay any sums required to pay any such taxes and/or to secure the release of any lien therefor, and any sums so advanced by Lender shall constitute Loans hereunder, shall be payable by Borrowers to Lender on demand, and, until paid, shall bear interest at the highest rate then applicable to Loans hereunder.

#### **10.09 Intellectual Property.**

Each Borrower shall maintain adequate licenses, patents, patent applications, copyrights, service marks, trademarks, trademark applications, tradestyles and trade names to continue its business as heretofore conducted by it or as hereafter conducted by it unless the failure to maintain any of the foregoing could not reasonably be expected to have a Material Adverse Effect.

#### **10.10 Checking Accounts and Cash Management Services.**

Each Borrower shall maintain its general checking/controlled disbursement account with Lender or another bank acceptable to Lender. If any Borrower maintains its general checking/controlled disbursement account with Lender, (a) normal charges shall be assessed thereon, (b) although no compensating balance is required, such Borrower must keep monthly balances in order to merit earnings credits which will cover Lender's service charges for demand deposit account activities, and (c) such Borrower shall enter into agreements with Lender for standard cash management services. Borrowers shall be responsible for all normal charges assessed thereon. All of each Borrower's bank accounts are set forth on Schedule 9.02. No Borrower will open any other bank account unless (i) Borrowers provide written notice to Lender at least ten (10) days prior to opening such account and (ii) the bank at which such account is located executes such documents as are necessary to give Lender a first priority, perfected security interest in such account. On or before the date which is one-hundred twenty (120) days after the Closing Date, Borrowers shall close each of its bank accounts with The Huntington National Bank.

#### **10.11 Patriot Act, Bank Secrecy Act and Office of Foreign Assets Control.**

As required by federal law and the Lender's policies and practices, Lender may need to obtain, verify and record certain customer identification information and documentation in connection with opening or maintaining accounts, or establishing or continuing to provide services and each Borrower agrees to provide such information that will allow Lender to identify each Loan Party in accordance with the Patriot Act or Anti-Money Laundering Laws. In addition, and without limiting the foregoing sentence, each Borrower shall (a) ensure, and cause each of its Subsidiaries to ensure, that no Person who owns a controlling interest in or otherwise controls such Borrower or any Subsidiary of such Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by OFAC, the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loans to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause each of its Subsidiaries to comply, with all applicable Anti-Money Laundering Laws.

#### **10.12 Compliance with Beneficial Ownership Regulation.**

Each Borrower shall (a) notify Lender of any change in the information in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein and (b) promptly upon the reasonable request of Lender, provide Lender any information or documentation requested by it for purposes of complying with the Beneficial Ownership Regulation.

#### **10.13Post-Closing Deliveries.**

As promptly as practicable, and in any event within the time periods specified in Schedule 10.13 or such later date as Lender reasonably agrees to in writing, Borrowers shall deliver the documents or take the actions specified on Schedule 10.13, in each case reasonably acceptable to Lender.

### **11. NEGATIVE COVENANTS.**

Until payment and satisfaction in full of all Obligations (other than contingent indemnification obligations for which no claim has been made) and termination of this Agreement, unless Borrowers obtain Lender's prior written consent waiving or modifying any of Borrowers' covenants hereunder in any specific instance, each Borrower agrees as follows:

#### **11.01Dispositions.**

No Borrower shall make any Disposition or enter into any agreement to make any Disposition, except: (a) Dispositions of Inventory in the ordinary course of business; (b) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business; and (c) Dispositions that result from a casualty or condemnation in respect of such property or assets and is not otherwise an Event of Default so long as all proceeds thereof are applied in accordance with Section 2.07(f); (d) Dispositions of capital assets outside of the ordinary course of such Borrower's business in an arms-length transaction having an aggregate book value of less than \$100,000 in any calendar year; (e) Dispositions of individual accounts receivable (and not as part of any financing or bulk sale) in connection with the collection or compromise thereof on commercially reasonable terms to the extent such accounts receivable are not included in the most recent Borrowing Base Certificate delivered by Borrowers to Lender; (f) licenses of Intellectual Property in the ordinary course of such Borrower's business, and (g) Dispositions of owned or leased vehicles in the ordinary course of such Borrower's business.

#### **11.02Indebtedness.**

No Borrower shall create, incur, assume or become obligated (directly or indirectly), for any loans or other Indebtedness other than the Obligations, except that Borrowers may (a) borrow money from a Person other than Lender or incur other Indebtedness on an unsecured basis in an aggregate principal amount not to exceed \$500,000 at any time outstanding, or otherwise to the extent that a subordination agreement in favor of Lender and in form and substance satisfactory to Lender is executed and delivered to Lender prior to any borrowing of money; (b) incur Hedging Obligations in favor of Lender or any affiliate of Fifth Third Bancorp; (c) maintain their present Indebtedness listed on Schedule 9.14; (d) incur unsecured indebtedness to trade creditors in the ordinary course of business; and (e) incur purchase money indebtedness or capitalized lease obligations in a principal amount not to exceed \$500,000.00 in the aggregate at any time outstanding; (f) guarantee Indebtedness otherwise permitted under this Agreement of any wholly- owned Subsidiary; (g) if constituting Indebtedness, incur obligations in connection with matching 401(k) contributions in the ordinary course of its business; (h) incur Indebtedness secured by Permitted Liens; (i) incur Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant

to reimbursement or indemnification obligations; (j) incur obligations under incentive, non-compete, consulting, deferred compensation or other similar arrangement; (k) incur Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds, custom bonds, financial assurances and completion guarantees and similar obligations in the ordinary course of business;

(l) Indebtedness of any Person acquired after the Closing Date in a Permitted Acquisition to the extent existing at the time of such Permitted Acquisition, provided that (i) such Indebtedness shall not have been incurred in contemplation of such Permitted Acquisition and (ii) after giving effect to the acquisition of any such Indebtedness, the aggregate principal amount of all Indebtedness acquired and outstanding pursuant to this clause (l) shall not exceed \$500,000; (m) incur customary indemnification obligations under agreements entered into to consummate a Permitted Acquisition; (n) incur earn-out obligations, seller note obligations and other deferred purchase price obligations in connection with Permitted Acquisitions, provided such obligations under this clause (n) are subordinated to the Obligations pursuant to a subordination agreement in favor of Lender and in form and substance satisfactory to Lender prior to or contemporaneously with its incurrence; (o) incur Indebtedness under credit card programs, fuel card programs and company purchase card programs, in each case, to the extent consistent with past practice and incurred in the ordinary course of such Borrower's business; (p) incur Indebtedness solely between Borrowers, and (q) incur Subordinated Debt.

#### **11.03 Liens.**

No Borrower shall grant or permit to exist (voluntarily or involuntarily) any lien, claim, security interest or other encumbrance whatsoever on any of its assets, other than Permitted Liens.

#### **11.04 Mergers, Sales, Acquisitions, Subsidiaries and Other Transactions Outside the Ordinary Course of Business.**

No Borrower shall (a) form any foreign Subsidiary and shall not form any domestic Subsidiary, unless such Subsidiary (i) has no material assets, and (ii) such Subsidiary is formed for purposes of consummating a Permitted Acquisition and is joined as a Loan Party on or before the closing of such Permitted Acquisition; (b) enter into any merger or consolidation; (c) change the state of such Borrower's organization or enter into any transaction which has the effect of changing such Borrower's state of organization; (d) [reserved]; (e) if such Borrower is a limited liability company, divide into multiple limited liability companies; (f) [reserved]; (g) [reserved]; (h) enter into any joint ventures or partnerships with any other Person; or (i) enter into any other material transaction outside the ordinary course of such Borrower's business.

#### **11.05 Dividends and Distributions.**

No Borrower shall declare or pay any dividend or other distribution (whether in cash or in kind) on any class of its stock (if such Borrower is a corporation) or on account of any Equity Interest in such Borrower (if such Borrower is a partnership, limited liability company or other type of entity). Notwithstanding the foregoing:

(a) so long as a Borrower is part of a consolidated, combined, affiliated, unitary or similar income tax group for U.S. federal and/or applicable state or local income tax purposes for which another Person is the common parent, such Borrower may make Tax Distributions; and

(b) Borrowers may declare or pay dividends or other distributions in respect of their Equity Interests, provided that both immediately before and immediately after giving effect to any such dividend or other distribution, (i) no Event of Default then exists under this Agreement or would be created thereby on a pro-forma basis, (ii) Excess Availability on a pro-forma basis after giving effect to such dividend or distribution is not less than \$2,000,000, and (iii) not less than five (5) days prior to such distribution or payment, Borrowers provide a written certification to Lender as to the amount of any such dividend, distribution or payment, the pro-forma Excess Availability calculation and certifying that no Event of Default then exists or would be caused thereby on a pro forma basis.

#### **11.06 Investments; Loans.**

No Borrower shall purchase or otherwise acquire, or contract to purchase or otherwise acquire, the obligations, stock or other equity interests of any Person, all or a material portion of the assets of any Person or division of any Person, or lend or otherwise advance funds to any Person, other than (a) direct obligations of the United States, (b) Hedging Agreements with Lender,

(c) pursuant to and to the extent permitted in a Permitted Acquisition, (d) obligations insured by the Federal Deposit Insurance Corporation and obligations unconditionally guaranteed by the United States, (e) advances made to employees, officers and directors for travel and other expenses arising in the ordinary course of business, (f) short-term loans and advances to employees of a Borrower, in the form of a paycheck advance arising in the ordinary course of a Borrower's business in an aggregate amount not to exceed \$100,000, (g) extensions of trade credit to customers in the ordinary course of such Borrower's business, (h) advances in the ordinary course of such Borrower's business to suppliers consistent with past practices, and (i) securities or other property distributed in connection with a bankruptcy or other insolvency proceeding of a customer or contract counterparty.

#### **11.07 Fundamental Changes, Line of Business.**

No Borrower shall amend its organizational documents in a manner adverse to the Lender's interest in any respect, or change its Fiscal Year or enter into a new line of business materially different from such Borrower's current business unless (a) such actions would not have a Material Adverse Effect; (b) such actions would not adversely affect Lender; and (c) Lender has received ten (10) days prior written notice of such amendment or change.

#### **11.08 Equipment.**

No Borrower shall (a) permit any Equipment to become a Fixture to real property unless such real property is owned by such Borrower and is subject to a mortgage in favor of Lender, or if such real estate is leased, is subject to a landlord's agreement in favor of Lender on terms reasonably acceptable to Lender, or (b) permit any Equipment to become an accession to any other personal property unless such personal property is subject to a first priority lien in favor of Lender (subject to Permitted Liens).

#### **11.09 Affiliate Transactions.**

Except (a) as set forth on Schedule 9.09, and (b) pursuant to the Management Agreement, no Borrower shall conduct, permit or suffer to be conducted, transactions with Affiliates other than

transactions for the purchase or sale of Inventory or services in the ordinary course of business pursuant to terms that are no less favorable to such Borrower than the terms upon which such transactions would have been made had they been made to or with a Person that is not an Affiliate.

**11.10 Settling of Accounts.**

No Borrower shall settle or adjust any Account other than in the ordinary course of business consistent with past practices and, as permitted pursuant to **Section 11.01**; provided, however, (a) during any Default Period, no Account may be settled or adjusted without the consent of the Lender (other than settlements and adjustments for which a binding agreement was entered into prior to the inception of such Default Period) and (b) no Account with respect to which the Account Debtor is an Affiliate of any Borrower may be settled or adjusted.

**11.11 Consulting and Management Fees.**

(a) No Borrower shall pay in any Fiscal Year any consulting fees except fees to consultants who are not Affiliates of any Borrower on an arm's-length basis in the ordinary course of business.

(b) No Borrower shall pay any management fees to any Persons except pursuant to the Management Agreement and subject to the Management Fee Subordination Agreement.

**11.12 ERISA.**

Except as disclosed to the Lender in writing prior to the date hereof, neither any Borrower nor any ERISA Affiliate will (a) adopt, create, assume or become a party to any Pension Plan, (b) incur any obligation to contribute to any Multiemployer Plan, (c) incur any obligation to provide post-retirement medical or insurance benefits with respect to employees or former employees (other than benefits required by law) or (d) amend any Plan in a manner that would materially increase its funding obligations.

**11.13 Use of Proceeds**

No Borrower shall, and no Borrower shall permit any of its Subsidiaries to (a) directly or indirectly apply any part of the proceeds of any Loan to the purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System); (b) use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any Person: (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions; or (ii) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as lender, advisor, investor or otherwise); (c) use the proceeds of the Loans, directly or indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of Anti-Corruption Laws; or (d) use the proceeds of the Loans in violation of any Anti-Terrorism Laws.

#### 11.14 **Subordinated Debt.**

Except as permitted pursuant to the terms of any applicable Subordination Agreement, no Borrower shall, and no Borrower shall permit any of its Subsidiaries to make: (a) any payment of principal of, or interest on, any of the Subordinated Debt, if an Event of Default then exists hereunder or would result from such payment; (b) any payment of the principal or interest due on the Subordinated Debt as a result of acceleration thereunder or a mandatory prepayment thereunder; (c) any amendment or modification of or supplement to the documents evidencing or securing the Subordinated Debt; or (d) payment of principal or interest on the Subordinated Debt other than when due (without giving effect to any acceleration of maturity or mandatory prepayment) and expressly permitted under the terms of the Subordination Agreement.

### 12. **FINANCIAL COVENANTS.**

Each Borrower shall maintain and keep in full force and effect each of the financial covenants set forth below:

#### 12.01 **Fixed Charge Coverage.**

Borrowers shall not permit Fixed Charge Coverage of Borrowers to be less than 1:10 to 1:00, as of September 30, 2023, or as of the last day of any fiscal quarter thereafter. Fixed Charge Coverage shall be tested as follows: (A) for each test period from September 30, 2023, through March 31, 2024, Fixed Charge Coverage shall be calculated on a cumulative basis for the period beginning July 1, 2023, through the last day of each such test period, and (B) for the test period ending June 30, 2024 and each test period thereafter, Fixed Charge Coverage shall be calculated on a trailing 12 month basis as of the last day of each such test period. Borrowers' compliance with this covenant will be determined monthly.

### 13. **DEFAULT AND REMEDIES.**

#### 13.01 **Events of Default.**

The occurrence of any one or more of the following events shall constitute an "Event of Default" by Borrowers hereunder:

(a) **Payment.** The failure of any Loan Party to pay when due or declared due by Lender (i) any payment of principal or interest on the Obligations or (ii) within three (3) Business Days following notice of such non-payment, any payment of other Obligations, unless, in each case, such failure to pay is solely caused by Lender's failure to apply available funds from the Blocked Account prior to the due date thereof in accordance with the terms of this Agreement and Borrowers have cured any such failure to pay immediately upon Lender's notice thereof to Borrowers; or

(b) **Breach of Loan Documents.** The failure of any Loan Party to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of such Loan Party under any of the Loan Documents; provided that any such failure by a Borrower under

(i) **Sections 10.02(a), 10.02(d), 10.02(e), 10.02(f), 10.03 and 10.09**, of this Agreement shall not constitute an Event of Default hereunder until the 30th day following any Loan Party obtaining

knowledge thereof, (ii) **Section 10.08** of this Agreement shall not constitute an Event of Default hereunder until the 5th day following any Loan Party obtaining knowledge thereof and (iii) **Sections 5.03, 5.04, 5.06(D), 10.06, 10.11 and 10.12** of this Agreement, and the last sentence of **Section 5.07** of this Agreement, shall not constitute an Event of Default hereunder until the 10th day following any Loan Party obtaining knowledge thereof; or

(c) **Breaches of Other Obligations.** The failure of any Loan Party to perform, keep or observe (after any applicable notice and cure period) any of the covenants, conditions, promises, agreements or obligations of such Loan Party under any other agreement with any Person if such failure could reasonably be expected to have a Material Adverse Effect; or

(d) **Breach of Representations and Warranties.** The making or furnishing by any Loan Party to Lender of any representation, warranty, certificate, schedule, report or other communication which is untrue or misleading in any material respect as of the date made within or in connection with the Loan Documents, any Bank Product Agreement or in connection with any other agreement between such Loan Party and Lender executed in connection with any credit, loan or lease provided by Lender or an affiliate of Lender to any Borrower; or

(e) **Loss of Collateral.** A loss, theft, damage or destruction occurs with respect to any Collateral if the amount not covered by insurance exceeds \$250,000; or

(f) **Levy, Seizure or Attachment.** Any writ or warrant of attachment or execution or similar process is issued or levied against any of the Collateral having a value in excess of \$250,000; or

(g) **Bankruptcy or Similar Proceedings.** The commencement of any proceedings in bankruptcy by or against any Loan Party or for the liquidation or reorganization of any Loan Party, or alleging that such Loan Party is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of any Loan Party's debts, whether under the United States Bankruptcy Code or under any other law, whether state or federal, now or hereafter existing, for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving any Loan Party, which, in the case of any such involuntary proceeding not stayed or dismissed within sixty (60) days after the filing thereof or is granted; or

(h) **Appointment of Receiver.** The appointment of a receiver or trustee for any Loan Party, for any of the Collateral or for any substantial part of any Loan Party's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or, to the extent not otherwise permitted hereunder, the merger or consolidation, of any Loan Party which is a corporation, limited liability company or a partnership; or

(i) **Judgment.** The entry of any monetary judgments or orders aggregating in excess of \$250,000 (to the extent not covered by insurance) against any Loan Party which remains unsatisfied or undischarged and in effect for 30 days after such entry without a stay of enforcement or execution; or

(j) **Dissolution of Loan Party.** The dissolution of any Loan Party which is a partnership, limited liability company, corporation or other entity; or



or (k) **Death of Loan Party.** The death of any Loan Party who is a natural Person;

(l) **Default or Revocation of Guaranty.** The occurrence of an event of default (subject to notice and cure provisions contained therein) under, or the revocation by such Person or termination of, any agreement, instrument or document executed and delivered by any Person to Lender pursuant to which such Person has guaranteed to Lender the payment of all or any of the Obligations or has granted Lender a security interest in or lien upon some or all of such Person's real and/or personal property to secure the payment of all or any of the Obligations; or

(m) **Criminal Proceedings.** The institution in any court of a criminal proceeding against any Loan Party which would have a Material Adverse Effect, or the indictment of any Loan Party for any crime other than traffic and boating tickets and misdemeanors not punishable by jail terms; or

(n) **Change of Control.** A Change of Control shall occur; or

(o) **Material Adverse Change.** A Material Adverse Effect shall occur; or

(p) **Other Indebtedness.** The occurrence of a breach, default or event of default by a Loan Party (in its capacity as borrower, guarantor or otherwise) in any Indebtedness (other than the Loans) which could reasonably be expected to have a Material Adverse Effect; or

(q) **Subordinated Debt.** (i) Any default or event of default occurs under the Subordinated Debt Documents after the expiration of any applicable cure periods, or (ii) any Subordination Agreement entered into by Lender with respect to Subordinated Debt fails to be enforceable by Lender in accordance with the terms thereof.

### 13.02 **Remedies.**

(a) Upon the occurrence of an Event of Default described in **Section 13.01(g)**, all of the Obligations shall immediately and automatically become due and payable, without notice of any kind. Upon the occurrence of any other Event of Default, all Obligations may, at the option of Lender, and without demand, notice or legal process of any kind, be declared, and immediately shall become, due and payable.

(b) During a Default Period, Lender may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code and any other applicable law in addition to, and not in lieu of, any rights and remedies expressly granted in the Loan Documents and all of Lender's rights and remedies shall be cumulative and non-exclusive to the extent permitted by law. In particular, but not by way of limitation of the foregoing, Lender may, without notice, demand or legal process of any kind, (i) suspend, terminate or limit any further loans or other extensions of credit under this Agreement and the other Loan Documents, and/or (ii) take possession of any or all of the Collateral (in addition to Collateral of which it already has possession), wherever it may be found, and for that purpose may pursue the same wherever it may be found, and may enter onto any of Borrowers' premises where any of the Collateral may be, and search for, take possession of, remove, keep and store any of the Collateral until the same shall be sold or otherwise disposed of, and Lender shall have the right to store the same at any of

Borrowers' premises without cost to Lender. At Lender's request, each Borrower shall, at Borrowers' expense, assemble the Collateral and make it available to Lender at one or more places to be designated by Lender and reasonably convenient to Lender and such Borrower. Each Borrower recognizes that if a Borrower fails to perform, observe or discharge any of its Obligations under the Loan Documents, no remedy at law will provide adequate relief to Lender, and agrees that Lender shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages. Any notification of intended disposition of any of the Collateral required by law will be deemed to be a reasonable authenticated notification of disposition if given at least 10 days prior to such disposition and such notice shall (i) describe Lender and such Borrower, (ii) describe the Collateral that is the subject of the intended disposition, (iii) state the method of the intended disposition, (iv) state that such Borrower is entitled to an accounting of the Obligations and state the charge, if any, for an accounting and (v) state the time and place of any public disposition or the time after which any private sale is to be made. Lender may disclaim any warranties that might arise in connection with the sale, lease or other disposition of the Collateral and has no obligation to provide any warranties at such time. Any Proceeds of any disposition by Lender of any of the Collateral may be applied by Lender to the payment of expenses in connection with the Collateral, including legal expenses and reasonable attorneys' fees, and any balance of such Proceeds may be applied by Lender toward the payment of such of the Obligations, and in such order of application, as Lender may from time to time elect.

(c) Without limiting the rights of Lender under applicable law, Lender has a right of set-off, a lien against and a security interest in all property of each Borrower now or at any time in Lender's or any affiliate of Lender's possession in any capacity whatsoever, including but not limited to any balance of any deposit, trust or agency account, or any other bank account, as security for all Obligations. At any time and from time to time following the occurrence of an Event of Default, or event which, with the passage of time, the giving of notice or both would become an Event of Default, Lender may without notice or demand, set-off and apply or cause to be set-off or otherwise applied any and all deposits at any time held and other indebtedness at any time owing by Lender or any affiliate of Lender to or for the credit of any one or more of Borrowers against the Obligations.

(d) Lender shall have the right, but not the obligation, to continue to extend the Revolving Loans during any Default Period without waiving any Event of Default or the default remedies of Lender and on such terms and conditions as Lender elects in its sole and absolute discretion. Without limitation to any of its default rights and remedies, Lender may elect to continue to make the Revolving Loans with such a reduced Maximum Revolving Loan Limit and with such reductions in the percentages set forth in the definition of Borrowing Base as Lender determines to be in the interest of Lender.

(e) In addition to all other rights, options and remedies granted or available to Lender under this Agreement or the other Loan Documents, or otherwise available at law or in equity, upon or at any time during a Default Period or after the occurrence and during the continuance of any event which with the giving of notice or the passage of time, or both, would become an Event of Default, Lender may, in its sole and absolute discretion, (i) withhold or cease making Loans or issuing Letters of Credit, (ii) commence accruing interest on the Loans at a rate up to the Default Rate or (iii) decrease the Maximum Revolving Loan Limit and/or the rates of advance under the Borrowing Base.

### **13.03 License to Use Intellectual Property.**

Lender is hereby granted an irrevocable, non-exclusive license or other right to use, license of sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property of the Loan Parties, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral. Each Loan Party's rights and interests under Intellectual Property shall inure to the Lender's benefit.

### **13.04 Commercially Reasonable Sales.**

To the extent that applicable law imposes duties on Lender to exercise remedies in a commercially reasonable manner, each Borrower acknowledges and agrees that it is not commercially unreasonable for Lender (a) to fail to incur expenses reasonably deemed significant by Lender to prepare Collateral for disposition or otherwise to fail to complete raw material or work in process into finished goods or other finished products for disposition, (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (c) to fail to exercise collection remedies against account debtors or other persons obligated on Collateral or to fail to remove liens or encumbrances on or any adverse claims against Collateral, (d) to exercise collection remedies against account debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (e) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (f) to contact other persons, whether or not in the same business as Borrowers, for expressions of interest in acquiring all or any portion of the Collateral, (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature, (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (i) to dispose of assets in wholesale rather than retail markets, (j) to decline to provide credit to any potential purchaser of the Collateral in connection with Lender's disposition of the Collateral, (k) to disclaim disposition warranties, (l) to purchase insurance or credit enhancements to insure Lender against risks of loss, collection or disposition of Collateral or to provide to Lender a guaranteed return from the collection or disposition of Collateral, or (m) to the extent deemed appropriate by Lender, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist Lender in the collection or disposition of any of the Collateral. Each Borrower acknowledges that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by Lender would fulfill Lender's duties under the UCC in Lender's exercise of remedies against the Collateral and that other actions or omissions by Lender shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this Section. Without limitation upon the foregoing, nothing contained in this Section shall be construed to grant any rights to Borrowers or to impose any duties on Lender that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section.

### **13.05 Equity Cure.**

(a) Subject to the limitations set forth in subsection (e) below, Borrowers may cure (and shall be deemed to have cured) an Event of Default arising out of a breach of the Fixed Charge Coverage Ratio set forth in **Section 12.01** (the “**FCCR Covenant**”), if Borrowers receive the cash proceeds of an investment of Curative Equity (as defined below) within fifteen (15) days of the occurrence of such Event of Default. As used herein, the term “**Curative Equity**” shall mean equity contributions or other contributions made by the Owners of Holdings in immediately available funds which are immediately remitted by Holdings to Metals in exchange for Qualified Equity Interests.

(b) Any investment of Curative Equity shall be in an amount that is sufficient to cause the Loan Parties to be in compliance with the FCCR Covenant as of the last day of the most recently ended fiscal quarter calculated for such purpose as if such amount of Curative Equity were additional EBITDA.

(c) As a condition to any such cure, Borrowers shall deliver to Lender an updated version of the compliance certificate delivered required to **Section 7.02** in respect of the fiscal quarter-end with respect to which Curative Equity is issued, which shall (i) include evidence of Borrowers’ receipt of Curative Equity proceeds and (ii) set forth a calculation of the financial results of Borrowers at such fiscal quarter-end (including for such purposes the proceeds of such Curative Equity (broken out separately) as, subject to clause (e), deemed EBITDA as if received on such date), which shall confirm that on a pro forma basis after taking into account receipt of the Curative Equity proceeds in the amount specified therein, Borrowers would have been in compliance with the FCCR Covenant as of such date.

(d) Upon Borrowers’ receipt of such Curative Equity proceeds and satisfaction of the other conditions set forth in this Section 13.05, the Event of Default that would have occurred as a result of a breach of the FCCR Covenant shall be deemed cured with no further action required by Borrowers.

(e) Notwithstanding the foregoing, (i) (y) Borrowers may not exercise the equity cure right under this **Section 13.05** more than four (4) times during the term of this Agreement and (z) the Loan Parties may not exercise the cure right under this **Section 13.05** more than twice in any twelve (12) consecutive fiscal months, (ii) the amount of Curative Equity permitted hereunder shall not exceed the amount that is sufficient to cause the Loan Parties to be in compliance with the FCCR Covenant as of the last day of the most recently ended fiscal quarter, as applicable, and (iii) in connection with each exercise of Borrowers’ rights under this **Section 13.05**, Borrowers shall be credited with EBITDA in an amount equal to 100% of the amount of Curative Equity received by Borrowers in connection with such exercise. To the extent that Curative Equity is received and included in the calculation of the FCCR Covenant as EBITDA for any fiscal quarter, such Curative Equity shall be deemed to be added to EBITDA for purposes of determining compliance with the FCCR Covenant and for purposes of any other calculation of EBITDA for all subsequent periods that include the fiscal quarter for which such proceeds were received.

(f) Provided that the Loan Parties have the right to cure an Event of Default according to the terms of this **Section 13.05** and have provided the Lender with notice of their intention to do so, the Lender shall not exercise any right to accelerate the Loans, terminate the

Commitments, or exercise any right to foreclose or take possession of the Collateral solely on the basis of an Event of Default having occurred and being continuing resulting from a breach of the FCCR Covenant, until the expiration of the fifteen (15) day time period set forth in **Section 13.05(a)**.

#### **14. CONDITIONS PRECEDENT.**

##### **14.01Conditions Precedent to Initial Loans.**

The Lender's obligation to make the initial Credit Extension is subject to the satisfaction or waiver on or before the date hereof of the following conditions precedent:

(a) Lender shall have received each of the agreements, opinions, reports, approvals, consents, certificates and other documents set forth on the closing delivery list attached as Schedule 14.01-A in each case properly executed by the appropriate party and in form and substance satisfactory to the Lender;

(b) Since April 30, 2023, no event shall have occurred which has had or could reasonably be expected to have a Material Adverse Effect, as determined by Lender in its sole discretion;

(c) Lender shall have received payment in full of all fees and expenses payable to it by Borrowers or any other Person in connection herewith, on or before disbursement of the initial Credit Extensions;

(d) As shown on Schedule 14.01-B, Lender shall have determined that immediately after giving effect to (i) the initial Credit Extensions, if any, requested to be made on the date hereof, (ii) the payment of all fees due upon such date and (iii) the payment or reimbursement by Borrowers of Lender for all closing costs and expenses incurred in connection with the transactions contemplated hereby, Borrowers have Excess Availability as of the Closing Date of not less than \$2,000,000.00; and

(e) The Purchase Agreement Transaction shall have been completed and closed prior to or simultaneously herewith upon terms and conditions satisfactory to Lender, in accordance with the Purchase Agreement and applicable Laws in all material respects, and Lender shall have received photocopies of all Purchase Agreement Documents executed, delivered and/or furnished in connection with the Purchase Agreement Transaction;

(f) The Loan Parties shall have executed and delivered to Lender all such other documents, instruments and agreements which Lender determines are reasonably necessary to consummate the transactions contemplated hereby.

##### **14.02Conditions Precedent to All Loans.**

The Lender's obligation to make each Credit Extension shall be subject to the further conditions precedent that:

(a) the representations and warranties contained in **Section 9** are correct in all material respects (without duplication of any materiality qualifiers set forth in Section 9), on and as of the date of such Credit Extension as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date; and

(b) no Default or Event of Default has occurred and is continuing.

## **15. GENERAL PROVISIONS.**

### **15.01Indemnification.**

Each Borrower agrees to defend (with counsel satisfactory to Lender), protect, indemnify and hold harmless Lender, each affiliate or Subsidiary of Lender, and each of their respective shareholders, members, officers, directors, managers, employees, attorneys and agents (each an “**Indemnified Party**”) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature (including the reasonable and documented disbursements and fees of outside counsel for each Indemnified Party in connection with any investigative, administrative or judicial proceeding, whether or not the Indemnified Party shall be designated a party thereto), which may be imposed on, incurred by, or asserted against, any Indemnified Party (whether direct, indirect or consequential and whether based on any federal, state or local laws or regulations, including securities laws and regulations, Environmental Laws and commercial laws and regulations, under common law or in equity, or based on contract or otherwise) in any manner relating to or arising out of this Agreement or any other Loan Document, or any act, event or transaction related or attendant thereto, the making or issuance and the management of the Loans or any Letters of Credit or the use or intended use of the proceeds of the Loans or any Letters of Credit (including, without limitation, all costs and expenses incurred with respect to the retention of any payments or transfers of any kind made to Lender by or on account of this Agreement, including the granting of liens, collateral rights, security interests, or payment protection of any type, in any action brought or threatened against Lender including any avoidance action in a bankruptcy or similar proceeding); provided, however, that no Borrower shall have any obligation hereunder to any Indemnified Party with respect to matters caused by or resulting from the willful misconduct or gross negligence of such Indemnified Party. To the extent that the undertaking to indemnify set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, each Borrower shall satisfy such undertaking to the maximum extent permitted by applicable law. Any liability, obligation, loss, damage, penalty, cost or expense covered by this indemnity shall be paid to each Indemnified Party on demand, and, failing prompt payment, shall, together with interest thereon at the highest rate then applicable to Loans hereunder from the date incurred by each Indemnified Party until paid by Borrowers, be added to the Obligations of Borrowers and be secured by the Collateral. The provisions of this **Section 15.01** shall survive the satisfaction and payment of the other Obligations and the termination of this Agreement.

### **15.02Notice.**

All written notices and other written communications with respect to this Agreement shall be sent by ordinary, certified or overnight mail, by email, or delivered in person, to the address or email address specified for Lender or Borrowers, as applicable, on Schedule 15.02. Each Borrower

agrees that notices and other communications to it hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Lender and such electronic communication shall have the same force and effect that the same submissions would have had if they had been submitted in any other applicable form authorized, required or contemplated by the Loan Documents. All notices shall be deemed received upon actual receipt thereof or refusal of delivery.

**15.03 Governing Law; Construction; Forum Selection.**

**(a) THE LOAN DOCUMENTS SHALL BE GOVERNED AND CONTROLLED BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS AS TO INTERPRETATION, ENFORCEMENT, VALIDITY, CONSTRUCTION, EFFECT, AND IN ALL OTHER RESPECTS, INCLUDING THE LEGALITY OF THE INTEREST RATE AND OTHER CHARGES, BUT EXCLUDING PERFECTION OF THE SECURITY INTERESTS IN COLLATERAL LOCATED OUTSIDE OF THE STATE OF ILLINOIS, WHICH SHALL BE GOVERNED AND CONTROLLED BY THE LAWS OF THE RELEVANT JURISDICTION IN WHICH SUCH COLLATERAL IS LOCATED.** If any

provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or remaining provisions of this Agreement.

**(b)** To induce Lender to accept this Agreement, each Borrower irrevocably agrees that, subject to Lender's sole and absolute election, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THE LOAN DOCUMENTS OR THE COLLATERAL SHALL BE LITIGATED IN COURTS HAVING SITUS WITHIN THE CITY OF CHICAGO, STATE OF ILLINOIS. EACH BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURTS LOCATED WITHIN SAID CITY AND STATE. EACH BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT IN ACCORDANCE WITH THIS SECTION. EACH BORROWER AND LENDER HEREBY WAIVE PERSONAL SERVICE OF ANY AND ALL PROCESS FOR ANY AND ALL ACTIONS OR PROCEEDINGS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH BORROWER OR LENDER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH BORROWER OR LENDER, AT THE ADDRESS SET FORTH FOR NOTICE IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE 10 DAYS AFTER THE SAME HAS BEEN POSTED.

**15.04 Modification and Benefit of Agreement.**

The Loan Documents may not be modified, altered or amended except by an agreement in writing signed by each Borrower or such other Person who is a party to such Loan Document and Lender. No Borrower may sell, assign or transfer the Loan Documents or any portion thereof, including such Borrower's rights, titles, interest, remedies, powers or duties hereunder and thereunder. Each Borrower hereby consents to Lender's sale, assignment, transfer or other disposition, at any time and from time to time hereafter, of the Loan Documents or of any portion thereof, or participations therein, including Lender's rights, titles, interest, remedies, powers and/or

duties and agrees that it shall execute and deliver such documents as Lender may request in connection with any such sale, assignment, transfer or other disposition; provided, that in the absence of an Event of Default, Lender shall not sell assign or transfer (other than by way of any participation interest or in connection with a sale or transfer of Lender, a material portion of Lender's loan facilities or a material portion of Lender's asset based lending portfolio) all or any portion of the Loan or the Loan Documents without the consent of Borrowers, such consent not to be unreasonably withheld, conditioned or delayed

**15.05 Headings of Subdivisions.**

The headings of subdivisions in this Agreement are for convenience of reference only, and shall not govern the interpretation of any of the provisions of this Agreement.

**15.06 Power of Attorney.**

Each Borrower acknowledges and agrees that its appointment of Lender as its attorney and agent-in-fact for the purposes specified in this Agreement is an appointment coupled with an interest and shall be irrevocable until all of the Obligations are satisfied and paid in full and this Agreement is terminated.

**15.07 Confidentiality.**

Lender hereby agrees to use commercially reasonable efforts to assure that any and all information relating to a Borrower which is (a) furnished by such Borrower to Lender (or to any affiliate of Lender); and (b) non-public, confidential or proprietary in nature, shall be kept confidential by Lender or such affiliate in accordance with applicable law; provided, however, that such information and other credit information relating to such Borrower may be distributed by Lender or such affiliate to Lender's or such affiliate's directors, managers, officers, employees, attorneys, affiliates, assignees, participants, auditors, agents and regulators, and upon the order of a court or other governmental agency having jurisdiction over Lender or such affiliate, to any other party. In addition such information and other credit information may be distributed by Lender to potential participants or assignees of any portion of the Obligations, provided, that such potential participant or assignee agrees to follow the confidentiality requirements set forth herein. Each Borrower and Lender further agree that this provision shall survive the termination of this Agreement. Notwithstanding the foregoing, each Borrower hereby consents to Lender publishing a tombstone or similar advertising material relating to the financing transaction contemplated by this Agreement.

**15.08 Counterparts; Integration; Effectiveness; Electronic Execution.**

(a) The Loan Documents and any amendments, waivers, consents or supplements may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which counterparts together shall constitute but one agreement. 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. Delivery of an executed counterpart of a signature page of this



Agreement or any of the Loan Documents by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) The words “execution,” “signed,” “signature,” and words of like import in this Agreement and the other Loan Documents will be deemed to include electronic signatures or electronic records, each of which will 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 Illinois Electronic Commerce Security Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**15.09 WAIVER OF JURY TRIAL; OTHER WAIVERS.**

(a) EACH BORROWER AND LENDER EACH HEREBY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THE LOAN DOCUMENTS, THE OBLIGATIONS, THE COLLATERAL, ANY ALLEGED TORTIOUS CONDUCT BY A BORROWER OR LENDER OR WHICH, IN ANY WAY, DIRECTLY OR INDIRECTLY, ARISES OUT OF OR RELATES TO THE RELATIONSHIP BETWEEN A BORROWER AND LENDER. IN NO EVENT SHALL BORROWERS OR LENDER BE LIABLE FOR LOST PROFITS OR OTHER SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

(b) Each Borrower hereby waives demand, presentment, protest and notice of nonpayment, and further waives the benefit of all valuation, appraisal and exemption laws.

(c) Each Borrower hereby waives the benefit of any law that would otherwise restrict or limit Lender or any affiliate of Lender in the exercise of its right, which is hereby acknowledged and agreed to, to set-off against the Obligations, without notice at any time hereafter, any indebtedness, matured or unmatured, owing by Lender or such affiliate of Lender to such Borrower, including any Deposit Account at Lender or such affiliate.

(d) EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW (INCLUDING ARTICLE 9 OF THE UCC) OR AS OTHERWISE REQUIRED PURSUANT TO THE TERMS OF THE LOAN DOCUMENTS, DURING A DEFAULT PERIOD, EACH BORROWER HEREBY WAIVES ALL RIGHTS TO NOTICE AND HEARING OF ANY KIND PRIOR TO THE EXERCISE BY LENDER OF ITS RIGHTS TO REPOSSESS THE COLLATERAL OF SUCH BORROWER WITHOUT JUDICIAL PROCESS OR TO REPLEVY, ATTACH OR LEVY UPON SUCH COLLATERAL, PROVIDED THAT IN THE EVENT THAT LENDER SEEKS TO ENFORCE ITS RIGHTS HEREUNDER BY JUDICIAL PROCESS OR SELF HELP, LENDER SHALL PROVIDE SUCH BORROWER WITH SUCH NOTICES AS ARE REQUIRED BY LAW.

(e) Lender’s failure, at any time or times hereafter, to require strict performance by a Borrower of any provision of the Loan Documents shall not waive, affect or diminish any right of Lender thereafter to demand strict compliance and performance therewith. Any suspension or waiver by Lender of an Event of Default under this Agreement or any default under any of the

other Loan Documents shall not suspend, waive or affect any other Event of Default under this Agreement or any other default under any of the other Loan Documents, whether the same is prior or subsequent thereto and whether of the same or of a different kind or character. No delay on the part of Lender in the exercise of any right or remedy under any Loan Document shall preclude other or further exercise thereof or the exercise of any right or remedy. None of the undertakings, agreements, warranties, covenants and representations of each Borrower contained in the Loan Documents and no Event of Default under this Agreement or default under any of the other Loan Documents shall be deemed to have been suspended or waived by Lender unless such suspension or waiver is in writing, signed by a duly authorized officer of Lender and directed to Borrowers specifying such suspension or waiver.

## **16. MULTIPLE BORROWERS**

### **16.01 Borrowing Agent.**

Each Borrower hereby irrevocably appoints Metals as “Borrowing Agent” and grants Metals a power of attorney coupled with interest which is irrevocable without the prior written consent of the Lender. Because the operations and business activities of Borrowers are highly integrated and interdependent, at any particular time it is impractical to determine which of Borrowers will directly receive the proceeds of a Loan. Each of the Borrowers hereby directs Lender to disburse the proceeds of each Loan to or at the direction of the Borrowing Agent, with such directions to be subject to approval of Lender in its discretion, and such distribution will, in all circumstances, be deemed to be made to each of the Borrowers. From time to time, Borrowing Agent shall further distribute the proceeds of Loans to a particular Borrower or Borrowers, jointly and severally, and each Borrower represents and warrants that the subsequent receipt and use of such proceeds by any particular Borrower inures to the economic benefit directly and indirectly of all other Borrowers. For so long as the Obligations remain outstanding and any commitment to make Revolving Loans is in effect, each Borrower hereby covenants and agrees, and hereby grants to the Borrowing Agent an absolute and irrevocable power of attorney coupled with interest, and irrevocably designates, appoints, authorizes and directs the Borrowing Agent to (a) certify Borrowing Base Certificates and financial statements and other reports of Borrowers, (b) request Loans and execute and deliver written requests for Loans, (c) make any other deliveries required to be delivered periodically hereunder to Lender, (d) request waivers, amendments or other accommodations under the Loan Documents, and (e) otherwise take all other actions otherwise contemplated by this Section, and to act on behalf of such Borrower for purposes of giving and receiving notices and certifications under this Agreement or any other Loan Document. Lender is entitled to rely and act on the instructions and certifications of the Borrowing Agent. Any notice, election, representation, warranty, agreement or undertaking by or on behalf of any Borrower by the Borrowing Agent shall be deemed for all purposes to have been made by such Borrower and shall be binding upon and enforceable against such Borrower to the same extent as if made directly by such Borrower and Lender shall be entitled to rely thereon. Lender may give any notice to or communication with a Borrower to Borrowing Agent on behalf of such Borrower.

### **16.02 Joint and Several Liability.**

Each Borrower agrees that it is jointly and severally liable for all Obligations and all agreements under the Loan Documents. Each Borrower agrees its obligations under the Loan

Documents shall be unconditional, irrespective of (a) the absence of any attempt to collect a Borrower's Obligations from any Borrower or any guarantor or other action to enforce the same; (b) the waiver or consent by Lender with respect to any provision of any instrument evidencing Borrowers' Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Lender; (c) failure by Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for Borrowers' Obligations; (d) the institution of any proceeding under the Bankruptcy Code, or any similar proceeding, by or against a Borrower or Lender's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code; (e) any borrowing or grant of a security interest by any Borrower as debtor-in-possession, under Section 364 of the Bankruptcy Code; (f) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Lender's claim(s) for repayment of any of Borrowers' Obligations; or (g) any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor.

#### 16.03 Savings Clause.

Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the Obligations of Borrowers and the liens and security interests granted by Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Lender and Borrowers agree that if the Obligations of a Borrower, or any liens or security interests granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the Obligations of such Borrower and the liens and security interests securing such Obligations shall be valid and enforceable only to the maximum extent that would not cause such Obligations or such lien or security interest to constitute a Fraudulent Conveyance, and the Obligations of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, "**Fraudulent Conveyance**" means a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the United States Code (11 U.S.C. § 101, et seq.), as amended (the "**Bankruptcy Code**") or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

#### 16.04 Financial Information.

Each Borrower assumes responsibility for keeping itself informed of the financial condition of the each other Borrower, and any and all endorsers and/or guarantors of any instrument or document evidencing all or any part of such other Borrower's Obligations and of all other circumstances bearing upon the risk of nonpayment by such other Borrowers of their Obligations and each Borrower agrees that Lender shall not have any duty to advise such Borrower of information known to Lender regarding such condition or any such circumstances or to undertake any investigation not a part of its regular business routine. If Lender, in its Permitted Discretion, undertakes at any time or from time to time to provide any such information to a Borrower, Lender shall not be under any obligation to update any such information or to provide any such information to such Borrower on any subsequent occasion.

**16.05 Joint Enterprise.**

Each Borrower has requested that Lender make this credit facility available to Borrowers on a combined basis, in order to finance Borrowers' business most efficiently and economically. Borrowers' business is a mutual and collective enterprise, and the successful operation of each Borrower is dependent upon the successful performance of the integrated group. Borrowers believe that consolidation of their credit facility will enhance the borrowing power of each Borrower and ease administration of the Loans, all to their mutual advantage. Borrowers acknowledge that Lender's willingness to extend credit and to administer the Collateral on a combined basis hereunder is done solely as an accommodation to Borrowers and at Borrowers' request.

**16.06 Subordination.**

Each Borrower hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution, indemnification or setoff, that it may have at any time against any other Borrower, howsoever arising, to the full payment in cash of all Obligations and termination of this Agreement.

**16.07 Waivers.**

Each Borrower expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Lender to marshal assets or to proceed against any Borrower, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower. Each Borrower waives all defenses available to a surety, guarantor or accommodation co-obligor other than full payment of all Obligations. The provisions of this Article are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Lender would decline to make Loans and issue Letters of Credit. Each Borrower acknowledges that its guaranty pursuant to this Article is necessary to the conduct and promotion of its business, and can be expected to benefit such business. Each Borrower expressly agrees not to exercise any and all rights of subrogation, reimbursement, indemnity, exoneration, contribution or any other claim which such Borrower may now or hereafter have against the other Borrowers or other Person directly or contingently liable for the Obligations hereunder, or against or with respect to the other Borrowers' property (including, without limitation, any property which is Collateral for the Obligations), arising from the existence or performance of this Agreement, until termination of this Agreement or repayment in full of the Obligations.

**16.08 Remedies.**

Lender may, in its discretion, upon the occurrence and during the continuance of an Event of Default, pursue such rights and remedies as it deems appropriate, including realization upon Collateral by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this Article. If, in taking any action in connection with the exercise of any rights or remedies, Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Borrower or other Person, whether because of any applicable Laws pertaining to "election of remedies" or otherwise, each Borrower consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation

that such Borrower might otherwise have had. Any election of remedies that results in denial or impairment of the right of Lender to seek a deficiency judgment against any Borrower shall not impair any other Borrower's obligation to pay the full amount of the Obligations. Each Borrower waives all rights and defenses arising out of an election of remedies, such as non-judicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such Borrower's rights of subrogation against any other Person. Lender may bid all or a portion of the Obligations at any foreclosure or trustee's sale or at any private sale, and the amount of such bid need not be paid by Lender but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether Lender or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Article, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Lender might otherwise be entitled but for such bidding at any such sale. Lender has the exclusive right to determine the time and manner of application of any payments or credits, whether received from a Borrower or any other source, and such determination shall be binding on such Borrower. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of a Borrower's Obligations as Lender shall determine in its Permitted Discretion without affecting the validity or enforceability of the Obligations of the other Borrowers.

16.09 **Keepwell.**

Each Borrower that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Borrower that is not a Qualified ECP with respect to such Swap Obligation as may be needed by such Borrower that is not a Qualified ECP from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP's obligations and undertakings under this Article voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until payment in full of the Obligations. Each Borrower intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Borrower for all purposes of the Commodity Exchange Act. As used in this Agreement, "**Qualified ECP**" means any Borrower with total assets exceeding \$10,000,000, or that constitutes an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

*[signature page to follow]*

The parties have duly executed this Agreement as of the date first written above.

**Borrowers:**

Signature page to Credit and Security Agreement

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PMW AFFILIATED HOLDINGS, LLC,  
a Delaware limited liability company

By:\_\_\_ Name: Eric Althofer  
Title: President

PRECISION METAL WORKS, INC.,

By:\_\_\_

Name: R

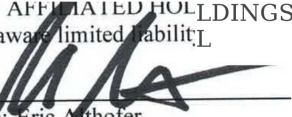
Chief Executive Officer

Signature page to Credit and Security Agreement

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The parties have duly executed this Agreement as of the date first written above.

MW AFFILIATED HOLDINGS,  
Delaware limited liability

By:   
Name: Eric Anthofer  
Title: President

**Borrowers:**

Signature page to Credit and Security Agreement

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PRECISION METAL WORKS, INC.,  
a Kentucky corporation

LC,

By:\_\_\_ Name: Richard Stanley  
Title: President and Chief Executive Officer

Signature page to Credit and Security Agreement

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**Lender:**

FIFTH THIRD BANK, NATIONAL ASSOCIATION

By: 

Name: David L. Enghauser

Title: Vice President

Signature page to Credit and Security Agreement

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SCHEDULE 1.01-A

APPLICABLE MARGINS

	<b>Reference Rate Margin (bps)</b>	<b>Tranche Rate Margin (bps)</b>
Revolving Loans	0	200
Machinery & Equipment Term Loan	50	250
Capital Expenditure Term Loan	50	250

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SCHEDULE 1.01-B

ACCOUNT CONCENTRATION EXCEPTIONS

Haier US Appliance Solutions, Inc. (f/k/a GE Appliance): 55%

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#### SCHEDULE 1.01-C EXISTING LIENS

1. Financing Statement naming JPMorgan Chase Bank, N.A. as secured party, filed on May 28, 2013 at Filing No. 2013-2644535-15.01.
  2. Financing Statement naming JPMorgan Chase Bank, N.A. as secured party, filed on March 13, 2018 at Filing No. 2018-2949637-01.01.
  3. Financing Statement naming Precision Metal Works, Inc. as debtor and The Richard Stanley Trust, a trust formed under the Laws of Ontario, Canada, as secured party, to be filed after the Closing Date and which is subject to the Subordination Agreement.
  4. Financing Statement naming Precision Metal Works, Inc. as debtor and The John Locke Family Trust, a trust formed under the Laws of Ontario, Canada, as secured party, to be filed after the Closing Date and which is subject to the Subordination Agreement.
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SCHEDULE 5.01 COMMERCIAL TORT CLAIMS

None.

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## SCHEDULE 9.02 LOCATIONS; BANK ACCOUNTS

- A. Borrower's business locations (please indicate which location is the principal place of business and at which locations originals and all copies of Borrower's books, records and accounts are kept).

Loan Party Obligor	Principal Place of Business
Metals	6901-6903 Preston Highway Louisville, KY 40219
Holdings	325 E. Warm Springs Road, #102 Las Vegas, NV 89119

- B. Other locations of Collateral (including warehouse locations, processing locations, consignment locations) and all post office boxes of Borrower. Please indicate the relationship of such location to Borrower (i.e. public warehouse, processor, etc.).

Owner/Landlord/Operator	Address	Owned/Leased/ Warehouse/Bailee
Legacy West Partners Kentucky Portfolio	111 Commerce Blvd. Frankfort, KY 40601	Leased
Legacy West Partners Kentucky Portfolio	4701 Allmond Ave Louisville, KY 40209	Leased
Atalaya Investments LLC	6901-6903 Preston Highway Louisville, KY 40219	Leased
	2580 Palumbo Dr. Lexington, KY 40509	Processing Location
	230 Chambers Ave Georgetown, KY 40324	Processing Location
	115 Security Parkway New Albany, IN 47150	Processing Location
	1900 E Main St New Albany, IN 47150	Processing Location
	6350 Este Ave Cincinnati, OH 45225	Processing Location
	2980 Spring Grove Ave Cincinnati, OH 45225	Processing Location

- C. Bank Accounts of Borrower (other than those maintained with Lender):

Bank (with address)	Account Number	Type of Account
The Huntington National Bank 7 Easton Oval (EA4W30) Columbus, OH 43219	*****1310 *****1323 *****0080 *****1501	Operating Account Cash Collateral Account AP Checks Payroll

SCHEDULE 9.06 ORGANIZATION INFORMATION

Borrower	Entity Type	Jurisdiction	FEIN	Organizational # (PA Revenue ID #)
Precision Metal Works, Inc.	Corporation	Kentucky	61-0417457	0042190
PMW Affiliated Holdings, LLC	Limited liability company	Delaware	93-1508284	7468836

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## SCHEDULE 9.07 LITIGATION

None.

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SCHEDULE 9.09 AFFILIATE TRANSACTIONS

None.

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SCHEDULE 9.10 NAMES & TRADE NAMES

Legal Name	Prior Legal Name	Existing/Prior Trade Name
Precision Metal Works, Inc.	Nth Holding, Ltd.; Precision Tool, Die and Machine Company; Precision Tool, Die and Machine Co., Inc.; Precision Metal Works, Inc.	None.

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#### SCHEDULE 9.14 EXISTING INDEBTEDNESS

1. Subordinated Secured Promissory Note, dated as of the Closing Date, in favor of The Richard Stanley Trust, a trust formed under the Laws of Ontario, Canada, for the principal sum of \$1,250,000.00.
  2. Subordinated Secured Promissory Note, dated as of the Closing Date, in favor of The John Locke Family Trust, a trust formed under the Laws of Ontario, Canada, for the principal sum of \$1,250,000.00.
-


SCHEDULE 9.16

PARENT, SUBSIDIARIES & AFFILIATES

Subsidiary	Parent
NTH/WORKS DE MEXICO S. DE R.L. DE C.V., a Mexican variable capital limited liability company	Precision Metal Works, Inc.

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SCHEDULE 9.19 INTELLECTUAL PROPERTY

Loan Party Obligor	Trademark Title	Trademark Application Number	Trademark Registration Number	Date of Application	Date of Registration
Precision Metal Works, Inc.	PRECISION METAL WORKS (word mark)	n/a	n/a	n/a	n/a
Precision Metal Works, Inc.		n/a	n/a	n/a	n/a

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#### SCHEDULE 9.20 ENVIRONMENTAL MATTERS

1. Phase I Environmental Assessment, 111 Commerce Blvd., Frankfort, KY, Partner Engineering and Science, Inc. (March 27, 2023)
  2. Phase II Subsurface Investigation, 111 Commerce Blvd., Frankfort, KY, Partner Engineering and Science, Inc., (May 11, 2023)
  3. Phase I Environmental Assessment, 4701 Allmond Ave., Louisville, KY, Partner Engineering and Science, Inc. (March 27, 2023)
  4. Phase II Subsurface Investigation, 4701 Allmond Ave., Louisville, KY, Partner Engineering and Science, Inc., (May 4, 2023)
  5. Phase I Environmental Assessment, 111 Commerce Blvd., Frankfort, KY, NSS Environmental, Inc. (May 4, 2019)
  6. Phase II Environmental Assessment, 111 Commerce Blvd., Frankfort, KY, NSS Environmental, Inc., (July 12, 2019)
  7. Department for Environmental Protection Notice of Violation dated February 16, 2023 for violation of KRS 224.70-110 (discharging total suspended solids into stormwater) at 6901 Preston Highway, Louisville, KY. Energy and Environment Cabinet offer of settlement dated March 24, 2023 for \$15,000. Negotiated down to \$7,500, but not yet formally resolved.
  8. Department for Environmental Protection Notice of Violation dated February 19, 2021 for violation of KRS 224.70-110 at 6901 Preston Highway, Louisville, KY. Citation for discharging total suspended solids into stormwater.
  9. Department for Environmental Protection Notice of Violation dated September 1, 2021 for violation of KRS 224.70-110 at 6901 Preston Highway, Louisville, KY. Citation for discharging total suspended solids into stormwater.
  10. Department for Environmental Protection Notice of Violation dated December 2, 2021 for violation of KRS 224.70-110 at 6901 Preston Highway, Louisville, KY. Citation for discharging total suspended solids into stormwater.
-

**SCHEDULE 10.13 POST-CLOSING DELIVERIES**

<b>Action or Document</b>	<b>Due Date</b>
1. Evidence satisfactory to Lender that NTH/WORKS DE MEXICO S. DE R.L. DE C.V., a Mexican variable capital limited liability company (“ <b>Nth Works</b> ”), has been dissolved. In connection therewith, Borrowers hereby represent, warrant, covenant and agree to and with Lender that as of the date hereof and at all times hereafter until its dissolution, (a) Nth Works is and shall remain a dormant entity with no assets, operations, liabilities or business opportunities, and no value to the Loan Parties or their businesses, and (b) no Loan Party will transfer any assets or business opportunities of any kind to Nth Works.	Ninety (90) days after the Closing Date
2. All original certificates or instruments representing or evidencing the Pledge Collateral (as defined in that certain Stock Pledge Agreement of even date herewith by and among Holdings and Lender), in suitable form for transfer by deliver, together with such Equity Interest powers and other instruments or documents reasonably required by Lender in connection with such Stock Pledge Agreement;	Ten (10) Business Days after the Closing Date
3. All original certificates of title for vehicles owned by Borrowers.	Thirty (30) days after the Closing Date
4. A fully executed Deposit Account Control Agreement and Blocked Account Control Agreement with The Huntington National Bank, in form and substance satisfactory to Lender.	Thirty (30) days after the Closing Date
5. Customary insurance endorsements (i) showing Lender as lender’s loss payable with respect to each policy of property or casualty insurance and additional insured with respect to general liability insurance; and (ii) providing that thirty (30) days’ notice will be given to Lender prior to any cancellation of, material reduction or change in coverage provided by or other material modification to such policy and ten (10) days’ notice for nonpayment.	Thirty (30) days after the Closing Date



SCHEDULE 14.01-A CLOSING

DELIVERY LIST CLOSING

CHECKLIST

LOANS BY FIFTH THIRD BANK, NATIONAL ASSOCIATION TO  
PRECISION METAL WORKS, INC.

Closing Date: July 19, 2023

Borrower: Precision Metal Works, Inc. ("**Metals**") and PMW Affiliated Holdings, LLC ("**PMW**") (collectively, the "**Borrower**") Lender: Fifth Third Bank ("**53**" or "**Lender**")

Lender's Counsel: Thompson Coburn LLP ("**LC**") Borrower's Counsel:  
Greenberg Traurig, LLP ("**BC**")

\*\*Capitalized terms used but not otherwise defined have the meanings given in the Credit and Security Agreement\*\*

ACTION PARTY	ITEM STATUS	DOCUMENT OR ACTION
LC	Received	1. <b>Credit and Security Agreement</b>
		<b>Schedules &amp; Exhibits</b>
53	Received	1.01-A Applicable Margins
53	Received	1.01-B Account Concentration Exceptions
Borrower	Received	1.01-C Existing Liens
Borrower	Received	5.01 Commercial Tort Claims

ACTION PARTY	ITEM STATUS	DOCUMENT OR ACTION
Borrower	Received	9.02 Locations; Bank Accounts
Borrower	Received	9.06 Organization Information
Borrower	Received	9.07 Litigation
Borrower	Received	9.09 Affiliate Transactions
Borrower	Received	9.10 Names & Trade Names
Borrower	Received	9.14 Existing Indebtedness
Borrower	Received	9.16 Parent, Subsidiaries & Affiliates
Borrower	Received	9.19 Intellectual Property
Borrower	Received	9.20 Environmental Matters
53	Received	10.13 Post Closing Deliveries
LC	Received	14.01-A Closing Checklist
53	Received	14.01-B Sources and Uses
Borrower	Received	15.02 Certain Addresses for Notices
LC	Received	Exhibit A – Form of Compliance Certificate
53	Received	Exhibit B - Form of Borrowing Base Certificate
53	Received	2. <b>Continuing Agreement for Commercial and Standby Letters of Credit</b>
LC	Received	3. <b>Management Fee Subordination Agreement</b>

ACTION PARTY	ITEM STATUS	DOCUMENT OR ACTION
LC	Received	4. <b>Subordination Agreement</b> ☑Copy of Seller Note
LC	Received	5. <b>Assignment of Undertakings</b>
BC	Received	6. <b>Officer's Certificate</b> (Metals) ☑Incumbency Certificate ☑Articles of Incorporation ☑Bylaws ☑Certificate of Good Standing (KY) ☑Borrowing Resolutions
BC	Received	7. <b>Secretary's Certificate</b> (PMW) ☑Incumbency Certificate ☑Certificate of Formation ☑Operating Agreement ☑Certificate of Good Standing (DE) ☑Borrowing Resolutions
LC	Received	8. <b>UCC Filing Authorization.</b>
LC	Filed upon close	9. <b>UCC-1 Financing Statements.</b>
LC	Received	10. <b>UCC and Lien Search Results.</b>
LC	Received	11. <b>Stock Pledge Agreement (Borrowers)</b>

ACTION PARTY	ITEM STATUS	DOCUMENT OR ACTION
BC	Post-Closing	12. <b>Original Stock Certificates</b>
LC	Received	13. <b>Blank Stock Powers</b>
LC	Received	14. <b>Trademark Security Agreement</b>
LC	Received	15. <b>Closing Certificate</b>
LC	Received	16. <b>Landlord Agreement.</b> – 111 Commerce Blvd., Frankfort, KY 40601 ☒ Copy of Lease
LC	Received	17. <b>Landlord Agreement.</b> – 4701 Allmond Ave., Louisville, KY 40209 ☒ Copy of Lease
LC	Post-Closing	18. <b>Landlord Agreement.</b> – Preston Highway, Jefferson County, KY ☒ Copy of Lease
Borrower/ 53	Post-Closing	19. <b>Third Party Deposit Account Control Agreement</b>
Borrower/ 53	Post-Closing	20. <b>Third Party Blocked Account Control Agreement</b>
BC/Borrower	Received	21. <b>Diligence Request List</b>
LC	Received	22. <b>ABL Reporter Service Agreement and Borrowing Base Certificate and Loan Authorization</b>
LC	Received	23. <b>Authorization to Pay Proceeds with Funds Flow Exhibit, including evidence of Excess Availability of not less than \$2,000,000</b>
Borrower	Received	24. <b>Initial Borrowing Base Certificate</b>
Borrower	Received	25. <b>ACORD 25 Certificate of Liability Insurance</b> <ul style="list-style-type: none"> <li>• Borrower must be named insured or additional insured</li> <li>• 53 must be named as additional insured</li> </ul>

ACTION PARTY	ITEM STATUS	DOCUMENT OR ACTION
		<ul style="list-style-type: none"> <li>\$1,000,000 per occurrence and \$2,000,000 aggregate</li> </ul>
Borrower	Post-Closing	26. <b>Additional Insured Endorsement for liability insurance</b>
Borrower	Post-Closing	27. <b>ACORD 27 Certificate of Property Insurance</b> <ul style="list-style-type: none"> <li>Borrower must be named insured or additional insured</li> <li>53 named as lender's loss payable</li> <li>Replacement cost</li> </ul>
Borrower	Post-Closing	28. <b>Lender's Loss Payable Endorsement for property insurance</b>
Borrower	Received	29. <b>Payment of Fees and Costs</b> . All fees and expenses payable to the Lender through the Closing Date.
Borrower		30. <b>Payoff Letter</b>
	Received	a. Huntington National Bank
	Received	b. Bank of the West
	Received	c. Community Trust Bank
BC		31. <b>Lien Releases</b>
BC	Received	a. UCC-3 JPMorgan Supply Chain Finance re Mexican A/R? Thought Mexico was dormant.
BC	Post-Closing	b. UCC-3 Huntington National Bank (all asset and equipment)
	Received	c. UCC-3 Artiflex (appears to be a bailment)
	Post-Closing	d. UCC-3 DeLage, will this be paid in connection with closing?

ACTION PARTY	ITEM STATUS	DOCUMENT OR ACTION
	Received	e. Description re status of KY litigation
	Post-Closing	f. UCC-3 Bank of the West
	Post-Closing	g. UCC-3 Community Trust Bank
BC		32. <b>Legal opinion</b>
	Received	a. DE Opinion
	Received	b. KY Opinion
	Received	c. IL Opinion
Borrower	Received	33. <b>CIP Forms</b>
Borrower	Received	34. <b>Certification of Beneficial Ownership</b>
Borrower	Received	35. <b>Purchase Agreement Documents</b>
Borrower	Received	36. <b>Evidence of \$2,000,000 Cash Equity</b>
Borrower	Received	37. <b>Quality of Earnings Report</b>
53	Received	38. <b>Inventory and Equipment Appraisals</b>

## CONTACT LIST

### LENDER

Fifth Third Bank, National Association 6111 N. River  
Road  
Rosemont, IL 60018

Name	Phone	E-Mail	Mobile
David L. Enghauser	312/960-5360	<a href="mailto:david.enghauser@53.com">david.enghauser@53.com</a>	312/560-8326

### LENDER'S COUNSEL

Thompson Coburn LLP  
55 E. Monroe Street, 37<sup>th</sup> Floor Chicago,  
Illinois 60603

Name	Phone	E-Mail	Mobile
Victor Des Laurier	312/580-2246	<a href="mailto:vdeslaurier@thompsoncoburn.com">vdeslaurier@thompsoncoburn.com</a>	630/234-7686
Sarah A. Wade	314/552-6197	<a href="mailto:swade@thompsoncoburn.com">swade@thompsoncoburn.com</a>	314/602-6197
Dylan Miller	312/580-2230	<a href="mailto:dmiller@thompsoncoburn.com">dmiller@thompsoncoburn.com</a>	734/755-6279

### BORROWER

Precision Metal Works, Inc. 6901 Preston  
Highway Louisville, KY

Name	Phone	E-Mail	Mobile
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### BORROWER' COUNSEL

Greenberg Traurig, LLP  
2375 E. Camelback Rd., Suite 800  
Phoenix, AZ 85016

Name	Phone	E-Mail	Mobile
Jeffrey H. Verbin, Esq	602/445-8202	<a href="mailto:verbinj@gtlaw.com">verbinj@gtlaw.com</a>	602/418-6245

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## SCHEDULE 14.01-B SOURCES AND USES

FINAL SOURCES & USES- PRECISION METAL WORKS, Inc.								
	Closing Date:	7/19/2023						
<b>Sources:</b>				<b>Uses:</b>				
Revolver Availability (after Reserves)	11,328,351.50			Cash to Sellers at Close	7,207,862.00			
Fifth Third M&E Loan	4,952,000.00			Existing Senior Debt Repayment (See Cells G38, G40:G43)	6,531,464.99			
				Existing Shareholder Note Repayment (See Cells G44:G48+)	3,460,526.01			
				Rent Reserve - No LLW / Preston Pkwy., Louisville, KY	96,000.00			
				Purchase Price Adjustment Escrow	1,020,000.00			
				Indemnification Escrow	225,000.00			
Transfer of Goof Faith Deposit	65,000.00			Closing Costs	2,067,477.25			
Cash on hand to be wired to Fifth Third				A/P > 30 days past due	243,846.33			
				PreFunded CapEx (add'l availability to fund portion of CapEx spend within 90 days of closing that will not flow thru FCC)				
Equity - Live Ventures Transfer to 5/3	6,704,578.82				100,000.00			
				Excess Availability	2,097,753.74	<b>MUST BE AT LEAST \$2,000,000</b>		
Totals	23,049,930.32				23,049,930.32			
<b>Funding numbers</b>				<b>Outbound Wires</b>				
Revolver	8,939,643.04			Dinsmore & Shohi, LLP (Seller's counsel)	225,000.00	Wire #1		
Fifth Third M&E Loan	4,952,000.00			Invision Capital Advisors, LLC (Seller's IB)	750,000.00	Wire #2		
Incoming Cash - Internal Transfer of Good Faith Funds from GL#200395, Affiliate #001, Cost Center 10097				Armfield, Harrison & Thomas, LLC (insurance)	51,240.00	Wire #3		
	65,000.00			McGill Global Risk Solutions, LLC (insurance)	151,371.00	Wire #4		
Cash on hand to be wired to Fifth Third	0.00			Balance Partners, LLC (insurance)	45,000.00	Wire #5		
Equity - Live Ventures Transfer to 5/3	6,704,578.82			Greenberg Traurig (Buyer's counsel)	300,000.00	Wire #6		
				Cherry Bekeart (Quality of Earnings)	63,446.25	Wire #7		
				Stites & Harbison PLLC (Buyer's KY Counsel)	35,000.00	Wire #8		
				Thompson & Coburn LLP (5/3 Bank's counsel)	95,400.00	Wire #9		
				PURCHASE PRICE ADJUSTMENT ESCROW	1,020,000.00	Wire #10		
				INDEMNIFICATION ESCROW	225,000.00	Wire #11		
				Live Ventures (Reimbursement of Diligence Deposits)	111,250.00	Wire #12		
				Bank of The West (Sr. Debt Repayment)	10,195.98	Wire #13		
				BRP D&O Management Tail	106,480.00	Wire #14		
				De Lage Landed #1 (Sr. Debt Repayment)	8,148.09	Wire #15		
				De Lage Landed #2 (Sr. Debt Repayment)	233,952.86	Wire #16		
				Huntington Bank Equipment Loan(Sr. Debt Repayment)	2,104,242.93	Wire #17		
				Huntington ABL Loans (Sr. Debt Repayment)	4,174,925.13	Wire #18		
				Bartell Global (Affiliate Payoff)	1,600,000.00	Wire #19		
				Mark Matthews (Shareholder Loan Payoff)	176,999.76	Wire #20		
				Devon Jones (Shareholder Loan Payoff)	180,000.00	Wire #21		
				Gary Cook (Shareholder Loan Payoff)	75,000.00	Wire #22		
				Howard (HR) Terry (Shareholder Loan Payoff)	93,600.00	Wire #23		
				Richard Stanley Trust (Cash to Seller)	3,603,930.80	Wire #24		
				John Locke Trust (Cash to Seller)	3,603,930.80	Wire #25		
				Bruce Murray (Shareholder Loan Payoff)	54,000.00	Wire #26		
0	0.00			SFM Consideration Payout	1,230,926.25	Wire #27		
				Huntington Legal Fees / McDonald Hopkins, LLC	3,000.00	Wire #28		



[illegible]

SCHEDULE 15.02

CERTAIN ADDRESSES FOR NOTICES

Notice Address for Lender:

Fifth Third Bank 6111 N. River Road  
Rosemont, Illinois 60018 Attn: Rhonnetta McKinney  
Email: [rhonnetta.mckinney@53.com](mailto:rhonnetta.mckinney@53.com)

With a copy to:

Thompson Coburn LLP  
55 E. Monroe Street, 37<sup>th</sup> Floor Chicago, Illinois 60603  
Attn: Mr. Victor A. DesLaurier, Esq. Email:  
[vdeslaurier@thompsoncoburn.com](mailto:vdeslaurier@thompsoncoburn.com)

Notice Address for Borrower:

Precision Metal Works, Inc.  
c/o Live Ventures, Incorporated 325 E. Warm Springs Road #102 Las  
Vegas, Nevada 89119  
Attn: Eric Althofer  
Email: [ealthofer@liveventures.com](mailto:ealthofer@liveventures.com) and

Precision Metal Works, Inc. c/o Live Ventures Incorporated  
325 E. Warm Springs Rd., #102 Las Vegas, Nevada 89119 Attention:  
Wayne Ipsen  
Email: [wipsen@liveventures.com](mailto:wipsen@liveventures.com)

With a copy to:

Greenberg Traurig, LLP  
10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135  
Attn: Michael J. Bonner, Esq. Email: [bonnerm@gtlaw.com](mailto:bonnerm@gtlaw.com)

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EXHIBIT A

FORM OF COMPLIANCE CERTIFICATE

Compliance Certificate

To: Fifth Third Bank  
Date: \_\_, 20\_\_ Subject: Precision Metal Works, Inc.

Financial Statements

In accordance with our Credit and Security Agreement dated as of July 19, 2023, as amended, modified, extended, renewed, supplemented or restated (the “**Credit Agreement**”), attached are the financial statements of Precision Metal Works, Inc., a Kentucky corporation and PMW Affiliated Holdings, LLC, a Delaware limited liability company (collectively, the “**Borrowers**”) of and for the month ended \_\_, 20 (the “**Reporting Date**”) and the year-to-date period then ended (the “**Current Financials**”) required to be delivered pursuant to **Section 7.03** of the Credit Agreement. All terms used in this certificate have the meanings given in the Credit Agreement.

Borrowers certify that the Current Financials have been prepared in accordance with GAAP and fairly present in all material respects the consolidated financial condition of Borrowers as of the date thereof, subject in the case of unaudited statements to changes resulting from audit and normal year-end adjustment.

Defaults. (Check one):

Each Borrower further certifies that:

Except as previously reported in writing to the Lender, there exists no event or circumstance which is or which with the passage of time, the giving of notice, or both would constitute an Event of Default, as that term is defined in the Agreement, or, if such an event of circumstance exists, a writing attached hereto specifies the nature thereof, the period of existence thereof and the action that Borrowers have taken or proposes to take with respect thereto.

There exists no event or circumstance which is or which with the passage of time, the giving of notice, or both would constitute an Event of Default, as that term is defined in the Agreement, or, if such an event of circumstance exists, a writing attached hereto specifies the nature thereof, the period of existence thereof and the action that Borrowers have taken or proposes to take with respect thereto.

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Representations and Warranties:

Each Borrower further certifies that each of the representations and warranties made by such Borrower, any Subsidiary and/or any Owner of such Borrower in the Credit Agreement and/or in any other Loan Document are true and correct in all material respects on and as of the date of this Compliance Certificate as if made on and as of the date of this Compliance Certificate (and for purposes of this Compliance Certificate, the representations and warranties made by Borrowers in **Section 9.01** of the Credit Agreement shall be deemed to refer to the financial statements of Borrowers delivered to the Lender with this Compliance Certificate).

Financial Covenants. Borrower further certifies as follows:

1. Minimum Fixed Charge Coverage. Pursuant to **Section 12.01** of the Credit Agreement, as of the Reporting Date, Borrowers' Fixed Charge Coverage was \_\_\_ to 1.00 which satisfies does not satisfy the requirement that such ratio be no less than 1.10 to 1.00 on the Reporting Date.

Attached hereto are all relevant facts in reasonable detail to evidence, and the computations of the financial covenants referred to above. These computations were made in accordance with GAAP, subject to normal year-end adjustments and absence of footnotes.

PRECISION METAL WORKS, INC.,  
a Kentucky corporation

By\_\_ Name:\_\_ Title:\_\_

PMW AFFILIATED HOLDINGS, LLC,  
a Delaware limited liability company

By\_\_ Name:\_\_ Title:\_\_

Signature page to Form of Compliance Certificate

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EXHIBIT B

FORM OF BORROWING BASE CERTIFICATE  
(see attached)

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# PRECISION METAL WORKS,

BOOK OF RECORDING BASE CERTIFICATE (BBC)

Fifth Third Bank, National Association

Client Name:

		Report	Report Effective		
<b>ACCO UNITS</b>		Amount			TO
Beginning A/R					
Balance Gross	(+)				
Sales	(-)				
A/R Collections	(-)				
Non A/R	memo item				
Collections Total	onl memo				
Collections	item onl (-)				
Discounts/Allowanc	(-)				
Credit Memos	(+)				
Ending A/R Balance	As of Date:				
Ineligible	End of Month A/R Ineligible As of Date				
	Temporary Inelig				
	ible Total				
	Ineligible				
Eligible A/R					
Advance Rate - Effective Adv. Rate		85.00			
%					
Cash before Adv	Subtractio				
v. Rate	n Not				
	Unapplied Cash				
	Change				
Available A/R					
A/R Available for Advances	Check to Apply				
A/R Sub-Limit	A/R Limit				15,000,000.
<b>INVENTORY:</b>		Raw Materials	Work In Progress		TO
Beginning Inventory	As of				
Increase/Decrease	(+) /				
Ending Inventory	As of Date:				
Ineligible Inventory		42.84	75.00	74.63	
Available	Check to				
Inventory Available for Adv	Revolving				
Inventory Sub-Limit		5,000,000.0	2,000,000.0	5,000,000.0	5,000,000.
<b>GROSS AVAILABILITY (A/R AND INVENTORY)</b>					
AVAILABLE FOR ADVANCES	Check to				
Revolving Limit	Revolving	15,000,000.0	15,000,000.0	15,000,000.0	15,000,000.
<b>GUARANTEES</b>		Advance			
Standby Letter of Credit	Re v				
Trade Letter of Credit					
<b>Guarantees/Total</b>					
<b>Beginning Revolving Loan Balance</b>					
Collections	(-)				
Negative Loan Adj.	(-)				
Advances	(+)				
<b>RESERVES</b>					
Credit	Check to Apply to				
Credit Card					
<b>Availability</b>					
Total Re	Check to Apply to	15,000,000.0	15,000,000.0	15,000,000.0	15,000,000.
<b>Avail.</b>					

The undersigned hereby represents and warrants to Fifth Third Bank, National Association that the information set forth herein is true and correct as of the date made, that any Accounts Receivable or Inventory classified as "Eligible Accounts" or "Eligible Inventory" conform in all respects to the respective definitions of "Eligible Account" and "Eligible Inventory" as set forth in the Loan and Security Agreement

Prepared

Authorized

**LEASE  
(4701 Allmond Ave., Louisville, KY)**

**BETWEEN**

**LEGACY WEST PARTNERS KENTUCKY PORTFOLIO, LLC LESSOR**

**AND**

**PRECISION METAL WORKS, INC. LESSEE**

**LEASE  
(4701  
Allmond  
Ave.,  
Louisville,  
KY)**

day of

July ,

—**THIS LEASE AGREEMENT**  
(this "**Lease**") is dated as of the <sup>19th</sup>



\_\_\_\_\_2023 (the "Effective Date") by and between **Precision Metal Works, Inc.**, a Kentucky corporation ("Lessee"), and **Legacy West Partners Kentucky Portfolio, LLC**, a Delaware limited liability company ("Lessor").

WITNESSETH:

WHEREAS, Lessee desires to lease the entire property, including the building(s) thereon, consisting of approximately 74,613 square feet, located at 4701 Allmond Avenue, Louisville, Jefferson County, KY 40209 (the "Demised Premises") and Lessor agrees to lease the Demised Premises to Lessee.

NOW, THEREFORE, in consideration of the Demised Premises, mutual covenants contained in this Lease, and each act to be performed hereunder by the parties, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee covenant and agree as follows:

ARTICLE I. DEMISED PREMISES

Section 1.1 Lessor leases to Lessee, and Lessee leases and accepts from Lessor, the Demised Premises (designated as Jefferson County tax parcel 059C00150000), which Demised Premises include the structure, buildings, and improvements located thereon (the structures, buildings, and improvements on the Demised Premises are hereinafter called the "Improvements"), and together with all rights, easements, privileges, consents and appurtenances pertaining thereto.

Section 1.2 Acceptance of Demised Premises In As-Is Condition. LESSEE ACKNOWLEDGES THAT IT IS FAMILIAR WITH THE DEMISED PREMISES AND THE LEGALLY PERMISSIBLE USES THEREON. ACCORDINGLY, LESSEE ACCEPTS POSSESSION OF THE DEMISED PREMISES IN ITS "AS IS" CONDITION AS OF THE EFFECTIVE DATE. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE DEMISED PREMISES, EITHER AS TO ITS FITNESS FOR USE, ITS DESIGN OR CONDITION, OR ANY PARTICULAR USE OR PURPOSE TO WHICH THE DEMISED PREMISES MAY BE PUT, OR OTHERWISE, OR THE EXISTENCE OF ANY DEFECTS, LATENT OR PATENT, IT BEING AGREED THAT ALL SUCH RISKS ARE BORNE BY LESSEE.

ARTICLE II. TERM AND RENT

Section 2.1 Term. Lessee's obligation to pay rent and occupy the Demised Premises in accordance with this Lease shall be for a term of twenty (20) years (the "Term"), commencing on the Effective Date and ending on the last day of the month twenty (20) years following the

Commencement Date, unless terminated at an earlier date for any reason set forth in this Lease. The Effective Date shall be the date on which . . .

Section 2.2 Renewal Periods. Provided that the Lessee is not in default of the terms of the Lease and has not committed an act or omission that with the giving of notice and the passage of time could constitute a default of the terms of the Lease (subject to any applicable cure period hereunder), Lessee shall have and is hereby granted two (2) successive separate options to renew and extend the Term of this Lease from the date or dates upon which it would otherwise expire, for each separate successive renewal period, which shall be for a period of five

(5) years each (each such period being called a "Renewal Period"). Each such Renewal Period shall follow consecutively upon the expiration of the initial term as or upon the expiration of the prior Renewal Period, as the case may be, and each such Renewal Period shall, upon commencement thereof, be deemed included in references to "the term of this Lease" and "the full term of this Lease". Lessee's option with respect to each Renewal Period shall be exercised by Lessee by giving written notice to Lessor of Lessee's exercise of same not later than one hundred and eighty (180) days prior to the expiration date of the initial term or the then current Renewal Period, as the case may be. No option shall be deemed validly exercised unless the option affecting the preceding Renewal Period shall have been validly exercised. If Lessee elects to exercise any one or more of such options, the full term of this Lease shall be automatically extended for the Renewal Period or Periods covered by the option or options so exercised without execution of an extension or renewal lease. Each Renewal Period shall be on all of the same terms and conditions as are in effect hereunder immediately preceding the commencement date of such Renewal Period, except that the Basic Annual Rent during the Renewal Periods shall be fair market value as determined by the Lessor in its reasonable discretion. Lessee shall have no further right or option to renew after expiration of the final Renewal Period. The Lessee's failure to renew the Lease shall result in the expiration of the Lessee's right of occupancy upon the expiration of the then-current lease term.

Section 2.3 Holdover. If Lessee (or anyone claiming through Lessee) does not immediately surrender the Demised Premises or any portion thereof upon the expiration or earlier termination of the Term, then the Basic Rent (as hereinafter defined) payable by Lessee hereunder shall be increased to equal one hundred fifty percent (150%) of the Basic Rent in addition to all other sums that would have been payable pursuant to the provisions of this Lease if the Term had continued during such holdover period. If the Lessor consents to the Lessee's holdover, Lessee's tenancy during such holdover period shall be from month to month in accordance with all the terms and conditions of this Lease.

Section 2.4 Intentionally Omitted.

Section 2.5 Memorandum of Lease. As soon as practicable after execution of this Lease, upon request by either party, Lessor and Lessee shall execute, in recordable form, a Memorandum of Lease in the form annexed to this Lease as Exhibit A, and Lessee shall have the right to record the Memorandum of Lease in the appropriate recording office at Lessee's cost.

Section 2.6 Rent. Commencing on the Effective Date, and during the initial lease year of the Term the annual rent payable by Lessee shall be Seven Hundred and Sixty One Thousand Nine Hundred and Twenty dollars (\$761,920), payable in monthly installments of Sixty Three

Thousand Four Hundred Ninety Three Dollar and thirty three cents (\$63,493.33) per month (the "Basic Rent"). Thereafter, on each anniversary of the Effective Date, including during each Renewal Period, Basic Rent shall increase by two percent (2.0%). If this Lease shall commence on a date other than the first day of the month, then on the Effective Date the Lessee shall pay that portion of the Basic Rent which represent the amount due for the balance of the month together with the first full monthly payment of Basic Rent. Thereafter, all payments of Basic Rent shall be due and payable on the first (1<sup>st</sup>) day of each month during the Term.

Section 2.7 Payments. Rent shall be made payable to Lessor and mailed to the address (if by check) or delivered by wire or ACH transfer, as directed in writing by Lessor. Lessor may, from time to time, change the method or address for delivery of rent in a written notice delivered to Lessee at least ten (10) days prior to the effective date of such change.

Section 2.8 Late Payment. Notwithstanding anything to the contrary contained herein, in the event that payment of rent or any other amount to be paid to the Lessor under this Lease, including amounts to be reimbursed to the Lessor is not received by Lessor within five (5) days of the due date, then Lessee shall pay, as additional rent, a sum equal to five (5%) percent of the unpaid rent or other amount due as the late payment. In addition, Lessee shall be obligated to pay five percent (5%) of the unpaid amount from the date that such amount is due until paid in full.

**Section 2.9 Net Lease. This Lease shall be an absolute net lease, so that this Lease shall yield all Basic Rent payable hereunder as an absolutely net return to Lessor. Accordingly, with the exception of Lessor's Income Taxes and as otherwise expressly set forth in this Lease, Lessee shall pay all taxes, insurance, assessments, and other costs, expenses and obligations of every kind and nature whatsoever relating to the ownership, including a management fee not to exceed at \$500.00/month, with annual increases matching the lease term, and operation of the Demised Premises, such as taxes, assessments, insurance premiums and maintenance, repair and compliance costs, which accrue with respect to the Demised Premises prior to, on and after the Effective Date and prior to the expiration of the Term. Lessee's obligation to pay all amounts described in this Section 2.9 shall survive the expiration or earlier termination of this Lease. Lessee will pay property taxes directly to taxing authority.**

Section 2.10 Impositions.

(a) On or before the Effective Date, Lessee shall notify the appropriate taxing authorities to deliver directly to Lessee all statements and invoices for Impositions (hereinafter defined), effective as of the Effective Date. Lessee shall pay all Impositions prior to the date they become delinquent. As soon as practicable after the payment thereof, Lessee shall deliver to Lessor evidence of each such payment. To the extent that any such Impositions are imposed upon Lessor, at Lessor's option, Lessee shall either pay such Impositions directly to the taxing authority or, upon documentation of such Imposition and payment thereof, reimburse Lessor for such Impositions paid by Lessor. If the Lease Term expires on a day other than the last day of a calendar year, then Lessee's liability for Impositions for such calendar year shall be apportioned by multiplying the amount of Impositions for the full calendar year by a fraction, the numerator of which is the number of days during such calendar year falling within the Lease Term, and the denominator of which is three hundred sixty-five (365).

(b) The term "Impositions" shall mean, collectively, taxes, including without limitation, any present or future real estate taxes, all taxes or other impositions that are in the nature of or in substitution for real estate taxes, vault and/or public space rentals, business district or arena taxes, business or occupation, single business, transaction, privilege, excise or franchise taxes, as well as special user fees, license fees, permits, improvement bonds, levies, improvement district charges, governmental charges, rates, assessments and other similar charges, general, special, ordinary or extraordinary foreseen and unforeseen, that are related to the Demised Premises or Lessee's use thereof. Impositions shall not include any federal, state, or local tax imposed on Lessor that is based upon Lessor's income or profits ("Lessor's Income Taxes").

(c) Contest of Impositions. Lessee, at its sole expense, upon at least ten (10) days' prior written notice to Lessor but without Lessor's consent, and using legal counsel or other service reasonably acceptable to Lessor (such acceptance not to be unreasonably withheld, conditioned, or delayed), shall have the right to contest the amount or validity of any Imposition by diligently conducting in good faith an appropriate legal or administrative proceeding, provided that the following conditions are met: (a) the Impositions are paid or the postponement of payment of Impositions, without penalty, as part of such proceeding is required by applicable law, (b) the Demised Premises shall not, by reason of such postponement of payment, or the initiation of such proceeding, be subject to any lien, forfeiture, sale, or loss, (c) such proceedings shall not materially impact or interfere with the use or occupancy of the Demised Premises, (d) such proceedings shall not affect or interfere with Lessee's continued payment of Basic Rent and any other amount that may be due herein; and (e) pursuing the contest of Impositions shall not in any way expose Lessor to any criminal or civil liability, penalty or sanction. Lessee further agrees that each such contest shall be promptly and diligently prosecuted to a final conclusion, and Lessee shall pay all judgments, decrees and costs (including any costs incurred by Lessor) in connection with any such contest and shall, promptly after the final determination of such contest, fully pay and discharge the amounts which shall be levied. Lessee shall be entitled to any refund received with respect to Impositions paid by Lessee.

(d) Assessments on Lessee's Business and Personalty. Lessee shall pay before delinquency any business, rent, sales, franchise or other taxes or fees that are now or hereafter levied, assessed or imposed upon Lessee's use, operation, or occupancy of the Demised Premises, the conduct of Lessee's business at the Demised Premises, or Lessee's equipment, fixtures, furnishings, inventory or personal property. If any such tax or fee is enacted or altered so that such tax or fee is levied against Lessor or so that Lessor is responsible for collection or payment thereof, then Lessee shall pay to Lessor as additional rent the amount of such tax or fee.

(e) Utilities and Services. Lessee, at its own expense and risk, shall arrange with the appropriate utility companies and service providers for the provision to the Demised Premises of water, sewer, trash collection, electricity, oil, telephone, window washing, landscaping, snow removal, and all other utilities and services desired by Lessee. On or before the Effective Date, Lessee shall notify the appropriate utility and service providers to deliver directly to Lessee all statements and invoices for the amounts for which Lessee is responsible pursuant to this Section 2.10(e), effective as of the Effective Date. Lessee shall pay directly to the appropriate utility companies and service providers all charges for all utilities consumed in and services performed for the Demised Premises, as and when such charges become due

and payable. To the extent the invoices for any such utilities and services are received by Lessor, at Lessor's option, Lessee shall either pay the charge for such utilities and services directly to the utility or service provider or reimburse Lessor for such charges paid by Lessor.

Section 2.11 Security Deposit. As security for performance of its obligations hereunder, upon execution of this Lease, Lessee shall pay to Lessor on even date hereof a security deposit in the amount of Sixty Three Thousand Four Hundred Ninety Three Dollars and 33 cents (\$63,493.33 (the "Security Deposit"). Upon the occurrence of any Event of Default (as hereinafter defined) by Lessee, Lessor may from time to time and without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrears of Basic Rent or any other amount payable hereunder, or any other damage, injury, expense or liability caused to the Lessor by such Event of Default. The remaining balance of such Security Deposit shall be returned by Lessor to Lessee within a reasonable time after the Lessee surrenders the premises to the Lessor; provided, however, Lessor shall not be obligated to return the remaining balance of such Security Deposit until all payments due from Lessee to Lessor pursuant to this Lease shall have been made in full. The Security Deposit shall not be considered an advance payment of rent or measure of the Lessor's damages in case of default by Lessee. Lessor may commingle such Security Deposit with other monies of the Lessor. Lessee shall receive no interest on such Security Deposit. Lessee shall be obligated to deposit with Lessor the amount necessary to restore the Security Deposit to its original amount within five (5) business days of Lessor's notice to Lessee of any depletion of the Security Deposit. In the event of the sale or transfer of Lessor's interest in the Demised Premises, Lessor shall have the right to transfer the Security Deposit to the purchaser or transferee and upon such transfer Lessee shall look only to the new Lessor for the return of the Security Deposit and the Lessor shall thereupon be released from all liability to Lessee for the return of or accounting for such Security Deposit.

### ARTICLE III. USE OF IMPROVEMENTS, ALTERATIONS, BUSINESS CONDUCT.

Section 3.1 Use. Lessee shall use and occupy the Demised Premises for no purpose except (a) purposes related to those for which the Demised Premises is being used as of the Effective Date and/or (b) other lawful purposes consistent with the industrial nature of the Demised Premises. Lessee shall not use or occupy the Demised Premises for any unlawful purpose, or in any manner that will violate the certificate of occupancy for the Demised Premises. Lessee shall, at Lessee's expense, comply with all present and future laws (including, without limitation, the Americans with Disabilities Act), ordinances (including without limitation, zoning ordinances and land use requirements), regulations, orders, recommendations, decisions, and decrees now or hereafter promulgated (including, without limitation, those made by any public or private agency), as any of the same may be amended from time to time (collectively, "Laws", and individually, "Law") applicable to Lessee, the use, occupancy and condition of the Demised Premises and the business being conducted thereon, and all machinery, equipment, furnishings, fixtures and improvements on or used in connection with the Demised Premises. If any Law requires any occupancy or use permit or license for the Demised Premises or the operation of the business conducted therein, then Lessee shall obtain and keep current all such permits or licenses at Lessee's expense. Lessee shall deliver to Lessor, promptly upon request, copies of all such licenses and permits. If any

Law requires any modification to the Demised Premises, Lessee shall perform such alterations, at its sole cost and expense, in accordance with the applicable terms and conditions of Section 3.2 below. Use of the Demised Premises is subject to all covenants, conditions, easements and restrictions of record, and Lessee shall comply with the same (but not with any of Lessor's obligations for and relating to borrowed money except as provided in this Lease or agreed by Lessee with Lessor's lender). Lessee shall conduct its business in the Demised Premises in a reputable manner. Lessee shall have the right to erect and maintain directional or Lessee identification signs (but no third party signage such as, by way of example and not limitation, advertisements, political advocacy, or position statements) in or on the Demised Premises at such place or places as Lessee may choose, subject to all applicable Laws and ordinances.

Section 3.2 Alterations by Lessee. Except as otherwise provided in this Lease, any alterations and additions to the Demised Premises that Lessee may deem desirable during the Term may be made by Lessee, at Lessee's sole cost and expense, but Lessor's prior written consent (not to be unreasonably withheld, conditioned, or delayed) shall be required for any exterior alterations in excess of \$200,000 at any one time, reductions or increase in size of the Demised Premises. Lessor shall promptly sign and execute such documents or otherwise evidence its approval, consent or grant of authority, as required by any public authorities having jurisdiction, to facilitate issuance to Lessee of necessary licenses or to permit Lessee to make or perform any permissible alteration or addition.

Section 3.3 Conduct of Business. Lessee shall not cause injury or waste to the Demised Premises, reasonable wear and tear excepted, and shall reimburse the Lessor for the cost of repair within 10 days after invoicing by the Lessor. Lessee shall keep the Demised Premises clean and free from rubbish, trash and garbage, and, at Lessee own expense, arrange for removal of same. Lessee shall store all such rubbish, trash and garbage within the Demised Premises.

#### Section 3.4 Hazardous Materials.

(a) Lessee shall not cause or permit any Hazardous Materials (as hereinafter defined) to be generated, used, released, stored or disposed of in or about the Demised Premises, other than in compliance with all applicable Environmental Laws. Without limiting the generality of the foregoing, it is acknowledged that Lessee presently uses the chemicals and materials listed on Exhibit A attached hereto and made a part hereof (collectively, the "Permitted Materials"). Notwithstanding anything to the contrary contained herein, Lessee shall be permitted to store and use at the Demised Premises the Permitted Materials so long as the same is done in compliance with all applicable Environmental Laws. At the expiration or earlier termination of this Lease, Lessee shall surrender the Demised Premises to Lessor in a condition that is not in violation of Environmental Laws caused or permitted by Lessee or originating on the Demised Premises. "Hazardous Materials" means (i) asbestos and any asbestos containing material, (ii) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other applicable Law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability,

corrosively, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity, (iii) any petroleum product, cleaning solvents, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear, or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product, and any other substance the presence of which is regulated by Environmental Law or is commonly acknowledged as being detrimental to the Demised Premises or hazardous to health or the environment, and (iv) any mold, fungi, bacterial or microbial matter present at or in the Demised Premises, including, without limitation, building materials, which is in a condition, location or a type which poses a risk to human health or safety or the environment, or may result in damage to or would adversely affect or impair the value or marketability of the Demised Premises. "Environmental Law" means any present and future Laws, and other requirements or guidelines of governmental authorities applicable to the Demised Premises and relating to the environment and environmental conditions, industrial hygiene, public health or safety, or to any Hazardous Material (including, without limitation, CERCLA 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, the Clean Air Act, 33 U.S.C. § 7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 1101 *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*, and any so-called "Super Fund" or "Super Lien" law, any Law requiring the filing of reports and notices relating to Hazardous Materials, environmental laws administered by the Environmental Protection Agency, and any similar state and local Laws).

(b) Lessee shall give Lessor notice of any Environmental Default (as hereinafter defined) of which Lessee has actual knowledge within forty-eight (48) hours after Lessee has actual knowledge of such Environmental Default. If such notice is oral or telephonic, Lessee shall follow such notice with written notice within seventy-two (72) hours after Lessee has actual knowledge of such Environmental Default. A n "**Environmental Default**" means any of the following: a violation of an Environmental Law caused or permitted by Lessee or originating on the Demised Premises; a release, spill, discharge or detection of a Hazardous Material on or from the Demised Premises in violation of Environmental Law or an environmental condition on or from the Demised Premises requiring responsive action under Environmental Law. For avoidance of doubt, notwithstanding anything to the contrary contained herein, Lessee shall have no liability for environmental matters originating off of the Demised Premises or migrating onto the Demised Premises except to the extent caused by Lessee. Upon any Environmental Default, in addition to all other rights available to Lessor under this Lease, at law or in equity, Lessor shall have the right but not the obligation, at its option, (i) to require Lessee, at Lessee's sole cost and expense, to cure such Environmental Default in accordance with all Environmental Laws and to the reasonable satisfaction of Lessor , in which event Lessee shall commence such cure promptly, but in no event later than fifteen (15) days after written demand by Lessor and Lessee shall complete such cure within the time reasonably necessary to effect the cure, not to exceed one hundred eighty (180) days after commencement, provided that such 180-day period may be extended by Lessor if reasonably necessary to complete such cure, and provided that Lessee shall keep Lessor fully informed of the actions being planned and taken by Lessee to address the

Environmental Default, or (ii) to perform, at Lessee's sole cost and expense, any lawful action necessary to address the same, in which event Lessee shall pay the reasonable costs thereof to Lessor as additional rent. Lessee may provide evidence of meeting its obligation to cure upon receipt of a determination by the Kentucky Department for Environmental Protection ("KDEP") that current and future owners of the Demised Premises are relieved of further liability for the remediation of the Hazardous Materials that are the subject matter of the Environmental Default. In connection with any effort by Lessee to obtain such a determination from KDEP, Lessor agrees to implement engineering or institutional controls under the Uniform Environmental Covenants Act, including the recording of necessary instruments in the public records, providing such engineering or institutional controls do not prevent use of the Demised Premises for (a) purposes related to those for which the Demised Premises is being used as of the Effective Date and/or (b) other lawful purposes consistent with the industrial nature of the Demised Premises.

(c) If Lessor has a reasonable basis to believe an Environmental Default has occurred, or if a governmental authority requires a Phase I environmental assessment, or in connection with any sale, financing or refinancing of the Demised Premises, Lessor shall have the right, but not the obligation upon each such request, to conduct an audit of the Demised Premises (including, without limitation, the air, soil, surface water and/or groundwater at or near the Demised Premises) and Lessee's compliance with Environmental Laws with respect thereto, including without limitation, a Phase II environmental assessment if recommended by such audit. Lessor will bear the cost of any Phase I environmental assessment required under this Section 3.4(c) unless (i) such Phase I environmental report is required by any governmental authority, or (ii) such Phase I environmental report reveals that an Environmental Default has occurred, in which case Lessee shall pay for the cost of such Phase I environmental report as Additional Rent. If a Phase II report is performed pursuant to a recommendation therefor set forth in any Phase I environmental report that is done under this Section 3.4(c), and if such Phase II environmental report reveals that an Environmental Default has occurred, Lessee shall pay for the cost of such Phase II environmental report as additional rent. If such audit reveals that an Environmental Default has occurred, Lessor shall have the right, but not the obligation, (i) to require Lessee, at Lessee's expense, to cure the same in accordance with the terms of Section 3.4(b) above or (ii) to cure the same, at Lessee's sole cost and expense, in which event Lessee shall pay the reasonable costs thereof to Lessor as additional rent. Lessor shall use commercially reasonable efforts to ensure that any audit conducted pursuant to this Section 3.4(c) does not unreasonably interfere with Lessee's operations at the Demised Premises.

(d) If any lender shall require testing at or near the Demised Premises and Lessor incurs expenses in complying with such requirement, then Lessor shall bear all such expenses (including, without limitation, the cost of a Phase I and Phase II environmental report) unless any such Phase I or a Phase II environmental report reveals that an Environmental Default has occurred, in which case Lessee shall pay to Lessor the reasonable costs therefor as additional rent. Lessor shall use commercially reasonable efforts to ensure that any audit conducted pursuant to this Section 3.4(d) does not unreasonably interfere with Lessee's operations at the Demised Premises.

(e) If this Lease has terminated or expired and Lessee owes Lessor the costs of any



environmental action under Section 3.4(c) or Section 3.4(d), Lessee shall pay the amount owed directly to Lessor and not as additional rent.

(f) As a material consideration for Lessor's entering into this Lease, Lessee hereby waives, and releases Lessor and its Affiliates, partners, officers, directors, members, trustees, employees, agents and Lenders from any and all claims for damage, injury or loss (including without limitation, claims for the interruption of or loss to business) which relate to any Environmental Default, whether occurring prior or subsequent to the Effective Date except to the extent that such Environmental Default results from Lessor's gross negligence or intentional misconduct. Promptly upon request, Lessee shall execute from time-to-time reasonable certificates concerning Lessee's best knowledge and belief regarding the presence of Hazardous Materials at the Demised Premises.

(g) Lessee's obligations pursuant to this Section 3.4 shall survive the expiration or earlier termination of this Lease.

#### ARTICLE IV. MAINTENANCE AND REPAIRS.

Section 4.1 Maintenance of Demised Premises. Except with respect to damage caused by the negligence or other acts of Lessor and/or Lessor's agents, vendors, contractors, members, officers, directors, shareholders and employees (collectively, "Lessor's Agents") Lessee, at Lessee's sole cost and expense, shall keep the Demised Premises, including all portions of the building, landscaping and equipment, in good condition and repair throughout the Term, reasonable wear and tear and the effects of time excepted; provided, however, that Lessee's liability for any item of maintenance, repair or replacement shall be limited as set forth in Article VIII of this Lease. Lessor, at Lessor's sole cost and expense, shall be responsible to repair or remedy damage caused by the negligence or other acts of Lessor and Lessor's agents, contractors, vendors, invitees, and employees. In the event Lessor fails to remedy such damage as required above within thirty (30) days after receipt of notice from Lessee or in the event of an emergency, Lessee may make such repairs and Lessor will reimburse Lessee for such costs within thirty (30) days' after receipt of the bill and if Lessor fails to reimburse Lessee, Lessee within such thirty (30) days, Lessee may deduct the cost from the next due Basic Rent payment. Notwithstanding anything in this Lease to the contrary, Lessor shall have the right, but not the obligation, to take such actions as are reasonably necessary to prevent or mitigate damages or injury to persons or property arising out of the need for Lessee to make repairs or maintain the Demised Premises but only where Lessor reasonably determines that (a) an emergency exists, or

(b) any delay or further delay in taking action would likely result in irreparable harm and/or cause, increase or compound damages or injury to persons or property. Lessor shall promptly give notice to the Lessee of its exercise of the foregoing right. Lessee shall reimburse Lessor the actual costs and expenses incurred in taking such actions within thirty (30) days after receipt of a statement therefore. Any such amounts due will be deemed additional rent. Lessee further agrees to replace (with systems of equal usable years remaining from lease commencement) all systems, after the termination of this Lease, including the roof, HVAC, parking lot and exterior of the building.

Lessee also agrees to make the following repairs and improvements within the allotted timeframe:

- A) Repair items in Property Condition Report Table 1 - Immediate Repairs & Deferred Maintenance Cost Opinion within first 12 months of lease term.
- B) Refurbish/Refresh Office Area within first 36 Months of the lease term.
- C) Replace Roof within first 36 months of lease term.
- D) Total Expenditure to be a minimum of \$500,000 in the first 60 months of the lease term.
- E) Lessee/Seller agrees that at the termination of the lease, Lessee will remove all equipment from Premises.

#### ARTICLE V. LAWS AND GOVERNMENTAL REGULATIONS.

Section 5.1 Compliance with Laws. Lessee shall promptly comply with all laws and ordinance, and all orders, rules, regulations, and requirements of federal, state, and municipal governments and appropriate departments, commissions, boards, and officers of these governments ("Legal Requirements") applicable to the Demised Premises and the business conducted by Lessee thereon throughout the term of this Lease at the Demised Premises, and without cost to Lessor. Lessee shall promptly comply with these Legal Requirements whether they are foreseen or unforeseen, or ordinary or extraordinary. Lessor shall promptly comply with any Legal Requirements affecting any common areas or any portion of the Demised Premises under Lessor's control, if any. The Lessee further agrees to reimburse the Lessor for any costs incurred by the Lessor due to the Lessee's failure to comply with this Lease or any Legal Requirements. Such reimbursement shall occur within thirty (30) days of invoicing by the Lessor. No conviction, citation, arrest, or any adjudication of wrongdoing by the Lessee shall be required in order for the Lessor to assert its rights or seek its remedies for a violation of this section.

#### ARTICLE VI. LIENS AND ENCUMBRANCES.

Section 6.1 Liens. Lessee shall not create, permit, or suffer any mechanic's or other lien or encumbrance on or affecting the Demised Premises or the leasehold interest of Lessor or the fee estate or reversion of the Lessor except as specifically permitted in this Lease.

Section 6.2 Construction Liens. Lessee shall not permit the creation of any lien against the Demised Premises on account of labor or materials furnished in connection with any construction, maintenance, repairs, or alterations Lessee shall undertake. If any such lien is filed against the Demised Premises, Lessee, as the party contracting for such work, shall cause such lien to be released within sixty (60) days after actual notice of the filing thereof or shall furnish to Lessor a bond or other security reasonably satisfactory to Lessor, conditioned to indemnify Lessor against the foreclosure of such lien. Lessee shall have the right, after notice to Lessor, to contest in good faith and with all due diligence any such lien and shall not be required to pay any claim secured by such lien; provided that (a) such lien would not impair the rights or be satisfied out of the interest of Lessor in the Demised Premises by reason of such delay, and (b) Lessee will, at its expense, defend Lessor and pay all costs reasonably incurred by the other relating to

the contest if Lessor is joined in any suit pertaining thereto or if any such lien is placed upon the Lessor's interest in the Demised Premises.

Section 6.3 No Lessor Liability. Lessor shall not be liable for any labor, services, or materials furnished or to be furnished to Lessee or to any sublessee in connection with any work performed on or at the Demised Premises, and no mechanic's lien or other lien or encumbrance for any labor, services or materials shall attach to or affect the Lessor's leasehold interest or the Lessor's fee estate or reversion in the Demised Premises.

Section 6.4 Lessee's Furniture, Fixtures and Equipment. Any and all movable or removable fixtures, equipment and personally purchased by, belonging to or leased from third parties by Lessee and installed on the Demised Premises (whether or not affixed), including, without limitation, Lessee lamps, decor items, fans, office and business equipment, software, signs and other personal property are hereinafter referred to as Lessee's "Furniture, Fixtures and Equipment." Lessee shall own all Lessee's Furniture, Fixtures and Equipment to the exclusion of Lessor. Lessee shall have the right to remove all of Lessee's Furniture, Fixtures and Equipment from the Demised Premises. Lessee's Furniture, Fixtures and Equipment not so removed by the termination of this Lease within ten (10) days following the termination hereof shall be deemed abandoned by Lessee and the property of Lessor.

Section 6.5 Lessee's Equipment Financing; Subordination of Lessor's Lien. Lessee may, from time to time, enter into equipment leases covering Lessee's Furniture, Fixtures and Equipment or secure financing or general credit lines and grant the lessors or lenders as security therefore a security interest in Lessee's Furniture, Fixtures and Equipment. Provided Lessee notifies Lessor in writing of the name and address of any such lessor or lender, Lessor agrees that it will grant a lender the same rights to notice and cure with respect to any default of Lessee as are given to Lessee hereunder, provided, however, the lender's notice period shall run concurrently with, and not in addition to, the Lessee's notice period. Any Lessor's lien covering Lessee's Furniture, Fixtures and Equipment shall be and hereby is made subordinate to the rights of any and all of Lessee's lender(s), including, without limitation, any equipment lease or security interest and Lessor shall, within ten (10) days of a request by Lessee, execute and deliver to Lessee any documents that may reasonably be required in order to effect such subordination.

## ARTICLE VII. INSURANCE AND INDEMNITY.

Section 7.1 Casualty Insurance. At all times during the Term of this Lease, Lessee shall maintain, at its sole cost and expense, insurance covering the Demised Premises and the Improvements, and including, without limitation, all Improvements now located on the Demised Premises or that may be erected on the Demised Premises, against loss or damage by fire, vandalism, malicious mischief, windstorm, hail, smoke, explosion, riot, civil commotion, vehicles, aircraft, flood or earthquake (if required due to the location of the Demised Premises), together with such other insurance as Lessor may reasonably require from time to time. This insurance shall be carried by insurance companies authorized to transact business in the Commonwealth of Kentucky and, selected by Lessee. In addition, the following conditions shall be met:

(a) The insurance shall be for up to \$9,000,000 of the replacement cost of buildings and other Improvements.

(b) The insurance shall be maintained for the mutual benefit of Lessor and Lessee, and succeeding holders of the fee title in the Demised Premises, and any successors and assigns of this Lease. The insurance policy or policies shall name Lessor and Lessee as insureds.

(c) Any and all fire or other insurance proceeds that become payable at any time during the term of this Lease because of damage to or destruction of any Improvements on the Demised Premises shall be paid to Lessee and applied by Lessee toward the cost of repairing, restoring and replacing the damaged or destroyed Improvements in the manner required by Article VIII of this Lease. However, if Lessee elects to terminate this Lease pursuant to the provisions of Article VIII of this Lease, then any and all fire or other insurance proceeds that become payable because of that damage or destruction shall be applied as follows:

(i) Proceeds shall be first paid to Lessor and applied first toward the demolition of the building, if necessary.

(ii) Second, shall be paid to Lessor to compensate Lessor, for the loss suffered to the Demised Premises and/or the Improvements without any obligation on the part of Lessor to rebuild or restore the Demised Premises and/or the Improvements.

(iii) Third, all remaining proceeds shall be paid to Lessee in compensation for its Furniture, Fixtures and Equipment, inventory, proprietary items and loss of business.

Section 7.2 Liability Insurance. At all times during the term of this Lease, Lessee shall maintain, at its sole cost and expense, comprehensive broad-form general public liability insurance against claims and liability for personal injury, death, and property damage in an amount not less than \$2,000,000.00. The insurance shall be carried by insurance companies authorized to transact business in the Commonwealth of Pennsylvania, selected by Lessee. In addition, the following conditions shall be met:

(a) Except as otherwise set forth in this Lease, the insurance provided pursuant to this Section 7.2 shall be in an amount no less than \$2,000,000 toward the replacement cost for property damage, and in an amount no less than \$2,000,000.00 for one person and \$2,000,000.00 for one accident for personal injury. In addition, Lessee shall provide an umbrella policy in the amount of \$5,000,000.

(b) The insurance shall be maintained for the mutual benefit of Lessor and Lessee, and succeeding owners of the fee title in the Demised Premises, and any successors and assigns of this Lease. The insurance policy or policies shall name Lessor and Lessee as insureds.

(c) The amounts of insurance may be increased as mutually agreed upon by Lessor and Lessee, in each party's reasonable discretion, from time to time account for inflation, or generally increased insurance settlements or jury verdicts.

(d) The insurance required to be carried pursuant to this Article VII may be carried under policies of blanket insurance that may cover other liabilities and locations; provided, however, in all other respects each of such policies shall comply with the provisions of this Article VII.

Section 7.3 Certificate of Insurance. Lessee shall furnish Lessor with certificates of all insurance required by this Article VII. Lessee agrees that if Lessee does not keep this insurance in full force and effect, Lessor may notify Lessee of this failure, and if Lessee does not deliver to Lessor certificates showing all such insurance to be in full force and effect with no gap in coverage, within ten (10) days after this notice, Lessor may, at its option, take out and/or pay the premiums on the insurance needed to fulfill Lessee's obligations under the provisions of this Article VII. On demand from Lessor, Lessee shall reimburse Lessor the full amount of any insurance premiums paid by Lessor, with interest equal to the prime rate charged by Bank of America, plus three (3) percent, from the date of Lessor's demand until reimbursement by Lessee.

Section 7.4 Lessee Waiver of Claims. Lessor shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from any use of the Demised Premises or Improvements, or caused by any defect in any building, structure, equipment, facility or other improvement on the Demised Premises, or caused by or arising from any act or omission of Lessee, or any of its agents, employees, licensees or invitees, or by or from any accident, fire or other casualty on the land, or occasioned by the failure of Lessee to maintain the Demised Premises in safe condition. Lessee waives all claims and demands on Lessee's behalf against Lessor for any loss, damage, or injury, and agrees to indemnify and hold Lessor entirely free and harmless from all liability for any loss, damage, costs or injury of other persons, and from all costs and expenses arising from any claims or demands of other persons concerning any loss, damage or injury, caused on or about the Demised Premises.

Section 7.5 Mutual Waiver of Subrogation. Lessor and Lessee and their successors in interest hereby waive any legal rights each may later acquire against the other party during the Term for the loss of or damage to their respective property or to property in which they may have an interest, which loss or damage is caused by an insured hazard arising out of or in connection with the Demised Premises.

#### ARTICLE VIII. DAMAGE OR DESTRUCTION OF IMPROVEMENTS.

##### Section 8.1 Damage to Demised Premises.

(a) In the event that the Improvements are completely destroyed, or are damaged in excess of fifty-one percent (51%) of the value thereof due to any cause whatsoever, Lessee shall have the following options:

- (i) Within ninety (90) days of such destruction or damage, or such later time if permits are required for the reconstruction, Lessee shall commence and diligently pursue to completion the repair, restoration or replacement of the damaged or destroyed Demised Premises and Improvements, and this Lease

shall remain in full force and effect, with Basic Rent abated until such time as the Demised Premises has been repaired, restored, or replaced; or

- (ii) Lessee shall terminate this Lease on ninety (90) days prior notice to Lessor. If Lessee elects to terminate this Lease, all insurance proceeds on the policies required hereunder shall be paid to Lessor with no obligation to rebuild the Improvements or otherwise restore the Demised Premises to the pre-destruction condition. If Lessee elects this option, the Lease will terminate on the date in the notice of termination which shall be no later than ninety (90) days after the date of the notice and the Lease will terminate effective on such date. Lessee will be responsible prior to such date to remove any Furniture, Fixtures and Equipment, inventory and proprietary items that remain in the Demised Premises.

(b) In the event that damage to the Improvements, due to any cause whatsoever, is less than fifty-one percent (51%) percent, the Lessee shall, at its own expense, repair, restore or replace the damaged Improvements with due diligence, and this Lease shall continue in full force and effect with no abatement of Basic Rent.

#### ARTICLE IX. EMINENT DOMAIN.

Section 9.1 Condemnation. If the Demised Premises and Improvements or any part thereof is taken for public or quasi-public purposes by condemnation in any action or proceeding in eminent domain, or are transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of Lessor and Lessee in the award or consideration for the taking or transfer and the effect of the taking or transfer on this Lease shall be governed by this Article IX.

##### Section 9.2 Taking

(a) If all or substantially all of the Demised Premises and Improvements are taken or transferred as described in Section 9.1, this Lease and all of the rights, title and interest under this Lease shall cease on the date title to the Demised Premises and Improvements vests in the condemning authority, and the proceeds of the condemnation shall be paid to Lessor. In the event of any such taking or condemnation, of all or any part of the Demised Premises or the Improvements, Lessee shall have no claim against Lessor and shall not have any claim or right to any portion of the amount that may be awarded as damages or paid as a result of such taking or condemnation; and all rights of Lessee to damages therefore are hereby assigned by Lessee to Lessor, and Lessee shall have no claim against Lessor or the condemnor for the value of the unexpired Term of this Lease. However, the foregoing provisions of this section shall not be construed to deprive Lessee of the right to claim and receive payment from the condemnor or taking authority for moving and related expenses or for the taking of Lessee's personal property or fixtures as long as such claim or the payment thereof does not reduce the award which Lessor would otherwise be entitled to receive. In the event of any such taking or condemnation of part of the Demised Premises, the Basic Rent shall be proportionately reduced from the date that

possession of the Demised Premises is required to be surrendered to the condemnor or taking authority.

(b) If less than all or substantially all of the Demised Premises and Improvements is taken or transferred as described in Section 9.1, and if in Lessee's opinion the remainder of the Demised Premises and Improvements is in a location, or in a form, shape, or reduced size that Lessee is in its commercially reasonable opinion unable to effectively and practicably operate Lessee's business on the remaining Demised Premises and Improvements, then this Lease shall terminate on the date title to the portion of the Demised Premises and Improvements taken or transferred vests in the condemning authority. The proceeds of the condemnation shall be payable as set forth in Section 9.2(a).

(c) If less than all or substantially all of the Demised Premises and Improvements is taken or transferred as described in Section 9.1, and if in Lessee's opinion the remainder of the Demised Premises and Improvements is in a location and a form, shape, or size that makes it possible for Lessee to effectively and practicably operate Lessee's business on the remaining Demised Premises and Improvements, this Lease shall terminate as to the portion of the Demised Premises and Improvements taken or transferred as of the date title to the portion vests in the condemning authority. However, this Lease shall continue in full force and effect as to that portion of the Demised Premises and Improvements not taken or transferred. From and after the date of taking or transfer, the rental required to be paid by Lessee to Lessor shall be reduced during the unexpired portion of this Lease by that proportion of the annual rent that the value of the part of the Demised Premises and Improvements taken or transferred bears to the value of the total Demised Premises and Improvements. These values shall be determined as of the date immediately before any actual taking. The proceeds of the condemnation shall be payable as set forth in this Section 9.2(a).

Section 9.3 Temporary Taking. If the period of taking shall be less than three (3) months, this Lease shall continue in full force and effect, the Basic Rent and other charges shall abate during such period of taking, and all awards for damages shall belong solely to Lessee.

Section 9.4 More Than One Taking. If more than one taking occurs during the Term, the right of the parties, as provided in this Article, shall be determined as if all such takings had all occurred at the time of the last taking, and the effect of all such takings shall be considered cumulatively.

#### ARTICLE X. INTENTIONALLY OMITTED. ARTICLE XI. DEFAULT.

##### Section 11.1 Lessee's Default.

(a) Any one or more of the events listed in subparagraphs (b) through (f) of this Section 11.1 shall constitute a default under this Lease ("Event of Default").

(b) Lessee's failure to pay Basic Rent or any other amount due under this Lease within five (5) days after receipt of written notice from the Landlord that such amount has become past

due and payable in accordance with the terms, covenants and agreements of this Lease shall constitute a default under this Lease.

(c) Lessee's failure to observe or perform or cause to be observed or performed any other term, covenant or agreement under this Lease, and continuation of this failure for a period of thirty (30) days after Lessor's written notice to Lessee specifying in reasonable detail the nature of the Lessee's failure shall constitute a default under this Lease. However, a failure as described in this subparagraph (c) shall not constitute an Event of Default if it is curable but cannot with reasonable diligence be cured by Lessee within a period of thirty (30) days, and if Lessee commences to cure the failure with reasonable diligence and in good faith.

(d) The occurrence of any of the following events at the date of the commencement of this Lease or during the Term shall constitute an Event of Default under this Lease:

(i) Filing of a petition in bankruptcy or insolvency, for reorganization or the appointment of a receiver or trustee of all or a portion of Lessee's property, by or against Lessee in any court pursuant to any statute either of the United States or of any state days; and

(ii) Lessee's failure to secure a dismissal of the petition within ninety (90) days after its filing.

(e) Lessee's assignment of the Leasehold interest under this Lease for the benefit of creditors shall constitute a default under this Lease.

#### Section 11.2 Lessor Rights.

(a) Intentionally omitted.

(b) At any time after the termination of Lessee's right of possession under this Lease, Lessor may enter and possess the Demised Premises and Improvements by summary proceedings, ejectment or otherwise, and Lessor may remove Lessee and all other persons and property from the Demised Premises and Improvements. If the Lessor takes the actions described in this Section 11.1, Lessor may then possess the Demised Premises and Improvements and assume the right to receive all rents, income and profits from the Demised Premises and Improvements, and Lessor may also sell any of the Improvements.

(c) The expiration of this Lease or termination of the Lessee's right to possession pursuant to Article 2 or 11 shall not relieve Lessee of its liability and obligation to pay the Basic Rent and any other charges accrued prior to these events, or relieve the Lessee of liability and obligation to pay the Basic Rent and any other charges accrued prior to these events, or relieve the Lessee of liability for damages for breach. These liabilities and obligations of the Lessee shall survive any expiration or termination of the Lease or any entry and possession by the Lessor.

(d) In the event of Lessee's abandonment of the Demised Premises and Improvements, and/or Lessee's failure to operate a business continually within the Demised Premises for a



period in excess of six (6) consecutive months (other than in the case of repairs, maintenance, casualty or condemnation) it shall constitute an Event of Default under this Lease unless Lessee continues to pay Basic Rent to Lessor and covers all other costs that Lessee is obligated to pay hereunder, but Lessor shall be permitted to terminate the Lease at any time following the conclusion of the above-referenced 6-month period on ten (10) business days' notice to Lessee in which case Lessee will vacate the Building as provided for in this Lease and have no liability to Lessor beyond its period of occupation.

#### Section 11.3 Lessor's Obligation to Mitigate.

(a) After the expiration of this Lease or termination of the Lessee's right of possession under this Lease pursuant to Article 2 or 11.3, Lessor shall use reasonable efforts to mitigate damages by reletting the Demised Premises and Improvements, in whole or in part, either in its own name or as agent of Lessee, at or above the Basic Rent rate and for a term or terms which, at Lessor's option, may be for the remainder of the then current term of this Lease or for any longer or shorter period.

(b) Lessee shall remain liable for the difference between the rent reserved under this Lease, and the rent collected and received, if any, by Lessor during the remainder of the unexpired term. Lessor shall have the option of collecting the deficiency between the rent reserved and the rent collected in monthly payments as these payments become due and payable, or of receiving in advance the deficiency for the remainder of the term reduced to present value.

Section 11.5 Remedies Cumulative. All remedies available to Lessor hereunder and otherwise available at law or in equity shall be cumulative and concurrent. No determination of this Lease nor taking or recovering possession of the Demised Premises shall deprive Lessor of any remedies or actions against Lessee for rent, for charges, or for damages for the breach of any term, covenant or condition herein contained, nor shall the bringing of any such action for rent, charges or breach of term, covenant or condition, nor the resort to any other remedy or right for the recovery of rent, charges or damages for such breach be construed as a waiver or release of the right to insist upon the forfeiture and to obtain possession. The failure of Lessor to insist upon strict and/or prompt performance of the terms, agreements, covenants and conditions of this Lease or any of them, and/or the acceptance of such performance thereafter shall not constitute or be construed as a waiver of Lessor's right to thereafter enforce the same strictly according to the tenor thereof in the event of a continuing or subsequent Event of Default.

Section 11.6 Method of Calculation. In determining the amount of any future payments due Lessor due to increases in Taxes, Insurance, Basic Rent, additional rent or other charges due hereunder, Lessor may make such determination based upon the amount of such Taxes, Insurance, Basic Rent, additional rent and other charges due by Lessee for the calendar year immediately prior to such Event of Default.

Section 11.7 Expenses of Enforcement. Lessee shall pay to Lessor upon demand all of Lessor's documented costs, charges and expenses, including the fees and out-of-pocket expenses of counsel, agents and others retained by Lessor incurred in enforcing Lessee's obligations hereunder or incurred by Lessor in any litigation, negotiation or transaction in which the Lessee

causes the Lessor to become involved or concerned. Such expenses shall include all professional fees incurred by the Lessor, including attorney's fees.

## ARTICLE XII. EXPIRATION OF TERM.

Section 12.1 Expiration of Term. On the expiration date of this Lease as set forth in Article 2, or the termination of the Lessee's possession under this Lease pursuant to Article XI, or any entry or possession of the Demised Premises and Improvements by Lessor pursuant to Section 11.4 (collectively referred to as the "Expiration Date"), Lessee shall promptly quit and surrender the Demised Premises and Improvements, and deliver to Lessor actual possession and ownership of the Demised Premises and Improvements in good order, condition, and repair.

Section 12.2 Removal of Equipment. Subject to the provisions of Section 6.4 hereof, Lessee shall have the right to remove from the Demised Premises and Improvements all of Lessee's Furniture, Fixtures and Equipment used or procured for use in connection with the operation of its business on or before the Expiration Date, provided that Lessee shall promptly repair, or cause to be repaired, any damage resulting to the Demised Premises or Improvements by reason of this removal. Any of Lessee's Furniture, Fixtures and Equipment that remain at or on the Demised Premises after the Expiration Date shall be deemed to have been abandoned by Lessee, and may either be retained by Lessor as its property or disposed of by the Lessor without accountability to Lessee for the value of such Furniture, Fixtures and Equipment, or any proceeds derived from the sale of these items, (subject to the rights of any equipment lenders).

## ARTICLE XIII. GENERAL PROVISIONS.

Section 13.1 Non-enforcement. The failure of Lessor to seek redress for violation of, or to insist on the strict performance of any covenant, agreement, term, provision, or condition of this Lease shall not constitute a waiver of the covenant, agreement, term, provision, or condition. The receipt by Lessor of rent with knowledge of the breach of any covenant, agreement, term, provision, or condition of this Lease shall not be deemed a waiver of that breach or the Lessor's right to terminate the Lease or invoke any other remedy set forth in this Lease.

Section 13.2 Waivers. No provision of this Lease shall be deemed to have been waived unless the waiver is in writing and signed by the party against whom enforcement is sought. No payment by Lessee or receipt by Lessor of a lesser amount than the rent stipulated in this Lease shall be deemed to be other than for the payment of rent or other charge owing by Lessee, as Lessor shall elect. No endorsement or statement on any check or any letter accompanying any check or payment as rent shall be deemed binding on Lessor or deemed on accord and satisfaction, and Lessor may accept a check or payment from Lessee without prejudice to Lessor's right to recover the balance of the rent or other charges owing by Lessee, and without limitation on Lessor's right to pursue each and every remedy in this Lease or provided by law. Each right and remedy of Lessor provided for in this Lease shall be cumulative and in addition to every other right or remedy provided for in this Lease, or now or later existing at law, in equity, by statute, or otherwise.

Section 13.3 Exhibits. This Lease and the Exhibits annexed to this Lease contain the entire agreement between Lessor and Lessee, and any agreement made after the execution of this

Lease between Lessor and Lessee shall be ineffective to change, modify, waive, release, discharge, terminate, or effect a surrender or abandonment of this Lease, in whole or in part, unless that agreement is in writing and signed by the Lessor and Lessee.

Section 13.4 Notices. All notices, requests, demands and other communications required or permitted hereunder shall be in writing addressed to the parties as provided below (or at such other address as may hereafter be substituted by notice in writing thereof) and shall be deemed to have been duly given upon delivery by hand (including by a nationally recognized overnight carrier), by confirmed facsimile transmission, or if sent by email, on the business day sent so long as such email notice is sent within business hours and in such event, such email shall be followed by written notice sent by certified or registered mail postmarked no later than the following business day.

Section 13.6 Invalidity. If any term, covenant or condition of this Lease shall be invalid or unenforceable to any extent, the remainder of the terms, covenants and conditions of this Lease shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 13.7 Terms. The term "Lessor", as used in this Lease in relation to the Lessor's covenants and agreements under this Lease, shall be limited to mean and include only the owner or owners of fee estate to the Demised Premises at the time in question. In the event of any conveyance of this fee estate, Lessor named in this Lease and each subsequent grantor shall be automatically relieved, at the date of conveyance, of all liability in respect to the performance of any of Lessor's covenants and agreements remaining to be performed after the date of conveyance, and each grantee shall be bound by all of the covenants and agreements remaining to be performed under the Lease during the time of grantee's ownership of the leasehold interest.

Section 13.8 Non-Recourse. Anything contained in this Lease to the contrary notwithstanding, Lessee agrees to look solely to the Demised Premises and Lessor's interest in the Demised Premises for the collection and satisfaction of any judgment that Lessee may obtain against Lessor because of the Lessor's failure to observe or perform any of its covenants or obligations under this Lease, including, but not limited to, the breach of the covenant of quiet enjoyment, whether express or implied. If Lessee receives any judgment resulting from the Lessor's failure to observe or perform any of its covenants or obligations under this Lease, Lessee further agrees not to collect or execute, or attempt to collect or execute, that judgment out of or against any other assets or properties of Lessor.

Section 13.9 Successors and Assigns. This Lease shall inure to the benefit of and be binding on Lessor and Lessee and their respective distributees, personal representatives, executors, successors, and permitted assigns except as otherwise provided in this Lease. Any references in this Lease to Lessor and Lessee shall be deemed to include their respective successors and assigns.

Section 13.10 Quiet Enjoyment. Lessor covenants and agrees that Lessee, on payment of rent and other charges provided for in this Lease and fulfillment of the obligations under the covenants, agreements and conditions of this Lease, shall lawfully and quietly hold, occupy and

enjoy the Demised Premises during the term of this Lease, without hindrance on the part of Lessor or any party claiming by, through, over or under it, for the term of this Lease, and Lessor further warrants that it shall defend Lessee in such peaceful and quiet possession, use and enjoyment of the Demised Premises against any such claims.

Section 13.11 Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, partnership, joint venture, or any relationship between the parties hereto other than that of Lessor and Lessee.

Section 13.12 Consent. Whenever it is necessary under the terms of this Lease for either party to obtain the consent or approval of the other party, such consent or approval shall, unless otherwise specified in this Lease, not be unreasonably withheld or delayed.

Section 13.13 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth in which the Demised Premises is located. The parties further agree that jurisdiction and venue for any claim arising out of this lease or the leased premises shall lie in the state courts in the county in which the Demised Premises is situated.

Section 13.14 Disputes. If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other or any work to be performed by either of them under the provisions hereof, the party against whom the obligation to pay or to perform is asserted shall have the right, but not the obligation, to make payment or perform such work and pay the cost thereof "under protest," and such payment or performance shall not be regarded as a voluntary payment or performance and the right of such party to institute suit to recover the amount paid "under protest" shall survive. If it shall be adjudged or mutually agreed by Lessor and Lessee that there was no legal obligation on the part of such party to pay such sum or any part thereof or that such party was not legally obligated to perform, such party shall be entitled to recover the amount paid "under protest" or so much thereof as it was not legally required to pay under the provisions of this Lease, plus interest thereon at the Interest Rate specified in Section 16.13 hereof, from the date on which such payment was made until the date on which reimbursement is received.

Section 13.15 Counterparts. This Lease may be executed in several counterparts, including counterparts transmitted by facsimile or electronic mail, each of which shall be deemed an original, but all of which together shall constitute one and the same Lease. Signatures to this Agreement transmitted by facsimile, sent by email (including ".pdf"), or delivered by other electronic means shall be valid and effective to bind the Party so signing. Each Party agrees to promptly deliver an execution original to this Agreement with its actual signature to the other Party upon request, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each Party to this Agreement shall be bound by its own facsimile or other electronic signature and shall likewise accept the facsimile or other electronic signature of the other Party.

Section 13.16 Modification. This Lease may not be modified except by a written agreement signed by both Lessor and Lessee.

Section 13.17 Brokers. Lessor and Lessee represent and warrant that they have not dealt with any real estate agent or broker in connection with this transaction other than Institutional Property Advisors/ Marcus & Millichap and Ben Tashakorian. Lessor and Lessee shall each indemnify and save other harmless from and against all liability, damage, loss, cost and expense incurred by reason of the indemnitor's breach of such representation and warranty.

#### ARTICLE XIV. ESTOPPEL CERTIFICATE; DOCUMENTATION AND RECORDING OF LEASE.

Section 14.1 Estoppel Certificates. Lessor or Lessee shall have the right to request the other party to provide an estoppel certificate, as described below, without charge, at any time on or after ten (10) days after the requesting party sends written notice. This estoppel certificate shall consist of a written statement certifying the following information to the requesting party or to any person specified by that party:

- (a) That this Lease is unmodified and in full force and effect; or, if there have been any modifications in this Lease, that this Lease is in full force and effect as modified, specifying the nature of each modification;
- (b) The dates through which the rent and other charges payable under this Lease have been paid;
- (c) Whether the other party to this Lease is in default in the performance or observance of any covenant, agreement, condition, term or provision contained in this Lease, to the best knowledge of the certifying party, and, if so, specifying the nature of each default of which the certifying party has knowledge; and
- (d) Any other information with respect to this Lease and the Demised Premises that the requesting party shall reasonably request.

#### ARTICLE XV. ASSIGNMENT AND SUBLETTING

Section 15.1 Assignment. Except as provided otherwise herein, Lessee covenants and agrees not to assign this Lease or to sublease the whole or any part of the Demised Premises or to permit any other persons to occupy same without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Lessee may assign this Lease or sublease the Demised Premises, without Lessor's consent, to (a) any parent, subsidiary or affiliate entity of Lessee; or (b) an entity resulting from the consolidation or merger of Lessee into or with any other entity; or (c) the sale of all or substantially all of the assets of the Lessee in the state in which the Demised Premises is located;. As used herein, the phrase "affiliate entity" means a person or business entity, corporate or otherwise, that, through one or more intermediaries, controls or is controlled by, or is under common control with Lessee.

Lessor's consent to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease or to be consent to the assignment of this Lease or subletting of the Demised Premises.

Any transfer of an ownership interest in Lessee by merger, consolidation, sale of stock, membership interests, other capital reorganization or liquidation shall constitute an assignment or sublet for the purpose of this Lease and shall therefore require the consent of Lessor. In such event, if consent is given, the surviving entity specifically shall assume in writing Lessee's obligations under this Lease.

#### ARTICLE XVI. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT OF FEE MORTGAGES.

Section 16.1 Non-Disturbance Agreement. If Lessee is not in default hereunder, Lessor shall cause:

(a) any party holding a mortgage or deed of trust on the Demised Premises; and

(b) any party (if other than Lessor) owning any portion of the Demised Premises as of the date hereof to execute and deliver to Lessee a non-disturbance, subordination and attornment agreement substantially in the form attached hereto as Exhibit E and subject to such mortgagee's approval within thirty (30) days of the date of this Lease (or within thirty (30) days after the execution of a mortgage or deed of trust that is entered into after the date of this Lease).

Section 16.2 Subordination. If Lessor is not in default under the terms of this Lease, Lessee shall subordinate this Lease to an existing or future first deed of trust or mortgage covering the Demised Premises by executing and delivering an agreement in the form attached hereto as Exhibit C within thirty (30) days of Lessee's receipt of a copy of such agreement duly executed and acknowledged by Lessor and Lessor's lender with respect to the mortgage or deed of trust to which this Lease is to be subordinate. Except as set forth in this Section, this Lease shall at all times be and remain prior and paramount to the lien and charge of all leases and deeds of trust or mortgages.

Section 16.3 Attornment. Lessee agrees that if the mortgagee, beneficiary or any other person claiming under a mortgage or deed of trust to which Lessee has subordinated shall succeed to Lessor's interest in this Lease, Lessee will recognize such mortgagee, beneficiary or person as its Lessor under the provisions of this Lease, provided that such mortgagee, beneficiary or other person, during the period in which it shall be in possession of the Demised Premises, and thereafter its successor in interest, shall assume all of the obligations of Lessor hereunder and shall have executed and delivered the non-disturbance, subordination and attornment agreement referred to in Section 16.2 above. Any purchaser taking title to the property by reason of such foreclosure or sale shall take title subject to this provision and shall be bound by any approvals or consents made or given by Lessor pursuant to this Lease prior to the date on which title to the Demised Premises was transferred.

Section 16.4 Mortgage Protection. Lessee shall give any mortgagees of the Demised Premises by registered or certified mail, return receipt requested, or overnight delivery service, requiring a signed delivery receipt, a copy of any notice of default sent to Lessor by Lessee, provided that, prior to such notice, Lessee has been notified, in writing (by way or notice of assignment of rents and lease or otherwise), of the address of such mortgagees. If Lessor shall

have failed to cure such default within the time provided for in this Lease, then the mortgagees shall have thirty (30) days within which to cure such default or, if such default cannot be cured within that time, then such additional time as may be necessary if, within such thirty (30) days, any mortgagee has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure).

ARTICLE XVII. ACCESS TO PREMISES BY LESSOR. Lessor and/or Lessor's agents shall have the right upon 24 hours' notice or without advance notice in the event of emergency or if it is otherwise impractical to do so, to enter upon the Demised Premises, or any part thereof, at any and all reasonable times for the purpose of inspecting the unit, making desired repairs, replacements, or alterations, or for other legitimate business or safety reasons. Lessee also agrees to permit Lessor and/or Lessor's agents to show the Demised Premises for the purposes of renting same, upon 24 hours' written notice, and to permit Lessor to place notices or signs on the Demised Premises offering the Demised Premises for rent within the last six months of the end of the primary term or renewal term as the case may be. Lessee shall provide Lessor with keys to all locks on the doors of the Demised Premises to allow access pursuant hereto.

***Remainder of Page Intentionally Left Blank; Signature Page Follows***

IN WITNESS WHEREOF, Lessor and Lessee, through their respective duly authorized representatives and intending to be legally bound hereby, have executed this Lease under seal as of the Effective Date.

**LESSEE: PRECISION METAL WORKS, INC.**

By: \_\_



Its: Vice President

**LESSOR: LEGACY WEST PARTNERS KENTUCKY PORTFOLIO, LLC**

By: Ben Tashakorian  
Its: CEO

EXHIBIT A

MEMORANDUM OF LEASE

Prepared by:

MEMORANDUM OF LEASE

Notice is hereby given of the following Lease:

1. The name and address of the Lessor is:
  2. The name and address of the Lessee is:
  3. The Lease is dated \_\_, 2023.
  4. The Demised Premises is comprised of the real property together with the buildings and improvements located at and known as 4701 Allmond Avenue, Louisville, KY (designated as Jefferson County tax parcel no. 059C00150000).
- Being the same property conveyed to Legacy West Partners Kentucky Portfolio, LLC, by deed dated \_\_, 2023, of record in Deed Book , page in the Jefferson County Clerk's Office.
5. The Original Term of the Lease is twenty (20) years following the Effective Date as defined in the Lease. There are two (2) renewal options of five (5) years each following the Term.
  6. A copy of the Lease is on file at the office of:

Live Ventures Incorporated  
325 E. Warm Springs Road, Suite 102 Las Vegas, Nevada 89119  
Attn: Kent Randall, Esq., General Counsel Facsimile: (702) 997-5968  
Email: [krandall@liveventures.com](mailto:krandall@liveventures.com)

This instrument, being a Memorandum of Lease, is intended by the parties hereto to give constructive notice of such Lease. It is not intended to affect, in any way, the rights and

obligations of the parties to such Lease. All capitalized terms used in this Memorandum are as defined in the Lease unless otherwise defined herein.

IN WITNESS WHEREOF, the parties hereto, and to such Lease, have either set, or caused to be set, their respective hands and seals, and, if a corporation or limited liability company, such is done by a duly authorized officer or member thereof, all as of the day of 2023.

**LESSEE: PRECISION METAL WORKS, INC.**

By: \_\_\_\_\_  
Ben Tashakorian Eric Althofer

Its: CEO

STATE OF \_\_ )  
 ) COUNTY OF \_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this [ ] day of [ ], 2023, by \_\_, as \_\_ of PRECISION METAL WORKS, INC., a Kentucky corporation, Lessee herein, on behalf of said corporation.

[AFFIX SEAL] \_\_\_\_ NOTARY PUBLIC  
My Commission Expires: \_\_ Notary Registration ID No. \_\_\_\_

**LESSOR: LEGACY WEST PARTNERS KENTUCKY PORTFOLIO, LLC**

By: Its: \_\_\_\_\_ ~~Ben Tashakorian~~ CEO

STATE OF \_\_\_\_ )  
 ) COUNTY OF \_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this [ ] day of [ ], 2023, by \_\_\_\_, as \_\_\_\_ of LEGACY WEST PARTNERS KENTUCKY PORTFOLIO, LLC, a Delaware limited liability company, Lesore herein, on behalf of said company.

[AFFIX SEAL] \_\_\_\_\_ NOTARY PUBLIC  
My Commission Expires: \_\_\_\_ Notary Registration ID No. \_\_\_\_\_

THIS INSTRUMENT WAS PREPARED  
WITHOUT BENEFIT OF TITLE EXAMINATION BY AND UPON RECORDING PLEASE  
RETURN TO:

---

Brady W. Dunnigan  
STITES & HARBISON, PLLC  
250 West Main Street, Suite 2300  
Lexington, Kentucky 40507  
(859) 226-2300

EXHIBIT B

ESTOPPEL AND CONSENT AGREEMENT

ESTOPPEL CERTIFICATE AND CONSENT

RE: Demised Premises: Lease:  
Lessor:  
Lessee:

The undersigned Lessor/Sub Lessor under the Lease/Sublease described above certifies to \_\_\_a\_\_\_, in connection with the placing of a leasehold mortgage the following:

1. Lessor and Lessee entered into the Lease/Sublease, by which Lessor leases to Lessee and Lessee leases from Lessor the above-referenced Demised Premises.
2. The Lease constitutes the only agreement between Lessor and Lessee with respect to the Demised Premises, and the Lease and all amendments thereto as of the date hereto are set forth on Exhibit A attached hereto and made part hereof. The Lease is in full force and effect and, except as evidence on Exhibit A, is not modified or amended.
3. Other than the Lease, and the documents listed on Exhibit A attached hereto, there are no other agreements, written or oral between Lessor and Lessee regarding the Demised Premises or Lessee's obligations to pay rentals under the Lease, and Lessee does not claim a right to any concessions, free rent or rental abatement other than as set forth in the Lease.
4. The monthly rental payable by Lessee as of the date hereof is as follows:
  - a. Base Rent:
  - b. Common Area Maintenance/Insurance Payments
  - c. Additional Rent

All above rental amounts under the Lease have been paid in full by Lessee through \_\_\_, 2020. The amount of rent prepaid, if any, is \$0, and the security deposit made, if any, is \$63,493.33.

5. Percentage Rent is N/A

6. Lessee currently pays for utilities used in the Demised Premises by making payment directly to the suppliers of utilities serving the Demised Premises and pays the real estate taxes directly to the applicable municipal taxing authority
7. The Lease terminates on \_\_\_\_; there are \_\_\_\_additional \_\_\_\_year renewal options.
8. The Lease is in full force and effect and Lessor does not have any presently existing claims against the Lessee nor has any actual knowledge without due inquiry of any offsets against rent claimed by Lessee. There are no defaults of Lessee or Lessor under the Lease or any existing circumstances which with the passage of time, or notice, or both, would give rise to the default under the Lease.
9. Lessor's current contact information is:
  - a. Address:
  - b. Contact Person:
  - c. Phone No.:
  - d. Facsimile No.:
  - e. Email:
10. The Undersigned acknowledges that Lessee and its title agent is relying (and will rely) on the truth and accuracy of the representations made herein and upon the authority of the undersigned to execute this Estoppel Certificate.
11. Lessor's execution of this Estoppel and Consent shall be considered such notice of and written consent to the leasehold mortgage as may be required by the Lease.

LESSOR:

7/19/2023 | 08:48:04 PDT

By: \_\_\_\_ Date:

\_\_\_\_\_  
\_\_\_\_\_  
Name: Title:

Ben  
Tashak



CEO

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, an officer duly authorized to take acknowledgements, personally appeared \_\_\_\_\_ known to me to be the person described in and who executed

the foregoing instrument; and who acknowledged before me that he or she executed this instrument for the purposes stated therein and of his or her own free will.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this  
\_\_day of \_\_, 2020, in this State and County.

---

My commission expires: Notary Public

EXHIBIT C

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT

SUBORDINATION, NONDISTURBANCE AND ATTORNMEN AGREEMENT

This SUBORDINATION, NONDISTURBANCE AND ATTORNMEN AGREEMENT (this "Agreement"), is made as of the \_\_\_ day of \_\_\_, 2023, among \_\_\_\_\_, a \_\_\_\_\_, and its successors and assigns ("Lender"), \_\_\_\_\_, a \_\_\_\_\_ ("Lessor"), and \_\_\_\_\_ ("Lessee").

WHEREAS, Lender has made a loan to Lessor which was secured by a Mortgage Security Agreement and Assignment of Leases and Rents (the "Mortgage") dated \_\_\_, 20\_\_\_, of record in Mortgage Book \_\_\_, page \_\_\_ in the Clinton County Clerk's Office, and covered Lessor's interest in certain real property located at \_\_\_ and more particularly described in Exhibit A attached hereto (the "Property"); and

WHEREAS, Lessee has entered into a certain \_\_\_, as the same may have been amended, modified or supplemented (the "Lease") dated \_\_\_, \_\_\_, with Lessor, covering a certain portion of the Property (the "Demised Premises"); and

WHEREAS, a notice or memorandum of the Lease was recorded in in Lease Book \_\_\_, page \_\_\_ in the Clinton County Clerk's Office; and

WHEREAS, Lender, Lessor and Lessee desire to confirm their understanding, with respect to the Lease and the Mortgage;

NOW, THEREFORE, in consideration of the promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Subordination. Subject to the provisions hereof, Lessee agrees that the Lease shall in all respects be, and is hereby expressly made, subject and subordinate at all times to the lien of the Mortgage and to all of the terms, conditions and provisions thereof and to all advances and/or payments made or to be made thereunder, as the same may hereafter be amended from time to time. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Mortgage. Notwithstanding the foregoing, Lender agrees that all proceeds of property insurance maintained under the Lease and all eminent domain damages will be disbursed in accordance with the provisions of the Lease and will be made available to Lessor or Lessee for restoration of the building and other improvements on the Property to the extent required by the Lease, subject only to reasonable regulation regarding the disbursement thereof.

Attornment.

In the event that Lender acquires or succeeds to the interests of Lessor under the Lease by reason of a foreclosure of the Mortgage, deed in lieu of foreclosure or otherwise (collectively, a "Foreclosure"), Lessee shall be bound to Lender under all of the terms, covenants and conditions of the Lease, except as provided in this Agreement, for the balance of the term thereof remaining, with the same force and effect as if Lender were Lessor. Lessee hereby agrees in such event to (i) attorn to Lender as its Lessor on such terms, (ii) affirm its obligations under the Lease, and (iii) make payments of all sums thereafter becoming due under the Lease to Lender. Said attornment, affirmation and agreement is to be effective and self-operative without the execution of any further instruments upon Lender succeeding to the interests of Lessor under the Lease.

Lessee agrees to execute and deliver at any time and from time to time, upon the request of Lessor or Lender, any instrument or certificate deemed to be necessary or appropriate to evidence such attornment.

From and after such attornment, Lender shall be bound to Lessee under all the terms, covenants and conditions of the Lease with the same force and effect as if originally entered between said parties; provided, however, Lender shall not be:

except as provided in Section 2(d) below, obligated to cure any defaults under the Lease of any prior Lessor which occurred prior to the date Lender obtained title to or possession of the Property, provided, however, that the foregoing shall not limit Lender's obligation to correct any conditions that existed as of the date of attornment which violate Lender's obligations as Lessor under the Lease;

except as provided in Section 2(d) below, subject to any offsets or defenses which Lessee might have against any prior Lessor (including Lessor), provided, however, that the foregoing shall not limit Lessee's right to exercise against Lender any right of Lessee to any offset or defense otherwise available to Lessee because of events occurring after the date of attornment;

bound by any payment of fixed rent, percentage rent or additional rent that Lessee may have made to any prior Lessor (including Lessor) more than thirty (30) days in advance of the date such rent was first due and payable under the Lease;

bound by any modification or amendment of the Lease which increases the obligations or responsibilities of Lessor thereunder or changes the rent or the term thereof and is made without Lender's written consent; or

bound by any consensual or negotiated surrender of the Demised Premises or termination of the Lease, in whole or in part, agreed upon between any prior Lessor (including Lessor) and Lessee, unless effected unilaterally by Lessee pursuant to the express terms of the Lease.

Notwithstanding anything to the contrary contained in Paragraph 2(c) above, if the Lessor under the Lease commits an act or omission which, with the giving of notice and/or the passage of time, would constitute a default in the performance of Lessor's obligations under the Lease, Lender or any purchaser or grantee pursuant to a Foreclosure shall be subject to any and all claims, offsets or defenses of Lessee arising from such act or omission, provided that Lender received notice of such act or omission and an opportunity to cure same as required by the Lease or this Agreement.

**Non-Disturbance.** Provided Lessee is not in default under the terms of the Lease and complies with this Agreement, Lender agrees that in the event Lender takes possession of the Property pursuant to any provision of the Mortgage or Lender acquires title to the Property by reason of a Foreclosure, Lessee's possession and occupancy of the Demised Premises and Lessee's rights and privileges under the Lease during the term thereof (including any renewal term) shall not be disturbed or affected in any manner, and Lender shall recognize the Lease and Lessee's rights thereunder. If Lessee is not in default in the payment of rent or additional rent or in the performance of the terms, covenants and conditions of the Lease on Lessee's part to be performed, Lender will not join Lessee as a party defendant in any action or proceeding for the purpose of terminating Lessee's interest and estate under the Lease, except to terminate an option to purchase, if any, because of any default under the Mortgage. Subject to the limitations and conditions contained herein, Lender upon Foreclosure shall be deemed to be Lessor and shall assume the obligations of Lessor under the Lease thereafter arising or accruing.

**Payment of Rent to Lender.** From and after Lessee's receipt of written notice from Lender ("Rent Payment Notice"), Lessee shall pay all rent to Lender or as Lender shall direct in writing, until such time as Lender directs otherwise in writing. Lessee shall comply with any Rent Payment Notice notwithstanding any contrary instruction, direction or assertion from Lessor. Lender's delivery to Lessee of a Rent Payment Notice, or Lessee's compliance therewith, shall not be deemed to: (a) cause Lender to succeed to or to assume any obligations or responsibilities as Lessor under the Lease, all of which shall continue to be performed and discharged solely by Lessor unless and until any attornment has occurred pursuant to this Agreement; or (b) relieve Lessor of any obligations under the Lease. Lessor irrevocably directs Lessee to comply with any Rent Payment Notice, notwithstanding any contrary direction, instruction, or assertion by Lessor. Lessee shall be entitled to rely on any Rent Payment Notice. Lessee shall be under no duty to controvert or challenge any Rent Payment Notice. Lessee's compliance with a Rent Payment Notice shall not be deemed to violate the Lease. Lessor hereby releases Lessee from, and shall indemnify and hold Lessee harmless from and against, any and all loss, claim, damage, liability, cost or expense (including payment of reasonable attorneys' fees and disbursements) arising from any claim based upon Lessee's compliance with any Rent Payment Notice. Lessor shall look solely to Lender with respect to any claims Lessor may have on account of an incorrect or wrongful Rent Payment Notice. Lessee shall be entitled to full credit under the Lease for any rent paid to Lender pursuant to a Rent Payment Notice to the same extent as if such rent were paid directly to Lessor.

#### Notices.

All notices, demands and requests (collectively the "Notices") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been given if personally delivered or delivered by reliable overnight courier or mailed, first class postage

prepaid and shall be deemed delivered as of the date of such Notice if (i) delivered to the party intended; (ii) delivered to the then current address of the party intended, or (iii) rejected at the then current address of the party intended, provided such Notice was sent prepaid. The addresses of the parties are:

If to Lender: \_\_\_\_\_

If to Lessee: \_\_\_\_\_

If to Lessor: \_\_\_\_\_

Upon at least ten (10) days prior written Notice, each party shall have the right to change its address to any other address within the United States of America.

Miscellaneous. This Agreement (i) contains the entire agreement with respect to the subject matter hereof; (ii) may not be modified or terminated, nor may any provision hereof be waived, orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors, administrators and assigns; and (iii) shall inure to the benefit of, and be binding upon, the parties hereto, and their successors and assigns (including, without limitation, (a) Lessee's permitted assignees, (b) any subsequent holder of the Mortgage, and (c) any purchaser or grantee of the Property pursuant to a Foreclosure).

Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located.

IN WITNESS WHEREOF, Lender, Lessor and Lessee have executed this Agreement under seal effective as of the day and year first above written.

**LENDER**

[ ] By: \_\_\_\_\_ Name:  
Title:

DocuSigned by:

*Ben Tashakorian*  
Ben Tashakorian

**LESSEE LESSOR**

By: \_\_\_\_\_ By:

Vice President

CEO

\_\_\_\_\_  
Title:

STATE OF \_\_ COUNTY OF \_\_\_\_

On this day of \_\_\_\_, 2020, before me, the undersigned notary public, personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he/she) signed it voluntarily as \_\_for \_\_, a \_\_\_\_\_for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires:\_\_\_\_

STATE OF \_\_ COUNTY OF \_\_\_\_

On this day of \_\_\_\_, 2020, before me, the undersigned notary public, personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he/she) signed it voluntarily as \_\_for \_\_, a \_\_\_\_\_for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires:\_\_\_\_

STATE OF \_\_ COUNTY OF \_\_\_\_

On this day of \_\_\_\_, 2020, before me, the undersigned notary public, personally appeared \_\_\_\_\_ proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he/she) signed it voluntarily as \_\_for \_\_, a \_\_\_\_\_for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires:\_\_\_\_

THIS INSTRUMENT WAS PREPARED BY  
AND UPON RECORDING PLEASE RETURN TO:

---



**LEASE  
(111 Commerce Blvd., Frankfort, KY)**

**BETWEEN**

**LEGACY WEST PARTNERS KENTUCKY PORTFOLIO, LLC LESSOR**

**AND**

**PRECISION METAL WORKS, INC. LESSEE**

**LEASE  
(111 Commerce  
Blvd., Frankfort,  
KY)**

July ,

**THIS LEASE AGREEMENT** (this "**Lease**") is dated as of  
the 19th day of \_\_\_\_\_

\_\_\_\_\_2023 (the "Effective Date") by and between **Precision Metal Works, Inc.**, a Delaware limited liability company ("Lessee"), and **Legacy West Partners Kentucky Portfolio, LLC**, a Delaware limited liability company ("Lessor").

WITNESSETH:

WHEREAS, Lessee desires to lease the entire property, including the building(s) thereon, consisting of approximately 74,613 square feet, located at 111 Commerce Blvd., Frankfort, Franklin County, KY 40601 (the "Demised Premises") and Lessor agrees to lease the Demised Premises to Lessee.

NOW, THEREFORE, in consideration of the Demised Premises, mutual covenants contained in this Lease, and each act to be performed hereunder by the parties, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee covenant and agree as follows:

ARTICLE I. DEMISED PREMISES

Section 1.1 Lessor leases to Lessee, and Lessee leases and accepts from Lessor, the Demised Premises (designated as Franklin County tax parcels 095-00-00-060.17 and 095-00-00- 060.23), which Demised Premises include the structure, buildings, and improvements located thereon (the structures, buildings, and improvements on the Demised Premises are hereinafter called the "Improvements"), and together with all rights, easements, privileges, consents and appurtenances pertaining thereto.

Section 1.2 Acceptance of Demised Premises In As-Is Condition. LESSEE ACKNOWLEDGES THAT IT IS FAMILIAR WITH THE DEMISED PREMISES AND THE LEGALLY PERMISSIBLE USES THEREON. ACCORDINGLY, LESSEE ACCEPTS POSSESSION OF THE DEMISED PREMISES IN ITS "AS IS" CONDITION AS OF THE EFFECTIVE DATE. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE DEMISED PREMISES, EITHER AS TO ITS FITNESS FOR USE, ITS DESIGN OR CONDITION, OR ANY PARTICULAR USE OR PURPOSE TO WHICH THE DEMISED PREMISES MAY BE PUT, OR OTHERWISE, OR THE EXISTENCE OF ANY DEFECTS, LATENT OR PATENT, IT BEING AGREED THAT ALL SUCH RISKS ARE BORNE BY LESSEE.

ARTICLE II. TERM AND RENT

Section 2.1 Term. Lessee's obligation to pay rent and occupy the Demised Premises in accordance with this Lease shall be for a term of twenty (20) years (the "Term"), commencing on the Effective Date and ending on the last day of the month twenty (20) years following the

Commencement Date, unless terminated at an earlier date for any reason set forth in this Lease. The Effective Date shall be the date on which . . .

Section 2.2 Renewal Periods. Provided that the Lessee is not in default of the terms of the Lease and has not committed an act or omission that with the giving of notice and the passage of time could constitute a default of the terms of the Lease (subject to any applicable cure period hereunder), Lessee shall have and is hereby granted two (2) successive separate options to renew and extend the Term of this Lease from the date or dates upon which it would otherwise expire, for each separate successive renewal period, which shall be for a period of five

(5) years each (each such period being called a "Renewal Period"). Each such Renewal Period shall follow consecutively upon the expiration of the initial term as or upon the expiration of the prior Renewal Period, as the case may be, and each such Renewal Period shall, upon commencement thereof, be deemed included in references to "the term of this Lease" and "the full term of this Lease". Lessee's option with respect to each Renewal Period shall be exercised by Lessee by giving written notice to Lessor of Lessee's exercise of same not later than one hundred and eighty (180) days prior to the expiration date of the initial term or the then current Renewal Period, as the case may be. No option shall be deemed validly exercised unless the option affecting the preceding Renewal Period shall have been validly exercised. If Lessee elects to exercise any one or more of such options, the full term of this Lease shall be automatically extended for the Renewal Period or Periods covered by the option or options so exercised without execution of an extension or renewal lease. Each Renewal Period shall be on all of the same terms and conditions as are in effect hereunder immediately preceding the commencement date of such Renewal Period, except that the Basic Annual Rent during the Renewal Periods shall be fair market value as determined by the Lessor in its reasonable discretion. Lessee shall have no further right or option to renew after expiration of the final Renewal Period. The Lessee's failure to renew the Lease shall result in the expiration of the Lessee's right of occupancy upon the expiration of the then-current lease term.

Section 2.3 Holdover. If Lessee (or anyone claiming through Lessee) does not immediately surrender the Demised Premises or any portion thereof upon the expiration or earlier termination of the Term, then the Basic Rent (as hereinafter defined) payable by Lessee hereunder shall be increased to equal one hundred fifty percent (150%) of the Basic Rent in addition to all other sums that would have been payable pursuant to the provisions of this Lease if the Term had continued during such holdover period. If the Lessor consents to the Lessee's holdover, Lessee's tenancy during such holdover period shall be from month to month in accordance with all the terms and conditions of this Lease.

Section 2.4 Intentionally Omitted.

Section 2.5 Memorandum of Lease. As soon as practicable after execution of this Lease, upon request by either party, Lessor and Lessee shall execute, in recordable form, a Memorandum of Lease in the form annexed to this Lease as Exhibit A, and Lessee shall have the right to record the Memorandum of Lease in the appropriate recording office at Lessee's cost.

Section 2.6 Rent. Commencing on the Effective Date, and during the initial lease year of the Term the annual rent payable by Lessee shall be Four Hundred Nineteen Thousand Seven Hundred Twenty Five dollars (\$419,725), payable in monthly installments of Thirty Four

Thousand Nine Hundred Seventy Seven and eight cents (\$34,977.08) per month (the "Basic Rent"). Thereafter, on each anniversary of the Effective Date, including during each Renewal Period, Basic Rent shall increase by two percent (2.0%). If this Lease shall commence on a date other than the first day of the month, then on the Effective Date the Lessee shall pay that portion of the Basic Rent which represent the amount due for the balance of the month together with the first full monthly payment of Basic Rent. Thereafter, all payments of Basic Rent shall be due and payable on the first (1<sup>st</sup>) day of each month during the Term.

Section 2.7 Payments. Rent shall be made payable to Lessor and mailed to the address (if by check) or delivered by wire or ACH transfer, as directed in writing by Lessor. Lessor may, from time to time, change the method or address for delivery of rent in a written notice delivered to Lessee at least ten (10) days prior to the effective date of such change.

Section 2.8 Late Payment. Notwithstanding anything to the contrary contained herein, in the event that payment of rent or any other amount to be paid to the Lessor under this Lease, including amounts to be reimbursed to the Lessor is not received by Lessor within five (5) days of the due date, then Lessee shall pay, as additional rent, a sum equal to five (5%) percent of the unpaid rent or other amount due as the late payment. In addition, Lessee shall be obligated to pay five percent (5%) of the unpaid amount from the date that such amount is due until paid in full.

Section 2.9 Net Lease. **This Lease shall be an absolute net lease, so that this Lease shall yield all Basic Rent payable hereunder as an absolutely net return to Lessor. Accordingly, with the exception of Lessor's Income Taxes and as otherwise expressly set forth in this Lease, Lessee shall pay all taxes, insurance, assessments, and other costs, expenses and obligations of every kind and nature whatsoever relating to the ownership, including a management fee not to exceed at \$500.00/month, with annual increases matching the lease term, and operation of the Demised Premises, such as taxes, assessments, insurance premiums and maintenance, repair and compliance costs, which accrue with respect to the Demised Premises prior to, on and after the Effective Date and prior to the expiration of the Term. Lessee's obligation to pay all amounts described in this Section 2.9 shall survive the expiration or earlier termination of this Lease. Lessee will pay property taxes directly to taxing authority.**

Section 2.10 Impositions.

(a) On or before the Effective Date, Lessee shall notify the appropriate taxing authorities to deliver directly to Lessee all statements and invoices for Impositions (hereinafter defined), effective as of the Effective Date. Lessee shall pay all Impositions prior to the date they become delinquent. As soon as practicable after the payment thereof, Lessee shall deliver to Lessor evidence of each such payment. To the extent that any such Impositions are imposed upon Lessor, at Lessor's option, Lessee shall either pay such Impositions directly to the taxing authority or, upon documentation of such Imposition and payment thereof, reimburse Lessor for such Impositions paid by Lessor. If the Lease Term expires on a day other than the last day of a calendar year, then Lessee's liability for Impositions for such calendar year shall be apportioned by multiplying the amount of Impositions for the full calendar year by a fraction, the numerator of which is the number of days during such calendar year falling within the Lease Term, and the denominator of which is three hundred sixty-five (365).

(b) The term "Impositions" shall mean, collectively, taxes, including without limitation, any present or future real estate taxes, all taxes or other impositions that are in the nature of or in substitution for real estate taxes, vault and/or public space rentals, business district or arena taxes, business or occupation, single business, transaction, privilege, excise or franchise taxes, as well as special user fees, license fees, permits, improvement bonds, levies, improvement district charges, governmental charges, rates, assessments and other similar charges, general, special, ordinary or extraordinary foreseen and unforeseen, that are related to the Demised Premises or Lessee's use thereof. Impositions shall not include any federal, state, or local tax imposed on Lessor that is based upon Lessor's income or profits ("Lessor's Income Taxes").

(c) Contest of Impositions. Lessee, at its sole expense, upon at least ten (10) days' prior written notice to Lessor but without Lessor's consent, and using legal counsel or other service reasonably acceptable to Lessor (such acceptance not to be unreasonably withheld, conditioned, or delayed), shall have the right to contest the amount or validity of any Imposition by diligently conducting in good faith an appropriate legal or administrative proceeding, provided that the following conditions are met: (a) the Impositions are paid or the postponement of payment of Impositions, without penalty, as part of such proceeding is required by applicable law, (b) the Demised Premises shall not, by reason of such postponement of payment, or the initiation of such proceeding, be subject to any lien, forfeiture, sale, or loss, (c) such proceedings shall not materially impact or interfere with the use or occupancy of the Demised Premises, (d) such proceedings shall not affect or interfere with Lessee's continued payment of Basic Rent and any other amount that may be due herein; and (e) pursuing the contest of Impositions shall not in any way expose Lessor to any criminal or civil liability, penalty or sanction. Lessee further agrees that each such contest shall be promptly and diligently prosecuted to a final conclusion, and Lessee shall pay all judgments, decrees and costs (including any costs incurred by Lessor) in connection with any such contest and shall, promptly after the final determination of such contest, fully pay and discharge the amounts which shall be levied. Lessee shall be entitled to any refund received with respect to Impositions paid by Lessee.

(d) Assessments on Lessee's Business and Personalty. Lessee shall pay before delinquency any business, rent, sales, franchise or other taxes or fees that are now or hereafter levied, assessed or imposed upon Lessee's use, operation, or occupancy of the Demised Premises, the conduct of Lessee's business at the Demised Premises, or Lessee's equipment, fixtures, furnishings, inventory or personal property. If any such tax or fee is enacted or altered so that such tax or fee is levied against Lessor or so that Lessor is responsible for collection or payment thereof, then Lessee shall pay to Lessor as additional rent the amount of such tax or fee.

(e) Utilities and Services. Lessee, at its own expense and risk, shall arrange with the appropriate utility companies and service providers for the provision to the Demised Premises of water, sewer, trash collection, electricity, oil, telephone, window washing, landscaping, snow removal, and all other utilities and services desired by Lessee. On or before the Effective Date, Lessee shall notify the appropriate utility and service providers to deliver directly to Lessee all statements and invoices for the amounts for which Lessee is responsible pursuant to this Section 2.10(e), effective as of the Effective Date. Lessee shall pay directly to the appropriate utility companies and service providers all charges for all utilities consumed in and services performed for the Demised Premises, as and when such charges become due

and payable. To the extent the invoices for any such utilities and services are received by Lessor, at Lessor's option, Lessee shall either pay the charge for such utilities and services directly to the utility or service provider or reimburse Lessor for such charges paid by Lessor.

Section 2.11 Security Deposit. As security for performance of its obligations hereunder, upon execution of this Lease, Lessee shall pay to Lessor on even date hereof a security deposit in the amount of Sixty Three Thousand Four Hundred Ninety Three Dollars and 33 cents (\$63,493.33 (the "Security Deposit"). Upon the occurrence of any Event of Default (as hereinafter defined) by Lessee, Lessor may from time to time and without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrears of Basic Rent or any other amount payable hereunder, or any other damage, injury, expense or liability caused to the Lessor by such Event of Default. The remaining balance of such Security Deposit shall be returned by Lessor to Lessee within a reasonable time after the Lessee surrenders the premises to the Lessor; provided, however, Lessor shall not be obligated to return the remaining balance of such Security Deposit until all payments due from Lessee to Lessor pursuant to this Lease shall have been made in full. The Security Deposit shall not be considered an advance payment of rent or measure of the Lessor's damages in case of default by Lessee. Lessor may commingle such Security Deposit with other monies of the Lessor. Lessee shall receive no interest on such Security Deposit. Lessee shall be obligated to deposit with Lessor the amount necessary to restore the Security Deposit to its original amount within five (5) business days of Lessor's notice to Lessee of any depletion of the Security Deposit. In the event of the sale or transfer of Lessor's interest in the Demised Premises, Lessor shall have the right to transfer the Security Deposit to the purchaser or transferee and upon such transfer Lessee shall look only to the new Lessor for the return of the Security Deposit and the Lessor shall thereupon be released from all liability to Lessee for the return of or accounting for such Security Deposit.

### ARTICLE III. USE OF IMPROVEMENTS, ALTERATIONS, BUSINESS CONDUCT.

Section 3.1 Use. Lessee shall use and occupy the Demised Premises for no purpose except (a) purposes related to those for which the Demised Premises is being used as of the Effective Date and/or (b) other lawful purposes consistent with the industrial nature of the Demised Premises. Lessee shall not use or occupy the Demised Premises for any unlawful purpose, or in any manner that will violate the certificate of occupancy for the Demised Premises. Lessee shall, at Lessee's expense, comply with all present and future laws (including, without limitation, the Americans with Disabilities Act), ordinances (including without limitation, zoning ordinances and land use requirements), regulations, orders, recommendations, decisions, and decrees now or hereafter promulgated (including, without limitation, those made by any public or private agency), as any of the same may be amended from time to time (collectively, "Laws", and individually, "Law") applicable to Lessee, the use, occupancy and condition of the Demised Premises and the business being conducted thereon, and all machinery, equipment, furnishings, fixtures and improvements on or used in connection with the Demised Premises. If any Law requires any occupancy or use permit or license for the Demised Premises or the operation of the business conducted therein, then Lessee shall obtain and keep current all such permits or licenses at Lessee's expense. Lessee shall deliver to Lessor, promptly upon request, copies of all such licenses and permits. If any

Law requires any modification to the Demised Premises, Lessee shall perform such alterations, at its sole cost and expense, in accordance with the applicable terms and conditions of Section 3.2 below. Use of the Demised Premises is subject to all covenants, conditions, easements and restrictions of record, and Lessee shall comply with the same (but not with any of Lessor's obligations for and relating to borrowed money except as provided in this Lease or agreed by Lessee with Lessor's lender). Lessee shall conduct its business in the Demised Premises in a reputable manner. Lessee shall have the right to erect and maintain directional or Lessee identification signs (but no third party signage such as, by way of example and not limitation, advertisements, political advocacy, or position statements) in or on the Demised Premises at such place or places as Lessee may choose, subject to all applicable Laws and ordinances.

Section 3.2 Alterations by Lessee. Except as otherwise provided in this Lease, any alterations and additions to the Demised Premises that Lessee may deem desirable during the Term may be made by Lessee, at Lessee's sole cost and expense, but Lessor's prior written consent (not to be unreasonably withheld, conditioned, or delayed) shall be required for any exterior alterations in excess of \$200,000 at any one time, reductions or increase in size of the Demised Premises. Lessor shall promptly sign and execute such documents or otherwise evidence its approval, consent or grant of authority, as required by any public authorities having jurisdiction, to facilitate issuance to Lessee of necessary licenses or to permit Lessee to make or perform any permissible alteration or addition.

Section 3.3 Conduct of Business. Lessee shall not cause injury or waste to the Demised Premises, reasonable wear and tear excepted, and shall reimburse the Lessor for the cost of repair within 10 days after invoicing by the Lessor. Lessee shall keep the Demised Premises clean and free from rubbish, trash and garbage, and, at Lessee own expense, arrange for removal of same. Lessee shall store all such rubbish, trash and garbage within the Demised Premises.

#### Section 3.4 Hazardous Materials.

(a) Lessee shall not cause or permit any Hazardous Materials (as hereinafter defined) to be generated, used, released, stored or disposed of in or about the Demised Premises, other than in compliance with all applicable Environmental Laws. Without limiting the generality of the foregoing, it is acknowledged that Lessee presently uses the chemicals and materials listed on Exhibit A attached hereto and made a part hereof (collectively, the "Permitted Materials"). Notwithstanding anything to the contrary contained herein, Lessee shall be permitted to store and use at the Demised Premises the Permitted Materials so long as the same is done in compliance with all applicable Environmental Laws. At the expiration or earlier termination of this Lease, Lessee shall surrender the Demised Premises to Lessor in a condition that is not in violation of Environmental Laws caused or permitted by Lessee or originating on the Demised Premises. "Hazardous Materials" means (i) asbestos and any asbestos containing material, (ii) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other applicable Law as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability,



corrosively, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity, (iii) any petroleum product, cleaning solvents, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear, or by-product material), medical waste, chlorofluorocarbon, lead or lead-based product, and any other substance the presence of which is regulated by Environmental Law or is commonly acknowledged as being detrimental to the Demised Premises or hazardous to health or the environment, and (iv) any mold, fungi, bacterial or microbial matter present at or in the Demised Premises, including, without limitation, building materials, which is in a condition, location or a type which poses a risk to human health or safety or the environment, or may result in damage to or would adversely affect or impair the value or marketability of the Demised Premises. "Environmental Law" means any present and future Laws, and other requirements or guidelines of governmental authorities applicable to the Demised Premises and relating to the environment and environmental conditions, industrial hygiene, public health or safety, or to any Hazardous Material (including, without limitation, CERCLA 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, the Clean Air Act, 33 U.S.C. § 7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 1101 *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*, and any so-called "Super Fund" or "Super Lien" law, any Law requiring the filing of reports and notices relating to Hazardous Materials, environmental laws administered by the Environmental Protection Agency, and any similar state and local Laws).

(b) Lessee shall give Lessor notice of any Environmental Default (as hereinafter defined) of which Lessee has actual knowledge within forty-eight (48) hours after Lessee has actual knowledge of such Environmental Default. If such notice is oral or telephonic, Lessee shall follow such notice with written notice within seventy-two (72) hours after Lessee has actual knowledge of such Environmental Default. A n "**Environmental Default**" means any of the following: a violation of an Environmental Law caused or permitted by Lessee or originating on the Demised Premises; a release, spill, discharge or detection of a Hazardous Material on or from the Demised Premises in violation of Environmental Law or an environmental condition on or from the Demised Premises requiring responsive action under Environmental Law. For avoidance of doubt, notwithstanding anything to the contrary contained herein, Lessee shall have no liability for environmental matters originating off of the Demised Premises or migrating onto the Demised Premises except to the extent caused by Lessee. Upon any Environmental Default, in addition to all other rights available to Lessor under this Lease, at law or in equity, Lessor shall have the right but not the obligation, at its option, (i) to require Lessee, at Lessee's sole cost and expense, to cure such Environmental Default in accordance with all Environmental Laws and to the reasonable satisfaction of Lessor , in which event Lessee shall commence such cure promptly, but in no event later than fifteen (15) days after written demand by Lessor and Lessee shall complete such cure within the time reasonably necessary to effect the cure, not to exceed one hundred eighty (180) days after commencement, provided that such 180-day period may be extended by Lessor if reasonably necessary to complete such cure, and provided that Lessee shall keep Lessor fully informed of the actions being planned and taken by Lessee to address the

Environmental Default, or (ii) to perform, at Lessee's sole cost and expense, any lawful action necessary to address the same, in which event Lessee shall pay the reasonable costs thereof to Lessor as additional rent. Lessee may provide evidence of meeting its obligation to cure upon receipt of a determination by the Kentucky Department for Environmental Protection ("KDEP") that current and future owners of the Demised Premises are relieved of further liability for the remediation of the Hazardous Materials that are the subject matter of the Environmental Default. In connection with any effort by Lessee to obtain such a determination from KDEP, Lessor agrees to implement engineering or institutional controls under the Uniform Environmental Covenants Act, including the recording of necessary instruments in the public records, providing such engineering or institutional controls do not prevent use of the Demised Premises for (a) purposes related to those for which the Demised Premises is being used as of the Effective Date and/or (b) other lawful purposes consistent with the industrial nature of the Demised Premises.

(c) If Lessor has a reasonable basis to believe an Environmental Default has occurred, or if a governmental authority requires a Phase I environmental assessment, or in connection with any sale, financing or refinancing of the Demised Premises, Lessor shall have the right, but not the obligation upon each such request, to conduct an audit of the Demised Premises (including, without limitation, the air, soil, surface water and/or groundwater at or near the Demised Premises) and Lessee's compliance with Environmental Laws with respect thereto, including without limitation, a Phase II environmental assessment if recommended by such audit. Lessor will bear the cost of any Phase I environmental assessment required under this Section 3.4(c) unless (i) such Phase I environmental report is required by any governmental authority, or (ii) such Phase I environmental report reveals that an Environmental Default has occurred, in which case Lessee shall pay for the cost of such Phase I environmental report as Additional Rent. If a Phase II report is performed pursuant to a recommendation therefor set forth in any Phase I environmental report that is done under this Section 3.4(c), and if such Phase II environmental report reveals that an Environmental Default has occurred, Lessee shall pay for the cost of such Phase II environmental report as additional rent. If such audit reveals that an Environmental Default has occurred, Lessor shall have the right, but not the obligation, (i) to require Lessee, at Lessee's expense, to cure the same in accordance with the terms of Section 3.4(b) above or (ii) to cure the same, at Lessee's sole cost and expense, in which event Lessee shall pay the reasonable costs thereof to Lessor as additional rent. Lessor shall use commercially reasonable efforts to ensure that any audit conducted pursuant to this Section 3.4(c) does not unreasonably interfere with Lessee's operations at the Demised Premises.

(d) If any lender shall require testing at or near the Demised Premises and Lessor incurs expenses in complying with such requirement, then Lessor shall bear all such expenses (including, without limitation, the cost of a Phase I and Phase II environmental report) unless any such Phase I or a Phase II environmental report reveals that an Environmental Default has occurred, in which case Lessee shall pay to Lessor the reasonable costs therefor as additional rent. Lessor shall use commercially reasonable efforts to ensure that any audit conducted pursuant to this Section 3.4(d) does not unreasonably interfere with Lessee's operations at the Demised Premises.

(e) If this Lease has terminated or expired and Lessee owes Lessor the costs of any

environmental action under Section 3.4(c) or Section 3.4(d), Lessee shall pay the amount owed directly to Lessor and not as additional rent.

(f) As a material consideration for Lessor's entering into this Lease, Lessee hereby waives, and releases Lessor and its Affiliates, partners, officers, directors, members, trustees, employees, agents and Lenders from any and all claims for damage, injury or loss (including without limitation, claims for the interruption of or loss to business) which relate to any Environmental Default, whether occurring prior or subsequent to the Effective Date except to the extent that such Environmental Default results from Lessor's gross negligence or intentional misconduct. Promptly upon request, Lessee shall execute from time-to-time reasonable certificates concerning Lessee's best knowledge and belief regarding the presence of Hazardous Materials at the Demised Premises.

(g) Lessee's obligations pursuant to this Section 3.4 shall survive the expiration or earlier termination of this Lease.

#### ARTICLE IV. MAINTENANCE AND REPAIRS.

Section 4.1 Maintenance of Demised Premises. Except with respect to damage caused by the negligence or other acts of Lessor and/or Lessor's agents, vendors, contractors, members, officers, directors, shareholders and employees (collectively, "Lessor's Agents") Lessee, at Lessee's sole cost and expense, shall keep the Demised Premises, including all portions of the building, landscaping and equipment, in good condition and repair throughout the Term, reasonable wear and tear and the effects of time excepted; provided, however, that Lessee's liability for any item of maintenance, repair or replacement shall be limited as set forth in Article VIII of this Lease. Lessor, at Lessor's sole cost and expense, shall be responsible to repair or remedy damage caused by the negligence or other acts of Lessor and Lessor's agents, contractors, vendors, invitees, and employees. In the event Lessor fails to remedy such damage as required above within thirty (30) days after receipt of notice from Lessee or in the event of an emergency, Lessee may make such repairs and Lessor will reimburse Lessee for such costs within thirty (30) days' after receipt of the bill and if Lessor fails to reimburse Lessee, Lessee within such thirty (30) days, Lessee may deduct the cost from the next due Basic Rent payment. Notwithstanding anything in this Lease to the contrary, Lessor shall have the right, but not the obligation, to take such actions as are reasonably necessary to prevent or mitigate damages or injury to persons or property arising out of the need for Lessee to make repairs or maintain the Demised Premises but only where Lessor reasonably determines that (a) an emergency exists, or

(b) any delay or further delay in taking action would likely result in irreparable harm and/or cause, increase or compound damages or injury to persons or property. Lessor shall promptly give notice to the Lessee of its exercise of the foregoing right. Lessee shall reimburse Lessor the actual costs and expenses incurred in taking such actions within thirty (30) days after receipt of a statement therefore. Any such amounts due will be deemed additional rent. Lessee further agrees to replace (with systems of equal usable years remaining from lease commencement) all systems, after the termination of this Lease, including the roof, HVAC, parking lot and exterior of the building.

Lessee also agrees to make the following repairs and improvements within the allotted timeframe:

- A) Repair items in Property Condition Report Table 1 - Immediate Repairs & Deferred Maintenance Cost Opinion within first 12 months of lease term.
- B) Refurbish/Refresh Office Area within first 36 Months of the lease term.
- C) Replace Roof within first 36 months of lease term.
- D) Total Expenditure to be a minimum of \$500,000 in the first 60 months of the lease term.
- E) Lessee/Seller agrees that at the termination of the lease, Lessee will remove all equipment from Premises.

#### ARTICLE V. LAWS AND GOVERNMENTAL REGULATIONS.

Section 5.1 Compliance with Laws. Lessee shall promptly comply with all laws and ordinance, and all orders, rules, regulations, and requirements of federal, state, and municipal governments and appropriate departments, commissions, boards, and officers of these governments ("Legal Requirements") applicable to the Demised Premises and the business conducted by Lessee thereon throughout the term of this Lease at the Demised Premises, and without cost to Lessor. Lessee shall promptly comply with these Legal Requirements whether they are foreseen or unforeseen, or ordinary or extraordinary. Lessor shall promptly comply with any Legal Requirements affecting any common areas or any portion of the Demised Premises under Lessor's control, if any. The Lessee further agrees to reimburse the Lessor for any costs incurred by the Lessor due to the Lessee's failure to comply with this Lease or any Legal Requirements. Such reimbursement shall occur within thirty (30) days of invoicing by the Lessor. No conviction, citation, arrest, or any adjudication of wrongdoing by the Lessee shall be required in order for the Lessor to assert its rights or seek its remedies for a violation of this section.

#### ARTICLE VI. LIENS AND ENCUMBRANCES.

Section 6.1 Liens. Lessee shall not create, permit, or suffer any mechanic's or other lien or encumbrance on or affecting the Demised Premises or the leasehold interest of Lessor or the fee estate or reversion of the Lessor except as specifically permitted in this Lease.

Section 6.2 Construction Liens. Lessee shall not permit the creation of any lien against the Demised Premises on account of labor or materials furnished in connection with any construction, maintenance, repairs, or alterations Lessee shall undertake. If any such lien is filed against the Demised Premises, Lessee, as the party contracting for such work, shall cause such lien to be released within sixty (60) days after actual notice of the filing thereof or shall furnish to Lessor a bond or other security reasonably satisfactory to Lessor, conditioned to indemnify Lessor against the foreclosure of such lien. Lessee shall have the right, after notice to Lessor, to contest in good faith and with all due diligence any such lien and shall not be required to pay any claim secured by such lien; provided that (a) such lien would not impair the rights or be satisfied out of the interest of Lessor in the Demised Premises by reason of such delay, and (b) Lessee will, at its expense, defend Lessor and pay all costs reasonably incurred by the other relating to

the contest if Lessor is joined in any suit pertaining thereto or if any such lien is placed upon the Lessor's interest in the Demised Premises.

Section 6.3 No Lessor Liability. Lessor shall not be liable for any labor, services, or materials furnished or to be furnished to Lessee or to any sublessee in connection with any work performed on or at the Demised Premises, and no mechanic's lien or other lien or encumbrance for any labor, services or materials shall attach to or affect the Lessor's leasehold interest or the Lessor's fee estate or reversion in the Demised Premises.

Section 6.4 Lessee's Furniture, Fixtures and Equipment. Any and all movable or removable fixtures, equipment and personally purchased by, belonging to or leased from third parties by Lessee and installed on the Demised Premises (whether or not affixed), including, without limitation, Lessee lamps, decor items, fans, office and business equipment, software, signs and other personal property are hereinafter referred to as Lessee's "Furniture, Fixtures and Equipment." Lessee shall own all Lessee's Furniture, Fixtures and Equipment to the exclusion of Lessor. Lessee shall have the right to remove all of Lessee's Furniture, Fixtures and Equipment from the Demised Premises. Lessee's Furniture, Fixtures and Equipment not so removed by the termination of this Lease within ten (10) days following the termination hereof shall be deemed abandoned by Lessee and the property of Lessor.

Section 6.5 Lessee's Equipment Financing; Subordination of Lessor's Lien. Lessee may, from time to time, enter into equipment leases covering Lessee's Furniture, Fixtures and Equipment or secure financing or general credit lines and grant the lessors or lenders as security therefore a security interest in Lessee's Furniture, Fixtures and Equipment. Provided Lessee notifies Lessor in writing of the name and address of any such lessor or lender, Lessor agrees that it will grant a lender the same rights to notice and cure with respect to any default of Lessee as are given to Lessee hereunder, provided, however, the lender's notice period shall run concurrently with, and not in addition to, the Lessee's notice period. Any Lessor's lien covering Lessee's Furniture, Fixtures and Equipment shall be and hereby is made subordinate to the rights of any and all of Lessee's lender(s), including, without limitation, any equipment lease or security interest and Lessor shall, within ten (10) days of a request by Lessee, execute and deliver to Lessee any documents that may reasonably be required in order to effect such subordination.

#### ARTICLE VII. INSURANCE AND INDEMNITY.

Section 7.1 Casualty Insurance. At all times during the Term of this Lease, Lessee shall maintain, at its sole cost and expense, insurance covering the Demised Premises and the Improvements, and including, without limitation, all Improvements now located on the Demised Premises or that may be erected on the Demised Premises, against loss or damage by fire, vandalism, malicious mischief, windstorm, hail, smoke, explosion, riot, civil commotion, vehicles, aircraft, flood or earthquake (if required due to the location of the Demised Premises), together with such other insurance as Lessor may reasonably require from time to time. This insurance shall be carried by insurance companies authorized to transact business in the Commonwealth of Kentucky and, selected by Lessee. In addition, the following conditions shall be met:

(a) The insurance shall be for up to \$9,000,000 of the replacement cost of buildings and other Improvements.

(b) The insurance shall be maintained for the mutual benefit of Lessor and Lessee, and succeeding holders of the fee title in the Demised Premises, and any successors and assigns of this Lease. The insurance policy or policies shall name Lessor and Lessee as insureds.

(c) Any and all fire or other insurance proceeds that become payable at any time during the term of this Lease because of damage to or destruction of any Improvements on the Demised Premises shall be paid to Lessee and applied by Lessee toward the cost of repairing, restoring and replacing the damaged or destroyed Improvements in the manner required by Article VIII of this Lease. However, if Lessee elects to terminate this Lease pursuant to the provisions of Article VIII of this Lease, then any and all fire or other insurance proceeds that become payable because of that damage or destruction shall be applied as follows:

(i) Proceeds shall be first paid to Lessor and applied first toward the demolition of the building, if necessary.

(ii) Second, shall be paid to Lessor to compensate Lessor, for the loss suffered to the Demised Premises and/or the Improvements without any obligation on the part of Lessor to rebuild or restore the Demised Premises and/or the Improvements.

(iii) Third, all remaining proceeds shall be paid to Lessee in compensation for its Furniture, Fixtures and Equipment, inventory, proprietary items and loss of business.

Section 7.2 Liability Insurance. At all times during the term of this Lease, Lessee shall maintain, at its sole cost and expense, comprehensive broad-form general public liability insurance against claims and liability for personal injury, death, and property damage in an amount not less than \$2,000,000.00. The insurance shall be carried by insurance companies authorized to transact business in the Commonwealth of Pennsylvania, selected by Lessee. In addition, the following conditions shall be met:

(a) Except as otherwise set forth in this Lease, the insurance provided pursuant to this Section 7.2 shall be in an amount no less than \$2,000,000 toward the replacement cost for property damage, and in an amount no less than \$2,000,000.00 for one person and \$2,000,000.00 for one accident for personal injury. In addition, Lessee shall provide an umbrella policy in the amount of \$5,000,000.

(b) The insurance shall be maintained for the mutual benefit of Lessor and Lessee, and succeeding owners of the fee title in the Demised Premises, and any successors and assigns of this Lease. The insurance policy or policies shall name Lessor and Lessee as insureds.

(c) The amounts of insurance may be increased as mutually agreed upon by Lessor and Lessee, in each party's reasonable discretion, from time to time account for inflation, or generally increased insurance settlements or jury verdicts.

(d) The insurance required to be carried pursuant to this Article VII may be carried under policies of blanket insurance that may cover other liabilities and locations; provided, however, in all other respects each of such policies shall comply with the provisions of this Article VII.

Section 7.3 Certificate of Insurance. Lessee shall furnish Lessor with certificates of all insurance required by this Article VII. Lessee agrees that if Lessee does not keep this insurance in full force and effect, Lessor may notify Lessee of this failure, and if Lessee does not deliver to Lessor certificates showing all such insurance to be in full force and effect with no gap in coverage, within ten (10) days after this notice, Lessor may, at its option, take out and/or pay the premiums on the insurance needed to fulfill Lessee's obligations under the provisions of this Article VII. On demand from Lessor, Lessee shall reimburse Lessor the full amount of any insurance premiums paid by Lessor, with interest equal to the prime rate charged by Bank of America, plus three (3) percent, from the date of Lessor's demand until reimbursement by Lessee.

Section 7.4 Lessee Waiver of Claims. Lessor shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from any use of the Demised Premises or Improvements, or caused by any defect in any building, structure, equipment, facility or other improvement on the Demised Premises, or caused by or arising from any act or omission of Lessee, or any of its agents, employees, licensees or invitees, or by or from any accident, fire or other casualty on the land, or occasioned by the failure of Lessee to maintain the Demised Premises in safe condition. Lessee waives all claims and demands on Lessee's behalf against Lessor for any loss, damage, or injury, and agrees to indemnify and hold Lessor entirely free and harmless from all liability for any loss, damage, costs or injury of other persons, and from all costs and expenses arising from any claims or demands of other persons concerning any loss, damage or injury, caused on or about the Demised Premises.

Section 7.5 Mutual Waiver of Subrogation. Lessor and Lessee and their successors in interest hereby waive any legal rights each may later acquire against the other party during the Term for the loss of or damage to their respective property or to property in which they may have an interest, which loss or damage is caused by an insured hazard arising out of or in connection with the Demised Premises.

#### ARTICLE VIII. DAMAGE OR DESTRUCTION OF IMPROVEMENTS.

##### Section 8.1 Damage to Demised Premises.

(a) In the event that the Improvements are completely destroyed, or are damaged in excess of fifty-one percent (51%) of the value thereof due to any cause whatsoever, Lessee shall have the following options:

- (i) Within ninety (90) days of such destruction or damage, or such later time if permits are required for the reconstruction, Lessee shall commence and diligently pursue to completion the repair, restoration or replacement of the damaged or destroyed Demised Premises and Improvements, and this Lease

shall remain in full force and effect, with Basic Rent abated until such time as the Demised Premises has been repaired, restored, or replaced; or

- (ii) Lessee shall terminate this Lease on ninety (90) days prior notice to Lessor. If Lessee elects to terminate this Lease, all insurance proceeds on the policies required hereunder shall be paid to Lessor with no obligation to rebuild the Improvements or otherwise restore the Demised Premises to the pre-destruction condition. If Lessee elects this option, the Lease will terminate on the date in the notice of termination which shall be no later than ninety (90) days after the date of the notice and the Lease will terminate effective on such date. Lessee will be responsible prior to such date to remove any Furniture, Fixtures and Equipment, inventory and proprietary items that remain in the Demised Premises.

(b) In the event that damage to the Improvements, due to any cause whatsoever, is less than fifty-one percent (51%) percent, the Lessee shall, at its own expense, repair, restore or replace the damaged Improvements with due diligence, and this Lease shall continue in full force and effect with no abatement of Basic Rent.

#### ARTICLE IX. EMINENT DOMAIN.

Section 9.1 Condemnation. If the Demised Premises and Improvements or any part thereof is taken for public or quasi-public purposes by condemnation in any action or proceeding in eminent domain, or are transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, the interests of Lessor and Lessee in the award or consideration for the taking or transfer and the effect of the taking or transfer on this Lease shall be governed by this Article IX.

##### Section 9.2 Taking

(a) If all or substantially all of the Demised Premises and Improvements are taken or transferred as described in Section 9.1, this Lease and all of the rights, title and interest under this Lease shall cease on the date title to the Demised Premises and Improvements vests in the condemning authority, and the proceeds of the condemnation shall be paid to Lessor. In the event of any such taking or condemnation, of all or any part of the Demised Premises or the Improvements, Lessee shall have no claim against Lessor and shall not have any claim or right to any portion of the amount that may be awarded as damages or paid as a result of such taking or condemnation; and all rights of Lessee to damages therefore are hereby assigned by Lessee to Lessor, and Lessee shall have no claim against Lessor or the condemnor for the value of the unexpired Term of this Lease. However, the foregoing provisions of this section shall not be construed to deprive Lessee of the right to claim and receive payment from the condemnor or taking authority for moving and related expenses or for the taking of Lessee's personal property or fixtures as long as such claim or the payment thereof does not reduce the award which Lessor would otherwise be entitled to receive. In the event of any such taking or condemnation of part of the Demised Premises, the Basic Rent shall be proportionately reduced from the date that



possession of the Demised Premises is required to be surrendered to the condemnor or taking authority.

(b) If less than all or substantially all of the Demised Premises and Improvements is taken or transferred as described in Section 9.1, and if in Lessee's opinion the remainder of the Demised Premises and Improvements is in a location, or in a form, shape, or reduced size that Lessee is in its commercially reasonable opinion unable to effectively and practicably operate Lessee's business on the remaining Demised Premises and Improvements, then this Lease shall terminate on the date title to the portion of the Demised Premises and Improvements taken or transferred vests in the condemning authority. The proceeds of the condemnation shall be payable as set forth in Section 9.2(a).

(c) If less than all or substantially all of the Demised Premises and Improvements is taken or transferred as described in Section 9.1, and if in Lessee's opinion the remainder of the Demised Premises and Improvements is in a location and a form, shape, or size that makes it possible for Lessee to effectively and practicably operate Lessee's business on the remaining Demised Premises and Improvements, this Lease shall terminate as to the portion of the Demised Premises and Improvements taken or transferred as of the date title to the portion vests in the condemning authority. However, this Lease shall continue in full force and effect as to that portion of the Demised Premises and Improvements not taken or transferred. From and after the date of taking or transfer, the rental required to be paid by Lessee to Lessor shall be reduced during the unexpired portion of this Lease by that proportion of the annual rent that the value of the part of the Demised Premises and Improvements taken or transferred bears to the value of the total Demised Premises and Improvements. These values shall be determined as of the date immediately before any actual taking. The proceeds of the condemnation shall be payable as set forth in this Section 9.2(a).

Section 9.3 Temporary Taking. If the period of taking shall be less than three (3) months, this Lease shall continue in full force and effect, the Basic Rent and other charges shall abate during such period of taking, and all awards for damages shall belong solely to Lessee.

Section 9.4 More Than One Taking. If more than one taking occurs during the Term, the right of the parties, as provided in this Article, shall be determined as if all such takings had all occurred at the time of the last taking, and the effect of all such takings shall be considered cumulatively.

#### ARTICLE X. INTENTIONALLY OMITTED. ARTICLE XI. DEFAULT.

##### Section 11.1 Lessee's Default.

(a) Any one or more of the events listed in subparagraphs (b) through (f) of this Section 11.1 shall constitute a default under this Lease ("Event of Default").

(b) Lessee's failure to pay Basic Rent or any other amount due under this Lease within five (5) days after receipt of written notice from the Landlord that such amount has become past

due and payable in accordance with the terms, covenants and agreements of this Lease shall constitute a default under this Lease.

(c) Lessee's failure to observe or perform or cause to be observed or performed any other term, covenant or agreement under this Lease, and continuation of this failure for a period of thirty (30) days after Lessor's written notice to Lessee specifying in reasonable detail the nature of the Lessee's failure shall constitute a default under this Lease. However, a failure as described in this subparagraph (c) shall not constitute an Event of Default if it is curable but cannot with reasonable diligence be cured by Lessee within a period of thirty (30) days, and if Lessee commences to cure the failure with reasonable diligence and in good faith.

(d) The occurrence of any of the following events at the date of the commencement of this Lease or during the Term shall constitute an Event of Default under this Lease:

(i) Filing of a petition in bankruptcy or insolvency, for reorganization or the appointment of a receiver or trustee of all or a portion of Lessee's property, by or against Lessee in any court pursuant to any statute either of the United States or of any state days; and

(ii) Lessee's failure to secure a dismissal of the petition within ninety (90) days after its filing.

(e) Lessee's assignment of the Leasehold interest under this Lease for the benefit of creditors shall constitute a default under this Lease.

#### Section 11.2 Lessor Rights.

(a) Intentionally omitted.

(b) At any time after the termination of Lessee's right of possession under this Lease, Lessor may enter and possess the Demised Premises and Improvements by summary proceedings, ejectment or otherwise, and Lessor may remove Lessee and all other persons and property from the Demised Premises and Improvements. If the Lessor takes the actions described in this Section 11.1, Lessor may then possess the Demised Premises and Improvements and assume the right to receive all rents, income and profits from the Demised Premises and Improvements, and Lessor may also sell any of the Improvements.

(c) The expiration of this Lease or termination of the Lessee's right to possession pursuant to Article 2 or 11 shall not relieve Lessee of its liability and obligation to pay the Basic Rent and any other charges accrued prior to these events, or relieve the Lessee of liability and obligation to pay the Basic Rent and any other charges accrued prior to these events, or relieve the Lessee of liability for damages for breach. These liabilities and obligations of the Lessee shall survive any expiration or termination of the Lease or any entry and possession by the Lessor.

(d) In the event of Lessee's abandonment of the Demised Premises and Improvements, and/or Lessee's failure to operate a business continually within the Demised Premises for a

period in excess of six (6) consecutive months (other than in the case of repairs, maintenance, casualty or condemnation) it shall constitute an Event of Default under this Lease unless Lessee continues to pay Basic Rent to Lessor and covers all other costs that Lessee is obligated to pay hereunder, but Lessor shall be permitted to terminate the Lease at any time following the conclusion of the above-referenced 6-month period on ten (10) business days' notice to Lessee in which case Lessee will vacate the Building as provided for in this Lease and have no liability to Lessor beyond its period of occupation.

Section 11.3 Lessor's Obligation to Mitigate.

(a) After the expiration of this Lease or termination of the Lessee's right of possession under this Lease pursuant to Article 2 or 11.3, Lessor shall use reasonable efforts to mitigate damages by reletting the Demised Premises and Improvements, in whole or in part, either in its own name or as agent of Lessee, at or above the Basic Rent rate and for a term or terms which, at Lessor's option, may be for the remainder of the then current term of this Lease or for any longer or shorter period.

(b) Lessee shall remain liable for the difference between the rent reserved under this Lease, and the rent collected and received, if any, by Lessor during the remainder of the unexpired term. Lessor shall have the option of collecting the deficiency between the rent reserved and the rent collected in monthly payments as these payments become due and payable, or of receiving in advance the deficiency for the remainder of the term reduced to present value.

Section 11.5 Remedies Cumulative. All remedies available to Lessor hereunder and otherwise available at law or in equity shall be cumulative and concurrent. No determination of this Lease nor taking or recovering possession of the Demised Premises shall deprive Lessor of any remedies or actions against Lessee for rent, for charges, or for damages for the breach of any term, covenant or condition herein contained, nor shall the bringing of any such action for rent, charges or breach of term, covenant or condition, nor the resort to any other remedy or right for the recovery of rent, charges or damages for such breach be construed as a waiver or release of the right to insist upon the forfeiture and to obtain possession. The failure of Lessor to insist upon strict and/or prompt performance of the terms, agreements, covenants and conditions of this Lease or any of them, and/or the acceptance of such performance thereafter shall not constitute or be construed as a waiver of Lessor's right to thereafter enforce the same strictly according to the tenor thereof in the event of a continuing or subsequent Event of Default.

Section 11.6 Method of Calculation. In determining the amount of any future payments due Lessor due to increases in Taxes, Insurance, Basic Rent, additional rent or other charges due hereunder, Lessor may make such determination based upon the amount of such Taxes, Insurance, Basic Rent, additional rent and other charges due by Lessee for the calendar year immediately prior to such Event of Default.

Section 11.7 Expenses of Enforcement. Lessee shall pay to Lessor upon demand all of Lessor's documented costs, charges and expenses, including the fees and out-of-pocket expenses of counsel, agents and others retained by Lessor incurred in enforcing Lessee's obligations hereunder or incurred by Lessor in any litigation, negotiation or transaction in which the Lessee

causes the Lessor to become involved or concerned. Such expenses shall include all professional fees incurred by the Lessor, including attorney's fees.

## ARTICLE XII. EXPIRATION OF TERM.

Section 12.1 Expiration of Term. On the expiration date of this Lease as set forth in Article 2, or the termination of the Lessee's possession under this Lease pursuant to Article XI, or any entry or possession of the Demised Premises and Improvements by Lessor pursuant to Section 11.4 (collectively referred to as the "Expiration Date"), Lessee shall promptly quit and surrender the Demised Premises and Improvements, and deliver to Lessor actual possession and ownership of the Demised Premises and Improvements in good order, condition, and repair.

Section 12.2 Removal of Equipment. Subject to the provisions of Section 6.4 hereof, Lessee shall have the right to remove from the Demised Premises and Improvements all of Lessee's Furniture, Fixtures and Equipment used or procured for use in connection with the operation of its business on or before the Expiration Date, provided that Lessee shall promptly repair, or cause to be repaired, any damage resulting to the Demised Premises or Improvements by reason of this removal. Any of Lessee's Furniture, Fixtures and Equipment that remain at or on the Demised Premises after the Expiration Date shall be deemed to have been abandoned by Lessee, and may either be retained by Lessor as its property or disposed of by the Lessor without accountability to Lessee for the value of such Furniture, Fixtures and Equipment, or any proceeds derived from the sale of these items, (subject to the rights of any equipment lenders).

## ARTICLE XIII. GENERAL PROVISIONS.

Section 13.1 Non-enforcement. The failure of Lessor to seek redress for violation of, or to insist on the strict performance of any covenant, agreement, term, provision, or condition of this Lease shall not constitute a waiver of the covenant, agreement, term, provision, or condition. The receipt by Lessor of rent with knowledge of the breach of any covenant, agreement, term, provision, or condition of this Lease shall not be deemed a waiver of that breach or the Lessor's right to terminate the Lease or invoke any other remedy set forth in this Lease.

Section 13.2 Waivers. No provision of this Lease shall be deemed to have been waived unless the waiver is in writing and signed by the party against whom enforcement is sought. No payment by Lessee or receipt by Lessor of a lesser amount than the rent stipulated in this Lease shall be deemed to be other than for the payment of rent or other charge owing by Lessee, as Lessor shall elect. No endorsement or statement on any check or any letter accompanying any check or payment as rent shall be deemed binding on Lessor or deemed on accord and satisfaction, and Lessor may accept a check or payment from Lessee without prejudice to Lessor's right to recover the balance of the rent or other charges owing by Lessee, and without limitation on Lessor's right to pursue each and every remedy in this Lease or provided by law. Each right and remedy of Lessor provided for in this Lease shall be cumulative and in addition to every other right or remedy provided for in this Lease, or now or later existing at law, in equity, by statute, or otherwise.

Section 13.3 Exhibits. This Lease and the Exhibits annexed to this Lease contain the entire agreement between Lessor and Lessee, and any agreement made after the execution of this

Lease between Lessor and Lessee shall be ineffective to change, modify, waive, release, discharge, terminate, or effect a surrender or abandonment of this Lease, in whole or in part, unless that agreement is in writing and signed by the Lessor and Lessee.

Section 13.4 Notices. All notices, requests, demands and other communications required or permitted hereunder shall be in writing addressed to the parties as provided below (or at such other address as may hereafter be substituted by notice in writing thereof) and shall be deemed to have been duly given upon delivery by hand (including by a nationally recognized overnight carrier), by confirmed facsimile transmission, or if sent by email, on the business day sent so long as such email notice is sent within business hours and in such event, such email shall be followed by written notice sent by certified or registered mail postmarked no later than the following business day.

Section 13.6 Invalidity. If any term, covenant or condition of this Lease shall be invalid or unenforceable to any extent, the remainder of the terms, covenants and conditions of this Lease shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 13.7 Terms. The term "Lessor", as used in this Lease in relation to the Lessor's covenants and agreements under this Lease, shall be limited to mean and include only the owner or owners of fee estate to the Demised Premises at the time in question. In the event of any conveyance of this fee estate, Lessor named in this Lease and each subsequent grantor shall be automatically relieved, at the date of conveyance, of all liability in respect to the performance of any of Lessor's covenants and agreements remaining to be performed after the date of conveyance, and each grantee shall be bound by all of the covenants and agreements remaining to be performed under the Lease during the time of grantee's ownership of the leasehold interest.

Section 13.8 Non-Recourse. Anything contained in this Lease to the contrary notwithstanding, Lessee agrees to look solely to the Demised Premises and Lessor's interest in the Demised Premises for the collection and satisfaction of any judgment that Lessee may obtain against Lessor because of the Lessor's failure to observe or perform any of its covenants or obligations under this Lease, including, but not limited to, the breach of the covenant of quiet enjoyment, whether express or implied. If Lessee receives any judgment resulting from the Lessor's failure to observe or perform any of its covenants or obligations under this Lease, Lessee further agrees not to collect or execute, or attempt to collect or execute, that judgment out of or against any other assets or properties of Lessor.

Section 13.9 Successors and Assigns. This Lease shall inure to the benefit of and be binding on Lessor and Lessee and their respective distributees, personal representatives, executors, successors, and permitted assigns except as otherwise provided in this Lease. Any references in this Lease to Lessor and Lessee shall be deemed to include their respective successors and assigns.

Section 13.10 Quiet Enjoyment. Lessor covenants and agrees that Lessee, on payment of rent and other charges provided for in this Lease and fulfillment of the obligations under the covenants, agreements and conditions of this Lease, shall lawfully and quietly hold, occupy and

enjoy the Demised Premises during the term of this Lease, without hindrance on the part of Lessor or any party claiming by, through, over or under it, for the term of this Lease, and Lessor further warrants that it shall defend Lessee in such peaceful and quiet possession, use and enjoyment of the Demises Premises against any such claims.

Section 13.11 Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, partnership, joint venture, or any relationship between the parties hereto other than that of Lessor and Lessee.

Section 13.12 Consent. Whenever it is necessary under the terms of this Lease for either party to obtain the consent or approval of the other party, such consent or approval shall, unless otherwise specified in this Lease, not be unreasonably withheld or delayed.

Section 13.13 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth in which the Demised Premises is located. The parties further agree that jurisdiction and venue for any claim arising out of this lease or the leased premises shall lie in the state courts in the county in which the Demised Premises is situated.

Section 13.14 Disputes. If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other or any work to be performed by either of them under the provisions hereof, the party against whom the obligation to pay or to perform is asserted shall have the right, but not the obligation, to make payment or perform such work and pay the cost thereof "under protest," and such payment or performance shall not be regarded as a voluntary payment or performance and the right of such party to institute suit to recover the amount paid "under protest" shall survive. If it shall be adjudged or mutually agreed by Lessor and Lessee that there was no legal obligation on the part of such party to pay such sum or any part thereof or that such party was not legally obligated to perform, such party shall be entitled to recover the amount paid "under protest" or so much thereof as it was not legally required to pay under the provisions of this Lease, plus interest thereon at the Interest Rate specified in Section 16.13 hereof, from the date on which such payment was made until the date on which reimbursement is received.

Section 13.15 Counterparts. This Lease may be executed in several counterparts, including counterparts transmitted by facsimile or electronic mail, each of which shall be deemed an original, but all of which together shall constitute one and the same Lease. Signatures to this Agreement transmitted by facsimile, sent by email (including ".pdf"), or delivered by other electronic means shall be valid and effective to bind the Party so signing. Each Party agrees to promptly deliver an execution original to this Agreement with its actual signature to the other Party upon request, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each Party to this Agreement shall be bound by its own facsimile or other electronic signature and shall likewise accept the facsimile or other electronic signature of the other Party.

Section 13.16 Modification. This Lease may not be modified except by a written agreement signed by both Lessor and Lessee.

Section 13.17 Brokers. Lessor and Lessee represent and warrant that they have not dealt with any real estate agent or broker in connection with this transaction other than Institutional Property Advisors/ Marcus & Millichap and Ben Tashakorian. Lessor and Lessee shall each indemnify and save other harmless from and against all liability, damage, loss, cost and expense incurred by reason of the indemnitor's breach of such representation and warranty.

#### ARTICLE XIV. ESTOPPEL CERTIFICATE; DOCUMENTATION AND RECORDING OF LEASE.

Section 14.1 Estoppel Certificates. Lessor or Lessee shall have the right to request the other party to provide an estoppel certificate, as described below, without charge, at any time on or after ten (10) days after the requesting party sends written notice. This estoppel certificate shall consist of a written statement certifying the following information to the requesting party or to any person specified by that party:

- (a) That this Lease is unmodified and in full force and effect; or, if there have been any modifications in this Lease, that this Lease is in full force and effect as modified, specifying the nature of each modification;
- (b) The dates through which the rent and other charges payable under this Lease have been paid;
- (c) Whether the other party to this Lease is in default in the performance or observance of any covenant, agreement, condition, term or provision contained in this Lease, to the best knowledge of the certifying party, and, if so, specifying the nature of each default of which the certifying party has knowledge; and
- (d) Any other information with respect to this Lease and the Demised Premises that the requesting party shall reasonably request.

#### ARTICLE XV. ASSIGNMENT AND SUBLETTING

Section 15.1 Assignment. Except as provided otherwise herein, Lessee covenants and agrees not to assign this Lease or to sublease the whole or any part of the Demised Premises or to permit any other persons to occupy same without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Lessee may assign this Lease or sublease the Demised Premises, without Lessor's consent, to (a) any parent, subsidiary or affiliate entity of Lessee; or (b) an entity resulting from the consolidation or merger of Lessee into or with any other entity; or (c) the sale of all or substantially all of the assets of the Lessee in the state in which the Demised Premises is located;. As used herein, the phrase "affiliate entity" means a person or business entity, corporate or otherwise, that, through one or more intermediaries, controls or is controlled by, or is under common control with Lessee.

Lessor's consent to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease or to be consent to the assignment of this Lease or subletting of the Demised Premises.

Any transfer of an ownership interest in Lessee by merger, consolidation, sale of stock, membership interests, other capital reorganization or liquidation shall constitute an assignment or sublet for the purpose of this Lease and shall therefore require the consent of Lessor. In such event, if consent is given, the surviving entity specifically shall assume in writing Lessee's obligations under this Lease.

#### ARTICLE XVI. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT OF FEE MORTGAGES.

Section 16.1 Non-Disturbance Agreement. If Lessee is not in default hereunder, Lessor shall cause:

(a) any party holding a mortgage or deed of trust on the Demised Premises; and

(b) any party (if other than Lessor) owning any portion of the Demised Premises as of the date hereof to execute and deliver to Lessee a non-disturbance, subordination and attornment agreement substantially in the form attached hereto as Exhibit E and subject to such mortgagee's approval within thirty (30) days of the date of this Lease (or within thirty (30) days after the execution of a mortgage or deed of trust that is entered into after the date of this Lease).

Section 16.2 Subordination. If Lessor is not in default under the terms of this Lease, Lessee shall subordinate this Lease to an existing or future first deed of trust or mortgage covering the Demised Premises by executing and delivering an agreement in the form attached hereto as Exhibit C within thirty (30) days of Lessee's receipt of a copy of such agreement duly executed and acknowledged by Lessor and Lessor's lender with respect to the mortgage or deed of trust to which this Lease is to be subordinate. Except as set forth in this Section, this Lease shall at all times be and remain prior and paramount to the lien and charge of all leases and deeds of trust or mortgages.

Section 16.3 Attornment. Lessee agrees that if the mortgagee, beneficiary or any other person claiming under a mortgage or deed of trust to which Lessee has subordinated shall succeed to Lessor's interest in this Lease, Lessee will recognize such mortgagee, beneficiary or person as its Lessor under the provisions of this Lease, provided that such mortgagee, beneficiary or other person, during the period in which it shall be in possession of the Demised Premises, and thereafter its successor in interest, shall assume all of the obligations of Lessor hereunder and shall have executed and delivered the non-disturbance, subordination and attornment agreement referred to in Section 16.2 above. Any purchaser taking title to the property by reason of such foreclosure or sale shall take title subject to this provision and shall be bound by any approvals or consents made or given by Lessor pursuant to this Lease prior to the date on which title to the Demised Premises was transferred.

Section 16.4 Mortgage Protection. Lessee shall give any mortgagees of the Demised Premises by registered or certified mail, return receipt requested, or overnight delivery service, requiring a signed delivery receipt, a copy of any notice of default sent to Lessor by Lessee, provided that, prior to such notice, Lessee has been notified, in writing (by way or notice of assignment of rents and lease or otherwise), of the address of such mortgagees. If Lessor shall



have failed to cure such default within the time provided for in this Lease, then the mortgagees shall have thirty (30) days within which to cure such default or, if such default cannot be cured within that time, then such additional time as may be necessary if, within such thirty (30) days, any mortgagee has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure).

ARTICLE XVII. ACCESS TO PREMISES BY LESSOR. Lessor and/or Lessor's agents shall have the right upon 24 hours' notice or without advance notice in the event of emergency or if it is otherwise impractical to do so, to enter upon the Demised Premises, or any part thereof, at any and all reasonable times for the purpose of inspecting the unit, making desired repairs, replacements, or alterations, or for other legitimate business or safety reasons. Lessee also agrees to permit Lessor and/or Lessor's agents to show the Demised Premises for the purposes of renting same, upon 24 hours' written notice, and to permit Lessor to place notices or signs on the Demised Premises offering the Demised Premises for rent within the last six months of the end of the primary term or renewal term as the case may be. Lessee shall provide Lessor with keys to all locks on the doors of the Demised Premises to allow access pursuant hereto.

***Remainder of Page Intentionally Left Blank; Signature Page Follows***

IN WITNESS WHEREOF, Lessor and Lessee, through their respective duly authorized representatives and intending to be legally bound hereby, have executed this Lease under seal as of the Effective Date.

**LESSEE: PRECISION METAL WORKS, INC.**

By: \_\_

Its: Vice President

**LESSOR: LEGACY WEST PARTNERS KENTUCKY PORTFOLIO, LLC**

By: Ben Tashakorian CEO  
Its:

EXHIBIT A

MEMORANDUM OF LEASE

Prepared by:

MEMORANDUM OF LEASE

Notice is hereby given of the following Lease:

1. The name and address of the Lessor is:
2. The name and address of the Lessee is:
3. The Lease is dated \_\_, 2023.
4. The Demised Premises is comprised of the real property together with the buildings and improvements located at and known as 111 Commerce Blvd., Frankfort, KY (designated as Franklin County tax parcel nos. 095-00-00-060.17 and 095-00-00-060.23).  
Being the same property conveyed to Legacy West Partners Kentucky Portfolio, LLC, by deed dated \_\_, 2023, of record in Deed Book , page in the Franklin County Clerk's Office.
5. The Original Term of the Lease is twenty (20) years following the Effective Date as defined in the Lease. There are two (2) renewal options of five (5) years each following the Term.
6. A copy of the Lease is on file at the office of:

Live Ventures Incorporated  
325 E. Warm Springs Road, Suite 102 Las Vegas, Nevada 89119  
Attn: Kent Randall, Esq., General Counsel Facsimile: (702) 997-5968  
Email: [krandall@liveventures.com](mailto:krandall@liveventures.com)

This instrument, being a Memorandum of Lease, is intended by the parties hereto to give constructive notice of such Lease. It is not intended to affect, in any way, the rights and

obligations of the parties to such Lease. All capitalized terms used in this Memorandum are as defined in the Lease unless otherwise defined herein.

IN WITNESS WHEREOF, the parties hereto, and to such Lease, have either set, or caused to be set, their respective hands and seals, and, if a corporation or limited liability company, such is done by a duly authorized officer or member thereof, all as of the day of 2023.

DocuSigned by:  
*Ben Tashakorian Eric Althofer*  
F195A28F11A24AA...

**LESSEE: PRECISION METAL WORKS, INC.**

By: \_\_

Ben Tashakorian

Eric Althofer

Its:

CEO Vice President

STATE OF \_\_ )  
 ) COUNTY OF \_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me this [ ] day of [ ], 2023, by \_\_, as \_\_ of PRECISION METAL WORKS, INC., a Kentucky corporation, Lessee herein, on behalf of said corporation.

[AFFIX SEAL] \_\_\_\_ NOTARY PUBLIC

My Commission Expires: \_\_ Notary Registration ID No. \_\_\_\_

**LESSOR: LEGACY WEST PARTNERS KENTUCKY PORTFOLIO, LLC**

By:             
Ben Tashakorian



Its:

STATE OF \_\_\_\_\_ )

) COUNTY OF \_\_)

The foregoing instrument was subscribed, sworn to and acknowledged before me this [ ] day of [ ], 2023, by \_\_, as \_\_ of LEGACY WEST PARTNERS KENTUCKY PORTFOLIO, LLC, a Delaware limited liability company, Lesore herein, on behalf of said company.

[AFFIX SEAL] \_\_\_\_\_ NOTARY PUBLIC

My Commission Expires: \_\_ Notary Registration ID No. \_\_\_\_

THIS INSTRUMENT WAS PREPARED  
WITHOUT BENEFIT OF TITLE EXAMINATION BY AND UPON RECORDING PLEASE  
RETURN TO:

Brady W. Dunnigan  
STITES & HARBISON, PLLC  
250 West Main Street, Suite 2300  
Lexington, Kentucky 40507  
(859) 226-2300

EXHIBIT B

ESTOPPEL AND CONSENT AGREEMENT

ESTOPPEL CERTIFICATE AND CONSENT

RE: Demised Premises: Lease:  
Lessor:  
Lessee:

The undersigned Lessor/Sub Lessor under the Lease/Sublease described above certifies to \_\_\_a\_\_\_, in connection with the placing of a leasehold mortgage the following:

1. Lessor and Lessee entered into the Lease/Sublease, by which Lessor leases to Lessee and Lessee leases from Lessor the above-referenced Demised Premises.
2. The Lease constitutes the only agreement between Lessor and Lessee with respect to the Demised Premises, and the Lease and all amendments thereto as of the date hereto are set forth on Exhibit A attached hereto and made part hereof. The Lease is in full force and effect and, except as evidence on Exhibit A, is not modified or amended.
3. Other than the Lease, and the documents listed on Exhibit A attached hereto, there are no other agreements, written or oral between Lessor and Lessee regarding the Demised Premises or Lessee's obligations to pay rentals under the Lease, and Lessee does not claim a right to any concessions, free rent or rental abatement other than as set forth in the Lease.
4. The monthly rental payable by Lessee as of the date hereof is as follows:
  - a. Base Rent:
  - b. Common Area Maintenance/Insurance Payments
  - c. Additional Rent

All above rental amounts under the Lease have been paid in full by Lessee through \_\_\_, 2020. The amount of rent prepaid, if any, is \$0, and the security deposit made, if any, is \$63,493.33.

5. Percentage Rent is N/A

6. Lessee currently pays for utilities used in the Demised Premises by making payment directly to the suppliers of utilities serving the Demised Premises and pays the real estate taxes directly to the applicable municipal taxing authority
7. The Lease terminates on \_\_\_\_; there are \_\_\_\_additional \_\_\_\_year renewal options.
8. The Lease is in full force and effect and Lessor does not have any presently existing claims against the Lessee nor has any actual knowledge without due inquiry of any offsets against rent claimed by Lessee. There are no defaults of Lessee or Lessor under the Lease or any existing circumstances which with the passage of time, or notice, or both, would give rise to the default under the Lease.
9. Lessor's current contact information is:
  - a. Address:
  - b. Contact Person:
  - c. Phone No.:
  - d. Facsimile No.:
  - e. Email:
10. The Undersigned acknowledges that Lessee and its title agent is relying (and will rely) on the truth and accuracy of the representations made herein and upon the authority of the undersigned to execute this Estoppel Certificate.
11. Lessor's execution of this Estoppel and Consent shall be considered such notice of and written consent to the leasehold mortgage as may be required by the Lease.

LESSOR:

By: \_\_\_\_ Date:

7/19/2023 | 08:48:240423PDT

Ben Tashakorian

Name: ~~CEO~~—

Title: \_\_\_\_

STATE OF \_\_\_\_ )

) SS.

COUNTY OF \_\_\_\_ )

Before me, the undersigned, a Notary Public in and for the State and County aforesaid, an officer duly authorized to take acknowledgements, personally appeared \_\_\_\_ known to me to be the person described in and who executed

the foregoing instrument; and who acknowledged before me that he or she executed this instrument for the purposes stated therein and of his or her own free will.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this  
\_\_day of \_\_, 2020, in this State and County.

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My commission expires: Notary Public

EXHIBIT C

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT

SUBORDINATION, NONDISTURBANCE AND ATTORNMEN AGREEMENT

This SUBORDINATION, NONDISTURBANCE AND ATTORNMEN AGREEMENT (this "Agreement"), is made as of the \_\_\_ day of \_\_\_, 2023, among \_\_\_\_\_, a \_\_\_\_\_, and its successors and assigns ("Lender"), \_\_\_\_\_, a \_\_\_\_\_ ("Lessor"), and \_\_\_\_\_ ("Lessee").

WHEREAS, Lender has made a loan to Lessor which was secured by a Mortgage Security Agreement and Assignment of Leases and Rents (the "Mortgage") dated \_\_\_, 20\_\_\_, of record in Mortgage Book \_\_\_, page \_\_\_ in the Clinton County Clerk's Office, and covered Lessor's interest in certain real property located at \_\_\_ and more particularly described in Exhibit A attached hereto (the "Property"); and

WHEREAS, Lessee has entered into a certain \_\_\_, as the same may have been amended, modified or supplemented (the "Lease") dated \_\_\_, \_\_\_, with Lessor, covering a certain portion of the Property (the "Demised Premises"); and

WHEREAS, a notice or memorandum of the Lease was recorded in in Lease Book \_\_\_, page \_\_\_ in the Clinton County Clerk's Office; and

WHEREAS, Lender, Lessor and Lessee desire to confirm their understanding, with respect to the Lease and the Mortgage;

NOW, THEREFORE, in consideration of the promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Subordination. Subject to the provisions hereof, Lessee agrees that the Lease shall in all respects be, and is hereby expressly made, subject and subordinate at all times to the lien of the Mortgage and to all of the terms, conditions and provisions thereof and to all advances and/or payments made or to be made thereunder, as the same may hereafter be amended from time to time. Nothing contained in this Agreement shall in any way impair or affect the lien created by the Mortgage. Notwithstanding the foregoing, Lender agrees that all proceeds of property insurance maintained under the Lease and all eminent domain damages will be disbursed in accordance with the provisions of the Lease and will be made available to Lessor or Lessee for restoration of the building and other improvements on the Property to the extent required by the Lease, subject only to reasonable regulation regarding the disbursement thereof.

Attornment.

In the event that Lender acquires or succeeds to the interests of Lessor under the Lease by reason of a foreclosure of the Mortgage, deed in lieu of foreclosure or otherwise (collectively, a "Foreclosure"), Lessee shall be bound to Lender under all of the terms, covenants and conditions of the Lease, except as provided in this Agreement, for the balance of the term thereof remaining, with the same force and effect as if Lender were Lessor. Lessee hereby agrees in such event to (i) attorn to Lender as its Lessor on such terms, (ii) affirm its obligations under the Lease, and (iii) make payments of all sums thereafter becoming due under the Lease to Lender. Said attornment, affirmation and agreement is to be effective and self-operative without the execution of any further instruments upon Lender succeeding to the interests of Lessor under the Lease.

Lessee agrees to execute and deliver at any time and from time to time, upon the request of Lessor or Lender, any instrument or certificate deemed to be necessary or appropriate to evidence such attornment.

From and after such attornment, Lender shall be bound to Lessee under all the terms, covenants and conditions of the Lease with the same force and effect as if originally entered between said parties; provided, however, Lender shall not be:

except as provided in Section 2(d) below, obligated to cure any defaults under the Lease of any prior Lessor which occurred prior to the date Lender obtained title to or possession of the Property, provided, however, that the foregoing shall not limit Lender's obligation to correct any conditions that existed as of the date of attornment which violate Lender's obligations as Lessor under the Lease;

except as provided in Section 2(d) below, subject to any offsets or defenses which Lessee might have against any prior Lessor (including Lessor), provided, however, that the foregoing shall not limit Lessee's right to exercise against Lender any right of Lessee to any offset or defense otherwise available to Lessee because of events occurring after the date of attornment;

bound by any payment of fixed rent, percentage rent or additional rent that Lessee may have made to any prior Lessor (including Lessor) more than thirty (30) days in advance of the date such rent was first due and payable under the Lease;

bound by any modification or amendment of the Lease which increases the obligations or responsibilities of Lessor thereunder or changes the rent or the term thereof and is made without Lender's written consent; or

bound by any consensual or negotiated surrender of the Demised Premises or termination of the Lease, in whole or in part, agreed upon between any prior Lessor (including Lessor) and Lessee, unless effected unilaterally by Lessee pursuant to the express terms of the Lease.

Notwithstanding anything to the contrary contained in Paragraph 2(c) above, if the Lessor under the Lease commits an act or omission which, with the giving of notice and/or the passage of time, would constitute a default in the performance of Lessor's obligations under the Lease, Lender or any purchaser or grantee pursuant to a Foreclosure shall be subject to any and all claims, offsets or defenses of Lessee arising from such act or omission, provided that Lender received notice of such act or omission and an opportunity to cure same as required by the Lease or this Agreement.

**Non-Disturbance.** Provided Lessee is not in default under the terms of the Lease and complies with this Agreement, Lender agrees that in the event Lender takes possession of the Property pursuant to any provision of the Mortgage or Lender acquires title to the Property by reason of a Foreclosure, Lessee's possession and occupancy of the Demised Premises and Lessee's rights and privileges under the Lease during the term thereof (including any renewal term) shall not be disturbed or affected in any manner, and Lender shall recognize the Lease and Lessee's rights thereunder. If Lessee is not in default in the payment of rent or additional rent or in the performance of the terms, covenants and conditions of the Lease on Lessee's part to be performed, Lender will not join Lessee as a party defendant in any action or proceeding for the purpose of terminating Lessee's interest and estate under the Lease, except to terminate an option to purchase, if any, because of any default under the Mortgage. Subject to the limitations and conditions contained herein, Lender upon Foreclosure shall be deemed to be Lessor and shall assume the obligations of Lessor under the Lease thereafter arising or accruing.

**Payment of Rent to Lender.** From and after Lessee's receipt of written notice from Lender ("Rent Payment Notice"), Lessee shall pay all rent to Lender or as Lender shall direct in writing, until such time as Lender directs otherwise in writing. Lessee shall comply with any Rent Payment Notice notwithstanding any contrary instruction, direction or assertion from Lessor. Lender's delivery to Lessee of a Rent Payment Notice, or Lessee's compliance therewith, shall not be deemed to: (a) cause Lender to succeed to or to assume any obligations or responsibilities as Lessor under the Lease, all of which shall continue to be performed and discharged solely by Lessor unless and until any attornment has occurred pursuant to this Agreement; or (b) relieve Lessor of any obligations under the Lease. Lessor irrevocably directs Lessee to comply with any Rent Payment Notice, notwithstanding any contrary direction, instruction, or assertion by Lessor. Lessee shall be entitled to rely on any Rent Payment Notice. Lessee shall be under no duty to controvert or challenge any Rent Payment Notice. Lessee's compliance with a Rent Payment Notice shall not be deemed to violate the Lease. Lessor hereby releases Lessee from, and shall indemnify and hold Lessee harmless from and against, any and all loss, claim, damage, liability, cost or expense (including payment of reasonable attorneys' fees and disbursements) arising from any claim based upon Lessee's compliance with any Rent Payment Notice. Lessor shall look solely to Lender with respect to any claims Lessor may have on account of an incorrect or wrongful Rent Payment Notice. Lessee shall be entitled to full credit under the Lease for any rent paid to Lender pursuant to a Rent Payment Notice to the same extent as if such rent were paid directly to Lessor.

#### Notices.

All notices, demands and requests (collectively the "Notices") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been given if personally delivered or delivered by reliable overnight courier or mailed, first class postage

prepaid and shall be deemed delivered as of the date of such Notice if (i) delivered to the party intended; (ii) delivered to the then current address of the party intended, or (iii) rejected at the then current address of the party intended, provided such Notice was sent prepaid. The addresses of the parties are:

If to Lender: \_\_\_\_\_

If to Lessee: \_\_\_\_\_

If to Lessor: \_\_\_\_\_

Upon at least ten (10) days prior written Notice, each party shall have the right to change its address to any other address within the United States of America.

Miscellaneous. This Agreement (i) contains the entire agreement with respect to the subject matter hereof; (ii) may not be modified or terminated, nor may any provision hereof be waived, orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors, administrators and assigns; and (iii) shall inure to the benefit of, and be binding upon, the parties hereto, and their successors and assigns (including, without limitation, (a) Lessee's permitted assignees, (b) any subsequent holder of the Mortgage, and (c) any purchaser or grantee of the Property pursuant to a Foreclosure).

Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located.

IN WITNESS WHEREOF, Lender, Lessor and Lessee have executed this Agreement under seal effective as of the day and year first above written.

**LENDER**

[\_\_] By:\_\_\_\_ Name:  
Title:

**LESSEE LESSOR**

By:\_\_\_\_ By:\_\_\_\_

Vice President

Ben Tashakorian CEO

\_\_\_\_\_  
Title:



STATE OF \_\_ COUNTY OF \_\_\_\_

On this day of \_\_\_\_, 2020, before me, the undersigned notary public, personally appeared \_\_\_\_ proved to me through satisfactory evidence of identification, which was \_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he/she) signed it voluntarily as \_\_for \_\_, a \_\_\_\_for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires:\_\_\_\_

STATE OF \_\_ COUNTY OF \_\_\_\_

On this day of \_\_\_\_, 2020, before me, the undersigned notary public, personally appeared \_\_\_\_ proved to me through satisfactory evidence of identification, which was \_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he/she) signed it voluntarily as \_\_for \_\_, a \_\_\_\_for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires:\_\_\_\_

STATE OF \_\_ COUNTY OF \_\_\_\_

On this day of \_\_\_\_, 2020, before me, the undersigned notary public, personally appeared \_\_\_\_ proved to me through satisfactory evidence of identification, which was \_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he/she) signed it voluntarily as \_\_for \_\_, a \_\_\_\_for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires:\_\_\_\_

THIS INSTRUMENT WAS PREPARED BY  
AND UPON RECORDING PLEASE RETURN TO:

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## **Live Ventures Acquires Precision Metal Works Adding \$75 Million Annual Revenue Stream**

- *Acquisition is expected to be immediately accretive to earnings*
- *Strengthens steel manufacturing segment reinforcing strategic approach*

LAS VEGAS, July 24, 2023 – Live Ventures Incorporated (Nasdaq: LIVE), a diversified holding company (“Live Ventures” or “Company”), announced today that it has acquired Precision Metal Works, Inc. (“PMW”), a Kentucky-based Metal Stamping and Value-Added Manufacturing Company. PMW was acquired for a total consideration of approximately \$28 million, comprised of \$25 million cash, with additional consideration of up to \$3 million paid in the form of an earn-out. The acquisition involved no issuance of stock of Live Ventures. The Company believes the acquisition will be immediately accretive to earnings.

Founded nearly 76 years ago in 1947, Louisville, Kentucky-based Precision Metal Works manufactures and supplies highly engineered parts and components across 400,000 square feet of manufacturing space in Kentucky. It offers world-class metal forming, assembly, and finishing solutions across diverse industries, including appliance, automotive, hardware, electrical, electronic, medical products, and devices.

“PMW aligns wonderfully with our existing steel manufacturing operations and our long-term ‘buy-build-hold’ strategy. We expect not only increased demand due to manufacturers onshoring operations to the United States, but also synergies across our steel segment. We welcome all 250 employees to the Live Ventures family,” said Jon Isaac, President and CEO of Live Ventures.

“We are a high-tech manufacturer that firmly believes America makes the best products in the world. Our metal forming technologies and cutting-edge processes are second to none, and we look forward to becoming part of the Live Ventures team,” said Richard Stanley, PMW’s President and CEO. “PMW is strategically positioned for ongoing expansion, thanks to substantial investments in top-of-the-line equipment, exceptional management, and strong customer and supplier relationships. By joining forces with Live Ventures, we gain access to growth capital that will propel our business forward in the rapidly growing electric vehicle market, as well as our other target markets. Together, we are poised for even greater achievements.”

“We will adopt the same values at PMW as we have in our other steel subsidiaries. We pride ourselves on being an excellent partner for our customers and suppliers, as well as an excellent place to work for our employees. We are committed to exceeding the expectations of our customers with quality products that are on time every time,” said Thomas R. Sedlak, CEO of Precision Marshall, a Live Ventures company.

As part of the acquisition, Live Ventures will retain PMW’s existing management team and all its employees. Invision Capital Advisors, LLC and Focus Capital Advisors, Inc. acted as the financial advisers to PMW.

### **Live Ventures Incorporated**

Live Ventures is a diversified holding company with a strategic focus on value-oriented acquisitions of domestic middle-market companies. Live Ventures’ acquisition strategy is sector agnostic and focuses on well-

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run, closely held businesses with a demonstrated track record of earnings growth and cash flow generation. The Company looks for opportunities to partner with management teams of its acquired businesses to build increased stockholder value through a disciplined buy-build-hold long-term focused strategy. Live Ventures was founded in 1968. In late 2011 Jon Isaac, CEO and strategic investor, joined the Board of Directors and later refocused it into a diversified holding company. The Company's current portfolio of diversified operating subsidiaries includes companies in the textile, flooring, tools, steel, and entertainment industries.

### **Forward-Looking and Cautionary Statements**

This press release contains "forward-looking statements" within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, each as amended, that are intended to be covered by the "safe harbor" created by those sections. In accordance with such safe harbor provisions, statements contained herein that look forward in time that include everything other than historical information, involve risks and uncertainties that may affect the Company's actual results, including statements relating to accretion to earnings, expansion of products and services, alignment with existing operations and our 'buy-build-hold' strategy, demand for products and services, access to growth capital, and increase in the Company's total revenues. These forward-looking statements can be identified by terminology such as "will," "expects," "anticipates," "future," "intends," "plans," "believes," "estimates," and similar statements. Live Ventures may also make written or oral forward-looking statements in its periodic reports to the U.S. Securities and Exchange Commission on Forms 10-K and 10-Q, Current Reports on Form 8-K, in its annual report to stockholders, in press releases and other written materials, and in oral statements made by its officers, directors or employees to third parties. There can be no assurance that such statements will prove to be accurate, and there are a number of important factors that could cause actual results to differ materially from those expressed in any forward-looking statements made by the Company, including, but not limited to, plans and objectives of management for future operations or products, the market acceptance or future success of our products, and our future financial performance. The Company cautions that these forward-looking statements are further qualified by other factors including, but not limited to, those set forth in the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2022 (available at <http://www.sec.gov>). Live Ventures undertakes no obligation to publicly update or revise any statements in this release, whether as a result of new information, future events, or otherwise.

### **Contact:**

Live Ventures Incorporated  
Greg Powell, Director of Investor Relations  
725.500.5597  
[gpowell@liveventures.com](mailto:gpowell@liveventures.com)  
[www.liveventures.com](http://www.liveventures.com)

Source: Live Ventures Incorporated