

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

**Amendment No. 2
to
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

LESLIE'S, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation
or organization)

5091
(Primary Standard Industrial
Classification Code Number)

20-8397425
(I.R.S. Employer Identification No.)

**2005 East Indian School Road
Phoenix, Arizona 85016
(602) 366-3999**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Brad A. Gazaway
Senior Vice President, General Counsel
Leslie's, Inc.
2005 East Indian School Road
Phoenix, Arizona 85016
(602) 366-3999

(Name, address, including zip code, and telephone number, including area code, of agent for service)

With copies to:

**Christian O. Nagler
Aslam A. Rawoof
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
(212) 446-4800**

**Marc D. Jaffe
Stelios G. Saffos
Latham & Watkins LLP
885 Third Avenue
New York, New York 10022
(212) 906-1200**

Approximate date of commencement of proposed sale to the public

As soon as practicable after this Registration Statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 under the Securities Exchange Act of 1934:

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

If an emerging growth company that prepares its financial statements in accordance with United States GAAP, 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 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Security Being Registered	Amount To Be Registered(1)	Proposed Maximum Offering Price per Security(2)	Proposed Maximum Aggregate Offering Price(2)(3)	Amount of Registration Fee(4)
Common stock, par value \$0.001 per share	46,000,000	\$16.00	\$736,000,000	\$80,297.60

(1) Includes 6,000,000 shares that the underwriters have the option to purchase.

(2) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(a) under the Securities Act of 1933, as amended.

(3) Includes the offering price of 6,000,000 shares the underwriters have the option to purchase.

(4) Previously paid.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until this Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

[Table of Contents](#)

The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to completion. Dated October 26, 2020

PRELIMINARY PROSPECTUS

40,000,000 Shares



Common Stock

Leslie's, Inc. is offering 30,000,000 shares of its common stock. The selling stockholder is offering 10,000,000 shares of Leslie's, Inc.'s common stock.

We will not receive any proceeds from the sale of shares of our common stock by the selling stockholder.

Prior to this offering, there has been no public market for our common stock. The initial public offering price of our common stock is expected to be between \$14.00 and \$16.00 per share. We have applied to list our common stock on The Nasdaq Global Market ("Nasdaq") under the symbol "LESL."

Investing in our common stock involves risks. See the section titled [Risk Factors](#), beginning on page 21 for a discussion of information that should be considered in connection with an investment in our common stock.

After the completion of this offering, affiliates of L Catterton and an affiliate of GIC will continue to own a majority of the voting power of all outstanding shares of our common stock. As a result, we will be a "controlled company" within the meaning of the corporate governance standards of Nasdaq. See the section titled "Principal and Selling Stockholders."

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

We have the benefit of the status as an "emerging growth company," as defined under the federal securities laws and, as such, we have elected to comply with certain reduced public company reporting requirements for this prospectus.

	Per Share	Total
Initial public offering price	\$	\$
Underwriting discounts and commissions(1)	\$	\$
Proceeds to Leslie's, before expenses	\$	\$
Proceeds to the selling stockholder, before expenses	\$	\$

(1) See the section titled "Underwriting" for a description of compensation payable to the underwriters and estimated offering expenses.

To the extent that the underwriters sell more than 40,000,000 shares of our common stock, the selling stockholder has granted the underwriters the option to purchase up to an additional 6,000,000 shares at the initial public offering price less the underwriting discount within 30 days after the date of this prospectus.

Prior to the date hereof, certain funds and accounts managed by subsidiaries of BlackRock, Inc. have indicated an interest in purchasing an aggregate of up to \$100.0 million of our common stock in this offering at the initial public offering price. Because this indication of interest is not a binding agreement or commitment to purchase, one or more funds and/or accounts managed by BlackRock may determine to purchase more, fewer or no shares in this offering or the underwriters may determine to sell more, fewer or no shares to one or more such funds or accounts. The underwriters will receive the same discount from any of our shares of common stock purchased by the funds and/or accounts as they will from any other shares of common stock sold to the public in this offering.

Delivery of the shares of common stock will be made on or about _____, 2020.

Goldman Sachs & Co. LLC

Morgan Stanley

BofA Securities

Jefferies

Nomura

Baird

Guggenheim Securities

Piper Sandler

William Blair

Telsey Advisory Group

Loop Capital Markets

Ramirez & Co., Inc.

AmeriVet Securities

The date of this prospectus is _____, 2020.







Turning beautiful backyard moments into joyful memories since 1963.



INDUSTRY'S LARGEST
consumer-centric platform
serving 11,000,000 consumers
whenever, wherever, and
however they choose to
engage with us.

11M
DIRECT
CONSUMER
RELATIONSHIPS

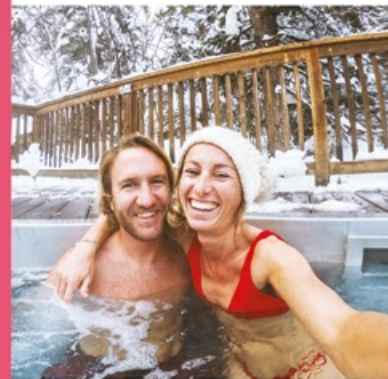


Physical network larger than
the sum of our 20 largest
competitors.

>20
LARGEST
COMPETITORS

Digital sales >5X as large
as that of our next largest
digital competitor.

>5X
LARGEST
DIGITAL
COMPETITOR





THE LEADER
in one of the most fundamentally attractive consumer categories.

14M
POOLS
AND SPAS

\$11B
RECURRING
ANNUAL
SPEND

80%
NON-
DISCRETIONARY

+32%
GROWTH IN
NEW POOL
BUILDS



COMPELLING & CLEAR
path to growth across product and service types.

57YRS
CONSECUTIVE
SALES
GROWTH

\$10B
AVAILABLE
WHITE
SPACE



INCREASE WALLET SHARE
GROW CONSUMER FILE
700+ RESIDENTIAL WHITESPACE
200+ PRO WHITESPACE
PROGRAMMATIC M&A
DISRUPTIVE INNOVATION



POOL LIFE

Demystifying pool and spa care,
helping owners spend less time
maintaining their pools and spas,
and more time enjoying them.



OUR MISSION

We are committed to continuing our legacy as the most trusted authority in pool and spa care.



TABLE OF CONTENTS

	<u>Page</u>
PROSPECTUS SUMMARY	1
THE OFFERING	16
SUMMARY HISTORICAL CONSOLIDATED FINANCIAL AND OTHER INFORMATION	19
RISK FACTORS	21
CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS	45
MARKET AND INDUSTRY DATA	47
USE OF PROCEEDS	48
DIVIDEND POLICY	49
CAPITALIZATION	50
DILUTION	51
SELECTED HISTORICAL CONSOLIDATED FINANCIAL AND OTHER INFORMATION	53
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS	55
BUSINESS	74
MANAGEMENT	93
EXECUTIVE COMPENSATION	103
PRINCIPAL AND SELLING STOCKHOLDERS	113
DESCRIPTION OF CAPITAL STOCK	115
SHARES ELIGIBLE FOR FUTURE SALE	120
CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS	122
CERTAIN MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS	125
UNDERWRITING (CONFLICTS OF INTEREST)	130
LEGAL MATTERS	138
EXPERTS	139
WHERE YOU CAN FIND MORE INFORMATION	140
INDEX TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS	F-1

You should rely only on the information contained in this prospectus or in any related free-writing prospectus prepared by or on behalf of us. We, the selling stockholder and the underwriters have not authorized anyone to provide you with information different from, or in addition to, the information contained in this prospectus or in any related free-writing prospectus. The information contained in this prospectus is current only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of the shares of common stock.

We, the selling stockholder and the underwriters have not taken any action that would permit a public offering of the shares of common stock outside the United States or permit the possession or distribution of this prospectus or any related free-writing prospectus outside the United States. Persons outside the United States who come into possession of this prospectus or any related free-writing prospectus must inform themselves about and observe any restrictions relating to the offering of the shares of common stock and the distribution of the prospectus outside the United States.

Until _____, 2020 (the 25th day after the date of this prospectus), all dealers that buy, sell or trade shares of common stock, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

TRADEMARKS

Leslie's®, AccuBlue®, MyLife®, and other trademarks, trade names or service marks of Leslie's, Inc. appearing in this prospectus are the property of Leslie's, Inc. All other trademarks, trade names, and service marks appearing in this prospectus are the property of their respective owners. Solely for convenience, the trademarks and trade names in this prospectus may be referred to without the ® and ™ symbols, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights, or the rights of the applicable licensor to these trademarks and tradenames.

MARKET, RANKING, AND OTHER INDUSTRY DATA

In this prospectus, we refer to information regarding market data obtained from internal sources, market research, publicly available information, and industry publications. Estimates are inherently uncertain, involve risks and uncertainties and are subject to change based on various factors, including those discussed in the section titled "Risk Factors." We believe that these sources and estimates are reliable as of the date of this prospectus but have not independently verified them and cannot guarantee their accuracy or completeness.

NON-GAAP FINANCIAL MEASURES

Comparable Sales, Comparable Sales Growth and Adjusted EBITDA are our key non-GAAP financial measures. For more information about how we use these non-GAAP financial measures in our business, the limitations of these measures, and a reconciliation of these measures to the most directly comparable GAAP measures, please see the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Factors and Measures We Use to Evaluate Our Business."

A LETTER FROM OUR CHIEF EXECUTIVE OFFICER, MICHAEL R. EGECK

We are the most trusted brand in pool and spa care.

We live in extraordinary times. As we manage through the COVID-19 pandemic, the health and safety of our consumers, communities, and associates remain our highest priority. In the face of this unprecedented challenge, our team continues to rise to the occasion and exceed all expectations, ultimately delivering solutions for our consumers when they need us the most. And, as we face the realities of division in our society, at Leslie's, we have made the commitment to be part of the solution. Our associates and management have joined together to set meaningful goals and make progress in support of one of our core values, Diversity and Inclusion. I am proud to lead such a talented and passionate team.

This talented and passionate team is excited to welcome you to the Leslie's family. For 57 years, Leslie's has been dedicated to addressing our consumers' pool and spa needs so they can spend less time maintaining their pools and spas – and more time enjoying them. Since our founding in 1963, we have consistently disrupted our category with innovation that provides the most advanced pool and spa care available, and we have used our accumulated expertise to provide our consumers the complete solution to keep their pools and spas clean, safe, and ready to enjoy. I have spent three decades leading and transforming consumer brands, and I am excited to have joined Leslie's in 2020 to lead our next phase of pool and spa care disruption.

Today, Leslie's is the largest and most trusted direct-to-consumer brand in pool and spa care, and has all the elements of a premier consumer lifestyle brand: category leadership, innovation at the core, and consumers at the center of all our efforts. Our team consists of over 5,000 associates, pool and spa care experts, and certified service technicians who are passionate about empowering our consumers with the knowledge, products, and solutions necessary to confidently maintain their pools and spas. We generated over \$1 billion in sales in Fiscal 2020 by offering an unmatched value proposition. In fact, our best-selling service is free—complimentary in-store water testing.

We know that our consumers, whether they are homeowners, pool and spa professionals, or commercial pool operators, want to engage with us whenever, wherever, and however they want. Consequently, over the last five years, we have made significant investments to create an industry-leading connected pool ecosystem to do just that. Our ecosystem uniquely enables us to efficiently reach and service every pool and spa in the continental United States—a capability no competitor can match. Earlier this year, we launched a key innovation to our ecosystem—our proprietary AccuBlue® in-store water testing service. AccuBlue® digitizes the water test experience and allows customers to quickly obtain specific step-by-step treatment plans for their pools and spas utilizing our accumulated expertise from completing over 40 million water tests.

As we look forward, we are developing even more innovative solutions for pool and spa care. We see great potential to further leverage our consumer-centric ecosystem; our scale and expertise; and our recent investments in technology and talent to disrupt the category—again. We have the right management team to lead us forward and a proud history to live up to, and I am energized by the path ahead. Leslie's is built for an exciting future, and we are just getting started. We encourage you to join us on our journey.

Let's dive in.

Michael R. Egeck
Chief Executive Officer

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus. This summary does not contain all of the information that you should consider before deciding to purchase our common stock in this offering. You should read the entire prospectus carefully, including the sections titled "Risk Factors," and "Management's Discussion and Analysis of Financial Condition and Results of Operations," and our consolidated financial statements and the related notes included elsewhere in this prospectus, before making an investment decision. If you invest in our common stock, you are assuming a high degree of risk.

Unless otherwise indicated or the context otherwise requires, all references in this prospectus to "we," "our," "us," "Leslie's," "the Company," and "our Company" refer to Leslie's, Inc. and its consolidated subsidiaries.

Our Business

Our Mission

We are committed to continuing our legacy as the most trusted authority in pool and spa care. Through our consumer-centric approach, we provide an unparalleled experience for all consumers across all channels, supported by leading product innovation, expert knowledge, and exceptional service.

Our Company

We are the largest and most trusted direct-to-consumer brand in the nearly \$11 billion United States pool and spa care industry, serving residential, professional, and commercial consumers. Founded in 1963, we are the only direct-to-consumer pool and spa care brand with national scale, operating an integrated marketing and distribution ecosystem powered by a physical network of 934 branded locations and a robust digital platform. We command a market-leading share of nearly 15% of residential aftermarket product spend, which represents an increase of approximately 500 basis points since 2010, our physical network is larger than the sum of our twenty largest competitors, and our digital sales are estimated to be greater than five times as large as that of our largest digital competitor. We offer an extensive assortment of professional-grade products, the majority of which are exclusive to Leslie's, as well as certified installation and repair services, all of which are essential to the ongoing maintenance of pools and spas. Our dedicated team of more than 5,000 associates, pool and spa care experts, and experienced service technicians are passionate about empowering our consumers with the knowledge, products, and solutions necessary to confidently maintain and enjoy their pools and spas. Over the last five years, we have spent more than \$70 million in foundational investments across new technologies and capabilities focused on transforming our consumer experience and advancing our industry leadership. The unprecedented scale of our integrated marketing and distribution ecosystem, which is powered by our direct-to-consumer network, uniquely enables us to efficiently reach and service every pool and spa in the continental United States—capabilities no competitor can match.

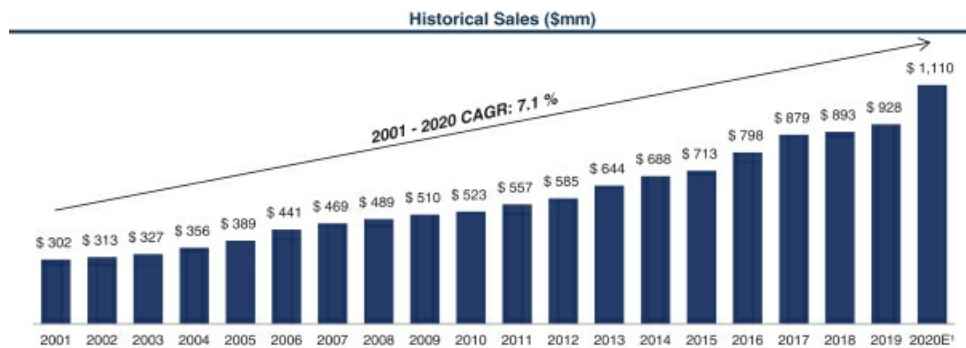
Consumer-Centric Integrated Ecosystem



The aftermarket pool and spa care industry is one of the most fundamentally attractive consumer categories given its scale, predictability, and growth outlook. Since 1970, when industry market data was first collected, the market has demonstrated consistent growth due to the non-discretionary nature of ongoing water treatment to maintain safe, sanitized water. Without proper ongoing maintenance, water quality quickly degrades, yielding unsafe conditions and risking equipment failure. As a result, each pool and spa represents an annuity-like stream of chemical, equipment, and service revenue for their average life span of over 25 years. We estimate the average in-ground pool owner spends \$24,000 or more on maintenance products and services over the life of a pool. According to P.K. Data, the United States market is comprised of a growing installed base of more than 14 million pools and spas, and the installed base of residential in ground pools has grown every year for at least 50 years. The industry generated revenue of nearly \$11 billion in 2019 and grew at a 3.8% CAGR from 2015 to 2019.

The industry is currently experiencing a significant increase in demand, as the COVID-19 pandemic has accelerated secular trends in consumer behavior. Consumers are increasingly focused on outdoor living, healthy lifestyles, sanitization and safety, migrating to lower density communities, and spending more time at home, all of which are fundamentally changing their spending patterns. In particular, the stay-at-home reality of the pandemic has led to significant growth in new pool installations and pool usage. Based on research performed by P.K. Data, new pool permit activity through July 2020 has grown by 32% over the comparable period in 2019 and is forecasted to achieve unprecedented year-over-year growth in new pool installations in 2020. This significant increase in new pool construction activity represents a permanent increase in demand for aftermarket products and services. Nearly 200,000 new in ground pools are expected to be constructed in 2020 and 2021, representing nearly \$5 billion in estimated lifetime maintenance spend. While our business is not dependent on new pool construction, we believe we are uniquely positioned to capture a meaningful portion of the related aftermarket spend.

Given we play primarily in the aftermarket business, we have a highly predictable, recurring revenue model, which is evidenced by our 57 consecutive years of sales growth. More than 80% of our assortment is comprised of non-discretionary products essential to the care of residential and commercial pools and spas. Our assortment includes chemicals, equipment and parts, cleaning and maintenance equipment, and safety, recreational, and fitness-related products. As important, we offer essential services, such as equipment installation and repair for residential and commercial consumers. Consumers receive the benefit of extended vendor warranties when purchasing product through our locations or when our certified in-field technicians install or repair equipment on-site. We also offer complimentary, commercial-grade, in-store water testing and analysis via our proprietary AccuBlue® system, which increases consumer engagement, conversion, basket size, and loyalty, resulting in higher lifetime value. Our water treatment expertise is powered by data and intelligence accumulated from the more than 40 million water tests we have performed over the past 57 years, positioning us as the most trusted water treatment solutions provider in the industry. Due to the non-discretionary nature of our products and services, our business has historically delivered strong, uninterrupted growth and profitability in all market environments, including the Great Recession and the COVID-19 pandemic. Our growth has recently accelerated, and for Fiscal 2020, we estimate that our sales will increase 19.6%, using the mid-point of the estimated sales range when compared with sales for Fiscal 2019. See the section titled “Prospectus Summary—Recent Developments”



¹ Represents the midpoint of the sales range from \$1,108.1mm to \$1,112.1mm based on preliminary estimated unaudited financial results for the year ended October 3, 2020. See the section titled “Prospectus Summary—Recent Developments”.

57 Years of Leadership and Disruptive Innovation in Pool & Spa Care

Since our founding in 1963, we have been the leading innovator in our category and have provided our consumers with the most advanced pool and spa care available. As we have scaled, we have leveraged our competitive advantages to strategically reinvest in our business to develop new, value-added capabilities that allow us to meet the needs of any pool and spa owner, whether they care for their pool or spa themselves or rely on a professional, whatever the nature of their need may be, and however they wish to engage with us.

Legacy of Innovation

Over our 57-year history, we have introduced innovative ways to serve pool and spa owners and the professionals who care for their pools and spas.

Owned and Exclusive Brands. Since our inception in 1963, we have offered a portfolio of owned and exclusive brands. We continue to expand our selection of exclusive offerings through innovation, most recently with the launch of the Jacuzzi® and our RightFit® brands in 2016. Our exclusive brands and products account for approximately 55% of total sales and 80% of chemical sales. These proprietary brands and custom-formulated products are only available through our integrated platform and offer professional-grade quality to our consumers, while allowing us to achieve higher gross margins relative to sales of third-party products.

Complimentary and Proprietary Water Testing. We pioneered complimentary in-store water testing, and over the course of our history have conducted more than 40 million tests, which has helped us establish relationships, cultivate loyalty, and drive attractive lifetime value with our consumers as they rely on us for their water treatment needs. We have found that consumers who regularly test their water with us spend approximately 2.5x more with us per year than other consumers, and we believe that these consumers experience significantly fewer days where their pools are out of commission.

Complimentary In-Store Repair. We provide complimentary in-store equipment repair, which we offer to all consumers with the purchase of Leslie's replacement parts. Over the last fifteen years, we have conducted more than one million in-store repairs.

In-Field Services. We employ the industry's largest in-field service network, consisting of more than 200 pool and spa care service professionals who have the expertise to provide essential, on-site equipment installation and repair services for residential and commercial consumers throughout the continental United States.

Loyalty Program. In 2014, we launched the industry's first loyalty program, which helps track loyalty members' water treatment history and prescriptions and rewards them for shopping with us. As of June 27, 2020, our loyalty program has more than 3.2 million active members, up more than 50% from 2.1 million active members as of September 2018. For the nine months ended June 27, 2020, our loyalty members generated more than 70% of our direct residential sales. Our loyalty members spend twice as much with us on average compared to our other consumers.

Professional Market. In 2015, we made the strategic decision to resource this channel and accelerate sales growth to professional consumers. Through acquisitions, technology investments, and increased utilization of our integrated network we drove a 23% sales CAGR through Fiscal Year 2019. Our differentiated go-to-market model includes over 930 convenient locations, including dedicated Leslie's PRO locations in certain markets, extended operating hours, expansive product offering through our online platforms, multiple fulfillment capabilities, and the ability to provide pool professionals with referrals to residential consumers. Despite our strong growth, our penetration in the professional market remains modest with an estimated market share of less than 10%.

Leslie's Evolution in the Digital World

Over the last five years, we have spent more than \$70 million investing in new service offerings and digital capabilities that have modernized how consumers take care of their pools and spas.

Digital Network. We have built the largest digital presence in the industry. Our complementary platform of branded proprietary e-commerce websites and marketplace storefronts allows us to seamlessly serve the needs of all digital consumers through curated pricing and targeted merchandising strategies. In addition to our owned e-commerce websites, approximately 40% of our

digital sales take place through online marketplaces. In all, our digital network is strategically designed to maximize total profitability. Our digital sales have grown at a CAGR of more than 40% between Fiscal Year 2015 and Fiscal Year 2019, and represent 26% of our total sales for the last twelve months ended June 27, 2020, up from 8% in Fiscal Year 2015.

Mobile App. In 2018, we introduced a custom-designed mobile app that allows consumers to create a personalized pool profile, sync in-store prescriptions, and monitor the performance of at-home water tests. As of August 2020, the mobile app has more than 500,000 downloads and an average user rating of 4.6/5.0. In the last year, the average active mobile app user completed 93% more transactions and spent 86% more with us than the average non-mobile app user. We plan to continue enhancing this critical element of our network by introducing new features, including transaction capabilities. The next version of our mobile app is scheduled to launch by the end of calendar year 2020.

Consumer-Centric Integrated Ecosystem. We architected a consumer-centric integrated ecosystem comprised of our physical network of more than 930 branded locations and a robust, data-driven digital platform. Over the last two years, we have invested in new capabilities, including global inventory visibility, buy online pick-up in store (“BOPIS”), buy online return in store (“BORIS”), and ship from store (“SFS”), each of which will come online in 2021. With our integrated physical and digital network, we will have the unique advantage of being able to reach all consumers in the continental United States in less than 24 hours, whether they are homeowners, pool and spa professionals, or commercial pool operators, whenever, wherever, and however they prefer to shop.

AccuBlue® Water Testing & Prescription Service. In January 2020, we launched our AccuBlue® in-store water testing device and enhanced water testing experience. AccuBlue®, which features exclusive and proprietary software that incorporates our 57 years of accumulated water treatment expertise, automates and gamifies the water testing experience, driving enhanced accuracy, higher throughput, greater consumer engagement, and increased consumer adherence to prescription recommendations. Locations that have been equipped with AccuBlue® are growing sales at a faster rate than our other locations, supported by an increase in number of water tests performed, an improved conversion rate, and an increase in number of products prescribed per test which has resulted in greater units per transaction. By the end of calendar year 2020, we expect to make AccuBlue® available at all of our locations.

Highly Experienced and Visionary Management Team. Over the last five years, we have built a diverse, multi-disciplinary management team to drive our consumer-first, digitally enabled growth. Since 2018, four of our eight senior leaders have joined our organization, bringing new expertise and capabilities that are highly complementary and synergistic with our core industry expertise that we have accumulated over decades.

Innovating the Future of Pool and Spa Care

As we look forward, we are committed to better serving our digital-first consumer by introducing an expanded portfolio of connected pool and spa products and services. We believe that we are uniquely positioned to leverage our market-leadership to continue to disrupt the pool and spa care category and further distance ourselves from our competition.

AccuBlue Home™ Subscription. We are actively developing new technologies that seek to fundamentally change the way all consumers, whether a novice or an expert, care for their pools and spas. Through a new AccuBlue Home™ subscription offering, we will leverage our proprietary water diagnostics software to convert on-demand test results into actionable prescriptions and treatment

plans tailored to the specific size and conditions of a consumer's pool or spa, which we can seamlessly and automatically fulfill through our integrated network.

Certified Pool Maintenance Offering. We are assembling a strategic network of qualified pool professionals to extend the Leslie's brand into on-site water maintenance, completing our suite of service offerings in the residential pool ecosystem.

Ongoing R&D. We continue to leverage our intellectual property and differentiated strategic position to be the innovator and disruptor in our industry. We plan to strategically reinvest in our business and bring to market new products and services that will continue to improve our ability to serve our consumers and win in the marketplace. In addition to our internal efforts, as the most recognized and trusted authority in the industry with the most direct access and deepest relationships with pool and spa owners, we continue to receive unsolicited opportunities from third parties to commercialize and introduce to the market new products and services on an exclusive basis.

Recent Financial Performance

Our compelling financial profile is characterized by consistent growth, strong profitability, and high cash flow generation.

Comparing the last twelve months ended June 29, 2019 and the last twelve months ended June 27, 2020, we achieved the following results:

- Increase in sales from \$912.8 million to \$1,029.1 million, representing year-over-year growth of 12.7%;
- Comparable Sales Growth of 11.5% for the last twelve months ended June 27, 2020;
- Increase in operating income from \$114.8 million to \$137.3 million, representing year-over-year growth of 19.6%; and
- Increase in Adjusted EBITDA from \$151.3 million to \$174.3 million, representing year-over-year growth of 15.1%.

Comparing the nine months ended June 29, 2019 and June 27, 2020, we achieved the following results:

- Increase in sales from \$630.0 million to \$730.9 million, representing year-over-year growth of 16.0%;
- Comparable Sales Growth of 15.5% for the nine months ended June 27, 2020;
- Increase in operating income from \$62.7 million to \$78.3 million, representing year-over-year growth of 25.0%; and
- Increase in Adjusted EBITDA from \$90.1 million to \$104.3 million, representing year-over-year growth of 15.8%.



LTM is defined as last twelve months. "LTM Q3 2019" refers to the four-quarter period ended June 29, 2019. "LTM Q3 2020" refers to the four-quarter period ended June 27, 2020. "YTD Q3 2019" refers to the three-quarter period ended June 29, 2019. "YTD Q3 2020" refers to the three-quarter period ended June 27, 2020. We regularly compute and review our key GAAP and non-GAAP measures on a last twelve months basis as it is used by management and our board of directors to assess our financial performance. Measures calculated on an LTM basis are also frequently used by analysts, investors, and other interested parties to evaluate companies in our industry. All financial measures presented on an LTM basis above have been derived from our consolidated financial statements and related notes which are included elsewhere in this prospectus. For a reconciliation of our key non-GAAP measures to their most comparable U.S. GAAP measures, see the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Factors and Measures We Use to Evaluate Our Business."

Our Competitive Strengths

We believe that the following competitive strengths have been key drivers of our success to date, and strategically position us for continued success.

Undisputed direct-to-consumer market leader in the aftermarket pool and spa care industry, with industry-leading brand recognition and loyalty.

For 57 years, we have been dedicated to addressing our consumers' pool needs so they can spend less time maintaining and more time enjoying their pools. We are the undisputed direct-to-consumer market leader, and most trusted brand, in the aftermarket pool and spa care industry, having served nearly 1-in-3 pool owners in the past year alone. The remainder of the industry is highly fragmented across both offline and online providers. We command a market-leading share of nearly 15% of residential aftermarket product spend, which represents an increase of approximately 500 basis points since 2010, our physical network is larger than the sum of the next twenty largest competitors, and our digital sales are estimated to be greater than five times as large as that of our largest digital competitor.

We believe that our history, scale, and consumer-centric approach have contributed to industry-leading consumer affinity metrics. As a result of our consumer-centric approach, we have a Voice of Customer (VoC) score of 75% based on our regular surveys of our consumer file, which demonstrates our consumers' strong affinity for our brand.

Direct relationships with more than 11 million pool and spa owners and professionals, generating durable, annuity-like economics.

We are the only national pool and spa care brand that has a direct relationship with pool and spa owners and the professionals who serve them. Across our integrated platform, we have a total file of approximately 11 million consumers who rely on us for their ongoing pool and spa care needs. Through our team of highly trained pool and spa experts, we offer sophisticated product recommendations and other expert advice, which cultivates long-standing relationships with our consumers. The comprehensive nature of our product and service offering eliminates the need for consumers to leave the Leslie's ecosystem, driving exceptional retention with annuity-like economics.

In 2014, we launched our loyalty membership program to further deepen our consumer relationships. The program, which now serves more than 3.2 million active consumers, allows members to save, earn, and redeem via discounts, points, and rewards. We track consumer preferences, order frequency, and pool profiles in order to curate and enhance our recommendations and promotions, anticipate product demand, and track lifetime value to better incentivize our loyalty members. For the nine months ended June 27, 2020, our loyalty members generated more than 70% of our direct residential sales. On average, a loyalty member spends twice as much with us per year than a non-loyalty member. We define "active consumers" as consumers who transacted with us during the 18-month period ended June 12, 2020 and "lapsed residential consumers" as those who have shopped with us in the past, but have not transacted with us in the last 18 months.

Consumer-centric connected ecosystem for all pool and spa owners and the professionals who serve them using proprietary, leading brands across all channels.

Over the last 57 years, we have built the most extensive and geographically diverse pool and spa care network in the United States, consisting of three formats: Residential, Professional (PRO), and Commercial. Our locations are strategically located in densely populated areas mainly throughout the Sunbelt, including California, Arizona, Texas, and Florida. Across our physical network, we employ a team of approximately 4,000 associates, including pool and spa care experts and service technicians, who act as solution providers to all of our consumers, including both do-it-yourself ("DIY") and do-it-for-me ("DIFM") pool owners as well as pool professionals.

As the world has become more digitally focused, and consumers increasingly demand "smart" home-enabled options, we have focused on architecting the industry-leading integrated digital platform of proprietary e-commerce websites designed to serve our residential, professional, and commercial consumers. Our proprietary e-commerce websites serve digital consumers through curated pricing and targeted merchandising strategies. In addition to our owned e-commerce websites, we are the leading partner for Amazon in the pool category, and accounted for more than 40% of Amazon's estimated pool and spa care business in the last twelve months ended June 27, 2020. As a result of our strategic investments in digital, we are uniquely positioned to serve our consumers with cross-channel capabilities and capture incremental online demand from new consumers while growing the total profitability of the network.

Comprehensive assortment of proprietary brands with recurring, essential, superior product formulations, and trusted, solution-based services for all consumers.

We offer a comprehensive product assortment, consisting of more than 30,000 products across chemicals, equipment and parts, cleaning and maintenance equipment, and safety, recreational, and fitness-related categories. More than 80% of our product sales are non-discretionary and recurring in

nature; these products are critical to the ongoing maintenance of pools and spas. In addition, approximately 55% of our total sales and 80% of our chemical sales are derived from proprietary brands and custom-formulated products, which allows us to create an entrenched consumer relationship, control our supply chain, and capture attractive margins. Consumers choose our exclusive, proprietary brands and custom-formulated products for their efficacy and value, a combination that we believe cannot be found elsewhere.

We pair our comprehensive assortment with differentiated in-store and on-site service offerings. We pioneered the complimentary in-store water test and resulting pool or spa water prescription, which has driven consumer traffic and loyalty, and has created a "pharmacist-like" relationship with our consumers. Through innovation, we recently introduced significant upgrades to our water testing capabilities with the launch of our AccuBlue® platform. The AccuBlue® testing device screens for nine distinct water quality criteria. Our in-store experts leverage our proprietary water diagnostics software engine to offer our consumers a customized prescription and treatment plan using our comprehensive range of exclusive products, walking them through product use sequencing step-by-step. These detailed and sophisticated treatment algorithms are supported by our differentiated water treatment expertise built over decades. We have found that consumers who test their water with us regularly spend approximately 2.5x more with us per year than those who do not, underscoring the importance of this acquisition and retention vehicle. We also employ the industry's largest network of in-field technicians who perform on-site evaluations, installation, and repair services for residential and commercial consumers.

Attractive financial profile characterized by consistent, profitable growth, and strong cash flow conversion offering multiple levers to drive shareholder value.

We have delivered 57 consecutive years of sales growth, demonstrating our ability to deliver strong financial results through all economic cycles. Our growth has been broad based across residential pool, residential spa, professional pool, and commercial pool consumers and has been driven by strong retention and profitable acquisition of sticky, long-term consumer relationships. Due to our scale, vertical integration, and operational excellence, we maintain high profitability; for the last twelve months ended June 27, 2020, we delivered Adjusted EBITDA margins of 16.9%. Due to our low maintenance capital intensity, we generate strong cash flows. As a result of our attractive financial profile, we have significant flexibility with respect to capital allocation, giving us the ability to drive long-term shareholder value through various operating and financial strategies.

Highly experienced and visionary management team that combines deep industry expertise and advanced, direct-to-consumer capabilities.

Our strategic vision and culture are directed by our executive management team under the leadership of our Chief Executive Officer, Michael R. Egeck, our Executive Vice President and Chief Financial Officer, Steven M. Weddell, and our Chairman, Steven L. Ortega. Mr. Egeck joined us in 2020 from PSEB Group, the operating company for Eddie Bauer and PACSUN, and brings significant multi-brand platform experience, as well as a proven track record of transforming businesses into next generation brands. Mr. Weddell joined us in 2015 as Executive Vice President, Chief Financial Officer, Secretary and Treasurer. Prior to joining Leslie's, Mr. Weddell served as a Managing Director at Goldman, Sachs & Co. Mr. Ortega joined us in 2005 as Chief Financial Officer and was promoted to Chief Operating Officer in March 2014, President in May 2015, and Chief Executive Officer in 2017. Prior to Leslie's, Mr. Ortega served as Executive Vice President and Chief Financial Officer for BI-LO LLC and Vice President, Finance for American Stores Company. Our management team is uniquely capable of executing upon our strategic vision and successfully continuing to create long-term shareholder value.

Our Growth Strategies

We believe we are well positioned to drive sustainable growth and profitability over the long-term by executing on the following strategies:

Increase spend from existing, acquire new, and reactivate lapsed residential consumers.

We currently capture between 40% and 50% of our consumers' total aftermarket product spend according to a recent survey. While this represents the highest share in the category, we believe we have a significant opportunity to further increase spend and drive higher lifetime value. We plan to do this by executing on the following strategies:

- **Increase loyalty membership penetration and introduce program upgrades.** We plan to continue to market our loyalty program in-store and online to convert more of our consumers to loyalty members. In addition, we are in the process of enhancing our loyalty program to offer more value-added features and further drive member engagement. We will explore opportunities to drive interest by selectively offering special incentives and rewards as well as introducing new value-added features. We believe these initiatives will drive higher transaction frequency and basket size, which will result in increased category spend and higher lifetime value with existing consumers.
- **Enhance retention marketing.** While we have historically been satisfied with our consumer retention metrics, we believe there is opportunity to drive even greater retention. We plan to do this by more actively leveraging our consumer database to personalize the consumer experience with targeted messaging and product recommendations.

We currently serve a file of approximately 5.5 million active consumers, which represents approximately one-third of the estimated total addressable market of pool and spa owners. We believe we have a significant opportunity to acquire new residential consumers and reactivate lapsed residential consumers, which we plan to do by executing on the following strategies:

- **Acquire or reactivate consumers via optimized marketing strategy.** We believe we have a sizeable opportunity to grow by serving the 2-in-3 pool and spa owners in our market who do not actively shop with us today. We plan to accelerate our acquisition of these potential new or reactivated consumers and, at the same time, reduce consumer acquisition cost by shifting our marketing mix toward more efficient digital and social channels.
- **Expand our product and service offering.** We plan to expand our offering by introducing new and innovative products and services in our existing categories and by expanding into adjacent categories. Specifically, we believe there is an opportunity with products targeted to spa owners, who have historically been underserved.

Grow additional share in the professional market.

We believe we have a significant opportunity to grow our sales with pool care professionals, who individually spend more than 25x more than residential consumers on pool supplies and equipment.

We plan to expand our physical network of PRO locations, which specifically cater to pool professionals, by opening new locations and selectively remodeling existing residential locations. We believe there is significant whitespace opportunity to operate more than 200 total PRO locations, and we plan to opportunistically open or convert a total of 20 PRO locations by the end of 2021. We also plan to assemble an affiliated network of qualified pool professionals to extend the Leslie's name into water maintenance. We believe that this initiative represents a natural adjacency and will resonate with existing residential consumers as well as help attract new residential consumers.

Utilize strategic M&A to consolidate share and further enhance capabilities.

The aftermarket pool and spa industry remains highly fragmented, which offers attractive opportunities to utilize strategic M&A to drive consolidation. We have historically used, and plan to continue to use, strategic acquisitions to obtain consumers and capabilities in both new and existing markets. We believe that we are the consolidator of choice in the industry, and we will continue to focus on acquiring high quality, market-leading businesses with teams, capabilities, and technologies that uniquely position us to create value by applying best practices across our entire physical and digital network to better serve new and existing consumer types.

Continue to introduce disruptive innovation.

Currently there is no existing integrated pool ecosystem that effectively automates pool maintenance. As the Internet of Things wave continues, we believe consumers will seek the convenience of “smart” home functionality in more facets of their daily lives.

We plan to continue to augment and expand our water testing, maintenance prescription, and product distribution ecosystem to strengthen our relationships with our consumers. As part of this, we are actively developing a new breakthrough device and introducing a new subscription service that leverages our proprietary pool software and AccuBlue® brand equity to provide a comprehensive, guided solution for pool care, coupled with a distribution network to deliver the products that consumers need when they need them. We believe this new technology will provide us with a natural opportunity to offer consumers a convenient subscription or on-demand service, personalized for their specific pool and equipment profile.

Recent Developments

Preliminary Estimated Unaudited Financial Results for the Three Months and the Year Ended October 3, 2020

Our preliminary estimated unaudited sales, Adjusted EBITDA, and net income for the three months and year ended October 3, 2020 are set forth below. We have provided a range for these preliminary financial results because our closing procedures for our fiscal quarter and year ended October 3, 2020 are not yet complete. Our preliminary estimates of the financial results set forth below are based solely on information available to us as of the date of this prospectus and are inherently uncertain and subject to change. Our preliminary estimates contained in this prospectus are forward-looking statements. Our actual results remain subject to the completion of management's final review and our other closing procedures, as well as the completion of the audit of our annual financial statements. These preliminary estimates are not a comprehensive statement of our financial results for the three months and the year ended October 3, 2020, and should not be viewed as a substitute for full financial statements prepared in accordance with GAAP. In addition, these preliminary estimates for the three months and the year ended October 3, 2020 are not necessarily indicative of the results to be achieved in any future period. Accordingly, you should not place undue reliance on these preliminary financial results. See “Risk Factors,” “Special Note Regarding Forward-Looking Statements,” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” for a discussion of certain factors that could result in differences between the preliminary estimated unaudited financial results reported below and the actual results. Our actual audited financial statements and related notes as of and for the year ended October 3, 2020 are not expected to be filed with the SEC until after this offering is completed.

The preliminary estimated unaudited financial results included in this prospectus have been prepared by, and are the responsibility of, our management. Our independent registered public

[Table of Contents](#)

accounting firm, Ernst & Young LLP, has not audited, reviewed, compiled or performed any procedures with respect to the preliminary financial results. Accordingly, Ernst & Young LLP does not express an opinion or any other form of assurance with respect thereto.

We operate on a fiscal calendar that results in a fiscal year consisting of a 52- or 53-week period ending on the Saturday closest to September 30th. References to Fiscal 2020 and Fiscal 2019 refer to the fiscal years ended October 3, 2020, which contained 53 weeks, and September 28, 2019, which contained 52 weeks, respectively. References to the three months ended October 3, 2020 and September 28, 2019 refer to the 14 weeks ended October 3, 2020 and the 13 weeks ended September 28, 2019, respectively.

For the 14 weeks ended October 3, 2020, we estimate that our sales will range from \$377.2 million to \$381.2 million, an increase of \$81.0 million or 27.2%, at the mid-point of the estimated sales range when compared with sales of \$298.2 million for the 13 weeks ended September 28, 2019. The increase in sales was primarily due to Comparable Sales Growth of approximately 22.4% to 23.1% for the quarter ended October 3, 2020 and non-Comparable Sales of approximately \$13.5 million to \$15.5 million, which includes an extra week. See section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Factors and Measures We Use to Evaluate Our Business" for information on how we calculate our Comparable Sales Growth.

For Fiscal 2020, we estimate that our sales will range from \$1,108.1 million to \$1,112.1 million, an increase of \$181.9 million or 19.6%, using the mid-point of the estimated sales range when compared with sales of \$928.2 million for Fiscal 2019. The increase in sales was due to Comparable Sales Growth of approximately 17.7% to 18.0% for Fiscal 2020 and non-Comparable Sales of approximately \$18.7 million to \$20.7 million, which includes an extra week.

For Fiscal 2020, we estimate that our net income will range from \$52.3 million to \$55.7 million, an increase of \$53.3 million, using the mid-point of the estimated range when compared with net income of \$0.7 million for Fiscal 2019. The change in net income for the year was primarily due to higher Adjusted EBITDA (discussed below), lower interest expense on our floating rate debt, and lower income tax expenses due to the impact of limitations on interest expense deductibility in accordance with section 163(j) of the Tax Cuts and Jobs Act of 2017. In addition, Fiscal 2019 included a reduction in the fair value of our interest rate cap agreements.

For Fiscal 2020, we estimate that our Adjusted EBITDA will range from \$182.2 million to \$185.5 million, an increase of \$23.9 million or 14.9%, using the midpoint of the estimated range when compared with our Adjusted EBITDA of \$160.0 million for Fiscal 2019. The increase in Adjusted EBITDA for the year was primarily due to higher sales and gross profits, including a reduction in occupancy costs. The increase was partially offset by SG&A expenses related to higher sales volume, higher compensation expenses including performance bonuses, expenses associated with COVID-19, and higher general and administrative expenses partially driven by higher spend related to information systems and expenses related to strategic consolidations of certain locations.

As of October 3, 2020, we estimate cash and cash equivalents of approximately \$156.0 million, outstanding borrowings under our Term Loan of \$811.2 million, and amounts outstanding under our Senior Unsecured Notes of \$390.0 million.

Reconciliation of Net Income to Adjusted EBITDA

Adjusted EBITDA is a non-GAAP financial measure. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Factors and Measures We Use to Evaluate Our Business” for a discussion on how we define Adjusted EBITDA and why believe this measure is important. The following table presents a reconciliation of net income, the most directly comparable GAAP financial measure, to Adjusted EBITDA for each of the periods indicated:

	Fiscal 2020		Fiscal 2019
	Low	High	(actual)
(in millions)	(estimated)		
Net income	\$ 52.3	\$ 55.7	\$ 0.7
Depreciation and amortization	29.1	28.8	30.4
Interest expense	85.3	85.1	98.6
Loss on disposition of assets	0.8	0.8	1.8
Income tax expense (1)	7.0	7.5	14.9
Management fee	4.9	4.9	4.5
Equity-based compensation expense	1.7	1.6	2.1
Mark-to-market on interest rate cap	—	—	4.3
Other	1.1	1.1	2.7
Adjusted EBITDA (2)	\$ 182.2	\$ 185.5	\$ 160.0

- (1) This preliminary estimated range reflects our provisionally determined amounts for the computation of income tax expense. The finalization of our computation of income tax expense requires a detailed evaluation of all income statement and balance sheet information. These processes are not complete. The preliminary estimated income tax expense range also considers several factors outlined in “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Estimates—Income Taxes.”
- (2) Adjusted EBITDA is defined as earnings before interest (including amortization of debt costs), taxes, depreciation, amortization, loss/(gain) on disposition of fixed assets, management fees, equity-based compensation expense, mark-to-market on interest rate cap, and special items. Adjusted EBITDA is not a recognized measure of financial performance under GAAP but is used by some investors to determine a company’s ability to service or incur indebtedness. Adjusted EBITDA is not calculated in the same manner by all companies, and accordingly, is not necessarily comparable to similarly entitled measures of other companies and may not be an appropriate measure for performance relative to other companies. Adjusted EBITDA should not be construed as an indicator of a company’s operating performance in isolation from, or as a substitute for, net income (loss), cash flows from operations or cash flow data, all of which are prepared in accordance with GAAP. We have presented Adjusted EBITDA solely as supplemental disclosure because we believe it allows for a more complete analysis of results of operations. Adjusted EBITDA is not intended to represent, and should not be considered more meaningful than, or as an alternative to, measures of operating performance as determined in accordance with GAAP. Our presentation of Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by these items.

Amendment to ABL Credit Facility

On August 13, 2020, we entered into Amendment No. 4 to the Credit Agreement (the Amendment). The Amendment provides us with a \$200 million asset based revolving credit facility (the ABL Credit Facility) and extends the final maturity to August 13, 2025. Amounts borrowed under the ABL Credit Facility are subject to interest at a rate per annum equal to, at the borrower’s option, either

(a) LIBOR plus a margin of 1.75% to 2.00%, and subject to a LIBOR floor of 0.75%, or (b) a base rate plus a margin of 0.75% to 1.00%, in each case depending on revolving line utilization. The ABL Credit Facility also contains customary covenants that provide for, among other things, limitations on indebtedness, liens, fundamental changes, restricted payments, and customary representations and warranties and events of default typical for credit facilities of this type.

Summary Risk Factors

Our business is subject to numerous risks described in the section entitled "Risk Factors" and elsewhere in this prospectus. You should carefully consider these risks before making an investment. Some of these risks include:

- Our success depends on our ability to maintain or increase Comparable Sales, and if we are unable to achieve comparable growth, our profitability and performance could be materially adversely impacted;
- We may not be able to successfully manage our inventory, which could have a material adverse effect on our business, financial condition, and results of operations;
- We face competition by store- and internet-based mass merchants and specialty retailers;
- The demand for our swimming pool and spa related products and services may be adversely affected by unfavorable economic conditions;
- We are susceptible to adverse weather conditions;
- Failure to timely implement updates to our information technology processes and systems could result in us not realizing cost savings or operational benefits; and
- The COVID-19 pandemic and associated responses could adversely impact our business and results of operations.

Our Corporate Information

We were incorporated as a Delaware corporation on February 6, 2007.

Our principal executive offices are located at 2005 East Indian School Road, Phoenix, Arizona 85016 and our telephone number is (602) 366-3999. We maintain a website at the address www.lesliespool.com. **Information contained on, or accessible through, our website is not a part of this prospectus and you should not rely on that information when making a decision to invest in our common stock.**

Implications of Being an Emerging Growth Company

We were an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012 when we submitted the registration statement, of which this prospectus forms a part, to the Securities and Exchange Commission. As a result, we may take advantage of reduced requirements that are otherwise applicable. These provisions include, but are not limited to, (i) being permitted to present only two years of audited financial statements and only two years of related Management's Discussion and Analysis of Financial Condition and Results of Operations in this prospectus, and (ii) reduced disclosure obligations regarding executive compensation in our periodic reports, proxy statements, and registration statements.

[Table of Contents](#)

We have elected to take advantage of these reduced disclosure obligations in this prospectus. We can take advantage of an extended transition period for complying with new or revised accounting standards. We have elected to avail ourselves of this exemption. As a result of this election, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests. Following the completion of the offering, we will cease to be an emerging growth company.

THE OFFERING

Issuer	Leslie's, Inc.
Common stock we are offering	30,000,000 shares.
Common stock offered by the selling stockholder	10,000,000 shares.
Option to purchase additional shares	The selling stockholder has granted the underwriters a 30-day option to purchase up to 6,000,000 additional shares of our common stock from the selling stockholder at the initial public offering price.
Common stock to be outstanding after the offering	186,602,667 shares.
Indication of Interest	Prior to the date hereof, certain funds and accounts managed by subsidiaries of BlackRock, Inc. have indicated an interest in purchasing an aggregate of up to \$100.0 million of our common stock in this offering at the initial public offering price. Because this indication of interest is not a binding agreement or commitment to purchase, one or more funds and/or accounts managed by BlackRock may determine to purchase more, fewer, or no shares in this offering or the underwriters could determine to sell more, fewer, or no shares to one or more such funds or accounts. The underwriters will receive the same discount on any of our shares of common stock purchased by these funds and/or accounts as they will from any other shares of common stock sold to the public in this offering.
Use of proceeds	We intend to use the net proceeds of this offering to repay in full the entire outstanding amount of our senior unsecured floating rate notes due 2024 (the "Senior Unsecured Notes") and, to the extent of any remaining net proceeds, for working capital and general corporate purposes, which may include the repayment of a portion of the borrowings under our Term Loan Credit Agreement, dated as of August 16, 2016, as amended from time to time, among Leslie's Poolmart, Inc., Leslie's, Inc., the lenders party hereto from time to time and Nomura Corporate Funding Americas, LLC, as administrative agent and as collateral agent (the "Term Loan"), which had \$815.3 million outstanding as of June 27, 2020. Certain affiliates of Goldman Sachs & Co. LLC, an underwriter in this offering, currently

[Table of Contents](#)

Proposed listing	<p>hold 100% of the aggregate principal amount of our Senior Unsecured Notes and a portion of the Term Loan.</p> <p>We will not receive any proceeds from the sale of our common stock by the selling stockholder.</p> <p>We intend to apply to list our common stock on Nasdaq under the trading symbol "LESL."</p>
Risk factors	<p>For a discussion of risks relating to the Company, our business and an investment in our common stock, see the section titled "Risk Factors" and all other information set forth in this prospectus before investing in our common stock.</p>
Conflicts of Interest	<p>Certain affiliates of Goldman Sachs & Co. LLC currently hold 100% of our Senior Unsecured Notes and a portion of our Term Loan and, as such, will receive 5% or more of the net proceeds of this offering due to the redemption in full of our Senior Unsecured Notes with the net proceeds of this offering. Therefore, Goldman Sachs & Co. LLC is deemed to have a conflict of interest within the meaning of Rule 5121 of the Financial Industry Regulatory Authority, Inc. ("Rule 5121"). Accordingly, this offering is being conducted in accordance with Rule 5121, which requires, among other things, that a "qualified independent underwriter" participate in the preparation of, and exercise the usual standards of "due diligence" with respect to, the registration statement and this prospectus. Morgan Stanley & Co. LLC has agreed to act as a qualified independent underwriter for this offering and to undertake the legal responsibilities and liabilities of an underwriter under the Securities Act of 1933, as amended (the "Securities Act"), specifically including those inherent in Section 11 thereof. Morgan Stanley & Co. LLC will not receive any additional fees for serving as a qualified independent underwriter in connection with this offering. We have agreed to indemnify Morgan Stanley & Co. LLC against liabilities incurred in connection with acting as a qualified independent underwriter, including liabilities under the Securities Act. For more information, see "Underwriting (Conflicts of Interest)."</p>

[Table of Contents](#)

Unless otherwise indicated, this prospectus reflects and assumes the following:

- the filing of our second amended and restated certificate of incorporation, which will be in effect on the completion of this offering;
- a 156,500 -for-1 stock split of our capital stock that was effected on October 23, 2020 (the “Stock Split”);
- includes 102,667 shares of common stock issuable upon settlement of restricted stock units expected to be issued following the completion of this offering in exchange for equity interests in Bubbles Holdings, L.P. (“Parent”) and are expected to vest within 60 days following the date of effectiveness of the registration statement of which this prospectus forms a part;
- no exercise by the underwriters of their option to purchase additional shares of common stock; and
- our issuance of 30,000,000 shares of common stock in this offering.

The number of shares of our common stock to be outstanding after this offering is based on 156,500,000 shares of common stock outstanding as of June 27, 2020 assuming the Stock Split had occurred as of that date, and also gives effect to the other assumptions set forth above and excludes 18,650,000 shares of common stock, subject to increase on an annual basis, reserved for future issuance under our 2020 Omnibus Incentive Plan.

SUMMARY HISTORICAL CONSOLIDATED FINANCIAL AND OTHER INFORMATION

The following tables set forth our summary consolidated statements of operations data for the years ended September 28, 2019 and September 29, 2018 and the nine months ended June 27, 2020 and June 29, 2019 and our consolidated balance sheet data as of June 27, 2020 and June 29, 2019. We have derived the following consolidated statements of operations data for the years ended September 28, 2019 and September 29, 2018 and the balance sheet data as of September 28, 2019 and September 29, 2018 from our audited consolidated financial statements included elsewhere in this prospectus. We have derived the following statements of operations data for the nine months ended June 27, 2020 and June 29, 2019 and balance sheet data as of June 27, 2020 and June 29, 2019 from our unaudited interim consolidated financial statements. The unaudited interim consolidated financial data, in management's opinion, have been prepared on the same basis as the audited consolidated financial statements and the related notes included elsewhere in this prospectus, and include all adjustments, consisting only of normal recurring adjustments, that management considers necessary for a fair presentation of the information for the periods presented. Our historical results are not necessarily indicative of the results that may be expected for any future period. The following summary consolidated financial data should be read with the sections titled "Selected Historical Consolidated Financial and Other Information" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and the related notes included elsewhere in this prospectus.

	(dollars in thousands)			
	Nine Months Ended		Fiscal Year Ended	
	June 27, 2020	June 29, 2019	September 28, 2019	September 29, 2018
Statement of operations data:				
Sales	\$ 730,916	\$ 629,984	\$ 928,203	\$ 892,600
Cost of merchandise and services sold	<u>436,837</u>	<u>381,557</u>	<u>548,463</u>	<u>535,464</u>
Gross profit	<u>294,079</u>	<u>248,427</u>	<u>379,740</u>	<u>357,136</u>
Selling, general and administrative expenses	<u>215,752</u>	<u>185,776</u>	<u>258,152</u>	<u>241,669</u>
Operating income	<u>78,327</u>	<u>62,651</u>	<u>121,588</u>	<u>115,467</u>
Other expense:				
Interest expense	65,513	74,641	98,578	91,656
Other expenses, net	<u>910</u>	<u>4,409</u>	<u>7,453</u>	<u>1,759</u>
Total other expense	66,423	79,050	106,031	93,415
Income before taxes	11,904	(16,399)	15,557	22,052
Income tax (benefit) expense	<u>(4,603)</u>	<u>(16,321)</u>	<u>14,855</u>	<u>4,926</u>
Net income (loss)	<u>\$ 16,507</u>	<u>\$ (78)</u>	<u>\$ 702</u>	<u>\$ 17,126</u>
Balance sheet data:				
Cash and cash equivalents	\$ 148,901	\$ 82,128	\$ 90,899	\$ 77,569
Total current assets	390,402	318,317	282,089	255,332
Total assets	588,031	530,475	479,721	453,160
Total current liabilities	260,729	219,072	165,522	137,165
Total liabilities	1,457,089	1,419,239	1,367,078	1,342,109
Total stockholder's deficit	(869,058)	(888,764)	(887,357)	(888,949)

[Table of Contents](#)

	(dollars in thousands)			
	Nine Months Ended		Fiscal Year Ended	
	June 27, 2020	June 29, 2019	September 28, 2019	September 29, 2018
Cash flow data:				
Net cash provided by operating activities	\$ 85,921	\$ 42,559	\$ 57,821	\$ 43,280
Net cash used in investing activities	(21,664)	(30,558)	(36,996)	(40,219)
Net cash used in financing activities	(6,255)	(7,442)	(7,495)	(24,386)
Other financial and operations data:				
Number of new locations and acquired	8	26	28	38
Number of locations open at end of period	934	956	952	940
Comparable Sales Growth(2)	15.5%	(0.6)%	0.4%	(1.3)%
Adjusted EBITDA(3)	\$104,343	\$ 90,090	\$ 160,003	\$ 151,799
Adjusted EBITDA as a Percentage of Sales(3)	14.3%	14.3%	17.2%	17.0%
<hr/>				
(1)	Components may not add to totals due to rounding.			
(2)	Please see the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Factors and Measures We Use to Evaluate Our Business."			
(3)	Please see the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" for a reconciliation from our net income (loss) to Adjusted EBITDA for the nine months ended June 27, 2020, the nine months ended June 29, 2019, Fiscal Year 2019, and Fiscal Year 2018.			

RISK FACTORS

Investing in our common stock involves a high degree of risk. You should consider and read carefully all of the risks and uncertainties described below as well as other information included in this prospectus, including our consolidated financial statements and related notes appearing at the end of this prospectus, before making an investment decision. The risks described below are not the only ones facing us. The occurrence of any of the following risks or additional risks and uncertainties not presently known to us or that we currently believe to be immaterial could materially and adversely affect our business, financial condition or results of operations. In such case, the trading price of our common stock could decline, and you may lose all or part of your original investment. This prospectus also contains forward-looking statements and estimates that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of specific factors, including the risks and uncertainties described below.

Risks Related to Our Business

Our success depends on our ability to maintain or increase Comparable Sales, and if we are unable to achieve Comparable Sales Growth, our profitability and performance could be materially adversely impacted.

Our success depends on increasing Comparable Sales through our merchandising strategy and ability to increase sales and profits. To increase sales and profits, and therefore Comparable Sales Growth, we focus on delivering value and generating consumer excitement by staffing our locations with pool and spa experts, developing compelling products, optimizing inventory management, maintaining strong location conditions, and effectively marketing current products and new product offerings. We may not be able to maintain or improve the levels of Comparable Sales that we have experienced in the past, which could adversely impact our profitability and overall business results. In addition, competition and pricing pressures from competitors may also materially adversely impact our operating margins. Our Comparable Sales Growth could be lower than our historical average or our future target for many reasons, including general economic conditions, operational performance, price inflation or deflation, industry competition, new competitive entrants near our locations, price changes in response to competitive factors, the impact of new locations entering the comparable base, cycling against any year or quarter of above-average sales results, supply shortages or other operational disruptions, the number and dollar amount of consumer transactions in our locations, our ability to provide product or service offerings that generate new and repeat visits to our locations, and the level of consumer engagement that we provide in our locations. Opening new locations in our established markets may result in inadvertent oversaturation, temporary or permanent diversion of consumers and sales from our existing locations to new locations and reduced Comparable Sales, thus adversely affecting our overall financial performance. These factors may cause our Comparable Sales results to be materially lower than in recent periods, which could harm our profitability and business.

Past growth may not be indicative of future growth.

Historically, we have experienced substantial sales growth through organic market share gains, new location openings and acquisitions that have increased our size, scope, and geographic footprint. Our various business strategies and initiatives, including our growth initiatives, are subject to business, economic and competitive uncertainties and contingencies, many of which are beyond our control. While we contemplate continued growth through internal expansion and acquisitions, we may not be able to:

- acquire new consumers, retain existing consumers, and grow our share of the market;
- penetrate new markets;

Table of Contents

- provide a relevant omni-channel experience to rapidly evolving consumer expectations through our proprietary mobile app and e-commerce websites;
- generate sufficient cash flows to support expansion plans and general operating activities;
- obtain financing;
- identify suitable acquisition candidates and successfully integrate acquired businesses;
- maintain favorable supplier arrangements and relationships; and
- identify and divest assets that do not continue to create value consistent with our objectives.

If we do not manage these potential difficulties successfully, our operating results could be adversely affected.

We may not be able to successfully manage our inventory to match consumer demand, which could have a material adverse effect on our business, financial condition, and results of operations.

We base our inventory purchases, in part, on our sales forecasts. If our sales forecasts overestimate consumer demand, we may experience higher inventory levels, which could result in the need to sell products at lower than anticipated prices, leading to decreased profit margins. Conversely, if our sales forecasts underestimate consumer demand, we may have insufficient inventory to meet demand, leading to lost sales, either of which could materially adversely affect our financial performance.

We face competition by manufacturers, retailers, distributors, and service providers in the residential, professional, and commercial pool and spa care market.

Within our industry, competition is highly fragmented. We compete against a wide range of manufacturers, retailers, distributors, and service providers in the residential, professional, and commercial pool and spa care market. This includes original equipment manufacturers, regional and local retailers, home improvement retailers, mass-market retailers, and specialty e-commerce operators.

Most of our competition comes from regional and local independent retailers which, unlike us, do not repackage products and which generally buy products in smaller quantities. National home improvement and retailers, such as Home Depot, Lowe's, and local and regional hardware stores, compete with us mainly on a seasonal basis during the spring and summer months. We also face competition from mass-market retail competitors, such as Amazon, Walmart, and Costco, who carry a limited range of, and devote a limited amount of shelf space to, merchandise and products targeted to our consumers. Historically, mass-market retailers have generally expanded by adding new stores and product breadth, but their product offering of pool-related products has remained relatively constant.

New competitors may emerge as there are no proprietary technologies or other significant barriers to prevent other firms from entering the swimming pool and spa supply retail market in the future. Should store and internet-based mass-market retailers increase their focus on the pool and spa industry, or increase the breadth of their pool, spa, and related product offerings, they may become a more significant competitor for our industry, which could have an adverse impact on our business. We may face additional competitive pressures if large pool supply retailers look to expand their consumer base. Given the density and demand for pool and spa products, some geographic markets that we serve also tend to have a higher concentration of competitors than others, particularly Arizona, California, Florida, and Texas. These states encompass our largest markets and represented approximately 60% of our total sales in Fiscal Year 2019.

[Table of Contents](#)

The demand for our swimming pool and spa related products and services may be adversely affected by unfavorable economic conditions.

Consumer discretionary spending affects our sales and is impacted by factors outside of our control, including general economic conditions, the residential housing market, unemployment rates and wage levels, interest rate fluctuations, inflation, disposable income levels, consumer confidence, and access to credit. In economic downturns, the demand for swimming pool and spa related products and services may decline, often corresponding with declines in discretionary consumer spending, the growth rate of pool-eligible households, and swimming pool construction. A weak economy may also cause consumers to defer discretionary replacement and refurbishment activity. Even in generally favorable economic conditions, severe and/or prolonged downturns in the housing market could have a material adverse impact on our financial performance.

We believe that homeowners' access to consumer credit is a critical factor enabling the purchase of new pools, spas and related products. Unfavorable economic conditions and downturn in the housing market can result in significant tightening of credit markets, which limit the ability of consumers to access financing for new swimming pools, spas, and related supplies, and consequently, replacement, repair and maintenance of equipment. Tightening consumer credit could prevent consumers from obtaining financing for pool and spa projects, which could negatively impact our sales of products and services.

We are susceptible to adverse weather conditions.

Given the nature of our business, weather is one of the principal external factors affecting our business. Unseasonably cool weather or significant amounts of rainfall during the peak sales season can reduce chemical consumption in pools and spas and decrease consumer purchases of our products and services. In addition, unseasonably early or late warming trends can increase or decrease the length of the pool season and impact timing around pool openings and closings and, therefore, our total sales and timing of our sales. While warmer weather conditions favorably impact our sales, global warming trends and other significant climate changes can create more variability in the short-term or lead to other unfavorable weather conditions that could adversely impact our sales or operations. Drought conditions or water management initiatives may lead to municipal ordinances related to water use restrictions. Such restrictions could result in decreased pool installations, which could negatively impact our sales.

Certain extreme weather events, such as hurricanes and tropical storms, may impact demand for our products and services, our ability to deliver our products, provide services, continue to keep our facilities open, and operational or cause damage to our facilities. As a consequence of these or other catastrophic or uncharacteristic events, we may experience interruption to our operations, increased costs or loss of property, equipment or inventory, which would adversely affect our revenue and profitability.

Our results of operations may fluctuate from quarter to quarter for many reasons, including seasonality.

Our sales are seasonal and we experience fluctuations in quarterly results as a result of many factors. We have historically generated a greater percentage of our revenues during the warm weather months of April through September. Timing of consumer purchases will vary each year and sales can be expected to shift from one quarter to another. As a result, management believes that period-to-period comparisons of results of operations are not necessarily meaningful and should not be relied upon as any indication of future performance or results expected for the fiscal year.

[Table of Contents](#)

Failure to timely implement updates to our information technology processes and systems could result in us not realizing cost savings or operational benefits.

We are constantly updating our information technology processes and systems. The risk of system disruption is increased when significant system changes are undertaken. If we fail to timely integrate and update our information systems and processes, we may fail to realize the cost savings or operational benefits anticipated to be derived from these initiatives.

If the technology-based systems that give our consumers the ability to shop with us online do not function effectively, our operating results, as well as our ability to grow our e-commerce business globally, could be materially adversely affected.

Many of our consumers shop with us through our physical network and digital platform, which includes our proprietary mobile app and e-commerce websites. Increasingly, consumers are using tablets and smart phones to shop online with us and with our competitors and to do comparison shopping. We are increasingly using social media and our proprietary mobile app to interact with our consumers and as a means to enhance their shopping experience. Any failure on our part to provide an attractive, effective, reliable, and user-friendly digital platform that offers a wide assortment of merchandise with rapid delivery options and that continually meets the changing expectations of online shoppers could place us at a competitive disadvantage, result in the loss of e-commerce and other sales, harm our reputation with consumers, have a material adverse impact on the growth of our e-commerce business globally, and could have a material adverse impact on our business and results of operations.

Our e-commerce operation faces distinct risks, such as the failure to make and implement changes to our e-commerce websites and mobile app, the failure to maintain a relevant consumer experience in understanding and interacting with our e-commerce websites and mobile app, telecommunications disruptions, reliance on third-party software technologies, and rapid changes in technology, among others. If not managed, these risks could adversely impact our operating results.

A significant portion of our digital sales take place through online marketplaces and online retailers and any limitation or restriction, temporarily or otherwise, to sell on these online platforms could harm our profitability and results of operation.

To complement our platform of branded proprietary e-commerce websites and marketplace storefronts, approximately 40% of our digital sales take place through online marketplaces and online retailers and are subject to their terms of service and their various other policies. While we endeavor to materially comply with the terms of service and other policies of each online marketplace and online retailer through which we sell our products, these online marketplaces or online retailers may not have the same determination with respect to our compliance. These online marketplaces and online retailers may, in certain circumstances, refuse to continue hosting us or selling our products or temporarily suspend or discontinue our access to their online platform and any limitation or restriction (whether temporary or otherwise) on our ability to sell our products through these online platforms could harm our profitability and results of operations.

Loss of key members of management could adversely affect our business.

Our future success depends on the continued efforts of the members of our executive management team. If one or more of our executives or other key personnel are unable or unwilling to continue in their present positions, or if we are unable to attract and retain high-quality executives or key personnel in the future, our business may be adversely affected.

[Table of Contents](#)

We depend on our ability to attract, develop, and retain highly qualified personnel.

We consider our employees to be the foundation for our growth and success. As such, our future success depends in large part on our ability to attract, train, retain, and motivate qualified personnel. During the height of our seasonal activities, we have additional employees, including seasonal and part-time employees who generally are not employed during the off-season. If we are unable to attract and hire additional personnel during these seasons, our operating results could be adversely affected.

We may acquire other companies or technologies, which could fail to result in a commercial product or sales, divert our management's attention, result in additional dilution to our stockholders, and otherwise disrupt our business.

Although we currently have no agreements or commitments to complete any such transactions, we may in the future seek to acquire or invest in businesses or technologies that we believe could complement or expand our portfolio, enhance our technical capabilities, or otherwise offer growth opportunities. We may not be able to successfully complete any acquisition we choose to pursue and we may not be able to successfully integrate any acquired business, product or technology in a cost-effective and non-disruptive manner. The pursuit of potential acquisitions may divert the attention of management and cause us to incur various costs and expenses in identifying, investigating, and pursuing suitable acquisitions, whether or not they are consummated. We may not be able to identify desirable acquisition targets or be successful in entering into an agreement with any particular target or obtain the expected benefits of any acquisition or investment.

To date, we have experienced significant growth through acquisitions, completing multiple acquisitions in the last ten years, but we may not be able to successfully integrate an acquired business or technology or to effectively manage the company following an acquisition. Acquisitions could also result in dilutive issuances of equity securities, the use of our available cash, or the incurrence of debt, which could harm our operating results. In addition, if an acquired business fails to meet our expectations, our business, financial condition, and results of operations may be negatively affected.

The outbreak of COVID-19 and associated responses could adversely impact our business and results of operations.

The COVID-19 pandemic has significantly impacted economic activity and markets throughout the world. In response, governmental authorities have imposed, and others in the future may impose, stay-at-home orders, shelter-in-place orders, quarantines, executive orders, and similar government orders and restrictions to control the spread of COVID-19. Such orders or restrictions have resulted in temporary location closures, limitation of location hours, limitations on the number of people in locations or in warehouses, enhanced requirements on sanitation, social distancing practices, and travel restrictions, among other effects. We currently operate as an essential business under the relevant state and local regulations and if this changes, it will adversely impact our financial condition and operating results. Beginning in mid-June and through late July 2020, there have been reports of increasing numbers of new COVID-19 cases in certain of our markets, including larger markets in Florida, Arizona, Texas, and southern California, resulting in some governments extending or re-imposing restrictions. Accordingly, COVID-19 may have negative impacts on our business in the future, and any future adverse impacts on our business may be worse than we anticipate. The ultimate impact will depend on the severity and duration of the current COVID-19 pandemic and future resurgences and actions taken by governmental authorities and other third parties in response, each of which is uncertain, rapidly changing, and difficult to predict. Our recent growth rates amid the COVID-19 pandemic may not be sustainable and may not be indicative of future growth.

[Table of Contents](#)

We are subject to risks associated with leasing retail space subject to long-term and non-cancelable leases.

We lease the majority of our locations under operating leases and our inability to secure appropriate real estate or lease terms could impact our ability to grow. Our leases generally have initial terms of five years, and certain leases can be extended in five-year increments. We generally cannot cancel these leases at our option. If an existing or new location is not profitable, and we decide to close it, as we have done in the past and may do in the future, we may nonetheless be committed to perform our obligations under the applicable lease including, among other things, paying the base rent for the balance of the lease term. Similarly, we may be committed to perform our obligations under the applicable leases even if current locations become unattractive as demographic patterns change. In addition, as each of our leases expire, we may fail to negotiate renewals, either on commercially acceptable terms or at all, which could require us to close locations in desirable locations.

The demand for pool chemicals may be affected by consumer attitudes towards products for environmental or safety reasons.

We could be adversely affected if consumers lose confidence in the safety and quality of our products. The demand for the pool chemicals sold by us may also be affected by changes in consumer attitudes toward pool chemical products for environmental or safety reasons.

Changes in our effective tax rate or exposure to additional income tax liabilities could adversely affect our financial results.

Taxation and tax policy changes, tax rate changes, new tax laws, revised tax law interpretations, and changes in accounting standards and guidance related to tax matters may cause fluctuations in our effective tax rate. Our effective tax rate may also be impacted by changes in the geographic mix of our earnings.

We rely on information technology systems to support our business operations. A significant disturbance or breach of our technological infrastructure could adversely affect our financial condition and results of operations. Additionally, failure to maintain the security of confidential information could damage our reputation and expose us to litigation.

Information technology supports several aspects of our business, including, among others, product sourcing, pricing, consumer service, transaction processing, financial reporting, collections, and cost management. Our ability to operate effectively on a day-to-day basis and accurately report our results depends on a solid technological infrastructure, which is inherently susceptible to internal and external threats. We are vulnerable to interruption by fire, natural disaster, power loss, telecommunication failures, internet failures, security breaches, and other catastrophic events. Exposure to various types of cyberattacks such as malware, computer viruses, worms, or other malicious acts, as well as human error, could also potentially disrupt our operations or result in a significant interruption in the delivery of our goods and services.

Advances in computer and software capabilities, encryption technology, and other discoveries increase the complexity of our technological environment, including how each interact with our various software platforms. Such advances could delay or hinder our ability to process transactions or could compromise the integrity of our data, resulting in a material adverse impact on our financial condition and results of operations. We also may experience occasional system interruptions and delays that make our information systems unavailable or slow to respond, including the interaction of our information systems with those of third parties. A lack of sophistication or reliability of our information systems could adversely impact our operations and consumer service and could require major repairs or replacements, resulting in significant costs and foregone revenue.

Table of Contents

Our numerous procedures and protocols designed to mitigate cybersecurity risks (including processes to timely notify appropriate personnel for assessment and resolution and company-wide training programs), our investments in information technology security and our updates to our business continuity plan may not prevent or effectively mitigate adverse consequences from cybersecurity risks. The failure to maintain security and prevent unauthorized access to our data, our consumers' personal information, including credit card information, or data belonging to our suppliers, could put us at a competitive disadvantage. Such a breach could result in damage to our reputation and subject us to potential litigation, liability, fines, and penalties, resulting in a possible material adverse impact on our financial condition and results of operations.

Improper activities by third parties, exploitation of encryption technology, new data-hacking tools and discoveries, and other events or developments may result in future intrusions into or compromise of our networks, payment card terminals or other payment systems.

The techniques used by criminals to obtain unauthorized access to sensitive data change frequently and often cannot be recognized until launched against a target; accordingly, we may not be able to anticipate these frequently changing techniques or implement adequate preventive measures for all of them. Any unauthorized access into our consumers' sensitive information, or data belonging to us or our suppliers, even if we are compliant with industry security standards, could put us at a competitive disadvantage, result in deterioration of our consumers' confidence in us, and subject us to potential litigation, liability, fines, penalties, and consent decrees, resulting in a possible material adverse impact on our financial condition and results of operations.

As a merchant that accepts debit and credit cards for payment, we are subject to the Payment Card Industry Data Security Standard ("PCI DSS") issued by the PCI Council. PCI DSS contains compliance guidelines and standards with regard to our security surrounding the physical administrative, technical storage, processing, and transmission of individual cardholder data. By accepting debit cards for payment, we are also subject to compliance with American National Standards Institute ("ANSI") data encryption standards and payment network security operating guidelines. Failure to be PCI compliant or to meet other payment card standards may result in the imposition of financial penalties or the allocation by the card brands of the costs of fraudulent charges to us. The Fair and Accurate Credit Transactions Act ("FACTA") also requires systems that print payment card receipts to employ personal account number truncation so that the consumer's full account number is not viewable on the slip. Despite our efforts to comply with these or other payment card standards and other information security measures, we cannot be certain that all of our IT systems will be able to prevent, contain, or detect all cyberattacks or intrusions from known malware or malware that may be developed in the future. To the extent that any disruption results in the loss, damage, or misappropriation of information, we may be adversely affected by claims from consumers, financial institutions, regulatory authorities, payment card associations, and others. In addition, privacy and information security laws and standards continue to evolve and could expose us to further regulatory burdens. The cost of complying with stricter laws and standards, including PCI DSS, ANSI, and FACTA data encryption standards and the California Consumer Privacy Act which took effect in January 2020, could be significant.

Our operating results will be harmed if we are unable to effectively manage and sustain our future growth or scale our operations.

We may not be able to manage our future growth efficiently or profitably. Our revenue and operating margins, or revenue and margin growth, may be less than expected. If we are unable to scale our operations efficiently or maintain pricing without significant discounting, we may fail to achieve expected operating margins, which would have a material and adverse effect on our operating results. Growth may also stress our ability to adequately manage our operations, quality of products,

Table of Contents

safety, and regulatory compliance. If growth significantly decreases, it will negatively impact our cash reserves, and it may be necessary to obtain additional financing, which may increase indebtedness or result in dilution to shareholders. Further, we may not be able to obtain additional financing on acceptable terms, if at all.

We are subject to, and may in the future be subject to, legal or other proceedings that could have a material adverse effect on us.

From time to time, we are a party to legal proceedings, including matters involving personnel and employment issues, personal injury, antitrust claims, intellectual property claims, and other proceedings arising in or outside of the ordinary course of business. In addition, there are an increasing number of cases being filed against companies generally, including class-action allegations under federal and state wage and hour laws. We could be exposed to legal proceedings arising out of the COVID-19 pandemic, including wrongful death actions brought on behalf of employees who contracted COVID-19 while performing their employment-related duties. We estimate our exposure to these legal proceedings and establish reserves for the probable and reasonably estimated liabilities. Assessing and predicting the outcome of these matters involves substantial uncertainties. Although not currently anticipated by management, unexpected outcomes in these legal proceedings or changes in management's forecast assumptions or predictions could have a material adverse impact on our results of operations.

A terrorist attack or the threat of a terrorist attack could have a material adverse effect on our business.

Discretionary spending on chemicals, equipment and parts, cleaning and maintenance equipment, and safety, recreational, and fitness-related products, such as ours, is generally adversely affected during times of economic or political uncertainty. The potential for terrorist attacks, the national and international responses to terrorist attacks, and other acts of war or hostility could create these types of uncertainties and negatively impact our business for the short- or long-term in ways that cannot presently be predicted.

Risks Related to the Manufacturing, Processing, and Supply of Our Products

Our business includes the packaging and storage of chemicals and an accident related to these chemicals could subject us to liability and increased costs.

We operate chemical repackaging facilities and we store chemicals in our locations and in our distribution facilities. Because some of the chemicals we repackage and store are flammable or combustible compounds, we must comply with various fire and safety ordinances. However, a release at a location or a fire at one of our facilities could give rise to liability claims against us and potential environmental liability. In addition, if an incident involves a repackaging or distribution facility, we might be required temporarily to use alternate sources of supply that could increase our cost of sales.

We maintain what we believe is prudent insurance coverage. However, we cannot guarantee that our insurance coverage will be adequate to cover future claims that may arise or that we will be able to maintain adequate insurance in the future at rates we consider reasonable. Successful claims for which we are not fully insured may adversely affect our working capital and profitability. In addition, changes in the insurance industry have generally led to higher insurance costs and decreased availability of coverage.

Even though we believe that our internal training curriculum and compliance programs ensure that our employees follow the applicable operating procedures and regulations, we cannot guarantee that no accidents or incidents will arise that could expose us to liability and have a negative impact on our operations and results.

[Table of Contents](#)

Product supply disruptions may have an adverse effect on our profitability and operating results.

We rely on various suppliers and vendors to provide and deliver product inventory on a continuous basis, some of which are located outside of the United States. We could suffer significant product inventory losses and significant lost revenue in the event of the loss or a shutdown of a major supplier or vendor, extended power outages, natural disaster, or other catastrophic occurrences. Due to the COVID-19 pandemic and the resulting dislocation of workplaces and the economy, the ability of vendors to supply required products may be impaired because of the illness or absenteeism of their workforces, government mandated shutdown orders or impaired financial conditions. The supply of each product may not return to pre-COVID-19 levels, and if so, products may return to pre-COVID levels at different times, and our efforts to ensure in-stock positions for all of the products that our consumers require may not be successful.

The cost of raw materials could increase our cost of goods sold and cause our results of operations and financial condition to suffer.

Our principal chemical raw materials are granular chlorine compounds, which are commodity materials. The prices of granular chlorine compounds are a function of, among other things, manufacturing capacity and demand. We have generally passed through chlorine price increases to our consumers. The price of granular chlorine compounds may increase in the future and we may not be able to pass on any such increase to our consumers. We purchase granular chlorine compounds primarily from the nation's largest suppliers. We believe that reliable alternate sources of supply are available for all of our raw materials and finished goods, including chlorine products. We may not continue to have access to reliable sources of supply.

Additionally, significant price fluctuations or shortages in raw materials needed for our products may increase our cost of goods sold and cause our results of operations and financial condition to suffer.

We depend on suppliers to consistently supply us with products, and any failure to procure such products could have a material adverse effect on our business, product inventories, sales and profit margins.

Our suppliers (and those they depend upon for materials and services) are subject to risks, including labor disputes or constraints, union organizing activities, financial liquidity, inclement weather, natural disasters, significant public health and safety events, supply constraints, and general economic and political conditions that could limit their ability to provide us with quality products. These risks may delay or preclude delivery of products to us on a timely basis or at all.

Risks Related to Commercialization of Our Products

Even if we are able to attain significant market acceptance of our planned or future products or services, the commercial success of our planned or future products is not guaranteed.

Our future financial success will depend substantially on our ability to effectively and profitably market and sell our planned and future products and services. Even if we are able to attain significant market acceptance, the commercial success of our planned or future products or services is dependent on a number of additional factors. Successful growth of our sales and marketing efforts will depend on the strength of our marketing infrastructure and the effectiveness of our sales and marketing strategies. Our ability to satisfy product demand driven by our sales and marketing efforts will be largely dependent on the ability to maintain a commercially viable manufacturing process that is compliant with regulatory standards. If we fail to market and sell our planned or future products or

[Table of Contents](#)

services successfully, we will not be able to achieve profitability, which could have a material adverse effect on our business, financial condition, and results of operations.

We may implement a product recall or voluntary market withdrawal, which could significantly increase our costs, damage our reputation, and disrupt our business.

The manufacturing, packaging, marketing, and processing of our products involves an inherent risk that our processes do not meet applicable quality standards and requirements. In that event, we may voluntarily implement a recall or market withdrawal or may be required to do so by a regulatory authority. A recall or market withdrawal of one of our products would be costly and would divert management resources. A recall or withdrawal of one of our products, or a similar product processed by another entity, also could impair sales of our products because of confusion concerning the scope of the recall or withdrawal, or because of the damage to our reputation for quality and safety.

If we do not manage product inventory in an effective and efficient manner, it could adversely affect profitability.

Many factors affect the efficient use and planning of product inventory, such as effectiveness of predicting demand, preparing manufacturing to meet demand, meeting product mix and product demand requirements, and managing product expiration. We may be unable to manage our inventory efficiently, keep inventory within expected budget goals, keep our work-in-process inventory on hand or manage it efficiently, control expired product, or keep sufficient product on hand to meet demand. We may not be able to keep inventory costs within our target levels. Failure to do so may harm our long-term growth prospects.

If we do not continue to obtain favorable purchase terms with manufacturers, it could adversely affect our operating results.

We believe that because we are one of the largest purchasers of swimming pool supplies for retail sales in the United States, we are able to obtain very favorable pricing on our purchases from outside suppliers. Most raw materials and those products not repackaged by us are purchased directly from manufacturers. It is common in the swimming pool supply industry for certain manufacturers to offer extended payment terms on certain products to quantity purchasers such as us. These payment terms are typically available to us for pre-season or early season purchases. If we do not continue to maintain such favorable purchase terms with manufacturers, it could adversely affect our operating results.

Risks Related to Government Regulation

The nature of our business subjects us to compliance with employment, environmental, health, transportation, safety, and other governmental regulations.

We are subject to federal, state, and local laws and regulations relating to matters such as product labeling, weights and measures, zoning, land use, environmental protection, local fire codes, and workplace safety, including regulation by the Environmental Protection Agency, the Consumer Product Safety Commission, the Department of Transportation, the Occupational Safety and Health Administration, and the National Fire Protection Agency and corresponding state and local authorities. Most of these requirements govern the packaging, labeling, handling, transportation, storage, disposal, and sale of chemicals. We store certain types of chemicals at each of our locations and the storage of these items is strictly regulated by local fire codes. In addition, we sell algacides and related products that are regulated under the Federal Insecticide, Fungicide and Rodenticide Act, and various state pesticide laws. These laws primarily relate to labeling, annual registration, and licensing.

Table of Contents

Management has processes in place to facilitate and support our compliance with these requirements. However, failure to comply with these laws and regulations may result in investigations, the assessment of administrative, civil and criminal fines, damages, seizures, disgorgements, penalties, or the imposition of injunctive relief. Moreover, compliance with such laws and regulations in the future could prove to be costly. Although we presently do not expect to incur any capital or other expenditures relating to regulatory matters in amounts that may be material to us, we may be required to make such expenditures in the future. These laws and regulations have changed substantially and rapidly in recent years, and we anticipate that there will be continuing changes.

The clear trend in environmental, health, transportation, and safety regulations is to place more restrictions and limitations on activities that impact the environment, such as the use and handling of chemicals. Increasingly, strict restrictions and limitations have resulted in higher operating costs for us and it is possible that the costs of compliance with such laws and regulations will continue to increase. Our attempts to anticipate future regulatory requirements that might be imposed and our plans to remain in compliance with changing regulations and to minimize the costs of such compliance may not be as effective as we anticipate.

Our failure to protect our technology systems and comply with data protection laws and regulations could lead to government enforcement actions and significant penalties against us and adversely impact our operating results.

We rely on information technology systems to process, transmit, and store electronic information in our day-to-day operations. Similar to other companies, the size and complexity of our information technology systems make them vulnerable to a cyberattack, malicious intrusion, breakdown, destruction, and loss of data privacy or other significant disruption. Our information systems require an ongoing commitment of resources to maintain, protect, and enhance existing systems and develop new systems to keep pace with continuing changes in information processing technology, evolving systems and regulatory standards and the increasing need to protect consumer information. Any failure by us to maintain or protect our information technology systems and data integrity, including from cyberattacks, intrusions or other breaches, could result in the unauthorized access to consumer data and personally identifiable information, theft of intellectual property or other misappropriation of assets, or otherwise compromise our confidential or proprietary information and disrupt our operations.

Compliance with applicable data privacy and security laws and regulations (including applicable industry standards) may increase our costs of doing business.

Our employees, commercial partners, and vendors may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements.

We are exposed to the risk that our employees, commercial partners, and vendors may engage in fraudulent or illegal activity. Misconduct by these parties could include intentional, reckless, and/or negligent conduct or disclosure of unauthorized activities to us that violate: (i) the rules of the applicable regulatory bodies; (ii) manufacturing standards; (iii) data privacy laws or other similar non-United States laws; or (iv) laws that require the true, complete and accurate reporting of financial information or data. These laws may impact, among other things, future sales, marketing, and education programs.

It is not always possible to identify and deter misconduct by our employees and other third parties, and the precautions we take to detect and prevent these activities may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. In addition, we are subject to the risk that a person or government could allege such fraud or other

Table of Contents

misconduct, even if none occurred. If any such actions are instituted against us and we are not successful in defending ourselves or asserting our rights, those actions could result in the imposition of significant fines or other sanctions, including the imposition of civil, criminal, and administrative penalties, additional integrity reporting and oversight obligations. Whether or not we are successful in defending against any such actions or investigations, we could incur substantial costs, including legal fees, and divert the attention of management in defending ourselves against any of these claims or investigations, which could have a material adverse effect on our business, financial condition, and results of operations.

We depend on a network of suppliers to source our products, including our own branded products. Product quality, warranty claims or safety concerns could negatively impact our sales and expose us to litigation.

We rely on manufacturers and other suppliers to provide us with the products we sell. As we increase the number of branded products we sell, our exposure to potential liability claims may increase. Product and service quality issues could negatively impact consumer confidence in our brands and our business. If our product and service offerings do not meet applicable safety standards or our consumers' expectations regarding safety or quality, we could experience lost sales and increased costs and be exposed to legal, financial, and reputational risks, as well as governmental enforcement actions. Actual, potential or perceived product safety concerns, including health-related concerns, could expose us to litigation, as well as government enforcement actions, and result in costly product recalls and other liabilities.

In addition, if our products are defectively designed, manufactured or labeled, contain defective components or are misused, we may become subject to costly litigation initiated by consumers. Product liability claims could harm our reputation, divert management's attention from our core business, be expensive to defend, and may result in sizable damage awards against us. Although we maintain product liability insurance, we may not have sufficient insurance coverage for future product liability claims. We may not be able to obtain insurance in amounts or scope sufficient to provide us with adequate coverage against all potential liabilities. Any product liability claims brought against us, with or without merit, could increase our product liability insurance rates or prevent us from securing continuing coverage, harm our reputation, significantly increase our expenses, and reduce product sales. Product liability claims could cause us to incur significant legal fees and deductibles and claims in excess of our insurance coverage would be paid out of cash reserves, harming our financial condition and operating results. In addition, successful product liability claims made against one of our competitors could cause claims to be made against us or expose us to a perception that we are vulnerable to similar claims. Claims against us, regardless of their merit or potential outcome, may also hurt our ability to obtain acceptance of our products or to expand our business.

Risks Related to Intellectual Property Matters

If we are unable to adequately protect our intellectual property rights, or if we are accused of infringing on the intellectual property rights of others, our competitive position could be harmed or we could be required to incur significant expenses to enforce or defend our rights.

In the course of our business, we employ various trademarks, trade names, and service marks as well as our logo in packaging and advertising of our products. Our commercial success will depend in part on our success in obtaining and maintaining issued trademarks, trade names, and service marks in the United States and protecting our proprietary technology. If we do not adequately protect our intellectual property and proprietary technology, competitors may be able to use our technologies or the goodwill we have acquired in the marketplace and erode or negate any competitive advantage we may have, which could harm our business and ability to achieve profitability.

[Table of Contents](#)

Our ability to enforce our intellectual property rights depends on our ability to detect infringement. It may be difficult to detect infringers who do not advertise the components that are used in their products. Moreover, it may be difficult or impossible to obtain evidence of infringement in a competitor's or potential competitor's product. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded if we were to prevail may not be commercially meaningful.

Third parties may assert ownership or commercial rights to inventions we develop.

Third parties may in the future make claims challenging the inventorship or ownership of our intellectual property. In addition, we may face claims by third parties that our agreements with employees obligating them to assign intellectual property to us are ineffective or in conflict with prior or competing contractual obligations of assignment, which could result in ownership disputes regarding intellectual property we have developed or will develop and interfere with our ability to capture the commercial value of such intellectual property. Litigation may be necessary to resolve an ownership dispute, and if we are not successful, we may be precluded from using certain intellectual property or may lose our exclusive rights in such intellectual property. Either outcome could harm our business and competitive position.

Our success depends in part on our ability to operate without infringing on or misappropriating the proprietary rights of others, and if we are unable to do so we may be liable for damages.

We cannot be certain that United States or foreign patents or patent applications of other companies do not exist or will not be issued that would prevent us from commercializing our products. Third parties may sue us for infringing or misappropriating their patent or other intellectual property rights. Intellectual property litigation is costly. If we do not prevail in litigation, in addition to any damages we might have to pay, we could be required to cease the infringing activity or obtain a license requiring us to make royalty payments. It is possible that a required license may not be available to us on commercially acceptable terms, if at all. In addition, a required license may be non-exclusive, and therefore our competitors may have access to the same technology licensed to us. If we fail to obtain a required license or are unable to design around another company's patent, we may be unable to make use of some of the affected products, which would reduce our revenues.

The defense costs and settlements for patent infringement lawsuits are not covered by insurance. Patent infringement lawsuits can take years to settle. If we are not successful in our defenses or are not successful in obtaining dismissals of any such lawsuit, legal fees or settlement costs could have a material adverse effect on our results of operations and financial position.

If our trademarks and trade names are not adequately protected, we may not be able to build name recognition in our markets of interest.

If our trademarks and trade names are not adequately protected, we may not be able to build name recognition in our target markets and our business may be adversely affected. At times, competitors may adopt trade names or trademarks similar to ours, thereby impeding our ability to build brand identity, possibly leading to market confusion and potentially requiring us to pursue legal action. In addition, there could be potential trade name or trademark infringement claims brought by owners of other registered trademarks or trademarks that incorporate variations of our unregistered trademarks or trade names. If we are unable to successfully register our trademarks and trade names and establish name recognition based on our trademarks and trade names, then we may not be able to compete effectively and our business may be adversely affected. Our efforts to enforce or protect our proprietary rights related to trademarks, domain names, copyrights, or other intellectual property may be ineffective and could result in substantial costs and diversion of resources and could adversely impact our financial condition or results of operations.

[Table of Contents](#)

Recent changes in United States patent laws may limit our ability to obtain, defend, and/or enforce our patents.

The United States has recently enacted and implemented wide ranging patent reform legislation. The United States Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in certain circumstances or weakening the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the value of patents, once obtained. Depending on actions by the United States Congress, the United States federal courts, and the United States Patent and Trademark Office, the laws and regulations governing patents could change in unpredictable ways that could weaken our ability to obtain new patents or to enforce patents that we have licensed or that we might obtain in the future. Similarly, changes in patent law and regulations in other countries or jurisdictions, changes in the governmental bodies that enforce them or changes in how the relevant governmental authority enforces patent laws or regulations may weaken our ability to obtain new patents or to enforce patents that we have licensed or that we may obtain in the future.

Risks Related to Our Indebtedness

Our substantial indebtedness could materially adversely affect our financial condition and our ability to operate our business, react to changes in the economy or industry or pay our debts and meet our obligations under our debt agreements, and could divert our cash flow from operations to debt payments.

We have a substantial amount of indebtedness. As of June 27, 2020, our total borrowings under our Senior Unsecured Notes, Term Loan, and Credit Agreement, dated as of October 16, 2012, as amended from time to time, among Leslie's Poolmart, Inc, the subsidiary borrowers from time to time party hereto, Leslie's, Inc., each lender from time to time party hereto, Bank of America, N.A., as Administrative Agent, and U.S. Bank National Association, as Co-Collateral Agent (the "ABL Credit Facility," and, together with the Senior Unsecured Notes and the Term Loan, the "Credit Facilities") was \$1.2 billion. Subject to restrictions in the agreements governing our Credit Facilities, we may incur additional debt.

Our substantial debt could have important consequences to you, including the following:

- it may be difficult for us to satisfy our obligations, including debt service requirements under our existing or future debt agreements, resulting in possible defaults on and acceleration of such debt;
- our ability to obtain additional financing for working capital, capital expenditures, debt service requirements, or other general corporate purposes may be impaired;
- a substantial portion of cash flow from operations may be dedicated to the payment of principal and interest on our debt, therefore reducing our ability to use our cash flow to fund our operations, capital expenditures, future business opportunities, and acquisitions or for other purposes;
- we are more vulnerable to economic downturns and adverse industry conditions and our flexibility to plan for, or react to, changes in our business or industry is more limited;
- our ability to capitalize on business opportunities and to react to competitive pressures, as compared to our competitors, may be compromised due to our high level of debt and restrictive covenants contained in the agreements governing our existing and any future debt; and
- our ability to borrow additional funds or to refinance debt may be limited.

Table of Contents

Furthermore, all of our debt under our Credit Facilities bears interest at variable rates. If these rates were to increase significantly, our ability to borrow additional funds may be reduced and the risks related to our substantial debt would intensify.

Servicing our debt requires a significant amount of cash. Our ability to generate sufficient cash depends on numerous factors beyond our control, and we may be unable to generate sufficient cash flow to service our debt obligations.

Our business may not generate sufficient cash flow from operating activities to service our debt obligations. Our ability to make payments on and to refinance our debt and to fund planned capital expenditures depends on our ability to generate cash in the future. To some extent, this is subject to general economic, financial, competitive, legislative, regulatory, and other factors that are beyond our control.

If we are unable to generate sufficient cash flow from operations to service our debt and meet our other commitments, we may need to refinance all or a portion of our debt, sell material assets or operations, delay capital expenditures, or raise additional debt or equity capital. We may not be able to effect any of these actions on a timely basis, on commercially reasonable terms or at all, and these actions may not be sufficient to meet our capital requirements. In addition, the terms of our existing or future debt agreements may restrict us from pursuing any of these alternatives.

Restrictive covenants in the agreements governing our Credit Facilities may restrict our ability to pursue our business strategies, and failure to comply with any of these restrictions could result in acceleration of our debt.

The operating and financial restrictions and covenants in the agreements governing our Credit Facilities may materially adversely affect our ability to finance future operations or capital needs or to engage in other business activities. Such agreements limit our ability, among other things, to:

- incur additional debt or issue certain preferred shares;
- pay dividends on or make distributions in respect of our common stock or make other restricted payments;
- make certain investments;
- sell certain assets;
- create liens;
- consolidate, merge, sell, or otherwise dispose of our assets;
- make certain payments in respect of certain debt obligations;
- enter into certain transactions with our affiliates; and
- designate our subsidiaries as unrestricted subsidiaries.

A breach of any of these covenants could result in an event of default under our Credit Facilities. Upon the occurrence of an event of default under any of our Credit Facilities, the lenders could elect to declare all amounts outstanding under our Credit Facilities to be immediately due and payable and terminate all commitments to extend further credit. If we were unable to repay those amounts, the lenders under our Credit Facilities could proceed against the collateral granted to them to secure the debt under the Credit Facilities. We have pledged substantially all of our assets as collateral to secure our Credit Facilities. Our future operating results may not be sufficient to enable compliance with our Credit Facilities, and we may not have sufficient assets to repay amounts outstanding under our Credit Facilities. In addition, in the event of an acceleration of our debt upon an event of default, we may not have or be able to obtain sufficient funds to make any accelerated payments.

[Table of Contents](#)

Furthermore, the terms of any future debt we may incur could have further additional restrictive covenants. We may not be able to maintain compliance with these covenants in the future, and in the event that we are not able to maintain compliance, we cannot assure you that we will be able to obtain waivers from the lenders or amend the covenants.

Despite current debt levels, we and our subsidiaries may still be able to incur substantially more debt. This could further exacerbate the risks associated with our substantial leverage.

We and our subsidiaries may be able to incur substantial additional debt in the future. Although the agreements governing our Credit Facilities contain restrictions on the incurrence of additional debt, these restrictions are subject to a number of qualifications and exceptions, and the debt incurred in compliance with these restrictions could be substantial. Additionally, we may successfully obtain waivers of these restrictions. If we incur additional debt above the levels currently in effect, the risks associated with our leverage, including those described above, would increase.

The phaseout of the London Interbank Offered Rate (LIBOR), or the replacement of LIBOR with a different reference rate, may adversely affect interest rate.

On July 27, 2017, the United Kingdom's Financial Conduct Authority, which regulates LIBOR, announced that it intends to phase out LIBOR by the end of 2021. It is unclear if LIBOR will cease to exist at that time or if new methods of calculating LIBOR will be established such that it continues to exist after 2021. The United States Federal Reserve, in conjunction with the Alternative Reference Rates Committee, a steering committee comprised of large U.S. financial institutions, is considering replacing LIBOR with a new index calculated by short-term repurchase agreements, backed by U.S. Treasury securities. The future of LIBOR at this time is uncertain and any changes in the methods by which LIBOR is determined or regulatory activity related to LIBOR's phaseout could cause LIBOR to perform differently than in the past or cease to exist. If LIBOR ceases to exist, we may need to renegotiate our credit agreements and related agreements, which may result in interest rates and/or payments that do not correlate over time with the interest rates and/or payments that would have been made on our obligations if LIBOR was available in its current form. Changes in the method of calculating LIBOR, or the replacement of LIBOR with an alternative rate or benchmark, may adversely affect interest rates and result in higher borrowing costs. This could materially and adversely affect our results of operations, cash flow and liquidity.

Risks Related to this Offering and Ownership of Our Common Stock

There has been no prior market for our common stock. An active market may not develop or be sustainable, and investors may be unable to resell their shares at or above the initial public offering price.

There has been no public market for our common stock prior to this offering. The initial public offering price for our common stock was determined through negotiations between the representatives of the underwriters and us and may vary from the market price of our common stock following the completion of this offering. An active or liquid market in our stock may not develop upon completion of this offering or, if it does develop, it may not be sustainable. In the absence of an active trading market for our common stock, you may not be able to resell your shares at or above the initial public offering price or at all. We cannot predict the prices at which our common stock will trade.

Prior to the date hereof, certain funds and accounts managed by subsidiaries of BlackRock, Inc. have indicated an interest in purchasing an aggregate of up to \$100.0 million of our common stock in this offering at the initial public offering price. Because this indication of interest is not a binding agreement or commitment to purchase, one or more funds and/or accounts managed by BlackRock

Table of Contents

could determine to purchase more, fewer, or no shares in this offering or the underwriters could determine to sell more, fewer, or no shares to any of such funds or accounts. The underwriters will receive the same discount on any of our shares of common stock purchased by these funds and/or accounts as they will from any other shares of common stock sold to the public in this offering.

If one or more funds or accounts managed by BlackRock are allocated all or a portion of the shares in which they have indicated an interest in this offering or more, and purchase any such shares, such purchase could reduce the available public float for our shares if these funds and/or accounts hold such shares long term.

Our stock price may be volatile or may decline regardless of our operating performance, resulting in substantial losses for investors purchasing shares in this offering.

The market price of our common stock may fluctuate significantly in response to numerous factors, many of which are beyond our control, including:

- actual or anticipated fluctuations in our results of operations;
- the financial projections we may provide to the public, any changes in these projections, or our failure to meet these projections;
- failure of securities analysts to initiate or maintain coverage of us, changes in financial estimates or ratings by any securities analysts who follow us or our failure to meet these estimates or the expectations of investors;
- announcements by us or our competitors of significant technical innovations, acquisitions, strategic partnerships, joint ventures, results of operations, or capital commitments;
- changes in operating performance and stock market valuations of other retail companies generally, or those in our industry in particular;
- price and volume fluctuations in the overall stock market, including as a result of trends in the economy as a whole;
- changes in our board of directors or management;
- sales of large blocks of our common stock, including sales by our executive officers or directors;
- lawsuits threatened or filed against us;
- changes in laws or regulations applicable to our business;
- changes in our capital structure, such as future issuances of debt or equity securities;
- short sales, hedging, and other derivative transactions involving our capital stock;
- general economic conditions in the United States;
- other events or factors, including those resulting from war, incidents of terrorism, pandemics, or other public health emergencies or responses to these events; and
- the other factors described in the sections titled “Risk Factors” and “Cautionary Note Regarding Forward-Looking Statements.”

If securities or industry analysts do not publish research or reports about our business, or they publish negative reports about our business, our share price and trading volume could decline.

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business, our market, and our competitors. We

[Table of Contents](#)

do not have any control over these analysts. If one or more of the analysts who cover us downgrade our shares or change their opinion of our shares, our share price would likely decline. If one or more of these analysts cease coverage of us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us more difficult, limit attempts by our stockholders to replace or remove our current management and limit the market price of our common stock.

Provisions in our certificate of incorporation and bylaws, as will be amended and restated prior to completion of this offering, may have the effect of delaying or preventing a change of control or changes in our management. Our amended and restated certificate of incorporation and amended and restated bylaws include provisions that:

- permit the board of directors to establish the number of directors and fill any vacancies and newly created directorships;
- provide that, from and after the date on which our Sponsors cease to beneficially own at least a majority of the outstanding shares of our common stock (the "Trigger Event"), a director may be removed only for cause and only by the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Company entitled to vote thereon, voting together as a single class;
- provide that, from and after the Trigger Event, the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Company entitled to vote thereon, voting together as a single class, is required in order to amend certain provisions of our second amended and restated certificate of incorporation regarding the amendment of our second amended and restated certificate of incorporation, the composition and authority of our board of directors, the election and removal of directors, limitations of director liability, stockholder meetings, corporate opportunities, choice of forum and the interpretation of our second amended and restated certificate of incorporation;
- authorize the board of directors to amend our bylaws without the assent or vote of shareholders, provided that, from and after the Trigger Event, stockholders may amend the bylaws with the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Company entitled to vote thereon, voting together as a single class;
- from and after the Trigger Event and with the exception of actions required or permitted to be taken by the holders of preferred stock, prohibit stockholder action by written consent, instead requiring stockholder actions to be taken at a meeting of our stockholders;
- permit our board of directors, without further action by our stockholders, to fix the rights, preferences, privileges, and restrictions of preferred stock, the rights of which may be greater than the rights of our common stock;
- restrict the forum for certain litigation against us to Delaware;
- establish advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon by stockholders at annual stockholder meetings; and
- provide for a staggered board.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. As a result, these provisions may adversely affect the market price and market for our common stock if they are viewed as limiting the liquidity of our stock or as discouraging takeover attempts in the future.

[Table of Contents](#)

The provision of our second amended and restated certificate of incorporation requiring exclusive forum in certain courts in the State of Delaware or the federal district court for the District of Delaware for certain types of lawsuits may have the effect of discouraging lawsuits against our directors and officers.

Our second amended and restated certificate of incorporation will require, to the fullest extent permitted by law, that (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, or other employees or stockholders to us or our stockholders, creditors or other constituents, or a claim of aiding and abetting any such breach of fiduciary duty, (iii) any action asserting a claim against us or our directors or officers arising pursuant to any provision of the DGCL or our second amended and restated certificate of incorporation or our amended and restated bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, (iv) any action to interpret, apply, enforce or determine the validity of our second amended and restated certificate of incorporation or amended and restated bylaws, (v) any action asserting a claim against us or our directors or officers governed by the internal affairs doctrine or (vi) any action asserting an "internal corporate claim" as that term is defined in Section 115 of the DGCL will have to be brought only in the Court of Chancery of the State of Delaware (or if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any other state court of the State of Delaware, or if no state court of the State of Delaware has subject matter jurisdiction, the federal district court for the District of Delaware), unless we consent in writing to the selection of an alternative forum. The foregoing provision will not apply to claims arising under the Securities Act or the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Unless we consent in writing to the selection of an alternative forum, the federal district court for the District of Delaware shall be, to the fullest extent permitted by law, the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act against us or any of our directors or officers. Although we believe these exclusive forum provisions benefit us by providing increased consistency in the application of Delaware law and federal securities laws in the types of lawsuits to which each applies, the exclusive forum provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers, or stockholders, which may discourage lawsuits with respect to such claims. Our stockholders will not be deemed to have waived our compliance with the federal securities laws and the rules and regulations thereunder as a result of our exclusive forum provisions. Further, in the event a court finds either exclusive forum provision contained in our second amended and restated certificate of incorporation to be unenforceable or inapplicable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, operating results and financial condition.

We have broad discretion to determine how to use the funds we receive from this offering and may use them in ways that may not enhance our operating results or the price of our common stock.

We have broad discretion over the use of proceeds we receive from this offering, and we could spend the proceeds we receive from this offering in ways our stockholders may not agree with or that do not yield a favorable return, or no return at all. We intend to use the net proceeds of this offering to repay in full the entire outstanding amount of our Senior Unsecured Notes and, to the extent of any remaining net proceeds, for working capital and general corporate purposes, which may include the repayment of a portion of the borrowings under our Term Loan. However, our use of these proceeds may differ substantially from our current plans. If we do not invest or apply the proceeds we receive from this offering in ways that improve our operating results, we may fail to achieve expected financial results, which could cause our stock price to decline.

[Table of Contents](#)

We will incur significant additional costs as a result of being a public company, and our management will be required to devote substantial time to compliance with our public company responsibilities and corporate governance practices.

Upon completion of this offering, we expect to incur costs associated with corporate governance requirements that will become applicable to us as a public company, including rules and regulations of the SEC, under the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley Act”), the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and the Exchange Act. These rules and regulations are expected to significantly increase our accounting, legal, and financial compliance costs and make some activities more time-consuming. We also expect these rules and regulations to make it more expensive for us to maintain directors’ and officers’ liability insurance. As a result, it may be more difficult for us to attract and retain qualified persons to serve on our board of directors or as executive officers. Furthermore, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. We cannot predict or estimate the amount of additional costs we will incur as a public company or the timing of such costs. Accordingly, increases in costs incurred as a result of becoming a publicly traded company may adversely affect our business, financial condition, and results of operations.

If we are unable to effectively implement or maintain a system of internal control over financial reporting, we may not be able to accurately or timely report our financial results and our stock price could be adversely affected.

Section 404 of the Sarbanes-Oxley Act requires us to evaluate the effectiveness of our internal control over financial reporting as of the end of each fiscal year, include a management report assessing the effectiveness of our internal control over financial reporting, and include a report issued by our independent registered public accounting firm based on its audit of the Company’s internal control over financial reporting, in each case, beginning with our Annual Report on Form 10-K for the year ending October 2, 2021. We may identify weaknesses or deficiencies that we may be unable to remedy before the requisite deadline for those reports. Our ability to comply with the annual internal control report requirements will depend on the effectiveness of our financial reporting and data systems and controls across the Company. We expect these systems and controls to involve significant expenditures and to become increasingly complex as our business grows. To effectively manage this complexity, we will need to continue to improve our operational, financial, and management controls, and our reporting systems and procedures. Any weaknesses or deficiencies or any failure to implement required new or improved controls, or difficulties encountered in the implementation or operation of these controls, could harm our operating results and cause us to fail to meet our financial reporting obligations or result in material misstatements in our financial statements, which could adversely affect our business and reduce our stock price.

Future sales of shares by existing stockholders could cause our stock price to decline.

If our existing stockholders sell, or indicate an intention to sell, substantial amounts of our common stock in the public market after the contractual lock-up agreements described below expire and other restrictions on resale lapse, the trading price of our common stock could decline below the initial public offering price. Based on shares outstanding as of June 27, 2020, upon the closing of this offering, we will have outstanding 186.6 million shares of common stock. Of these shares, all of the shares of common stock offered in connection with this offering will be eligible for sale in the public market and substantially all of the remaining shares of common stock will be subject to a 180-day contractual lock-up with the underwriters. The underwriters, may permit our executive officers, directors, employees, and current stockholders who are subject to the contractual lock-up to sell shares prior to the expiration of the lock-up agreements. Upon expiration of the contractual lock-up agreements with the underwriters, and based on shares outstanding as of June 27, 2020, approximately 146.6 million additional shares will be eligible for sale in the public market.

Table of Contents

You will experience an immediate and substantial dilution of the net tangible book value of the common shares you purchase in this offering.

The initial public offering price per share of our common stock is substantially higher than our net tangible book value per common share immediately after this offering. For this purpose, the net tangible book value per share represents the total amount of our tangible assets, less the total amount of liabilities, divided by the total number of shares outstanding, and dilution is determined by subtracting the net tangible book value per share after the offering from the initial public offering price per share. As a result, you may pay a price per share that substantially exceeds the book value of our assets after subtracting our liabilities. Investors who purchase common stock in this offering will be diluted by \$18.16 per share after giving effect to the sale of shares of common stock in this offering at the initial public offering price. If we grant options in the future to our employees, and those options are exercised or other issuances of common stock are made, there will be further dilution.

Further, we may need to raise additional funds in the future to finance our operations and/or acquire complementary businesses. If we obtain capital in future offerings on a per-share basis that is less than the initial public offering price per share, the value of the price per share of your common stock will likely be reduced. In addition, if we issue additional equity securities in a future offering and you do not participate in such offering, there will effectively be dilution in your percentage ownership interest in the Company.

We will in the future grant stock options and other awards to our certain current or future officers, directors, employees, and consultants under additional plans or individual agreements. The grant, exercise, vesting, and/or settlement of these awards, as applicable, will have the effect of diluting your ownership interests in the Company. We may also issue additional equity securities in connection with other types of transactions, including shares issued as part of the purchase price for acquisitions of assets or other companies from time to time or in connection with strategic partnerships or joint ventures, or as incentives to management or other providers of resources to us. Such additional issuances are likely to have the same dilutive effect.

Affiliates of Goldman Sachs & Co. LLC, an underwriter in this offering, will have an interest in this offering beyond customary underwriting discounts and commissions.

Certain affiliates of Goldman Sachs & Co. LLC, an underwriter in this offering, currently hold 100% of our Senior Unsecured Notes and a portion of our Term Loan and, as such, will receive 5% or more of the net proceeds of this offering due to the redemption in full of our Senior Unsecured Notes with the net proceeds of this offering. As such, Goldman Sachs & Co. LLC is deemed to have a "conflict of interest" under Rule 5121. Accordingly, this offering will be made in compliance with the applicable provisions of Rule 5121. This rule requires, among other things, that a "qualified independent underwriter" has participated in the preparation of, and has exercised the usual standards of "due diligence" with respect to, the registration statement and this prospectus. Morgan Stanley & Co. LLC, or Morgan Stanley, has agreed to act as qualified independent underwriter for this offering and to undertake the legal responsibilities and liabilities of an underwriter under the Securities Act. Morgan Stanley & Co. LLC will not receive any additional fees for serving as qualified independent underwriter in connection with this offering. Although Morgan Stanley has, in its capacity as qualified independent underwriter, participated in due diligence and the preparation of this prospectus and the registration statement of which this prospectus forms a part, this may not adequately address all potential conflicts of interest. We have agreed to indemnify Morgan Stanley against liabilities incurred in connection with acting as qualified independent underwriter, including liabilities under the Securities Act. Pursuant to Rule 5121, Goldman Sachs & Co. LLC will not confirm sales of securities to any account over which it exercises discretionary authority without the prior written approval of the customer. See "Underwriting (Conflicts of Interest)" for additional information.

[Table of Contents](#)

Your ability to influence corporate matters may be limited because a small number of stockholders beneficially own a substantial amount of our common stock and will continue to have substantial control over us after the offering.

Upon completion of this offering, our officers, directors, and principal stockholders (greater than 5% stockholders) collectively will beneficially own approximately 79% of our issued and outstanding common stock (or 75% of our issued and outstanding common stock if the underwriters' option to purchase additional shares is exercised in full). As a result, these stockholders will be able to exert significant influence over all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions, such as a merger or other sale of our Company or its assets, and may have interests that are different from yours and may vote in a way with which you disagree and which may be adverse to your interests. In addition, this concentration of ownership may have the effect of preventing, discouraging, or deferring a change of control, which could depress the market price of our common stock.

Transactions engaged in by our principal stockholders, our officers or directors involving our common stock may have an adverse effect on the price of our stock.

As described above, our officers, directors, and principal stockholders (greater than 5% stockholders) collectively will control approximately 79% of our issued and outstanding common stock (or 75% of our issued and outstanding common stock if the underwriters' option to purchase additional shares is exercised in full) upon completion of this offering. Subsequent sales of our shares by these stockholders could have the effect of lowering our stock price. The perceived risk associated with the possible sale of a large number of shares by these stockholders, or the adoption of significant short positions by hedge funds or other significant investors, could cause some of our stockholders to sell their stock, thus causing the price of our stock to decline. In addition, actual or anticipated downward pressure on our stock price due to actual or anticipated sales of stock by our directors or officers could cause other institutions or individuals to engage in short sales of our common stock, which may further cause the price of our stock to decline.

From time to time our directors and executive officers may sell shares of our common stock on the open market. These sales will be publicly disclosed in filings made with the SEC. In the future, our directors and executive officers may sell a significant number of shares for a variety of reasons unrelated to the performance of our business. Our stockholders may perceive these sales as a reflection on management's view of the business and result in some stockholders selling their shares of our common stock. These sales could cause the price of our stock to drop.

We do not intend to pay dividends for the foreseeable future.

We currently intend to retain any future earnings to finance the operation and expansion of our business and we do not expect to declare or pay any dividends in the foreseeable future. As a result, stockholders must rely on sales of their common stock after price appreciation as the only way to realize any future gains on their investment.

We may experience material weaknesses in the future or otherwise fail to maintain an effective system of internal controls in the future, as a result of which, we may not be able to accurately report our financial condition or results of operations which may adversely affect investor confidence in us and, as a result, the value of our common stock.

As a result of becoming a public company, we will be required, under Section 404 of the Sarbanes-Oxley Act to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting beginning with our Annual Report on Form 10-K for the year

Table of Contents

ending October 2, 2021. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. A material weakness is a deficiency or combination of deficiencies in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of a company's annual and interim financial statements will not be detected or prevented on a timely basis.

We are further enhancing internal controls, processes, and related documentation necessary to perform the evaluation needed to comply with Section 404. We may not be able to complete our evaluation, testing, and any required remediation in a timely fashion. During the evaluation and testing process, if we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to assert that our internal controls are effective.

There may be material weaknesses or significant deficiencies in our internal control over financial reporting in the future. Any failure to maintain internal control over financial reporting could severely inhibit our ability to accurately report our financial condition or results of operations. The effectiveness of our controls and procedures may be limited by a variety of factors, including:

- faulty human judgment and simple errors, omissions, or mistakes;
- fraudulent action of an individual or collusion of two or more people;
- inappropriate management override of procedures; and
- the possibility that any enhancements to controls and procedures may still not be adequate to assure timely and accurate financial control.

Our management and independent registered public accounting firm did not perform an evaluation of our internal control over financial reporting during any period in accordance with the provisions of Sarbanes-Oxley Act. Had we performed an evaluation and had our independent registered public accounting firm performed an audit of our internal control over financial reporting in accordance with the provisions of Sarbanes-Oxley Act, additional control deficiencies amounting to material weaknesses may have been identified. We are in the very early stages of the costly and challenging process of compiling the system and processing documentation necessary to perform the evaluation needed to comply with Section 404(a) of Sarbanes-Oxley Act. We may not be able to complete our evaluation, testing or any required remediation in a timely fashion. If we fail to comply with Section 404(a) or to remedy these material weaknesses or identify new material weaknesses by the time we have to issue that report, we will not be able to certify that our internal controls over financial reporting are effective, which may cause investors to lose confidence in our financial statements, and the trading price of our common stock may decline. If we fail to remedy any material weakness, our financial statements may be inaccurate, our access to the capital markets may be restricted and the trading price of our common stock may suffer.

Upon the listing of our common stock on Nasdaq, we will be a "controlled company" within the meaning of the corporate governance standards of Nasdaq. As a result, we will qualify for, and intend to rely on, exemptions from certain corporate governance standards. You will not have the same protections afforded to stockholders of companies that are subject to such requirements.

After the completion of this offering, affiliates of L Catterton and an affiliate of GIC will control a majority of the voting power of shares eligible to vote in the election of our directors. Because more than 50% of the voting power in the election of our directors will be held by an individual, group, or another company, we will be a "controlled company" within the meaning of the corporate governance standards of Nasdaq. As a controlled company, we may elect not to comply with certain corporate

[Table of Contents](#)

governance requirements, including the requirements that, within one year of the date of the listing of our common stock:

- a majority of our board of directors consists of “independent directors,” as defined under the rules of such exchange;
- our board of directors has a compensation committee that is composed entirely of independent directors with a written charter addressing the committee’s purpose and responsibilities; and
- our board of directors has a nominating and corporate governance committee that is composed entirely of independent directors with a written charter addressing the committee’s purpose and responsibilities.

Following this offering, we intend to utilize these exemptions. As a result, immediately following this offering we do not expect that the majority of our directors will be independent or that any committees of our board of directors will be composed entirely of independent directors. Accordingly, you will not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of Nasdaq.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements about us and our industry that involve substantial risks and uncertainties. All statements other than statements of historical facts contained in this prospectus, including statements regarding our future results of operations or financial condition, business strategy and plans and objectives of management for future operations, are forward-looking statements. In some cases, you can identify forward-looking statements because they contain words such as “anticipate,” “believe,” “contemplate,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “target,” “will,” or “would” or the negative of these words or other similar terms or expressions. These forward-looking statements include, but are not limited to, statements concerning the following:

- our ability to execute on our growth strategies;
- our ability to maintain favorable relationships with suppliers and manufacturers;
- competition from mass merchants and specialty retailers;
- impacts on our business from the sensitivity of our business to weather conditions, changes in the economy, and the housing market;
- our ability to implement technology initiatives that deliver the anticipated benefits, without disrupting our operations;
- our ability to attract and retain senior management and other qualified personnel;
- regulatory changes and development affecting our current and future products;
- our ability to obtain additional capital to finance operations;
- our ability to establish and maintain intellectual property protection for our products, as well as our ability to operate our business without infringing the intellectual property rights of others;
- impacts on our business from the COVID-19 pandemic; and
- other risks and uncertainties, including those listed in the section titled “Risk Factors.”

You should not rely on forward-looking statements as predictions of future events. We have based the forward-looking statements contained in this prospectus primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial condition, and operating results. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties, and other factors described in the section titled “Risk Factors” and elsewhere in this prospectus. Moreover, we operate in a very competitive and rapidly changing environment. New risks and uncertainties emerge from time to time, and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this prospectus. The results, events, and circumstances reflected in the forward-looking statements may not be achieved or occur, and actual results, events, or circumstances could differ materially from those described in the forward-looking statements.

In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this prospectus. And while we believe that information provides a reasonable basis for these statements, that information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements.

[Table of Contents](#)

The forward-looking statements made in this prospectus relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward-looking statements made in this prospectus to reflect events or circumstances after the date of this prospectus or to reflect new information or the occurrence of unanticipated events, except as required by law. We may not actually achieve the plans, intentions, or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures, or investments.

MARKET AND INDUSTRY DATA

We obtained the industry, market, and competitive position data used throughout this prospectus from our own internal estimates and research, as well as from independent market research, industry and general publications and surveys, governmental agencies, and publicly available information in addition to research, surveys, and studies conducted by third parties. In some cases, we do not expressly refer to the sources from which this data is derived. In that regard, when we refer to one or more sources of this type of data in any paragraph, you should assume that other data of this type appearing in the same paragraph is derived from the same sources, unless otherwise expressly stated or the context otherwise requires. All of the market and industry data used in this prospectus involve a number of assumptions and limitations, and you are cautioned not to give undue weight to such assumptions and limitations.

In addition, while we believe the industry, market, and competitive position data included in this prospectus is reliable and based on reasonable assumptions, such data involve risks and uncertainties and are subject to change based on various factors, including those described in the section titled "Risk Factors." These and other factors could cause results to differ materially from those expressed in the estimates made by the independent parties or by us.

USE OF PROCEEDS

We estimate that the net proceeds to us from this offering will be approximately \$410 million, based on an assumed initial public offering price of \$15.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

Each \$1.00 increase (decrease) in the assumed initial public offering price of \$15.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the net proceeds to us from this offering by \$28.3 million, assuming that the number of shares of common stock offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1 million in the number of shares of common stock offered by us, as set forth on the cover of this prospectus, would increase (decrease) the net proceeds to us by \$14.1 million, assuming an initial public offering price of \$15.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

We currently intend to use the net proceeds from this offering, together with our existing cash and cash equivalents, as follows:

- to repay in full the entire outstanding amount under our Senior Unsecured Notes, which mature on August 16, 2024 and which was \$390.0 million and carried an effective interest rate of 9.81%, in each case, as of June 27, 2020; and
- to the extent of any remaining net proceeds, for working capital and general corporate purposes, which may include the repayment of a portion of the borrowings under our Term Loan, which matures on August 16, 2023 and which had \$815.3 million outstanding and carried an effective interest rate of 3.67%, in each case, as of June 27, 2020.

We may also use a portion of the remaining net proceeds to acquire or invest in complementary businesses, technologies, products, or assets. However, we have no current commitments or obligations to do so.

This expected use of the net proceeds from this offering represents our intentions based on our current plans and business conditions, which could change in the future as our plans and business conditions evolve. Our management will have broad discretion over the use of the net proceeds from this offering, and our investors will be relying on the judgment of our management regarding the application of the net proceeds of this offering.

Pending the use of the net proceeds from this offering as described above, we intend to invest the net proceeds in a variety of capital preservation instruments, including short-term, interest-bearing obligations, investment-grade instruments, certificates of deposit, or direct or guaranteed obligations of the United States government.

We will not receive any proceeds from the sale of our common stock by the selling stockholder. We will, however, bear the costs associated with the sale of shares of common stock by the selling stockholder. The selling stockholder will not deduct any underwriting discounts or commissions from the proceeds of its sale of our common stock. We will deduct all underwriting discounts and commissions and pay all offering expenses in connection with this offering. For more information, see "Principal and Selling Stockholders" and "Underwriting."

Certain affiliates of Goldman Sachs & Co. LLC, an underwriter in this offering, will receive 5% or more of the net proceeds of this offering as a result of currently holding 100% of the aggregate principal amount of our Senior Unsecured Notes and being a lender under the Term Loan.

DIVIDEND POLICY

We have never declared nor paid any cash dividends on our common stock. We currently intend to retain all available funds and any future earnings for use in the operation of our business and do not expect to pay any dividends on our common stock in the foreseeable future. Any future determination relating to our dividend policy will be made by our board of directors and will depend on a number of factors, including: our actual and projected financial condition, liquidity, and results of operations; our capital levels and needs; tax considerations; any acquisitions or potential acquisitions that we may examine; statutory and regulatory prohibitions and other limitations; the terms of any credit agreements or other borrowing arrangements that restrict the amount of cash dividends that we can pay; general economic conditions; and other factors deemed relevant by our board of directors. We are not obligated to pay dividends on our common stock.

CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of June 27, 2020:

- on an actual basis reflecting the Stock Split; and
- on an as-adjusted basis to reflect the issuance and sale of 30,000,000 shares of common stock in this offering at an assumed initial public offering price of \$15.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable by us and the application of the net proceeds therefrom as described in the section titled "Use of Proceeds."

	Actual	As Adjusted(1)
Cash and cash equivalents	\$ 148,901	\$ 168,401
Debt:		
Term Loan—due on August 16, 2023	815,349	815,349
Senior Unsecured Notes—due on August 16, 2024	390,000	—
ABL Credit Facility—due on August 13, 2025	—	—
Stockholder's equity:		
Common stock, \$0.001 par value, 156,500,000 shares authorized issued and outstanding at June 27, 2020, 1,001,000,000 authorized, 186,602,667 shares, issued and outstanding, as adjusted	157	187
Preferred stock, \$0.001 par value, no shares authorized, issued and outstanding, actual, 1,000,000 shares authorized and no shares issued and outstanding, as adjusted	—	—
Capital deficit	(278,056)	131,415
Retained deficit	(591,159)	(599,006)
Total stockholder's deficit	(869,058)	(467,404)
Total capitalization	<u>\$ 336,291</u>	<u>\$ 347,945</u>

- (1) Gives effect to debt extinguishment costs of \$7.8 million related to the write-off of the unamortized portion of deferred financing costs and debt discounts associated with the Senior Unsecured Notes.

The number of shares of common stock that will be outstanding after this offering is based on 156.6 million shares of common stock outstanding as of June 27, 2020, after giving effect to the Stock Split and excludes shares of common stock, subject to increase on an annual basis, reserved for future issuance under our 2020 Omnibus Incentive Plan.

You should read this information in conjunction with our consolidated financial statements and the related notes and the sections entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Selected Historical Consolidated Financial and Other Information," included elsewhere in this prospectus.

DILUTION

If you invest in our common stock in this offering, your ownership interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock after this offering.

Our historical net tangible book deficit as of June 27, 2020 was \$(990.7) million, or \$(6.33) per share of common stock. Our historical net tangible book deficit represents our total tangible assets less total liabilities and preferred stock divided by the number of shares of our common stock outstanding as of June 27, 2020 after giving effect to the Stock Split.

After giving effect to the issuance of 30,000,000 shares of common stock and the sale of 40,000,000 shares of common stock in this offering at an assumed initial public offering price of \$15.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of June 27, 2020 would have been \$(589.1) million, or \$(3.16) per share. This represents an immediate increase (decrease) in pro forma as adjusted net tangible book value (deficit) of \$2.57 per share to our existing stockholders and an immediate dilution of \$18.16 per share to new investors purchasing shares of our common stock in this offering. We determine dilution per share to new investors by subtracting our pro forma as adjusted net tangible book value per share after this offering from the assumed public offering price per share paid by new investors in this offering.

The following table illustrates this dilution on a per share basis:

Assumed initial public offering price per share		\$ 15.00
Historical net tangible book deficit per share as of June 27, 2020	\$ (6.33)	
Decrease in historical net tangible book deficit per share attributable to pro forma transactions and other adjustments described above	\$ 2.57	
Pro forma net tangible book deficit per share as of June 27, 2020	\$ (3.76)	
Increase in pro forma net tangible book value per share attributable to new investors participating in this offering	\$ 0.61	
Pro forma as adjusted net tangible book value per share after this offering	\$ (3.16)	
Dilution per share to new investors participating in this offering		\$ 18.16

Each \$1.00 increase (decrease) in the assumed initial public offering price of \$15.00 (which is the midpoint of the price range set forth on the cover page of this prospectus) would increase (decrease) our pro forma as adjusted net tangible book value per share after this offering by \$0.15 per share and the dilution per share to new investors participating in this offering by \$0.85 per share, assuming that the number of shares of common stock offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1 million in the number of shares of common stock offered by us, as set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted net tangible book value per share after this offering by \$0.08 per share and increase (decrease) the dilution per share to new investors participating in this offering by \$(0.08) per share, assuming that the assumed initial public offering price remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

Table of Contents

The following table shows, as of June 27, 2020, on a pro forma as adjusted basis as described above, the number of shares of common stock purchased from us, the total consideration paid to us and the average price per share paid, or to be paid, by existing stockholders and by new investors purchasing common stock in this offering at the assumed initial public offering price of \$15.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, before deducting underwriting discounts and commissions and estimated offering expenses payable by us:

	<u>Shares Purchased</u>		<u>Total Consideration</u>		<u>Average Price Per Share</u>
	<u>Number</u> <u>(in thousands)</u>	<u>Percent</u>	<u>Amount</u> <u>(in thousands)</u>	<u>Percent</u>	
Existing Stockholder	156,603	84%	\$ 559,042	55%	\$ 3.57
New investors	30,000	16	450,000	45	15.00
Total	<u>186,603</u>	<u>100%</u>	<u>\$ 1,009,042</u>	<u>100%</u>	\$ 5.41

The above table assumes no exercise of the underwriters' option to purchase additional shares. If the underwriters exercise their option to purchase additional shares in full, our existing stockholders before this offering would own 75% and our new investors participating in this offering would own 25% of the total number of shares of our common stock outstanding following the completion of this offering. Additionally, the consideration paid to us by existing stockholders before this offering would be approximately 35% of the total consideration, and the consideration paid to us by new investors participating in this offering would be \$690 million, or approximately 65% of the total consideration.

The foregoing discussion and tables (other than the historical net tangible book value calculation) are based on 186.6 million shares of common stock outstanding as of June 27, 2020, which gives effect to the pro forma transactions described above, and excludes 18,650,000 shares of our common stock as of June 27, 2020 that remain available for issuance under the 2020 Omnibus Incentive Plan.

To the extent that stock options are exercised, new stock options are issued under the 2020 Omnibus Incentive Plan, or we issue additional shares of common stock in the future, there will be further dilution to investors participating in this offering. In addition, we may choose to raise additional capital because of market conditions or strategic considerations, even if we believe that we have sufficient funds for our current or future operating plans. If we raise additional capital through the sale of equity or convertible debt securities, the issuance of these securities could result in further dilution to our stockholders.

SELECTED HISTORICAL CONSOLIDATED FINANCIAL AND OTHER INFORMATION

You should read the following selected consolidated financial data together with the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and the related notes included elsewhere in this prospectus. The selected consolidated financial data included in this section are not intended to replace the consolidated financial statements and are qualified in their entirety by the consolidated financial statements and the related notes included elsewhere in this prospectus.

We have derived the following selected consolidated statements of operations data for the Fiscal Years ended September 28, 2019 and September 29, 2018 from our audited consolidated financial statements included elsewhere in this prospectus. We have derived the following selected consolidated statements of operations data for the nine months ended June 27, 2020 and June 29, 2019 and selected consolidated balance sheet data as of June 27, 2020 from our unaudited interim consolidated financial statements included elsewhere in this prospectus. The unaudited interim consolidated financial data, in management’s opinion, have been prepared on the same basis as the audited consolidated financial statements and the related notes included elsewhere in this prospectus, and include all adjustments, consisting only of normal recurring adjustments, that management considers necessary for a fair presentation of the information for the periods presented. Our historical results are not necessarily indicative of the results that may be expected for any future period.

	(dollars in thousands)			
	Nine Months Ended		Fiscal Year Ended	
	June 27, 2020	June 29, 2019	September 28, 2019	September 29, 2018
Statement of operations data:				
Sales	\$ 730,916	\$ 629,984	\$ 928,203	\$ 892,600
Cost of merchandise and services sold	436,837	381,557	548,463	535,464
Gross profit	294,079	248,427	379,740	357,136
Selling, general and administrative expenses	215,752	185,776	258,152	241,669
Operating income	78,327	62,651	121,588	115,467
Other expense:				
Interest expense	65,513	74,641	98,578	91,656
Other expenses, net	910	4,409	7,453	1,759
Total other expense	66,423	79,050	106,031	93,415
Income before taxes	11,904	(16,399)	15,557	22,052
Income tax (benefit) expense	(4,603)	(16,321)	14,855	4,926
Net income (loss)	<u>\$ 16,507</u>	<u>\$ (78)</u>	<u>\$ 702</u>	<u>\$ 17,126</u>
Balance sheet data:				
Cash and cash equivalents	\$ 148,901	\$ 82,128	\$ 90,899	\$ 77,569
Total current assets	390,402	318,317	282,089	255,332
Total assets	588,031	530,475	479,721	453,160
Total current liabilities	260,729	219,072	165,522	137,165
Total liabilities	1,457,089	1,419,239	1,367,078	1,342,109
Total stockholder’s deficit	(869,058)	(888,764)	(887,357)	(888,949)
Cash flow data:				
Net cash provided by operating activities	\$ 85,921	\$ 42,559	\$ 57,821	\$ 43,280
Net cash used in investing activities	(21,664)	(30,558)	(36,996)	(40,219)
Net cash used in financing activities	(6,255)	(7,442)	(7,495)	(24,386)

[Table of Contents](#)

	(dollars in thousands)			
	Nine Months Ended		Fiscal Year Ended	
	June 27, 2020	June 29, 2019	September 28, 2019	September 29, 2018
Other financial and operations data:				
Number of new locations and acquired	8	26	28	38
Number of locations open at end of period	934	956	952	940
Comparable Sales Growth(2)	15.5%	(0.6)%	0.4%	(1.3)%
Adjusted EBITDA(3)	\$104,343	\$90,090	\$ 160,003	\$ 151,799
Adjusted EBITDA as a Percentage of Sales(3)	14.3%	14.3%	17.2%	17.0%

- (1) Components may not add to totals due to rounding.
- (2) Please see the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Factors and Measures We Use to Evaluate Our Business."
- (3) Please see the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" for a reconciliation from our net income (loss) to Adjusted EBITDA for the nine months ended June 27, 2020, the nine months ended June 29, 2019, Fiscal Year 2019, and Fiscal Year 2018.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read together with the section titled "Selected Historical Consolidated Financial and Other Information" and our consolidated financial statements and related notes which are included elsewhere in this prospectus. This discussion may contain forward-looking statements based upon current expectations that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth under "Risk Factors" or in other sections of this prospectus.

We operate on a fiscal calendar that results in a fiscal year consisting of a 52- or 53-week period ending on the Saturday closest to September 30th. In a 52-week fiscal year, each quarter contains 13 weeks of operations; in a 53-week fiscal year, each of the first, second and third quarters includes 13 weeks of operations and the fourth quarter includes 14 weeks of operations. References to Fiscal Year 2019 and Fiscal Year 2018 refer to the fiscal years ended September 28, 2019 and September 29, 2018, each of which contained 52 weeks. Each of the nine months ended June 27, 2020 and the nine months ended June 29, 2019 included 39 weeks of operations.

Our Company

We are the largest and most trusted direct-to-consumer brand in the nearly \$11 billion United States pool and spa care industry, serving residential, professional, and commercial consumers. Founded in 1963, we are the only direct-to-consumer pool and spa care brand with national scale, operating an integrated marketing and distribution ecosystem powered by a physical network of 934 branded locations and a robust digital platform. We command a market-leading share of nearly 15% of residential aftermarket product spending, which represents an increase of approximately 500 basis points since 2010, our physical network is larger than the sum of our twenty largest competitors, and our digital sales are estimated to be greater than five times as large as that of our largest digital competitor. We offer an extensive assortment of professional-grade products, the majority of which are exclusive to Leslie's, as well as certified and warranted installation and repair services, all of which are essential to the ongoing maintenance of pools and spas. Our dedicated team of more than 5,000 associates, pool and spa care experts, and experienced service technicians are passionate about empowering our consumers with the knowledge, products, and solutions necessary to confidently maintain and enjoy their pools and spas. Over the last five years, we have spent more than \$70 million in foundational investments across new technologies and capabilities focused on transforming our consumer experience and advancing our industry leadership. The unprecedented scale of our integrated marketing and distribution ecosystem, which is powered by our direct-to-consumer network, uniquely enables us to efficiently reach and service every pool and spa in the continental United States—capabilities no competitor can match.

Given we play primarily in the aftermarket business, we have a highly predictable, recurring revenue model, which is evidenced by our 57 consecutive years of sales growth. More than 80% of our assortment is comprised of non-discretionary products essential to the care of residential and commercial pools and spas. Our assortment includes chemicals, equipment and parts, cleaning and maintenance equipment, and safety, recreational, and fitness-related products. As important, we offer essential services, such as equipment installation and repair for residential and commercial consumers. Consumers receive the benefit of extended vendor warranties when purchasing product through our locations or when our certified in-field technicians install or repair equipment on-site. We also offer complimentary, commercial-grade, in-store water testing and analysis via our proprietary AccuBlue[®] system, which increases consumer engagement, conversion, basket size, and loyalty, resulting in higher lifetime value. Our water treatment expertise is powered by data and intelligence

[Table of Contents](#)

accumulated from the more than 40 million water tests we have performed over 57 years, positioning us as the most trusted water treatment solutions provider in the industry. Due to the non-discretionary nature of our products and services, our business has historically delivered strong, uninterrupted growth and profitability in all market environments, including the Great Recession and the COVID-19 pandemic. Our growth has recently accelerated, and for Fiscal 2020, we estimate that our sales will increase 19.6%, using the mid-point of the estimated sales range when compared with sales for Fiscal 2019. See the section titled "Prospectus Summary—Recent Developments"

Key Factors and Measures We Use to Evaluate Our Business

We consider a variety of financial and operating measures in assessing the performance of our business. The key GAAP measures we use are sales, gross profit and gross margin, selling, general and administrative expenses, and operating income. The key non-GAAP measures we use are Comparable Sales, Comparable Sales Growth and Adjusted EBITDA.

Sales

We offer a broad range of products that consists of regularly purchased, non-discretionary pool and spa maintenance items such as chemicals, equipment, cleaning accessories and parts, as well as installation and repair services for pool and spa equipment. Our offering of proprietary, owned and third-party brands across diverse product categories drives sales growth by attracting new consumers and encouraging repeat visits from our existing consumers. We recognize product sales upon purchase of merchandise by the consumer. Sales related to services are recognized when services are performed. Terms are customarily point of sale or free on board shipping point, net of related discounts and sales tax. When we receive payment from consumers before the consumer has taken possession of the merchandise or the service has been performed, the amount received is recorded as deferred revenue until the sale or service is complete. Sales are impacted by product mix and availability, as well as promotional and competitive activities and the spending habits of our consumers. Growth of our sales is primarily driven by Comparable Sales Growth and expansion of our locations in existing and new markets.

Comparable Sales and Comparable Sales Growth

We measure Comparable Sales Growth as the increase or decrease in sales recorded by the comparable base in any reporting period, compared to sales recorded by the comparable base in the prior reporting period. The comparable base includes sales through our locations and through our e-commerce websites and third-party marketplaces. Comparable Sales is a key metric used by management and our board of directors to assess our financial performance.

We consider a new or acquired location comparable in the first full month after it has completed 52 weeks of sales. Closed locations become non-comparable during their last partial month of operation. Locations that are relocated are considered comparable at the time the relocation is complete. Comparable Sales are not calculated in the same manner by all companies, and accordingly, are not necessarily comparable to similarly titled measures of other companies and may not be an appropriate measure for performance relative to other companies.

The number of new locations reflects the number of locations opened during a particular reporting period. New locations require an initial capital investment in location build-outs, fixtures, and equipment, which we amortize over time as well as cash required for inventory.

We opened or acquired 28 locations in Fiscal Year 2019, 38 locations in Fiscal Year 2018, eight locations in the nine months ended June 27, 2020, and 26 new locations in the nine months ended

Table of Contents

June 29, 2019. We consolidated operations in certain markets and closed 16 locations in Fiscal Year 2019, five locations in Fiscal Year 2018, 26 locations in the nine months ended June 27, 2020, and ten locations in the nine months ended June 29, 2019. As of June 27, 2020, we operate 934 retail locations in 37 states across the United States. We own 27 locations and lease the remainder of our locations. Our initial lease terms are typically five years with options to renew for multiple successive five-year periods. We evaluate new opportunities in new and existing markets based on the number of pools and spas in the market, competition, our existing locations, availability and cost of real estate, and distribution cost, and operating costs of our locations. We review performance of our locations on a regular basis and evaluate opportunities to strategically close locations to improve our profitability. Our limited investment costs in individual locations and our ability to transfer sales to our extensive network of remaining locations and e-commerce websites allows us to improve profitability as a result of any strategic closures.

Gross Profit and Gross Margin

Gross profit is equal to our sales less our cost of merchandise and services sold. Cost of merchandise and services sold reflects the direct cost of purchased merchandise, costs to package certain chemical products, including direct materials and labor, costs to provide services, including labor and materials, as well as distribution and occupancy costs. The direct cost of purchased merchandise includes vendor rebates, which are treated as a reduction of merchandise costs. We recognize vendor rebates at the time the obligations to purchase products or perform services have been completed, and the related inventory has been sold. Distribution costs include warehousing and transportation expenses, including costs associated with third-party fulfillment centers used to ship merchandise to our e-commerce consumers. Occupancy costs include the rent, common area maintenance, real estate taxes, and depreciation and amortization costs of all retail locations. These costs are significant and can be expected to continue to increase as our company grows.

Gross margin is gross profit as a percentage of our sales. Gross margin is impacted by merchandise costs, pricing and promotions, product mix and availability, inflation, and service costs, which can vary. Our proprietary brands, custom-formulated products, and vertical integration provide us with cost savings, as well as greater control over product availability and quality as compared to other companies in the industry. Gross margin is also impacted by the costs of distribution and occupancy costs, which can vary.

Our gross profit is variable in nature and generally follows changes in sales. The components of our cost of merchandise and services sold may not be comparable to the components of cost of sales or similar measures of other companies. As a result, our gross profit and gross margin may not be comparable to similar data made available by other companies.

Selling, General and Administrative Expenses

Our selling, general and administrative expenses, or SG&A, include selling and operating expenses at our retail locations and corporate-level general and administrative expenses. Selling and operating expenses at retail locations include payroll, bonus and benefit costs for personnel, supplies, and credit and debit card processing costs. Corporate expenses include payroll, bonus, and benefit costs for our corporate and field support functions, marketing and advertising, insurance, utilities, occupancy costs related to our corporate office facilities, professional services, and depreciation and amortization for all assets, except those related to our retail locations and distribution operations, which are included in cost of merchandise and services sold. Selling and operating expenses generally vary proportionately with sales and the change in the number of locations. In contrast, general and administrative expenses are generally not directly proportional to sales and the change in the number of locations, but will be expected to increase over time to support the needs of our growing company.

[Table of Contents](#)

The components of our SG&A may not be comparable to the components of similar measures of other companies.

Operating Income

Operating income is gross profit less SG&A. Operating income excludes interest expense, income tax expense, and other expenses, net. We use operating income as an indicator of the productivity of our business and our ability to manage expenses.

Adjusted EBITDA

Adjusted EBITDA is a key metric used by management and our board of directors to assess our financial performance. Adjusted EBITDA is also frequently used by analysts, investors and other interested parties to evaluate companies in our industry, when considered alongside other GAAP measures. We use Adjusted EBITDA to supplement GAAP measures of performance to evaluate the effectiveness of our business strategies, to make budgeting decisions and to compare our performance against that of other companies using similar measures.

Adjusted EBITDA is defined as earnings before interest (including amortization of debt costs), taxes, depreciation, amortization, loss/(gain) on disposition of fixed assets, management fees, equity-based compensation expense, mark-to-market on interest rate cap, and special items. Adjusted EBITDA is not a recognized measure of financial performance under GAAP but is used by some investors to determine a company's ability to service or incur indebtedness. Adjusted EBITDA is not calculated in the same manner by all companies, and accordingly, is not necessarily comparable to similarly entitled measures of other companies and may not be an appropriate measure for performance relative to other companies. Adjusted EBITDA should not be construed as an indicator of a company's operating performance in isolation from, or as a substitute for, net income (loss), cash flows from operations or cash flow data, all of which are prepared in accordance with GAAP. We have presented Adjusted EBITDA solely as supplemental disclosure because we believe it allows for a more complete analysis of results of operations. Adjusted EBITDA is not intended to represent, and should not be considered more meaningful than, or as an alternative to, measures of operating performance as determined in accordance with GAAP. In the future we may incur expenses or charges such as those added back to calculate Adjusted EBITDA. Our presentation of Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by these items.

Factors Affecting the Comparability of our Results of Operations

Our results over the past two years have been affected by, among other events, the following events, which must be understood in order to assess the comparability of our period-to-period financial performance and condition.

Impact of COVID-19

We are closely monitoring the impact of COVID-19 on all aspects of our business and in all of our locations. As of June 27, 2020, we operate 934 locations in 37 states and all locations are currently open. During the nine months ended June 27, 2020, we maintained operations in nearly all of our markets as an 'essential' business, as defined by various federal, state, and local authorities, by providing essential products and services that maintain the safety and sanitization of homes and businesses. Certain of our locations were temporarily closed or restricted to curbside service only. These closures and restrictions did not have a material impact on our performance during the nine months ended June 27, 2020. We remain committed to supporting federal, state, and local mandates to prevent the spread of COVID-19 while we operate our business and to do our part in protecting public health.

Table of Contents

We help keep our communities safe from serious public health risks by providing essential products and services. Water that is not properly maintained can serve as a breeding ground for potentially fatal bacteria and viruses.

As a business, the health and safety of our consumers, communities, and associates remain our highest priority, and we continue to take all precautions recommended by the Centers for Disease Control and Prevention to ensure their safety and well-being. We have proactively implemented extensive measures in response to COVID-19 throughout our business operations, including:

- Required team members who are experiencing symptoms or have been in close contact with someone who has symptoms or has been exposed to the coronavirus to stay home;
- Improved employee benefits related to COVID-19 conditions;
- Distributed personal protective equipment and implemented temperature monitoring protocols, including the installation of contactless temperature scanners in our corporate offices and distribution centers;
- Enhanced facility cleaning including routine sanitization of high touch surfaces;
- Implemented social distancing guidelines and capacity restrictions in our locations and reduced operating hours;
- Encouraged contactless payments and introduced curbside pickup and contact-free service calls;
- Incurred front line recognition pay for associates in our locations, distribution centers, and service technicians during the third quarter of 2020;
- Executed remote workforce plan for associates in our corporate offices; and
- Enacted mandatory travel restrictions.

We have also closely coordinated with our vendor partners to minimize the impact of supply disruptions and maintain the flow of essential products to meet the elevated demand from consumers in the current environment. The full impact of COVID-19 on our financial and operating performance will depend significantly on the duration and severity of the pandemic, the actions taken to contain or mitigate its impact, and the change in consumer behaviors. It is not possible to predict the likelihood, timing, or severity of the aforementioned direct and indirect impacts of COVID-19 on our business. We may further restrict the operations of our locations and distribution facilities and these measures could have a material impact on our sales and earnings. COVID-19 could also lead to significant disruption to our supply chain for products we sell and could have a material impact on our sales and earnings.

Business Acquisitions

In January 2018, we acquired a provider of supplies and services for swimming pools, spas, and above ground pools, and related equipment. The acquisition included five locations in Pennsylvania.

In May 2018, we acquired a pool and spa parts distributor headquartered in Tucson, Arizona. The acquisition included inventory and assets at facilities located in Arizona and Tennessee.

In January 2019, we acquired a provider of supplies and services for swimming pools, spas, barbecues, and fireplaces. The acquisition included nine locations in the Pacific Northwest, based in the State of Washington, and expanded our physical presence to 36 states.

In October 2019, we acquired a provider of supplies and services for spas, swim spas, and saunas. The acquisition included six locations in the Pacific Northwest, based in the State of Oregon, and expanded our physical presence to 37 states.

[Table of Contents](#)

The consolidated financial statements include the results of operations of the acquisitions since their respective acquisition dates. The acquisitions did not have a material impact on our financial position or results of operations, either individually or in the aggregate. The total purchase consideration was allocated to the assets acquired and liabilities assumed at their estimated fair values as of the date of acquisition, as determined by management. The excess of the purchase price over the amounts allocated to assets acquired and liabilities assumed has been recorded as goodwill.

Impacts of the Initial Public Offering

Impact of Debt Extinguishment

Assuming net proceeds after expenses to us of \$410 million in connection with the sale of common stock in this offering and the application of such net proceeds to repay our Senior Unsecured Notes as described in "Use of Proceeds," we expect to incur debt extinguishment costs of \$7.2 million related to the write-off of deferred financing costs and unamortized debt discounts.

Equity-based Compensation Expenses

Upon the completion of an initial public offering, we expect to recognize equity-based compensation expense of approximately \$7.7 million in connection with the vesting of performance-based equity units issued to key employees. All existing equity-based compensation are for equity of our Parent. All outstanding unvested time-based equity units of our Parent will be cancelled at the time of the initial public offering and will be exchanged for Restricted Stock Units granted under our 2020 Omnibus Incentive Plan. See "Executive Compensation—Equity Compensation Plans" for more information.

Incremental Public Company Expenses

Following our initial public offering, we will incur significant expenses on an ongoing basis that we did not incur as a private company. Those costs include additional director and officer liability insurance expenses, as well as third-party and internal resources related to accounting, auditing, Sarbanes-Oxley Act compliance, legal, and investor and public relations expenses. We expect such expenses to further increase after we are no longer an emerging growth company following the completion of this offering. These costs will generally be expensed under SG&A in the consolidated statement of operations.

Results of Operations

The following tables summarize key components of our results of operations for the periods indicated, both in dollars and as a percentage of our sales.

We derived the consolidated statements of operations for Fiscal Year 2019 and Fiscal Year 2018 and the nine months ended June 27, 2020 and the nine months ended June 29, 2019 from our consolidated financial statements and our condensed consolidated interim financial statements, respectively. Our historical results are not necessarily indicative of the results that may be expected in the future.

[Table of Contents](#)

	Results of Operations			
	(dollars in thousands)			
	Nine Months Ended		Fiscal Year Ended	
	June 27, 2020	June 29, 2019	September 28, 2019	September 29, 2018
	(unaudited)			
Sales	\$730,916	\$629,984	\$ 928,203	\$ 892,600
Cost of merchandise and services sold	436,837	381,557	548,463	535,464
Gross profit	294,079	248,427	379,740	357,136
Selling, general and administrative expenses	215,752	185,776	258,152	241,669
Operating income	78,327	62,651	121,588	115,467
Other expense:				
Interest expense	65,513	74,641	98,578	91,656
Other expenses, net	910	4,409	7,453	1,759
Total other expense	66,423	79,050	106,031	93,415
Income (loss) before income taxes	11,904	(16,399)	15,557	22,052
Income tax (benefit) expense	(4,603)	(16,321)	14,855	4,926
Net income (loss)	\$ 16,507	\$ (78)	\$ 702	\$ 17,126
Percentage of Sales(1)	(%)	(%)	(%)	(%)
Sales	100.0	100.0	100.0	100.0
Cost of merchandise and services sold	59.8	60.6	59.1	60.0
Gross Margin	40.2	39.4	40.9	40.0
Selling, general and administrative expenses	29.5	29.5	27.8	27.1
Operating income	10.7	9.9	13.1	12.9
Interest expense	9.0	11.8	10.6	10.3
Other expenses, net	0.1	0.7	0.8	0.1
Total other expense	9.1	12.5	11.4	10.5
Income (loss) before income taxes	1.6	(2.6)	1.7	2.5
Income tax (benefit) expense	(0.6)	(2.6)	1.6	0.6
Net income (loss)	2.3	—	0.1	1.9
Other financial and operations data				
Number of new and acquired locations	8	26	28	38
Number of locations open at end of period	934	956	952	940
Comparable Sales Growth(2)	15.5%	(0.6)%	0.4%	(1.3)%
Adjusted EBITDA(3)	\$104,343	\$ 90,090	\$ 160,003	\$ 151,799
Adjusted EBITDA as a percentage of sales(3)	14.3%	14.3%	17.2%	17.0%

(1) Components may not add to totals due to rounding.

(2) See the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Factors and Measures We Use to Evaluate Our Business."

(3) The table below provides a reconciliation from our net income (loss) to Adjusted EBITDA for Fiscal Year 2019, Fiscal Year 2018, the nine months ended June 27, 2020, and the nine months ended June 29, 2019.

[Table of Contents](#)

	Results of Operations			
	(dollars in thousands)			
	Nine Months Ended		Fiscal Year Ended	
	June 27, 2020	June 29, 2019	September 28, 2019	September 29, 2018
	(unaudited)			
Net income (loss)	\$ 16,507	\$ (78)	\$ 702	\$ 17,126
Depreciation and amortization expenses	20,585	22,870	30,424	31,611
Interest expense	65,513	74,641	98,578	91,656
Loss on disposition of assets	486	412	1,751	1,057
Income tax (benefit) expense	(4,603)	(16,321)	14,855	4,926
Management fee	3,153	2,723	4,533	3,223
Equity-based compensation expense	1,792	1,451	2,130	1,785
Mark-to-market on interest rate cap	22	4,240	4,288	(3,045)
Other	888	153	2,742	3,460
Adjusted EBITDA(1)	<u>\$ 104,343</u>	<u>\$ 90,090</u>	<u>\$ 160,003</u>	<u>\$ 151,799</u>

- (1) Adjusted EBITDA is defined as earnings before interest (including amortization of debt costs), taxes, depreciation, amortization, loss/(gain) on disposition of fixed assets, management fees, equity-based compensation expense, mark-to-market on interest rate cap, and special items. Adjusted EBITDA is not a recognized measure of financial performance under GAAP but is used by some investors to determine a company's ability to service or incur indebtedness. Adjusted EBITDA is not calculated in the same manner by all companies, and accordingly, is not necessarily comparable to similarly entitled measures of other companies and may not be an appropriate measure for performance relative to other companies. Adjusted EBITDA should not be construed as an indicator of a company's operating performance in isolation from, or as a substitute for, net income (loss), cash flows from operations or cash flow data, all of which are prepared in accordance with GAAP. We have presented Adjusted EBITDA solely as supplemental disclosure because we believe it allows for a more complete analysis of results of operations. Adjusted EBITDA is not intended to represent, and should not be considered more meaningful than, or as an alternative to, measures of operating performance as determined in accordance with GAAP. Our presentation of Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by these items.

Nine Months Ended June 27, 2020 Compared to Nine Months Ended June 29, 2019

Sales

Sales increased to \$730.9 million in the nine months ended June 27, 2020 from \$630.0 million in the nine months ended June 29, 2019, an increase of \$100.9 million or 16.0%. The increase was the result of a Comparable Sales increase of 15.5% and non-Comparable Sales Growth primarily attributable to acquisitions. The Comparable Sales increase of \$95.6 million in the nine months ended June 27, 2020 was driven by an increase in consumer demand across all product categories due to higher use of residential pools and spas. We believe that COVID-19 has accelerated secular trends in consumer behavior and has favorably impacted our sales. While the duration and effects of the COVID-19 pandemic are uncertain, we anticipate that the changes in consumer behavior will continue for the foreseeable future.

Gross Profit and Gross Margin

Gross profit increased to \$294.1 million in the nine months ended June 27, 2020 from \$248.4 million in the nine months ended June 29, 2019, an increase of \$45.7 million or 18.4%. Gross profit increased by \$37.5 million related to higher Comparable Sales, by \$6.5 million related to higher non-Comparable Sales, and by \$1.9 million as a result of lower occupancy expenses. Gross margin

[Table of Contents](#)

increased to 40.2% in the nine months ended June 27, 2020 compared to 39.4% in the nine months ended June 29, 2019, an increase of 80 basis points.

Selling, General and Administrative Expenses

SG&A increased to \$215.8 million in the nine months ended June 27, 2020 from \$185.8 million in the nine months ended June 29, 2019, an increase of \$30.0 million or 16.1%. The increase in SG&A was primarily driven by increased costs related to higher sales volume of \$9.6 million, higher compensation expense of \$6.3 million, expenses associated with COVID-19 of \$6.3 million for temporary wage increases and personal protective equipment, higher general and administrative expenses of \$4.3 million partially driven by higher spend related to information systems, and expenses related to strategic consolidations of certain locations of \$3.5 million. As a percentage of sales, SG&A increased to 29.5% in the nine months ended June 27, 2020 compared to 29.5% in the nine months ended June 29, 2019, an increase of three basis points.

Total Other Expense

Total other expense decreased to \$66.4 million in the nine months ended June 27, 2020 from \$79.0 million in the nine months ended June 29, 2019, a decrease of \$12.6 million. The decrease in the nine months ended June 27, 2020 was primarily driven by lower interest expense on our floating rate debt of \$9.1 million, a reduction in the fair value of our interest rate cap agreements during the nine months ended June 29, 2019 of \$4.2 million, and partially offset by an increase in other expenses of \$0.7 million.

Income Taxes

We recorded an income tax benefit of \$4.6 million in the nine months ended June 27, 2020 and a benefit of \$16.3 million in the nine months ended June 29, 2019, a decrease of \$11.7 million. The change in income tax expenses was the result of higher pre-tax income during the nine months ended June 27, 2020 and the impact of limitations on interest expense deductibility in accordance with section 163(j) of the Tax Cuts and Jobs Act of 2017 in each period.

Net Income

As a result of the foregoing, net income increased to \$16.5 million in the nine months ended June 27, 2020 from a loss of \$0.1 million in the nine months ended June 29, 2019, an increase of \$16.6 million.

Adjusted EBITDA

Adjusted EBITDA increased to \$104.3 million in the nine months ended June 27, 2020 from \$90.1 million in the nine months ended June 29, 2019, an increase of \$14.3 million or 15.8%. The increase is due primarily to our increase in Comparable Sales and an improvement in gross margin. Adjusted EBITDA as a percentage of sales decreased to 14.3% in the nine months ended June 27, 2020 compared to 14.3% in the nine months ended June 29, 2019, a decrease of two basis points.

Fiscal Year 2019 Compared to Fiscal Year 2018

Sales

Sales increased to \$928.2 million in Fiscal Year 2019 from \$892.6 million in Fiscal Year 2018, an increase of \$35.6 million or 4.0%. This increase was driven primarily by a \$31.9 million increase related

[Table of Contents](#)

to non-Comparable Sales related to acquisitions and higher Comparable Sales of \$3.7 million. Comparable Sales increased by 0.4% in Fiscal Year 2019 when compared to the prior year.

Gross Profit and Gross Margin

Gross profit increased to \$379.7 million in Fiscal Year 2019 from \$357.1 million in Fiscal Year 2018, an increase of \$22.6 million or 6.3%. Gross profit increased by \$18.0 million related to higher Comparable Sales and by \$8.8 million related to higher non-Comparable Sales. The increase in gross profit was partially offset by higher occupancy expenses of \$2.6 million and higher distribution expenses of \$1.6 million. Gross margin increased to 40.9% in Fiscal Year 2019 compared to 40.0% in Fiscal Year 2018, an increase of 90 basis points.

Selling, General and Administrative Expenses

SG&A increased to \$258.2 million in Fiscal Year 2019 from \$241.7 million in Fiscal Year 2018, an increase of \$16.5 million or 6.8%. The increase in SG&A was primarily driven by costs related to higher sales volume of \$8.8 million, higher compensation expense of \$5.2 million, and higher corporate support expenses of \$2.5 million. As a percentage of sales, SG&A increased to 27.8% in Fiscal Year 2019 compared to 27.1% in Fiscal Year 2018, an increase of 74 basis points.

Total Other Expense

Total other expense increased to \$106.0 million in Fiscal Year 2019 from \$93.4 million in Fiscal Year 2018, an increase of \$12.6 million. The increase was primarily driven by higher interest expense on our floating rate debt of \$6.9 million, the impact related to the change in fair value of our interest rate cap agreements of \$7.3 million, and partially offset by lower other expenses of \$1.6 million.

Income Taxes

Income tax expense increased to \$14.9 million in Fiscal Year 2019 from \$4.9 million in Fiscal Year 2018. The increase in income tax expense and the effective tax rate is related to a higher valuation allowance recorded in the current year due to limitations on interest expense deductibility in accordance with section 163(j) of the Tax Cuts and Jobs Act of 2017. As of September 28, 2019 and September 29, 2018, we recorded a deferred tax asset of \$17.9 million and \$5.7 million, respectively, and a valuation allowance of \$16.8 million and \$5.7 million, respectively, related to our interest expense limitation.

Net Income

As a result of the foregoing, net income decreased to \$0.7 million in Fiscal Year 2019 from \$17.1 million in Fiscal Year 2018, a decrease of \$16.4 million.

Adjusted EBITDA

Adjusted EBITDA increased to \$160.0 million in Fiscal Year 2019 compared to \$151.8 million in Fiscal Year 2018, an increase of \$8.2 million or 5.4%. The increase in Adjusted EBITDA primarily related to the incremental sales associated with an increase in our non-Comparable Sales and an improvement in gross margin. Adjusted EBITDA as a percentage of sales increased to 17.2% in Fiscal Year 2019 compared to 17.0% in Fiscal Year 2018, an increase of 23 basis points.

[Table of Contents](#)

Seasonality and Quarterly Fluctuations

Our business is highly seasonal. In general, sales and earnings are highest during our Fiscal Year third and fourth quarters, which include April through September and represent the peak months of swimming pool use. In Fiscal Year 2019, we generated 76% of our sales and 107% of our Adjusted EBITDA in the third and fourth quarters of our fiscal year. Sales are substantially lower during our fiscal first and second quarters. We have a long track record of investing in our business throughout the year, including in operating expenses, working capital, and capital expenditures related to new locations and other growth initiatives. While these investments drive performance during the primary selling season in our third and fourth fiscal quarters, they have a negative impact during our first and second fiscal quarters.

We experience a build-up of inventory and accounts payable during the fiscal first and second quarters of the year in anticipation of the peak swimming pool supply selling season. We negotiate extended payment terms with certain of our primary suppliers as we receive merchandise in December through March and we pay for merchandise in April through July. As a result of lower sales volumes during our fiscal first and second quarters, we reach peak borrowing during our fiscal second quarter.

The principal external factor affecting our business is weather. Hot weather can increase purchases of chemicals and other non-discretionary products, purchases of discretionary products, and can drive increased activity around installation and repair services we offer. Unseasonably cool weather or significant amounts of rainfall during the peak sales season can reduce chemical consumption in pools and spas and decrease consumer purchases of our products and services. In addition, unseasonably early or late warming trends can increase or decrease the length of the pool season and impact timing around pool openings and closings and, therefore, our total sales and timing of our sales.

We generally open new locations before our peak selling season begins and we close locations after our peak selling season ends. We expect that our quarterly results of operations will fluctuate depending on the timing and amount of sales contributed by new locations.

For discussion regarding the effects seasonality had on our quarterly results of operations in the fourth quarter of Fiscal 2018 through the third quarter of Fiscal 2020, see “—Quarterly Results of Operations” below.

[Table of Contents](#)

Quarterly Results of Operations

The following table sets forth certain financial and operating information for each of our last eight fiscal quarters. The quarterly information has been prepared on the same basis as the consolidated financial statements and includes all adjustments (consisting of normal recurring adjustments) that, in the opinion of management, are necessary for a fair presentation of the information presented. This information should be read in conjunction with the consolidated financial statements and related notes thereto included elsewhere in this prospectus. Due to the seasonal nature of our industry, the results of any one or more quarters are not necessarily a good indication of results for an entire fiscal year.

	(unaudited) (dollars in thousands)							
	Third Quarter of Fiscal 2020	Second Quarter of Fiscal 2020	First Quarter of Fiscal 2020	Fourth Quarter of Fiscal 2019	Third Quarter of Fiscal 2019	Second Quarter of Fiscal 2019	First Quarter of Fiscal 2019	Fourth Quarter of Fiscal 2018
Selected Statements of Operations Data								
Sales	\$480,037	\$126,393	\$124,487	\$298,219	\$406,149	\$110,356	\$113,480	\$282,836
Gross profit	210,655	41,672	41,752	131,313	175,848	35,022	37,558	120,408
Operating income (loss)	111,777	(15,768)	(17,682)	58,937	93,131	(18,935)	(11,545)	52,147
Net income (loss)	71,799	(29,763)	(25,529)	780	856	(681)	(252)	20,321
Selected Other Financial and Operations Data								
Number of new and acquired locations	2	—	6	2	4	22	—	2
Number of locations open at end of period	934	932	932	952	956	952	930	940
Comparable Sales Growth(1)	19.4%	13.7%	3.4%	2.5%	1.3%	(7.0)%	(0.9)%	(0.4)%
Gross margin	43.9%	33.0%	33.5%	44.0%	43.3%	31.7%	33.1%	42.6%
Adjusted EBITDA(2)	\$120,019	\$ (7,673)	\$ (8,003)	\$ 69,913	\$102,040	\$ (10,018)	\$ (1,932)	\$ 61,245
Adjusted EBITDA as a percentage of sales	25.0%	(6.1)%	(6.4)%	23.4%	25.1%	(9.1)%	(1.7)%	21.7%
Borrowings under ABL Credit Facility	<u>\$ 0</u>	<u>\$ 50,000</u>	<u>\$ 6,300</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 47,900</u>	<u>\$ 11,700</u>	<u>\$ 0</u>

(1) See the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Factors and Measures We Use to Evaluate Our Business."

[Table of Contents](#)

(2) The table below provides a reconciliation from our net income (loss) to Adjusted EBITDA for the last eight fiscal quarters.

	(unaudited) (dollars in thousands)							
	Third Quarter of Fiscal 2020	Second Quarter of Fiscal 2020	First Quarter of Fiscal 2020	Fourth Quarter of Fiscal 2019	Third Quarter of Fiscal 2019	Second Quarter of Fiscal 2019	First Quarter of Fiscal 2019	Fourth Quarter of Fiscal 2018
Net income (loss)	\$ 71,799	\$ (29,763)	\$ (25,529)	\$ 780	\$ 856	\$ (681)	\$ (252)	\$ 20,321
Depreciation and amortization expenses	6,415	6,853	7,317	7,554	7,284	7,466	8,120	8,269
Interest expense	19,781	23,013	22,719	23,937	25,041	25,729	23,870	25,835
Loss on disposition of assets	16	27	443	1,341	143	87	182	656
Income tax expense (benefit)	19,612	(9,205)	(15,010)	31,176	67,049	(45,256)	(38,114)	7,555
Management fee	1,214	617	1,322	1,810	1,003	896	825	938
Equity-based compensation expense	597	598	597	679	483	503	464	481
Mark-to-market on interest rate cap	—	—	22	48	113	1,177	2,950	(3,045)
Other	585	187	116	2,588	68	61	23	235
Adjusted EBITDA(1)	<u>\$ 120,019</u>	<u>\$ (7,673)</u>	<u>\$ (8,003)</u>	<u>\$ 69,913</u>	<u>\$ 102,040</u>	<u>\$ (10,018)</u>	<u>\$ (1,932)</u>	<u>\$ 61,245</u>

(1) Adjusted EBITDA is defined as earnings before interest (including amortization of debt costs), taxes, depreciation, amortization, loss/(gain) on disposition of fixed assets, management fees, equity-based compensation expense, mark-to-market on interest rate cap, and special items. Adjusted EBITDA is not a recognized measure of financial performance under GAAP but is used by some investors to determine a company's ability to service or incur indebtedness. Adjusted EBITDA is not calculated in the same manner by all companies, and accordingly, is not necessarily comparable to similarly entitled measures of other companies and may not be an appropriate measure for performance relative to other companies. Adjusted EBITDA should not be construed as an indicator of a company's operating performance in isolation from, or as a substitute for, net income (loss), cash flows from operations or cash flow data, all of which are prepared in accordance with GAAP. We have presented Adjusted EBITDA solely as supplemental disclosure because we believe it allows for a more complete analysis of results of operations. Adjusted EBITDA is not intended to represent, and should not be considered more meaningful than, or as an alternative to, measures of operating performance as determined in accordance with GAAP. Our presentation of Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by these items.

Liquidity and Capital Resources

Overview

Our primary sources of liquidity are net cash provided by operating activities and availability under our ABL Credit Facility. Historically, we have funded working capital requirements, capital expenditures, payments related to acquisitions, and debt service requirements with internally generated cash on hand and through our ABL Credit Facility.

Cash and cash equivalents consist primarily of cash on deposit with banks. Cash and cash equivalents totaled \$148.9 million as of June 27, 2020, \$82.1 million as of June 29, 2019, \$90.9 million as of September 28, 2019, and \$77.6 million as of September 29, 2018. As of June 27, 2020, June 29, 2019, September 28, 2019, and September 29, 2018, we did not have any outstanding borrowings under our ABL Credit Facility. On August 13, 2020, we entered into an agreement to amend our ABL Credit Facility to extend the final maturity to August 13, 2025 and increase our borrowing capacity to \$200 million, subject to certain restrictions.

Our primary working capital requirements are for the purchase of inventory, payroll, rent, other facility costs, distribution costs, and general and administrative costs. Our working capital requirements fluctuate during the year, driven primarily by seasonality and the timing of inventory purchases.

Our capital expenditures are primarily related to infrastructure-related investments, including investments related to upgrading and maintaining our information technology systems, ongoing location improvements, expenditures related to our distribution centers, and new location openings. We expect to fund capital expenditures from net cash provided by operating activities.

Based on our growth plans, we believe our cash and cash equivalents position, net cash provided by operating activities and availability under our ABL Credit Facility will be adequate to finance our working capital requirements, planned capital expenditures, and debt service over the next 12 months. In the future, we may also allocate capital toward additional strategic acquisitions. If cash provided by operating activities and borrowings under our ABL Credit Facility are not sufficient or available to meet our capital requirements, then we will be required to obtain additional equity or debt financing in the future. There can be no assurance equity or debt financing will be available to us if we need it or, if available, the terms will be satisfactory to us.

As of October 3, 2020, outstanding standby letters of credit totaled \$11.6 million and, after considering borrowing base restrictions, we had \$125.5 million of available borrowing capacity under the terms of the ABL Credit Facility. As of October 3, 2020, we were in compliance with the covenants under the ABL Credit Facility, the Term Loan, and the Senior Unsecured Notes.

Summary of Cash Flows

A summary of our cash flows from operating, investing, and financing activities is presented in the following table:

	(dollars in thousands)			
	Nine Months Ended		Fiscal Year Ended	
	June 27, 2020	June 29, 2019	September 28, 2019	September 29, 2018
	(unaudited)			
Net cash provided by operating activities	\$ 85,921	\$ 42,559	\$ 57,821	\$ 43,280
Net cash used in investing activities	(21,664)	(30,558)	(36,996)	(40,219)
Net cash used in financing activities	(6,255)	(7,442)	(7,495)	(24,386)
Net increase (decrease) in cash and cash equivalents	<u>\$ 58,002</u>	<u>\$ 4,559</u>	<u>\$ 13,330</u>	<u>\$ (21,325)</u>

[Table of Contents](#)

Cash Provided by Operating Activities

Net cash provided by operating activities increased to \$85.9 million for the nine months ended June 27, 2020 from \$42.6 million for the nine months ended June 29, 2019, an increase of \$43.4 million or 101.9%. The increase was primarily driven by a \$16.6 million increase in net income, a \$14.9 million increase related to changes in operating assets and liabilities, and an increase in non-cash adjustments of \$11.9 million. The changes in operating assets and liabilities was driven by changes in working capital, including an increase in accounts payable and accrued expenses primarily related to compensation expense accruals and payment timing for other expenses, lower inventories resulting from higher sales volume in the current year period, lower accounts receivable related to reduced commercial account activity and improved collection of vendor receivables, and an increase in income tax payable. The increase in cash flows related to working capital was partially offset by an increase in prepaid expenses related to our capitalized cloud computing arrangements with certain vendors. The increase in non-cash adjustments primarily related to a change in deferred income taxes.

Net cash provided by operating activities increased to \$57.8 million for Fiscal Year 2019 from \$43.3 million for Fiscal Year 2018, an increase of \$14.5 million or 33.6%. The increase was primarily driven by a \$33.3 million increase related to changes in operating assets and liabilities and partially offset by a \$16.4 million decrease in net income. The changes in operating assets and liabilities was driven changes in by working capital, including an increase in accounts payable and accrued expenses primarily related to compensation expense accruals and payment timing of rent and other expenses, and an increase in income tax payable.

Cash Used in Investing Activities

Net cash used in investing activities decreased to \$21.7 million for the nine months ended June 27, 2020 from \$30.6 million for the nine months ended June 29, 2019, a decrease of \$8.9 million. The decrease in net cash used in investing activities relates to fewer new locations and a reduction in investments related to acquisitions in the current year period. Our net cash used in investing activities related to the acquisitions included \$6.2 million in the nine months ended June 27, 2020 and \$9.6 million in the nine months ended June 29, 2019.

Net cash used in investing activities decreased to \$37.0 million for Fiscal Year 2019 from \$40.2 million for Fiscal Year 2018, a decrease of \$3.2 million. The decrease in net cash used in investing activities relates to fewer new locations and a reduction in investments related to the acquisitions in the current year period. Our net cash used in investing activities related to acquisitions included \$9.6 million in Fiscal Year 2019 and \$11.8 million in Fiscal Year 2018.

Cash Used in Financing Activities

Net cash used in financing activities decreased to \$6.3 million for the nine months ended June 27, 2020 from \$7.4 million for the nine months ended June 29, 2019, a decrease of \$1.2 million. Net cash used in financing activities during the periods primarily relates to mandatory payments on our Term Loan.

Net cash used in financing activities decreased to \$7.5 million for Fiscal Year 2019 from \$24.4 million for Fiscal Year 2018, a decrease of \$16.9 million. The decrease in net cash used in 2019 is primarily the result of fewer mandatory payments on our Term Loan during year.

[Table of Contents](#)

Contractual Obligations and Other Commitments

The following table summarizes our contractual cash obligations as of June 27, 2020:

(in millions)	Payments Due By Period						
	Total	Remainder of 2020	2021	2022	2023	2024	Thereafter
ABL Credit Facility (1)	\$ 3.8	\$ 0.2	\$ 0.8	\$ 0.8	\$ 0.8	\$ 0.8	\$ 0.7
Term Loan	815.3	4.2	8.3	8.3	794.5	—	—
Senior Unsecured Notes	390.0	—	—	—	—	390.0	—
Letters of credit	11.6	—	11.6	—	—	—	—
Operating lease obligations (2)	248.7	17.2	66.0	56.7	44.6	31.8	32.3
Purchase commitments (3)	346.2	19.7	106.6	72.2	65.4	48.4	33.9
Total	\$ 1,815.6	\$ 41.2	\$ 193.3	\$ 138.0	\$ 905.3	\$ 470.9	\$ 66.9

- (1) We are required to pay a commitment fee of 0.375% based on the unused portion of the ABL Credit Facility.
- (2) Operating lease obligations relate to our stores, office, distribution, and manufacturing facilities. All of these obligations require cash payments to be made by us over varying periods of time. Certain leases are renewable at our option for periods of one to ten years and certain of these arrangements are cancelable on short notice while others require payments upon early termination.
- (3) Purchase obligations include all legally binding contracts and primarily relate to firm commitments for inventory purchases. The table above includes amounts related to additional purchase commitments entered into during August and September 2020 related to inventory. Purchase orders that are not binding agreements are excluded from the table above.

Off-Balance Sheet Arrangements

We did not have any off-balance sheet arrangements as of June 27, 2020.

Critical Accounting Policies and Estimates

Our consolidated financial statements have been prepared in accordance with GAAP. The preparation of our consolidated financial statements and notes to consolidated financial statements requires us to make estimates that affect the reported amounts of assets, liabilities, sales and expenses, and related disclosures of contingent assets and liabilities. We base these estimates on historical results and various other assumptions believed to be reasonable, all of which form the basis for making estimates concerning the carrying values of assets and liabilities that are not readily available from other sources. Actual results may differ from these estimates.

Our significant accounting policies are described in the notes to our consolidated financial statements included elsewhere in this prospectus. We believe that the following critical accounting policies affect the most significant estimates and management judgments used in preparing the consolidated financial statements.

Vendor Rebates

Many of our vendor arrangements provide for us to receive specified amounts of consideration when we achieve various measures. These measures generally relate to the volume of purchases from our vendors. We account for vendor rebates as a reduction of the cost of product and therefore a reduction of inventory until we sell the product, at which time we recognize such consideration as a reduction of cost of merchandise and services sold. For certain arrangements, we estimate the amount earned based on our latest projection of total purchases. We update our estimates each period to reflect actual purchase levels and any changes to our projection of total purchases.

[Table of Contents](#)

Goodwill and Other Intangibles

We review goodwill and indefinite lived intangible assets for impairment annually or on an interim basis whenever events or changes in circumstances indicate the fair value of such assets may be below their carrying amount.

For goodwill, we may first make a qualitative assessment of whether it is more likely than not that a reporting unit's fair value is less than its carrying value. The qualitative impairment assessment includes considering various factors including macroeconomic conditions, industry and market conditions, cost factors, and any reporting unit specific events. If it is determined through the qualitative assessment that the reporting unit's fair value is more likely than not greater than its carrying value, the quantitative impairment assessment is not required. If the qualitative assessment indicates it is more likely than not that the reporting unit's fair value is not greater than its carrying value, we must perform a quantitative impairment assessment. If it is determined a quantitative assessment is necessary, we would compare the fair value of the reporting unit to the respective carrying value, which includes goodwill. If the fair value of the reporting unit exceeds its carrying value, goodwill is not considered impaired. If the carrying value is higher than the fair value, the difference would be recognized as an impairment loss.

Similar to our test for impairment of goodwill, we may first make a qualitative assessment of whether it is more likely than not that an indefinite lived intangible assets' fair value is less than its carrying value to determine whether it is necessary to perform a quantitative impairment assessment. If it is determined a quantitative assessment is necessary, we would compare their estimated fair values to their carrying values. We would recognize an impairment charge when the estimated fair value of the indefinite lived intangible asset is less than its carrying value. We annually evaluate whether the trade names continue to have an indefinite life.

Income Taxes

We account for income taxes under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the future tax consequences attributable to differences between the financial statement carrying amounts and tax bases of existing assets and liabilities. Deferred tax assets, including the benefit of net operating loss and tax credit carryforwards, are evaluated based on the guidelines for realization and are reduced by a valuation allowance if it is deemed more likely than not that such assets will not be realized. We consider several factors in evaluating the realizability of our deferred tax assets, including the nature, frequency and severity of recent losses, the remaining years available for carryforwards, changes in tax laws, the future profitability of the operations in the jurisdiction, and tax planning strategies.

The ultimate realization of deferred tax assets can be dependent upon the generation of future taxable income during the periods in which the associated temporary differences became deductible. On a quarterly basis, we evaluate whether it is more likely than not that our deferred tax assets will be realized in the future and conclude whether a valuation allowance must be established.

Self-Insurance

We are self-insured for certain losses related to health, workers' compensation and general liability insurance, although we maintain stop-loss coverage with third-party insurers to limit our liability exposure. Liabilities associated with these losses are estimated in part by considering historical claim experience, industry factors, severity factors and other assumptions. We review and update these reserves on a quarterly basis.

Inventory Valuation

Inventories consist of merchandise held for sale and are stated at the lower of cost and net realizable value. When evidence exists that the net realizable value of inventory is lower than its cost,

[Table of Contents](#)

the difference is recorded in cost of merchandise and services sold in our consolidated statement of operations as a loss in the period in which it occurs. We provide provisions for losses related to inventories based on historical purchase cost, selling price, margin, and current business trends. The estimates have calculations that require us to make assumptions based on the current rate of sales, age, salability of inventory, and profitability of inventory, all of which may be affected by changes in our merchandising mix and consumer preferences. We do not believe there is a reasonable likelihood that there will be a material change in the assumptions we use to calculate our inventory provisions. However, if actual results are not consistent with our estimates and assumptions, we may be exposed to losses or gains that could be material. We review and update these reserves on a quarterly basis.

Recently Issued and Adopted Accounting Standards

See Note 2 of "Notes to the Condensed Consolidated Financial Statements" included in this Form S-1 for details.

We are an emerging growth company, as defined in the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. We elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our consolidated financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates. Following the completion of this offering, we will cease to be an emerging growth company.

Following the completion of this offering, we will be required to adopt ASU 2016-02, Leases (Topic 842) ("ASU 2016-02"). We are currently evaluating the impact that ASU 2016-02 will have on our consolidated financial statements. We do not anticipate a material impact to our Consolidated Statements of Operations or Consolidated Statements of Cash Flows, but we do expect a material impact to our Consolidated Balance Sheets related to our leased locations.

Quantitative and Qualitative Disclosures About Market Risks

Interest Rate Risk

Our operating results are subject to risk from interest rate fluctuations on our borrowings, which carry variable interest rates. Our borrowings include our ABL Credit Facility, Term Loan, and Senior Unsecured Notes. Our ABL Credit Facility provides for revolving loans of up to \$200.0 million, with a sub-commitment for issuance of letters of credit of \$25.0 million. Because our borrowings bear interest at a variable rate, we are exposed to market risks relating to changes in interest rates. As of June 27, 2020, we had \$815.3 million and \$390.0 million of outstanding variable rate loans outstanding under our Term Loan and Senior Unsecured Notes, respectively, and no outstanding variable rate debt under our ABL Credit Facility. Based on our June 27, 2020 variable rate loan balances, an increase or decrease of 1% in the effective interest rate would cause an increase or decrease in interest cost of approximately \$12.1 million over the next 12 months. We have entered into interest rate cap agreements to manage interest rate risk. Such agreements cap the borrowing rate on variable debt to provide a hedge against the risk of rising rates. At June 27, 2020, September 28, 2019, and September 29, 2018, we had two interest rate cap agreements with total notional amount of \$750 million (the "Cap Agreements") to mitigate the impact of fluctuations in the three-month LIBOR and effectively cap the LIBOR applicable to our variable rate debt at a rate of 3.00%. The four-year Cap Agreements reset and settle quarterly through March 31, 2021. Fluctuations in the market value of the Cap Agreements are recorded in "Other income and expenses" on our Consolidated Statements of Operations.

[Table of Contents](#)

Impact of Inflation

Our results of operations and financial condition are presented based on historical cost. We actively manage the impact of inflation, including tariffs, through strong relationships with our diverse supplier base, vendor negotiation, and price and promotion management. We also strategically invest through inventory purchases in order to obtain favorable pricing ahead of any vendor price increases. As a result, we believe we have an ability to mitigate any negative impacts of inflation.

Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

Internal Control over Financial Reporting

We are not currently required to comply with Section 404(b) of the Sarbanes-Oxley Act. We will be required to comply with the internal control requirements of the Sarbanes-Oxley Act for the Fiscal Year ending October 2, 2021. We would be required to comply with the independent registered public accounting firm attestation requirement in the event that we are deemed to be a large accelerated filer or an accelerated filer. Further, for as long as we remain an emerging growth company as defined in the JOBS Act, we intend to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the independent registered public accounting firm attestation requirement.

Prior to the closing of this offering, we have not completed an assessment, nor has our independent registered public accounting firm tested our systems, of internal controls. Once our management's report on internal controls is complete, we will retain our independent registered public accounting firm to audit and render an opinion on such report when required by Section 404 of the Sarbanes-Oxley Act. The independent registered public accounting firm may identify additional issues concerning internal controls while performing their audit of internal control over financial reporting.

BUSINESS

Our Mission

We are committed to continuing our legacy as the most trusted authority in pool and spa care. Through our consumer-centric approach, we provide an unparalleled experience for all consumers across all channels, supported by leading product innovation, expert knowledge, and exceptional service.

Our Company

We are the largest and most trusted direct-to-consumer brand in the nearly \$11 billion U.S. pool and spa care industry, serving residential, professional, and commercial consumers. Founded in 1963, we are the only direct-to-consumer pool and spa care brand with national scale, operating an integrated marketing and distribution ecosystem powered by a physical network of 934 branded locations and a robust digital platform. We command a market-leading share of nearly 15% of residential aftermarket product spend, which represents an increase of approximately 500 basis points since 2010, our physical network is larger than the sum of our twenty largest competitors, and our digital sales are estimated to be greater than five times as large as that of our largest digital competitor. We offer an extensive assortment of professional-grade products, the majority of which are exclusive to Leslie's, as well as certified installation and repair services, all of which are essential to the ongoing maintenance of pools and spas. Our dedicated team of more than 5,000 associates, pool and spa care experts, and experienced service technicians are passionate about empowering our consumers with the knowledge, products, and solutions necessary to confidently maintain and enjoy their pools and spas. Over the last five years, we have spent more than \$70 million in foundational investments across new technologies and capabilities focused on transforming our consumer experience and advancing our industry leadership. The unprecedented scale of our integrated marketing and distribution ecosystem, which is powered by our direct-to-consumer network, uniquely enables us to efficiently reach and service every pool and spa in the continental United States—capabilities no competitor can match.

Consumer-Centric Integrated Ecosystem

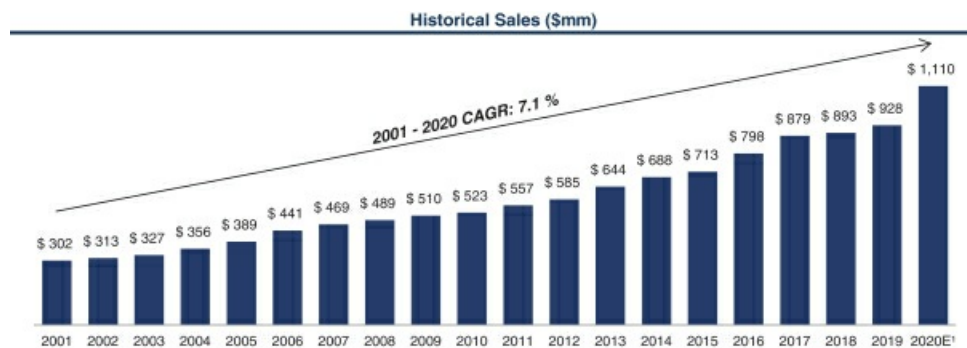


Table of Contents

The aftermarket pool and spa care industry is one of the most fundamentally attractive consumer categories given its scale, predictability, and growth outlook. Since 1970, when industry market data was first collected, the market has demonstrated consistent growth due to the non-discretionary nature of ongoing water treatment to maintain safe, sanitized water. Without proper ongoing maintenance, water quality quickly degrades, yielding unsafe conditions and risking equipment failure. As a result, each pool and spa represents an annuity-like stream of chemical, equipment, and service revenue for their average life span of over 25 years. We estimate the average in-ground pool owner spends \$24,000 or more on maintenance products and services over the life of a pool. According to P.K. Data, the U.S. market is comprised of a growing installed base of more than 14 million pools and spas. The industry generated revenue of nearly \$11 billion and grew at a 3.8% CAGR from 2015 to 2019.

The industry is currently experiencing a significant increase in demand, as the COVID-19 pandemic has accelerated secular trends in consumer behavior. Consumers are increasingly focused on outdoor living, healthy lifestyles, sanitization and safety, migrating to lower density communities, and spending more time at home, all of which are fundamentally changing their spending patterns. In particular, the stay-at-home reality of the pandemic has led to significant growth in new pool installations and pool usage. Based on research performed by P.K. Data, new pool permit activity through July 2020 has grown by 32% over the comparable period in 2019 and is forecasted to achieve unprecedented year-over-year growth in new pool installations in 2020. This significant increase in new pool construction activity represents a permanent increase in demand for aftermarket products and services. Nearly 200,000 new in ground pools are expected to be constructed in 2020 and 2021, representing nearly \$5 billion in estimated lifetime maintenance spend. While our business is not dependent on new pool construction, we believe we are uniquely positioned to capture a meaningful portion of the related aftermarket spend.

Given we play primarily in the aftermarket business, we have a highly predictable, recurring revenue model, which is evidenced by our 57 consecutive years of sales growth. More than 80% of our assortment is comprised of non-discretionary products essential to the care of residential and commercial pools and spas. Our assortment includes chemicals, equipment and parts, cleaning and maintenance equipment, and safety, recreational, and fitness-related products. As important, we offer essential services, such as equipment installation and repair for residential and commercial consumers. Consumers receive the benefit of extended vendor warranties when purchasing product through our locations or when our certified in-field technicians install or repair equipment on-site. We also offer complimentary, commercial-grade in-store water testing and analysis via our proprietary AccuBlue[®] system, which increases consumer engagement, conversion, basket size, and loyalty, resulting in higher lifetime value. Our water treatment expertise is powered by data and intelligence accumulated from the more than 40 million water tests we have performed over 57 years, positioning us as the most trusted water treatment service provider in the industry. Due to the non-discretionary nature of our products and services, our business has historically delivered strong, uninterrupted growth and profitability in all market environments, including the Great Recession and the COVID-19 pandemic. Our growth has recently accelerated, and for Fiscal 2020, we estimate that our sales will increase 19.6%, using the mid-point of the estimated sales range when compared with sales for Fiscal 2019. See the section titled "Prospectus Summary—Recent Developments"



¹ Represents the midpoint of the sales range from \$1,108.1mm to \$1,112.1mm based on preliminary estimated unaudited financial results for the year ended October 3, 2020. See the section titled “Prospectus Summary–Recent Developments”.

57 Years of Leadership and Disruptive Innovation in Pool & Spa Care

Since our founding in 1963, we have been the leading innovator in our category and have provided our consumers with the most advanced pool and spa care available. As we have scaled, we have leveraged our competitive advantages to strategically reinvest in our business to develop new value-added capabilities that allow us to meet the needs of any pool and spa owner, whether they care for their pool or spa themselves or rely on a professional, whatever the nature of their need may be, and however they wish to engage with us.

Legacy of Innovation

Over our 57-year history, we have introduced innovative ways to serve pool and spa owners and the professionals who care for their pools and spas.

Owned and Exclusive Brands. Since our inception in 1963, we have offered a portfolio of owned and exclusive brands. We continue to expand our selection of exclusive offerings through innovation, most recently with the launch of the Jacuzzi® and our RightFit® brands in 2016. Our exclusive brands and products account for approximately 55% of total sales and 80% of chemical sales. These proprietary brands and custom-formulated products are only available through our integrated platform and offer professional-grade quality to our consumers, while allowing us to achieve higher gross margins relative to sales of third-party products.

Complimentary and Proprietary Water Testing. We pioneered complimentary in-store water testing, and over the course of our history have conducted more than 40 million tests, which has helped us establish relationships, cultivate loyalty, and drive attractive lifetime value with our consumers as they rely on us for their water treatment needs. We have found that consumers who regularly test their water with us spend approximately 2.5x more with us per year than other consumers, and we believe that these consumers experience significantly fewer days where their pools are out of commission.

Complimentary In-Store Repair. We provide complimentary in-store equipment repair, which we offer to all consumers with the purchase of Leslie's replacement parts. Over the last fifteen years, we have conducted more than one million in-store repairs.

In-Field Services. We employ the industry's largest in-field service network, consisting of more than 200 pool and spa care service professionals who have the expertise to provide essential, on-site

[Table of Contents](#)

equipment installation and repair services for residential and commercial consumers throughout the continental United States.

Loyalty Program. In 2014, we launched the industry's first loyalty program, which helps track loyalty members' water treatment history and prescriptions and rewards them for shopping with us. As of June 27, 2020, our loyalty program has more than 3.2 million active members, up more than 50% from 2.1 million active members as of September 2018. For the nine months ended June 27, 2020, our loyalty members generated more than 70% of our direct residential sales. Our loyalty members spend twice as much with us on average compared to our other consumers.

Professional Market. In 2015, we made the strategic decision to resource this channel and accelerate our sales growth to professional consumers. Through acquisitions, technology investments, and increased utilization of our integrated network, we drove a 23% sales CAGR through Fiscal Year 2019. Our differentiated go to market model includes over 930 convenient locations including dedicated Leslie's PRO locations in certain markets, extended operating hours, expansive product offering through our online platforms, multiple fulfillment capabilities, and the ability to provide pool professionals with referrals to residential consumers. Despite our strong growth, our penetration in the professional market remains modest with an estimated market share of less than 10%.

Leslie's Evolution in the Digital World

Over the last five years, we have spent more than \$70 million investing in new service offerings and digital capabilities that have modernized how consumers take care of their pools and spas.

Digital Network. We have built the largest digital presence in the industry. Our complementary platform of branded proprietary e-commerce websites and marketplace storefronts allows us to seamlessly serve the needs of all digital consumers through curated pricing and targeted merchandising strategies. Our digital network is strategically designed to maximize total profitability. In addition to our owned e-commerce websites, approximately 40% of our digital sales take place through online marketplaces. In all, our digital sales have grown at a CAGR of more than 40% between Fiscal Year 2015 and Fiscal Year 2019, and represent 26% of our total sales for the last twelve months ended June 27, 2020, up from 8% in Fiscal Year 2015.

Mobile App. In 2018, we introduced a custom-designed mobile app that allows consumers to create a personalized pool profile, sync in-store prescriptions, and monitor the performance of at-home water tests. As of August 2020, the mobile app has more than 500,000 downloads and an average user rating of 4.6/5.0. In the last year, the average active mobile app user completed 93% more transactions and spent 86% more with us than the average non-mobile app user. We plan to continue enhancing this critical element of our network by introducing new features, including transaction capabilities. The next version of our mobile app is scheduled to launch by the end of calendar year 2020.

Consumer-Centric Integrated Ecosystem. We architected a consumer-centric integrated ecosystem comprised of our physical network of more than 930 locations and robust, data-driven digital platform. Over the last two years, we have invested in new capabilities, including global inventory visibility, BOPIS, BORIS, and SFS, each of which will come online in 2021. With our integrated physical and digital network, we will have the unique advantage of being able to reach all consumers in the continental United States in less than 24 hours, whether they are homeowners, pool and spa professionals, or commercial pool operators, whenever, wherever, and however they prefer to shop.

AccuBlue® Water Testing & Prescription Service. In January 2020, we launched our AccuBlue® in-store water testing device and enhanced water testing experience. AccuBlue®, which

Table of Contents

features exclusive and proprietary software that incorporates our 57 years of accumulated water treatment expertise, automates and gamifies the water testing experience, driving enhanced accuracy, higher throughput, greater consumer engagement, and increased consumer adherence to prescription recommendations. Locations that have been equipped with AccuBlue® are growing sales at a faster rate than our other locations, supported by an increase in number of water tests performed, an improved conversion rate, and an increase in number of products prescribed per test which has resulted in greater units per transaction. By the end of calendar year 2020, we expect to make AccuBlue® available at all of our locations.

Highly Experienced and Visionary Management Team. Over the last five years, we have built a diverse, multi-disciplinary management team to drive our consumer-first, digitally enabled growth. Since 2018, four of our eight senior leaders have joined our organization, bringing new expertise and capabilities that are highly complementary and synergistic with our core industry expertise that we have accumulated over decades.

Innovating the Future of Pool and Spa Care

As we look forward, we are committed to better serving our digital-first consumer by introducing an expanded portfolio of connected pool and spa products and services. We believe that we are uniquely positioned to leverage our market leadership to continue to disrupt the pool and spa care category and further distance ourselves from our competition.

AccuBlue Home™ Subscription. We are actively developing new technologies that seek to fundamentally change the way all consumers, whether a novice or an expert, care for their pools and spas. Through a new AccuBlue Home™ subscription offering, we will leverage our proprietary water diagnostics software to convert on-demand test results into actionable prescriptions and treatment plans tailored to the specific size and conditions of a consumer's pool or spa, which we can seamlessly and automatically fulfill through our integrated network.

Certified Pool Maintenance Offering. We are assembling a strategic network of qualified pool professionals to extend the Leslie's brand into on-site water maintenance, completing our suite of service offerings in the residential pool ecosystem.

Ongoing R&D. We continue to leverage our intellectual property and differentiated strategic position to be the innovator and disruptor in our industry. We plan to strategically reinvest in our business and bring to market new products and services that will continue to improve our ability to serve our consumers and win in the marketplace. In addition to our internal efforts, as the most recognized and trusted authority in the industry with the most direct access and deepest relationships with pool and spa owners, we continue to receive unsolicited opportunities from third parties to commercialize and introduce to the market new products and services on an exclusive basis.

Recent Financial Performance

Our compelling financial profile is characterized by consistent growth, strong profitability, and high cash flow generation.

Comparing the last twelve months ended June 29, 2019 and the last twelve months ended June 27, 2020, we achieved the following results:

- Increase in sales from \$912.8 million to \$1,029.1 million, representing year-over-year growth of 12.7%;
- Comparable Sales Growth of 11.5% for the last twelve months ended June 27, 2020;

Table of Contents

- Increase in operating income from \$114.8 million to \$137.3 million, representing year-over-year growth of 19.6%; and
- Increase in Adjusted EBITDA from \$151.3 million to \$174.3 million, representing year-over-year growth of 15.1%.

Comparing the nine months ended June 29, 2019 and June 27, 2020, we achieved the following results:

- Increase in sales from \$630.0 million to \$730.9 million, representing year-over-year growth of 16.0%;
- Comparable Sales Growth of 15.5% for the nine months ended June 27, 2020;
- Increase in operating income from \$62.7 million to \$78.3 million, representing year-over-year growth of 25.0%; and
- Increase in Adjusted EBITDA from \$90.1 million to \$104.3 million, representing year-over-year growth of 15.8%.



¹ LTM is defined as last twelve months. "LTM Q3 2019" refers to the four-quarter period ended June 29, 2019. "LTM Q3 2020" refers to the four-quarter period ended June 27, 2020. "YTD Q3 2019" refers to the three-quarter period ended June 29, 2019. "YTD Q3 2020" refers to the three-quarter period ended June 27, 2020. We regularly compute and review our key GAAP and non-GAAP measures on a last twelve months basis as it is used by management and our board of directors to assess our financial performance. Measures calculated on an LTM basis are also frequently used by analysts, investors, and other interested parties to evaluate companies in our industry. All financial measures presented on an LTM basis above have been derived from our consolidated financial statements and related notes which are included elsewhere in this prospectus. For a reconciliation of our key non-GAAP measures to their most comparable U.S. GAAP measures, see section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Factors and Measures We Use to Evaluate Our Business."

Our Competitive Strengths

We believe that the following competitive strengths have been key drivers of our success to date, and strategically position us for continued success.

Undisputed direct-to-consumer market leader in the aftermarket pool and spa care industry, with industry-leading brand recognition and loyalty.

For 57 years, we have been dedicated to addressing our consumers' pool needs so they can spend less time maintaining and more time enjoying their pools. We are the undisputed direct-to-consumer market leader and most trusted brand in the aftermarket pool and spa care industry, having served nearly 1-in-3 pool owners in the past year alone. The remainder of the industry is highly fragmented across both offline and online providers. We command a market-leading share of nearly 15% of residential aftermarket product spend, which represents an increase of approximately 500 basis points since 2010, our physical network is larger than the sum of the next twenty largest competitors, and our digital sales are estimated to be greater than five times as large as that of our largest digital competitor. We measure the size of our physical network in terms of number of physical locations. Similarly, we calculate the sum of our twenty largest competitors as the sum of the number of physical locations operated by our competitors. Additionally, we estimate our share of digital sales to be greater than 60%.

We believe that our history, scale, and consumer-centric approach have contributed to industry-leading consumer affinity metrics. As a result of our consumer-centric approach, we have a Voice of Customer (VoC) score of 75% based on our regular surveys of our consumer file, which demonstrates our consumers' strong affinity for our brand.

Direct relationships with more than 11 million pool and spa owners and professionals, generating durable, annuity-like economics.

We are the only national pool and spa care brand that has a direct relationship with pool and spa owners and the professionals who serve them. Across our integrated platform, we have a total file of approximately 11 million consumers who rely on us for their ongoing pool and spa care needs. Through our team of highly trained pool and spa experts, we offer sophisticated product recommendations and other expert advice, which cultivates long-standing relationships with our consumers. The comprehensive nature of our product and service offering eliminates the need for consumers to leave the Leslie's ecosystem, driving exceptional retention with annuity-like economics. We define "direct relationships" as the number of unique customers for whom we have a mailing address, a phone number, or an email address.

In 2014, we launched our loyalty membership program to further deepen our consumer relationships. The program, which now serves more than 3.2 million active consumers, allows members to save, earn, and redeem via discounts, points, and rewards. We track consumer preferences, order frequency, and pool profiles in order to curate and enhance our recommendations and promotions, anticipate product demand, and track lifetime value to better incentivize our loyalty members. For the nine months ended June 27, 2020, our loyalty members generated more than 70% of our direct residential sales. On average, a loyalty member spends twice as much with us per year than a non-loyalty member.

Consumer-centric connected ecosystem for all pool and spa owners and the professionals who serve them using proprietary, leading brands across all channels.

Over the last 57 years, we have built the most extensive and geographically diverse pool and spa care network in the United States, consisting of three formats: Residential, Professional (PRO), and

[Table of Contents](#)

Commercial. Our locations are strategically located in densely populated areas mainly throughout the Sunbelt, including California, Arizona, Texas, and Florida. Across our physical network, we employ a team of approximately 4,000 associates, including pool and spa care experts and service technicians, who act as solution providers to all of our consumers, including both DIY and DIFM pool owners as well as pool professionals.

As the world has become more digitally focused, and consumers increasingly demand “smart” home-enabled options, we have focused on architecting the industry-leading integrated digital platform of proprietary e-commerce websites designed to serve our residential, professional, and commercial consumers. Our proprietary e-commerce websites serve digital consumers through curated pricing and targeted merchandising strategies. In addition to our owned e-commerce websites, we are the leading partner for Amazon in the pool category, and accounted for more than 40% of Amazon’s estimated pool and spa care business in the twelve-month period ended June 27, 2020. As a result of our strategic investments in digital, we are uniquely positioned to serve our consumers with cross-channel capabilities and capture incremental online demand from new consumers while growing the total profitability of the network.

Comprehensive assortment of proprietary brands with recurring, essential, superior product formulations, and trusted, solution-based services for all consumers.

We offer a comprehensive product assortment, consisting of more than 30,000 products across chemicals, equipment and parts, cleaning and maintenance equipment, and safety, recreational, and fitness-related categories. More than 80% of our product sales are non-discretionary and recurring in nature; these products are critical to the ongoing maintenance of pools and spas. In addition, approximately 55% of our total sales and 80% of our chemical sales are derived from proprietary brands and custom-formulated products, which allows us to create an entrenched consumer relationship, control our supply chain, and capture attractive margins. Consumers choose our exclusive, proprietary brands and custom-formulated products for their efficacy and value, a combination that we believe cannot be found elsewhere.

We pair our comprehensive assortment with differentiated in-store and on-site service offerings. We pioneered the complimentary in-store water test and resulting pool or spa water prescription, which has driven consumer traffic and loyalty, and has created a “pharmacist-like” relationship with our consumers. Through innovation, we recently introduced significant upgrades to our water testing capabilities with the launch of our AccuBlue® platform. The AccuBlue® testing device screens for nine distinct water quality criteria. We have found that 85% of AccuBlue® tests come back with a score below 80%, indicating potentially unsafe pool water and resulting in three or more problems that need to be addressed. Our in-store experts leverage our proprietary water diagnostics software engine to offer our consumers a customized prescription and treatment plan using our comprehensive range of exclusive products, walking them through product use sequencing step-by-step. These detailed and sophisticated treatment algorithms are supported by our differentiated water treatment expertise built over decades. We have found that consumers who regularly test their water with us spend approximately 2.5x more with us per year than other consumers, underscoring the importance of this acquisition and retention vehicle. We also employ the industry’s largest network of in-field technicians who perform on-site evaluations, installation, and repair services for residential and commercial consumers.

Attractive financial profile characterized by consistent, profitable growth, and strong cash flow conversion offering multiple levers to drive shareholder value.

We have delivered 57 consecutive years of sales growth, demonstrating our ability to deliver strong financial results through all economic cycles. Our growth has been broad based across

[Table of Contents](#)

residential pool, residential spa, professional pool, and commercial pool consumers and has been driven by strong retention and profitable acquisition of sticky, long-term consumer relationships. Due to our scale, vertical integration, and operational excellence, we maintain high profitability; for the last twelve months ended June 27, 2020, we delivered Adjusted EBITDA margins of 16.9%. Due to our low maintenance capital intensity, we generate strong cash flows. As a result of our attractive financial profile, we have significant flexibility with respect to capital allocation, giving us the ability to drive long-term shareholder value through various operating and financial strategies.

Highly experienced and visionary management team that combines deep industry expertise and advanced, direct-to-consumer capabilities.

Our strategic vision and culture are directed by our executive management team under the leadership of our Chief Executive Officer, Michael R. Egeck, our Executive Vice President and Chief Financial Officer, Steven M. Weddell, and our Chairman, Steven L. Ortega. Mr. Egeck joined us in 2020 from PSEB Group, the operating company for Eddie Bauer and PACSUN, and brings significant multi-brand platform experience, as well as a proven track record of transforming businesses into next generation brands. Mr. Weddell joined us in 2015 as Executive Vice President, Chief Financial Officer, Secretary and Treasurer. Prior to joining Leslie's, Mr. Weddell served as a Managing Director at Goldman, Sachs & Co. Mr. Ortega joined us in 2005 as Chief Financial Officer and was promoted to Chief Operating Officer in March 2014, President in May 2015, and Chief Executive Officer in 2017. Prior to Leslie's, Mr. Ortega served as Executive Vice President and Chief Financial Officer for BI-LO LLC and Vice President, Finance for American Stores Company. Our management team is uniquely capable of executing upon our strategic vision and successfully continuing to create long-term shareholder value.

Our Growth Strategies

We believe we are well positioned to drive sustainable growth and profitability over the long-term by executing on the following strategies:

Increase spend from existing, acquire new, and reactivate lapsed residential consumers.

We currently capture between 40% and 50% of our consumers' total aftermarket product spend according to a recent survey. While this represents the highest share in the category, we believe we have a significant opportunity to further increase spend and drive higher lifetime value. We plan to do this by executing on the following strategies:

- **Increase loyalty membership penetration and introduce program upgrades.** We plan to continue to market our loyalty program in-store and online to convert more of our consumers to loyalty members. In addition, we are in the process of enhancing our loyalty program to offer more value-added features and further drive member engagement. We will explore opportunities to drive interest by selectively offering special incentives and rewards as well as introducing new value-added features. We believe these initiatives will drive higher transaction frequency and basket size, which will result in increased category spend and higher lifetime value with existing consumers.
- **Enhance retention marketing.** While we have historically been satisfied with our consumer retention metrics, we believe there is opportunity to drive even greater retention. We plan to do this by more actively leveraging our consumer database to personalize the consumer experience with targeted messaging and product recommendations.

We currently serve a file of approximately 5.5 million active consumers, which represents approximately one-third of the estimated total addressable market of pool and spa owners. We believe

[Table of Contents](#)

we have significant opportunity to acquire new residential consumers and reactivate lapsed residential consumers, which we plan to do by executing on the following strategies:

- **Acquire or reactivate consumers via optimized marketing strategy.** We believe we have a sizeable opportunity to grow by serving the 2-in-3 pool and spa owners in our market who do not actively shop with us today. We plan to accelerate our acquisition of these potential new or reactivated consumers and, at the same time, reduce consumer acquisition cost by shifting our marketing mix toward more efficient digital and social channels.
- **Expand our product and service offering.** We plan to expand our offering by introducing new and innovative products and services in our existing categories and by expanding into adjacent categories. Specifically, we believe there is an opportunity with products targeted to spa owners, who have historically been underserved.

Grow additional share in the professional market.

We believe we have a significant opportunity to grow our sales with pool care professionals, who individually spend more than 25x more than residential consumers on pool supplies and equipment.

We plan to expand our physical network of PRO locations, which specifically cater to pool professionals, by opening new locations and selectively remodeling existing residential locations. We believe there is significant whitespace opportunity to operate more than 200 total PRO locations, and we plan to opportunistically open or convert a total of 20 PRO locations by the end of 2021. We also plan to assemble an affiliated network of qualified pool professionals to extend the Leslie's name into water maintenance. We believe that this initiative represents a natural adjacency and will resonate with existing residential consumers as well as help attract new residential consumers.

Utilize strategic M&A to consolidate share and further enhance capabilities.

The aftermarket pool and spa industry remains highly fragmented, which offers attractive opportunities to utilize strategic M&A to drive consolidation. We have historically used, and plan to continue to use, strategic acquisitions to obtain consumers and capabilities in both new and existing markets. We believe that we are the consolidator of choice in the industry, and we will continue to focus on acquiring high quality, market-leading businesses with teams, capabilities, and technologies that uniquely position us to create value by applying best practices across our entire physical and digital network to better serve new and existing consumer types.

Continue to introduce disruptive innovation.

Currently there is no existing integrated pool ecosystem that effectively automates pool maintenance. As the Internet of Things wave continues, we believe consumers will seek the convenience of "smart" home functionality in more facets of their daily lives.

We plan to continue to augment and expand our water testing, maintenance prescription, and product distribution ecosystem to strengthen our relationships with our consumers. As part of this, we are actively developing a new breakthrough device and introducing a new subscription service that leverages our proprietary pool software and AccuBlue® brand equity to provide a comprehensive, guided solution for pool care, coupled with a distribution network to deliver the products that consumers need when they need them. We believe this new technology will provide us with a natural opportunity to offer consumers a convenient subscription or on-demand service, personalized for their specific pool and equipment profile.

Our Industry

We operate in the large and growing aftermarket pool and spa care industry, which we believe is among the most highly predictable, recurring, and defensible consumer markets. The industry broadly is comprised of: (i) chemicals; (ii) equipment, parts, and accessories; and (iii) services. According to leading research firms, the industry generated revenue of nearly \$11 billion in 2019 and grew at a 3.8% CAGR from 2015 to 2019.

The U.S. market is comprised of a growing installed base of more than 14 million pools and spas according to P.K. Data. The installed base of residential in ground pools has grown for at least 50 consecutive years, further underscoring the resilience of the industry we operate in. Once a new pool or spa is installed, it requires ongoing maintenance, which creates perpetual demand for maintenance products over the life of that pool or spa. We estimate the average in-ground pool owner spends \$24,000 or more on maintenance products and services over the life of a pool. In the last ten years, the average age of existing in-ground residential pools has increased from approximately 19 years to approximately 22 years; as the installed base continues to age, we expect there to be increasing demand from consumers for aftermarket parts and service to maintain their pools.

The industry is currently experiencing a seismic shift in demand due to secular trends in consumer behavior that have been accelerated by the COVID-19 pandemic. Consumers are increasingly adopting healthier lifestyles and a heightened sense of sanitization and safety, while migrating to lower density communities and spending more time at home and outdoors. Based on research performed by P.K. Data, new pool permit activity through July 2020 has grown by 32% compared to 2019 and is forecasted to drive unprecedented year-over-year growth in new pool installations. Nearly 200,000 new in ground pools are expected to be constructed in 2020 and 2021, representing nearly \$5 billion in estimated lifetime maintenance spend.

While we benefit from the growth in the installed base, our business is not dependent on new pool construction activity and can generate strong growth from a fixed installed base through increased pool usage and maintenance needs.

Our Consumers

We strategically serve all consumers within the aftermarket pool and spa care industry including Residential Pool, Residential Spa, Professional Pool, and Commercial Pool consumers.

- **Residential Pool.** The residential pool market consists of 8.5 million pools representing a total aftermarket sales opportunity of \$6.1 billion. Within this market, DIY aftermarket spend represents roughly 70% of total spend while DIFM services represent approximately 30% of total spend. We serve approximately 5.5 million active consumers. Many of these consumers visit our locations on a regular basis to conduct water testing, seek expert pool advice, and purchase products as well as utilize our integrated digital platforms.
- **Residential Spa.** The residential spa market consists of nearly 5.5 million spas or hot tubs representing a \$0.7 billion aftermarket sales opportunity for chemicals and equipment. Including the \$1.1 billion market for new spas, residential spa represents a total addressable market of approximately \$1.8 billion. We serve nearly 320,000 active residential spa consumers.
- **Professional Pool.** The professional pool market consists of nearly 45,000 professionals who spend an estimated \$23,000 on chemicals and equipment per year on average, representing a total sales opportunity of more than \$650 million. We serve nearly 20,000 active professional pool consumers who specialize in pool maintenance and equipment repair for

Table of Contents

DIFM homeowners, businesses, and government entities. We provide pool professionals access to wholesale pricing across our integrated network.

- **Commercial Pool.** The commercial pool market consists of more than 250,000 pools representing a total aftermarket sales opportunity of \$2 billion. We serve nearly 60,000 active commercial pool consumers, including operators of hotels, motels, apartment complexes, and water parks.

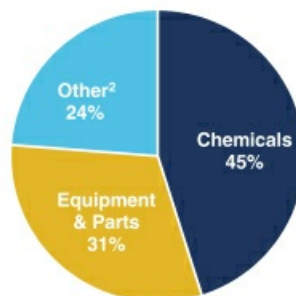
Our Product and Service Offering

We offer a comprehensive assortment of more than 30,000 products across chemicals, equipment and parts, cleaning and maintenance equipment, and safety, recreational, and fitness related products. More than 80% of our assortment is comprised of essential and non-discretionary products that are needed by residential and professional consumers to care for pools and spas. The vast majority of our assortment features non-discretionary products that are shelf-stable and generally not prone to either obsolescence or shrinkage, which could occur from changing technology or consumer buying habits. As the trusted one-stop destination for all aftermarket pool and spa needs, we provide an extensive and highly differentiated product offering. We aim to fulfill the needs of our residential, professional, and commercial consumers with our comprehensive assortment, in-stock inventory, and product selection across a broad range of premium third-party and proprietary brands.

Sales by Type (LTM Q3 2020¹)



Sales by Product Mix (LTM Q3 2020¹)



¹ "LTM Q3 2020" refers to the last twelve months ended June 27, 2020.

² "Other" includes all sales related to certain acquired businesses where detailed information is not available on a consistent basis. Sales included in "Other" may be associated with other classifications presented in this chart.

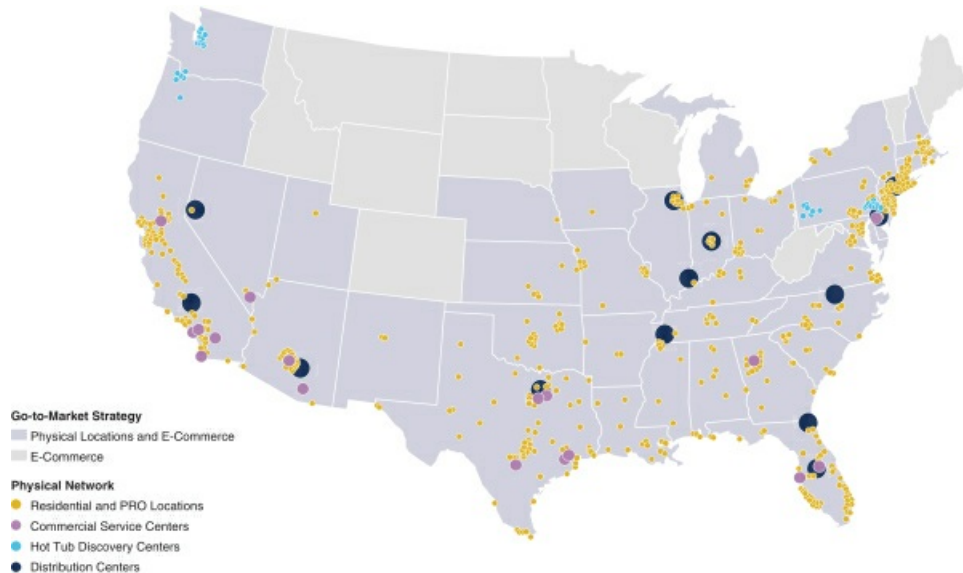
Since our inception in 1963, we have offered a growing portfolio of owned and exclusive brands, including the launch of the Jacuzzi® and our RightFit® brands in 2016. Our exclusive brands and products account for approximately 55% of total sales and 80% of chemical sales. Our premium, exclusive and broad assortment differentiates us from "commoditized" products offered by big-box retailers and enables us to build strong relationships with our consumers.

In addition to our comprehensive product assortment, we offer critical services, such as complimentary water testing and in-store equipment repair. We also employ the industry's largest in-field service network, consisting of more than 200 pool and spa care service professionals who have the expertise to provide essential on-site equipment installation and repair services for residential and commercial consumers throughout the continental United States.

Our Integrated Platform

We operate an integrated platform consisting of physical locations, distribution centers, and proprietary e-commerce websites.


The map below reflects our network:



- **Residential Locations.** We serve our residential consumers through 901 residential locations that are strategically located in 37 states. We offer a range of differentiated and innovative in-store and on-site service offerings including our in-store water test. Our residential locations are supported by a team of approximately 4,000 associates, including pool and spa care experts and experienced service technicians, who are committed to decoding pool care for consumers and performing on-site installation and repair services. On average, our residential locations average 3,500 square feet, and have on average 900 in-store SKUs. Our residential locations have service counters through which we also provide products and services to professional consumers. Our residential locations feature relatively modest upfront investment of approximately \$300,000, modest ongoing maintenance capital expenditures, and achieve strong performance levels by year four, including sales of \$525,000, 4-wall EBITDA margins of over 20%, and an attractive cash-on-cash return of more than 35%. We have identified, and third-party analysis has confirmed, more than 700 opportunities in underserved markets. We will determine how to most efficiently serve these markets through our integrated ecosystem.
- **Digital Network.** Our complementary platform of branded proprietary e-commerce websites and marketplace storefronts allows us to seamlessly serve the needs of all digital consumers through curated pricing and targeted merchandising strategies. In the last two years, we have invested in integrating our online and physical platforms and enhancing our ability to serve our consumers by developing omni-channel capabilities including BOPIS, BORIS, SFS, and STS, among other services, which are due to launch in calendar year 2021. In addition to our owned e-commerce websites, we are the leading partner for Amazon in the pool category, and

accounted for more than 40% of Amazon’s estimated pool and spa care business in the twelve-month period ended June 27, 2020.

Industry Leading Digital Ecosystem



Brand Promise	Pool Life Experts	Trusted Partner of the Pool Professional	Pool Life Experts	America’s #1 direct source for pool supplies	Relevant Products, Reliable Delivery
Product / Service Emphasis	Full Offering of High Quality Pool Supplies from Trusted Brands	Major Equipment & Parts	Sync in-store prescriptions and monitor performance; transaction capabilities to be launched in 2021	Broad assortment of pool supplies at entry to mid price points	Curated offering of basic pool care supplies
Key Highlights	Highest traffic pool supply website in the industry	Qualified access site dedicated to the Pool Professional	As of August 2020, 500k+ downloads, average 4.6/5.0 rating	Highest sales volume website in the industry	Highest volume Marketplace player in the industry

(1) Leslie’s PRO website to be launched in 2021.

- PRO Locations.** Our PRO locations carry additional SKUs targeting the professional consumer. We have identified significant opportunities to expand and develop our PRO network to address the growing and underserved professional consumer base. In addition, the PRO locations offer attractive economics featuring significantly higher average unit volume, sales per square foot, and greater contribution generation. Finally, our PRO locations draw more professionals into the broader Leslie’s ecosystem, driving meaningfully higher professional sales volumes in our residential locations situated in the same trade area. We believe we have a near-term opportunity to expand our PRO locations from 16 today to more than 200 by adding new locations in key markets and selectively retrofitting existing residential locations with incremental inventory and limited capital expenditures. On average, our PRO locations have 1,500 in-store SKUs. Our PRO locations also serve residential and commercial consumers.
- Commercial Service Centers.** We serve our commercial consumers through 17 Commercial Service Centers. These are our largest format locations with an extensive assortment and ability to service bulk orders and special items and services. Our physical network coupled with our forthcoming omni-channel capabilities and in-field service network offers unparalleled convenience to commercial consumers.
- Hot Tub Discovery Centers.** In select markets, we also operate full service hot tub and spa locations under the banners of AquaQuip, Valley Pool & Spa, and Oregon Hot Tub, which specialize in the hot tub and spa category. At these locations, we offer an expanded assortment of merchandise and services specifically catering to current and prospective spa owners. In addition to these standalone locations, we also operate four MyLife® Hot Tub Discovery Centers and eight MyLife® Hot Tub Showrooms in select Leslie’s residential locations, where we feature our proprietary MyLife® brand line of spas.

Our Vertically Integrated Model

We operate a vertically integrated supply chain, packaging, and distribution model, which represents a significant competitive advantage.

As the only vertically integrated national pool and spa care brand in the United States, we have the capability to produce and package products at our company-operated packaging plants and third-

[Table of Contents](#)

party contract packaging facilities. Our strategy is to identify, produce, and package high volume items that do not require sophisticated or capital-intensive production or packaging equipment, but allow us to offer our consumers a premium product while offering us a significant cost advantage. We source a variety of raw materials and chemicals directly from a diversified supplier base; we maintain strong relationships with these suppliers; and no single supplier represents more than 10% of our annual purchases. Using these raw materials, we manufacture and package a wide selection of final SKUs, including but not limited to, chlorine products, pH adjusters, and filter cleaners. A significant portion of our total mix is comprised of products that we manufacture or package through vertical integration, which offers economies of scale that has resulted in higher quality products and a structurally advantaged margin profile.

We also have the unique competitive advantage of operating a vertically integrated distribution and delivery model. In addition to operating two manufacturing plants, we operate a national network of eight Company-operated distribution centers as well as five third-party distribution centers. Our eight Company-operated distribution centers have the capacity to carry a broad breadth of our products in significant quantities and are capable of replenishing inventory throughout our physical network. From these facilities, we self-distribute to our physical network through an owned fleet, consisting of 31 tractors and 125 trailers, which helps ensure optimal in-stock levels throughout the year. Our third-party distribution centers are strategically located to complement our company-operated distribution centers and primarily fulfill online orders. As we implement new omni-channel capabilities in the near future, including ship-from-store, we will have 934 new omni distribution points across the United States, which will give us the unique advantage of being able to reach all consumers in the continental United States in less than 24 hours.

Our Marketing Strategy

As a result of our comprehensive product and service offering and longstanding relationship with our consumers, we currently capture between 40% and 50% of our consumers' total aftermarket product spend in the category, which is the highest such share in the category according to a recent survey. Despite this significant penetration, we believe there is significant potential to drive increased share of wallet through strategic initiatives such as our loyalty membership program and dynamic promotions.

Due to the highly recurring, replenishment nature of our product mix and long-term consumer relationships, we believe that our investments in consumer marketing generate highly attractive returns. When we acquire new consumers through our loyalty program, their average spend with us over time is several hundred dollars. However, we have not historically invested significant dollars in new consumer acquisition. For the last twelve months ended June 27, 2020, we invested \$16 million in marketing, representing only 1.5% of sales (including <1% in consumer acquisition). Historically, the vast majority of this spend has been directed toward retention rather than new consumer acquisition.

Going forward, we believe we have a sizable opportunity to profitably grow our investment in new consumer acquisition. We have the unique competitive advantage of knowing where virtually every pool and spa in the United States is located, and by leveraging this database, we have the ability to allocate our advertising dollars in a highly targeted manner. Through these strategies, we plan to increase brand awareness and profitably acquire new consumers.

Our Competition

The U.S. aftermarket pool and spa care industry is fragmented and competitive. We compete against a wide range of manufacturers, retailers, distributors, and service providers in the residential, professional, and commercial pool and spa care market. This includes original equipment manufacturers, regional and local retailers, home improvement retailers, mass-market retailers, and specialty e-commerce operators. Key competitive groups include:

- **Regional and Local Independent Retailers:** includes more than 8,000 smaller, local independent competitors, which offer the convenience of proximity. The vast majority of these competitors operate single stores and, due to relative economies of scale, this group generally offers a limited SKU selection, charges higher prices and invests less resources in marketing;
- **Home Improvement Retailers:** includes national home improvement retailers, such as Home Depot, Lowe's, and local and regional hardware stores. This group generally employs a seasonal strategy whereby a limited SKU selection is offered during select spring and summer months, does not offer services and does not have associates with the pool and spa care expertise or offer services to consumers;
- **Mass-Market Retailers:** includes larger, scaled players, such as Amazon, Walmart, and Costco. This group generally offers a limited SKU selection, often on a seasonal basis, and does not offer services or pool and spa care expertise; and
- **Wholesale Distributors:** includes large wholesalers such as Pool Corp. This group generally does not directly serve the end-consumer, but rather serves as an intermediary that supplies product to retailers as well as the professional channel.

Our competitors offer pool care products and services of varied quality and across a wide range of retail price points. We experience greater brick and mortar competition in the states with the largest installed pool bases, including California, Texas, Florida, and Arizona. While some of our competitors also market and sell online, there are various challenges to serving consumers in the aftermarket pool and spa care industry via e-commerce. These challenges include regulatory restrictions on shipping hazardous materials, the need for professional installation of equipment at point of delivery, and the need for regular water testing, expert advice, and customized prescriptions and solutions related to the sale of chemicals. In addition, due to the seasonality of the aftermarket pool and spa care industry, several competitors tend to offer only a limited selection of products during select spring and summer months.

Our Sponsors

L Catterton

With approximately \$20 billion of equity capital across seven fund strategies in 17 offices globally, L Catterton is the largest consumer-focused private equity firm in the world. L Catterton's team of nearly 200 investment and operating professionals partners with management teams around the world to implement strategic plans to foster growth, leveraging deep category insight, operational excellence, and a broad thought partnership network. Since 1989, the firm has made more than 200 investments in leading consumer brands. L Catterton was formed through the partnership of Catterton, LVMH, and Groupe Arnault.

GIC

GIC Pte. Ltd., or GIC, is a leading global investment firm established in 1981 to manage Singapore's foreign reserves. A disciplined long-term value investor, GIC is uniquely positioned for

[Table of Contents](#)

investments across a wide range of asset classes, including equities, fixed income, private equity, real estate, and infrastructure. In private equity, GIC invests through funds as well as directly in companies, partnering with its fund managers and management teams to help world class businesses achieve their objectives. Headquartered in Singapore, GIC employs more than 1,700 people across 10 offices in key financial cities worldwide.

Information Systems

We believe that our management information systems will support our continued growth. Over the last five years, we have invested over \$35 million in our information system infrastructure. We have robust and growing capabilities that enable our integrated platform to function seamlessly across channels.

Our Employees

As of June 27, 2020, we employed approximately 5,081 employees. Of these employees, approximately 4,160 work in our physical network, 221 work as in-field service technicians, 335 work in corporate, infrastructure, or e-commerce and 365 work in our distribution centers. We believe that we have good relations with our employees. None of our employees are currently covered under any collective bargaining agreements.

Trademarks and Other Intellectual Property

In the course of our business, we employ various trademarks, trade names and service marks, including Leslie's ®, AccuBlue®, MyLife®, and our logo, in packaging and advertising our products. We have registered trademarks and trade names for several of our major products on the Principal Register of the United States Patent and Trademark Office. We distinguish the products produced in our chemical repackaging operation or by third party repackagers at our direction through the use of the Leslie's brand name and logo and the trademarks and trade names of the individual items, none of which is patented, licensed, or otherwise restricted to or by us. We believe the strength of our trademarks and trade names has been beneficial to our business and we intend to continue to protect and promote our trademarks in appropriate circumstances.

Legal Proceedings

We are subject to various litigations, claims and other proceedings that arise from time to time in the ordinary course of business. We believe these actions are routine and incidental to the business. While the outcome of these actions cannot be predicted with certainty, we do not believe that any will have a material adverse impact on our company.

[Table of Contents](#)

Properties

We have 934 locations, two manufacturing facilities, eight Company-operated distribution centers, and five third-party distribution centers in 37 states. Most of our locations operate on flexible five-year leases which offer significant flexibility as they can be located in a variety of venues, including strip centers, lifestyle centers, and shopping centers. Our current physical network is summarized in the chart below:

State	Number of Locations
Alabama	9
Arizona	91
Arkansas	3
California	168
Connecticut	16
Delaware	3
Florida	88
Georgia	34
Illinois	9
Indiana	12
Iowa	1
Kansas	6
Kentucky	6
Louisiana	14
Maryland	9
Massachusetts	11
Michigan	5
Mississippi	4
Missouri	13
Nebraska	2
Nevada	25
New Hampshire	3
New Jersey	32
New Mexico	3
New York	31
North Carolina	13
Ohio	16
Oklahoma	21
Oregon	5
Pennsylvania	33
Rhode Island	1
South Carolina	9
Tennessee	13
Texas	197
Utah	3
Virginia	15
Washington	10
Total Locations	<u>934</u>

Our corporate offices are located in Phoenix, Arizona. The 92,669 square foot office building has a current lease term through February 28, 2027, with our ability to exercise two five-year renewal options.

[Table of Contents](#)

Government Regulation

We are subject to federal, state, and local laws and regulations relating to matters such as product labeling, weights and measures, zoning, land use, environmental protection, local fire codes, and workplace safety including regulation by the Environmental Protection Agency, the Consumer Product Safety Commission, the Department of Transportation, the Occupational Safety and Health Administration, and the National Fire Protection Agency. Most of these requirements govern the packaging, labeling, handling, transportation, storage, and sale of chemicals. We store certain types of chemicals at each of our locations and the storage of these items is strictly regulated by local fire codes. In addition, we sell algaecides and related products that are regulated as pesticides under the Federal Insecticide, Fungicide and Rodenticide Act, and various state pesticide laws. These laws primarily relate to labeling, annual registration, and licensing. Compliance with such laws and regulations in the future could prove to be costly and could affect various aspects of the business, including, but not limited to, the amount of chemical products we are able to maintain in our locations, our ability to obtain various governmental approvals (such as product labeling and registration approvals), and our handling, transportation, and storage of the various products that we sell. Additionally, with the trend in environmental, health, transportation, and safety regulations becoming more restrictive, it is possible that the costs of compliance with such laws and regulations will continue to increase.

Insurance

We are self-insured for losses relating to workers' compensation, general liability, and employee medical. Stop-loss coverage has been purchased to limit exposure to any material level of claims. Self-insured liabilities are accrued based upon our estimates of the aggregate claims incurred but not reported using historical experience.

MANAGEMENT

The following table sets forth information about our executive officers and directors.

Directors and Executive Officers

Our Board consists of nine directors. Our directors and executive officers are as follows:

Name	Age	Position(s)
Steven L. Ortega	59	Chairman
Michael R. Egeck	61	Chief Executive Officer and Director
Steven M. Weddell	46	Executive Vice President, Chief Financial Officer, Secretary and Treasurer
Paula F. Baker	53	Chief Revenue Officer
Yolanda Daniel	54	Director
Jodee Kozlak	57	Director
Marc Magliacano	45	Director
Matthew Lischick	36	Director
Eric Kufel	53	Director
Susan O'Farrell	56	Director
John Strain	52	Director

Set forth below is a brief biography of each of our executive officers and directors.

Steven L. Ortega

Steven L. Ortega is our Chairman and serves on our Board. Mr. Ortega's prior roles at the Company include Chief Executive Officer and President from 2017 to 2020, President and Chief Operating Officer from 2015 to 2017, Chief Financial Officer and Chief Operating Officer from 2014 to 2015, and EVP and Chief Financial Officer from 2005 to 2015. Prior to joining the Leslie's organization, Mr. Ortega served as Executive Vice President and Chief Financial Officer for BI-LO, LLC from 1999 to 2005. At that time, BI-LO, LLC, was a \$4.8 billion leading multi-branded regional supermarket chain in the southeast United States, which operated 423 stores in six states. Mr. Ortega's responsibilities at BI-LO, LLC included the leadership and oversight of the Finance, Treasury, Accounting, Real Estate, Construction, Information Technology, Risk Management, and Internal Audit functions. Mr. Ortega also held the position of President of Golden Gallon Convenience Stores, a wholly owned subsidiary of BI-LO, LLC, based in Tennessee. Prior to joining BI-LO, LLC, Mr. Ortega was with American Stores Company, holding various positions within their supermarket and drug store subsidiaries, including Vice President, Finance and Administration and Vice President, Logistics. Mr. Ortega has a B.S. in Accounting from the University of Arizona. Mr. Ortega was selected to serve on our board of directors because of his experience and knowledge of the consumer industry, including as our former Chief Executive Officer and Chief Operating Officer.

Michael R. Egeck

Michael R. Egeck is our Chief Executive Officer and serves on our Board. Mr. Egeck joined the Company in February 2020. Previously, Mr. Egeck served as the Chief Executive Officer of PSEB Group, a \$1.5 billion operating company composed of the Eddie Bauer outdoor brand and teen retailer PACSUN. Mr. Egeck has more than three decades of experience and a proven track record of driving transformational growth for a variety of brands and business models including: Chief Executive Officer of Eddie Bauer (from 2012 to 2020); Chief Executive Officer of Hurley International, a division of Nike,

Table of Contents

Inc. (from 2011 to 2012); President of True Religion Apparel, Inc. (from 2010 to 2011); President of VF Corp's Contemporary Brand Coalition (from 2007 to 2009); Chief Executive Officer of Seven For All Mankind, prior to its acquisition by VF Corp. (from 2006 to 2007); President of VF Corp's Outdoor and Action Sports Coalition (from 2004 to 2006); and President of The North Face, a division of VF Corp (from 2000 to 2004). Previously, Mr. Egeck held senior leadership positions at Columbia Sportswear and Seattle Pacific Industries. Mr. Egeck has a B.A. in Economics from the University of Washington and an M.B.A. from the Michael G. Foster School of Business at the University of Washington. Mr. Egeck was selected to serve on our board of directors because of his experience and knowledge of the consumer industry, including as our Chief Executive Officer.

Steven M. Weddell

Steven M. Weddell is our Executive Vice President, Chief Financial Officer, Secretary and Treasurer. Mr. Weddell joined the Company in such capacities in June 2015. Mr. Weddell worked at Goldman, Sachs & Co. from 2003 to 2015, in the Investment Banking Group, and served as a Managing Director in the Consumer Retail Group as well as the Merger Leadership Group. Mr. Weddell also served as a Manager in the Assurance Practice at Arthur Andersen LLP. Mr. Weddell earned his CPA license in California and previously held Series 7 and Series 24 licenses. Mr. Weddell has a B.S. in Accounting from the University of Southern California and an M.B.A. from the Wharton School of Business at the University of Pennsylvania.

Paula F. Baker

Paula F. Baker has been our Chief Revenue Officer since March 2020. Prior to that, Ms. Baker served as our Chief People and Performance Officer since November 2019. Before joining Leslie's, Ms. Baker served as the President of US Retail at Best Buy from June 2017 to March 2019, where she led the organization responsible for over 1,000 stores and \$35 billion in revenue. While at Best Buy, Ms. Baker served in a variety of retail and human resources leadership roles, including Chief Human Resources Officer in 2016 and Territory Vice President for the southeast region from 2012 to 2016. During her time at Best Buy, Ms. Baker was also a Territory Human Resources Director from 2010 to 2012 and served in District Manager and General Manager roles from 2004 to 2010. Before joining Best Buy in 2004, Ms. Baker worked at Books-A-Million, a large chain bookstore in the southeast, Golfsmith International, a retail golf superstore, and St. Andrews Golf Company, a premier golf club manufacturer and retailer, in retail leadership roles. Ms. Baker has a bachelor's degree in accounting and finance from the University of Nevada—Las Vegas.

Yolanda Daniel

Yolanda Daniel serves on our Board. Ms. Daniel joined the board in October 2020. Ms. Daniel currently serves as vice president, finance of the Federal Reserve Bank of Chicago where she leads financial planning and analysis, managerial accounting, financial analytics, procurement and payment services. Ms. Daniel brings 30 years of experience in finance, accounting and audit leadership for global and US-based operations across the distribution, financial services, and healthcare industries. Ms. Daniel has most recently served as finance executive for mission based organizations including CFO for IFF, a community development financial institution and real estate developer, and the American Board of Medical Specialties. Ms. Daniel's career, predominantly in industry, includes leadership roles at W. W. Grainger, Inc. where she was global chief audit executive, division CFO for Acklands-Grainger, Inc. (Grainger Canada), and vice president for U.S. financial services and global finance transformation. While at CVS Health (formerly CVS Caremark), Ms. Daniel led internal audit services as vice president, and was actively engaged in attest and advisory services during the divestiture of its physician practice management business, and subsequent growth and integration activities for the pharmaceutical benefits management business leading to its 2006 ranking as a

Table of Contents

Fortune 100. In 2015, Ms. Daniel was honored as a Chicago United Business Leader of Color, and is a Fellow of the 2017 class of the Aspen Institute Finance Leaders Fellowship, and a member of the Aspen Global Leadership Network. Ms. Daniel earned an MBA from Kellogg School of Management at Northwestern University, Bachelor of Science in accounting from the University of Alabama at Birmingham, and is an honors marketing alumna from Jackson State University.

Jodee Kozlak

Jodee Kozlak serves on our Board. Ms. Kozlak joined the board in October 2020. Ms. Kozlak founded Kozlak Capital Partners in 2017 to work with CEOs and Senior teams on their most pressing strategic issues, and for private investing. Ms. Kozlak is an Advisor to many public and private companies and serves on the boards of C.H. Robinson Worldwide (NASDAQ), MGIC (NYSE), and Aspen Dental. Previously, Ms. Kozlak worked with Alibaba Group from February 2016 to November 2017 as its Global SVP of HR to help set the direction for rapid expansion outside of China through organic and M&A growth. Ms. Kozlak was a senior advisor to the Offices of CEO and Chairman. Prior to that, Ms. Kozlak was a C-Suite leader of Target Corporation. Ms. Kozlak also held roles as General Counsel for both International Business and Labor and Employment, and was Trustee of the Target Foundation. Before Target, Ms. Kozlak was a law partner at Greene Espel, PLLP, and started her career at Arthur Andersen & Co.

Marc Magliacano

Marc Magliacano serves on our Board. Mr. Magliacano joined the board in February 2017. Mr. Magliacano currently serves as a Managing Partner for L Catterton's Flagship Buyout Fund. L Catterton is the world's largest consumer-focused private equity firm, with approximately \$20 billion of equity capital across seven fund strategies in 17 offices globally. Mr. Magliacano has been a senior investment professional at L Catterton since May 2006. Prior to joining L Catterton, from 1999 to 2006, Mr. Magliacano was a Principal at North Castle Partners, a private equity firm focused on making consumer growth investments that benefit from healthy living and aging trends. While at North Castle, Mr. Magliacano originated and executed investments in the consumer health and wellness sectors. Prior to joining North Castle, Mr. Magliacano worked at NMS Capital, the merchant bank of NationsBanc Montgomery Securities, making growth investments in early stage consumer and retail businesses. Mr. Magliacano has served on the boards of directors of a variety of private and public companies, including Restoration Hardware. Mr. Magliacano received a BS in Economics from the University of Pennsylvania's Wharton School of Business with dual degrees in Finance and Operations and Information Management and received an MBA from Columbia Business School. Mr. Magliacano was selected to serve as a director due to his prior experience on a variety of private and public company boards.

Matthew Lischick

Matthew Lischick serves on our Board. Mr. Lischick joined the board in February 2017. Mr. Lischick currently serves as a Principal at L Catterton. L Catterton is the world's largest consumer-focused private equity firm, with approximately \$20 billion of equity capital across seven fund strategies in 17 offices globally. Previously, Mr. Lischick was a Vice President at L Catterton. Prior to joining L Catterton in 2009, Mr. Lischick worked in the Consumer Products & Retail Investment Banking Group at Bank of America Merrill Lynch. Mr. Lischick has a B.S. in Business Administration from Georgetown University and an M.B.A. from Harvard Business School. Mr. Lischick was selected to serve as a director because he possesses particular knowledge and experience in supporting high-growth consumer businesses and has previously served as a director of companies with similar characteristics as the Company.

[Table of Contents](#)

Eric Kufel

Eric Kufel serves on our Board. Mr. Kufel joined the board in January 2018 and served as our Executive Chairman from January 2019 through September 2019. Previously, Mr. Kufel served as Chairman of CorePower Yoga from 2016 to 2020 and as its Chief Executive Officer from 2016 to 2019. From 2015 to 2016, Mr. Kufel was an Operating Partner at L Catterton and served on the board of Ferrara Candy Company. Mr. Kufel also served as a Director and the Chief Executive Officer of Van's Foods from 2009 to 2014 and Inventure Foods, Inc. from 1997 to 2008. Mr. Kufel has a Bachelor of Business Administration Degree from Gonzaga University and a master's degree from the Thunderbird School of Global Management. Mr. Kufel was selected to serve as a director due to his extensive experience in leadership roles in the consumer industry.

Susan O'Farrell

Susan C. O'Farrell serves on our Board. Ms. O'Farrell joined the board in October 2020. Previously, Ms. O'Farrell served as Chief Financial Officer, Senior Vice President, Principal Accounting Officer and Treasurer at BlueLinx Holdings Inc. Ms. O'Farrell has been a senior financial executive holding several roles with The Home Depot since 1999. As the Vice President of Finance at The Home Depot, Ms. O'Farrell led teams supporting the retail organization. Most recently, Ms. O'Farrell was responsible for the finance function for The Home Depot's At Home Services Group. Ms. O'Farrell began her career with Andersen Consulting, LLP, leaving as an Associate Partner in 1996 for a strategic information systems role with AGL Resources. Ms. O'Farrell served as Director BlueLinx Corporation, a subsidiary of BlueLinx Holdings. Ms. O'Farrell has a B.S. in business administration from Auburn University.

John Strain

John Strain serves on our Board. Mr. Strain joined the board in August 2018. Mr. Strain currently serves as the Head of e-Commerce and Technology at Gap, Inc., an American worldwide clothing and accessories retailer founded in 1969. Mr. Strain has responsibilities for technology, product management, data and analytics, and loyalty and payments. Mr. Strain also oversees the digital business including e-commerce strategy and operations and digital and direct marketing. With almost 30 years in the retail technology and e-commerce space, Mr. Strain brings a consumer-centric mindset to a delivery orientation that has resulted in a track-record of successful digital transformations. Prior to joining Gap Inc., Mr. Strain was the General Manager of the Retail and Consumer Goods Industry for Salesforce. Mr. Strain also spent 11 years at Williams-Sonoma Inc. as the Chief Digital and Technology Officer where he was responsible for technology, product management, and digital marketing. Mr. Strain also spent 14 years as a management consultant. Mr. Strain received a B.S. in Finance from Santa Clara University where he was a member of the Retail Management Institute. Mr. Strain was selected to serve as a director due to his experience in various positions with consumer facing companies.

Director and Executive Officer Qualifications

Although we have not formally established any specific minimum qualifications that must be met by each of our officers, we generally evaluate the following qualities: educational background, diversity of professional experience, including whether the person is a current or was a former chief executive officer or chief financial officer of a public company or the head of a division of a prominent international organization, knowledge of our business, integrity, professional reputation, independence, wisdom, and ability to represent the best interests of our shareholders.

The Nominating and Governance Committee of the Board will prepare policies regarding director qualification requirements and the process for identifying and evaluating director candidates for

Table of Contents

adoption by the Board. The above-mentioned attributes, along with the leadership skills and other experiences of our officers and Board members described above, are expected to provide us with a diverse range of perspectives and judgment necessary to facilitate our goals of shareholder value appreciation through organic and acquisition growth.

Composition of the Board of Directors and Election of Directors

Our board of directors is currently composed of nine members. In accordance with our second amended and restated certificate of incorporation, which will be filed immediately prior to the completion of this offering, our directors will be divided into three classes serving staggered three-year terms. At each annual meeting of stockholders, our directors will be elected to succeed the class of directors whose terms have expired. Our current directors will be divided among the three classes as follows:

- the Class I directors will consist of Yolanda Daniel, Michael Egeck and Eric Kufel, and their terms will expire at the first annual meeting of stockholders occurring after this offering;
- the Class II directors will consist of Jodee Kozlak, Matthew Lischick and John Strain, and their terms will expire at the second annual meeting of stockholders occurring after this offering; and
- the Class III directors will consist of Marc Magliacano, Susan O'Farrell and Steven Ortega, and their terms will expire at the third annual meeting of stockholders occurring after this offering.

Directors in a particular class will be elected for three-year terms at the annual meeting of shareholders in the year in which their terms expire. As a result, only one class of directors will be elected at each annual meeting of our shareholders, with the other classes continuing for the remainder of their respective three-year terms. Each director's term continues until the election and qualification of his successor, or his earlier death, resignation, retirement, disqualification or removal.

The classification of our board of directors, together with the ability of the stockholders to remove our directors only for cause and the inability of stockholders to call special meetings, may have the effect of delaying or preventing a change of control or management. See the section titled "Description of Capital Stock—Anti-Takeover Provisions" for a discussion of other anti-takeover provisions that are included in our second amended and restated certificate of incorporation.

Director Independence

Our board of directors has undertaken a review of its composition, the composition of its committees and the independence of each director. Based upon information provided by each director, our board of directors has determined that none of our directors, with the exception of Michael Egeck, Eric Kufel, Matthew Lischick, Marc Magliacano and Steven Ortega, has a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and is independent under applicable Nasdaq rules. In making these determinations, our board of directors considered the current and prior relationships that each non-employee director has with our company and all other facts and circumstances our board of directors deemed relevant in determining their independence, including the beneficial ownership of our capital stock by each non-employee director, and the transactions involving them described in the section titled "Certain Relationships and Related Party Transactions."

Committees of Our Board of Directors

Our board of directors has established an audit committee, a compensation committee and a nominating and corporate governance committee. The composition and responsibilities of each of the committees of our board of directors are described below. Members serve on these committees until their resignation or until otherwise determined by our board of directors.

Table of Contents

After the completion of this offering, affiliates of L Catterton and an affiliate of GIC will control a majority of the voting power of shares eligible to vote in the election of our directors. Because more than 50% of the voting power in the election of our directors will be held by an individual, group, or another company, we will be a “controlled company” within the meaning of the corporate governance standards of Nasdaq. As a controlled company, we may elect not to comply with certain corporate governance requirements, including the requirements that, within one year of the date of the listing of our common stock:

- a majority of our board of directors consists of “independent directors,” as defined under the rules of such exchange;
- our board of directors has a compensation committee that is composed entirely of independent directors with a written charter addressing the committee’s purpose and responsibilities; and
- our board of directors has a nominating and corporate governance committee that is composed entirely of independent directors with a written charter addressing the committee’s purpose and responsibilities.

Following this offering, we intend to utilize these exemptions. As a result, immediately following this offering we do not expect that the majority of our directors will be independent or that any committees of our board of directors will be composed entirely of independent directors. Accordingly, you will not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of Nasdaq.

Audit Committee

Upon the closing of this offering, our audit committee will consist of Susan O’Farrell, who will chair the committee, Yolanda Daniel and John Strain. Our board of directors has determined that each proposed committee member meets the “financial literacy” requirement for audit committee members under the Nasdaq rules and that Susan O’Farrell is an “audit committee financial expert” within the meaning of the SEC rules.

The audit committee’s primary responsibilities will include, among other matters:

- selecting a qualified firm to serve as the independent registered public accounting firm to audit our financial statements;
- helping to ensure the independence and performance of the independent registered public accounting firm;
- reviewing financial statements and discussing the scope and results of the independent audit and quarterly reviews with the independent registered public accounting firm, and reviewing, with management and the independent registered public accounting firm, our interim and year-end results of operations and the reports and certifications regarding internal controls over financial reporting and disclosure controls;
- preparing the audit and risk committee report that the SEC requires to be included in our annual proxy statement;
- reviewing the adequacy and effectiveness of our disclosure controls and procedures and developing procedures for employees to submit concerns anonymously about questionable accounting or audit matters;
- reviewing our policies on risk assessment and risk management;
- reviewing related party transactions; and

Table of Contents

- approving or, as required, pre-approving, all audit and all permissible non-audit services and fees, other than de minimis non-audit services, to be performed by the independent registered public accounting firm.

Our audit committee operates under a written charter that satisfies the applicable rules and regulations of the SEC and the listing standards of Nasdaq.

Compensation Committee

Upon the closing of this offering, our compensation committee will consist of John Strain, who will chair the committee, Jodee Kozlak and Marc Magliacano.

The compensation committee's primary responsibilities will include, among other matters:

- reviewing, approving and determining, or making recommendations to our board of directors regarding the compensation of our executive officers;
- overseeing our overall compensation philosophy and compensation policies, plans and benefit programs for service providers, including our executive officers;
- administering our equity compensation plans; and
- reviewing, approving, and making recommendations to our board of directors regarding incentive compensation and equity compensation plans.

Our compensation committee operates under a written charter that satisfies the applicable rules and regulations of the SEC and the listing standards of Nasdaq.

Nominating and Corporate Governance Committee

Upon the closing of this offering, our nominating and governance committee will consist of Eric Kufel, who will chair the committee, Yolanda Daniel and Matthew Lischick.

The nominating and corporate governance committee's primary responsibilities will include, among other matters:

- identifying, evaluating, and selecting, or making recommendations to our board of directors regarding, nominees for election to our board of directors and its committees;
- evaluating the performance of our board of directors and of individual directors;
- considering and making recommendations to our board of directors regarding the composition of our board of directors and its committees;
- reviewing developments in corporate governance practices;
- evaluating the adequacy of our corporate governance practices and reporting;
- reviewing the succession planning for our executive officers; and
- developing and making recommendations to our board of directors regarding corporate governance guidelines and matters.

Our nominating and corporate governance committee operates under a written charter that satisfies the applicable listing standards of Nasdaq.

Code of Ethics

Our board of directors has adopted a code of ethics that will apply to all of our employees, officers and directors, including our executive and senior financial officers. The full text of our code of ethics will be posted on the investor relations page of our website prior to completion of this offering. The information on our website is not part of this prospectus. We intend to disclose any amendments to our code of ethics, or waivers of its requirements, on our website or in filings under the Exchange Act.

Compensation Committee Interlocks and Insider Participation

None of our executive officers has served as a member of a compensation committee (or if no committee performs that function, the board of directors) of any other entity that has an executive officer serving as a member of our board of directors.

Director Compensation

During the Fiscal Year ended October 3, 2020, our non-employee directors (other than Mr. Strain) did not receive any cash fees for their service on the board of directors, but were entitled to reimbursement of all reasonable out-of-pocket expenses incurred in connection with their attendance at board of directors and committee meetings.

Mr. Strain received an annual cash retainer of \$125,000 for his service on the board of managers of our indirect parent entity and the boards of certain of our indirect parent entity's subsidiaries, including the Company. Mr. Strain's existing compensation arrangement will terminate effective upon completion of this offering, and he will be compensated in the manner described below.

Name	All Other Compensation	Total
John Strain	\$ 125,000(1)	\$125,000

(1) Represents the amount paid to Mr. Strain for his service on the board of managers of our indirect parent entity and the boards of certain of our indirect parent entity's subsidiaries, including the Company.

Upon completion of this offering, our non-employee directors will be eligible to receive cash compensation for their service on our board of directors in the form of annual cash retainers. We expect that, following this offering, our non-employee directors will receive the following annual cash retainers for their service on our board of directors.

Position	Retainer (\$)
Non-Executive Chairman	125,000
Board Member (other than the Non-Executive Chairman)	65,000
Audit Committee:	
Chairperson	20,000
Committee Member	10,000
Compensation Committee:	
Chairperson	15,000
Committee Member	10,000
Nominating and Corporate Governance Committee:	
Chairperson	10,000
Committee Member	5,000

Table of Contents

We expect that our non-employee directors will receive annual grants of restricted stock units with an aggregate grant date value of \$125,000 (with a vesting schedule to be established by the compensation committee at the time of the grant).

Our directors will be reimbursed for travel, food, lodging and other expenses directly related to their activities as directors. Our directors are also entitled to the protection provided by the indemnification provisions in our bylaws that will become effective upon the consummation of this offering. Our board of directors may revise the compensation arrangements for our directors from time to time.

Messrs. Ortega and Kufel are party to succession agreements with the Company that will become effective upon completion of this offering, pursuant to which they are entitled to certain payments and benefits, in addition to the compensation described above. For complete terms of the succession agreements, please see the respective agreements attached as exhibits to the registration statement of which this prospectus forms a part. Under Mr. Kufel's succession agreement, in addition to other accrued benefits and payments due upon termination of his existing employment agreement, he will receive, subject to his execution and non-revocation of a general release of claims in our favor, a lump-sum cash payment in the amount of \$250,000. Mr. Kufel also will be eligible to participate in the health plans generally available to our executives (provided that he pays the same portion of the premiums and related deductibles and copays as required to be paid by our actively employed executives) until he obtains other employment. Under Mr. Ortega's succession agreement, in addition to other accrued benefits and payments due upon termination of his existing employment agreement (including a bonus payment in the amount of \$700,000 in respect of fiscal year 2020), he will receive a payment in the amount of \$2,904,500, which constitutes his severance as further described below, and be eligible to participate in the health plans generally available to our executives, provided that he pays the same portion of the premiums and related deductibles and copays as required to be paid by our actively employed executives.

Limitations on Liability and Indemnification Matters

Our second amended and restated certificate of incorporation, which will be effective immediately prior to the completion of this offering, and our amended and restated bylaws, which will become effective immediately prior to the completion of this offering, limits our directors' liability, and may indemnify our directors and officers to the fullest extent permitted under the DGCL. The DGCL provides that directors of a corporation will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except for liability for any:

- transaction from which the director derives an improper personal benefit;
- act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or redemption of shares; or
- breach of a director's duty of loyalty to the corporation or its stockholders.

The DGCL and our amended and restated bylaws provide that we will, in certain situations, indemnify our directors and officers and may indemnify other employees and other agents, to the fullest extent permitted by law. Any indemnified person is also entitled, subject to certain limitations, to payment or reimbursement of reasonable expenses, including attorneys' fees and disbursements, in advance of the final disposition of the proceeding.

We have entered or intend to enter into indemnification agreements with each of our directors and officers. These indemnification agreements may require us, among other things, to indemnify our

[Table of Contents](#)

directors and officers for some expenses, including attorneys' fees, judgments, fines, and settlement amounts incurred by a director or officer in any action or proceeding arising out of his or her service as one of our directors or officers, or any of our subsidiaries or any other company or enterprise to which the person provides services at our request.

We maintain a directors' and officers' insurance policy pursuant to which our directors and officers are insured against liability for actions taken in their capacities as directors and officers. We believe that these provisions in our second amended and restated certificate of incorporation and amended and restated bylaws and these indemnification agreements are necessary to attract and retain qualified persons as directors and officers.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, or the Securities Act, may be permitted to directors, officers or control persons, in the opinion of the SEC, such indemnification is against public policy, as expressed in the Securities Act and is therefore unenforceable.

The limitation of liability and indemnification provisions in our second amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against our directors and officers for breach of their fiduciary duty. They may also reduce the likelihood of derivative litigation against our directors and officers, even though an action, if successful, might benefit us and our stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions. At present, there is no pending litigation or proceeding involving any of our directors, officers or employees for which indemnification is sought and we are not aware of any threatened litigation that may result in claims for indemnification.

EXECUTIVE COMPENSATION

We are currently considered an “emerging growth company,” within the meaning of the Securities Act, for purposes of the SEC’s executive compensation disclosure rules. In accordance with such rules, we are required to provide a Summary Compensation Table and an Outstanding Equity Awards at Fiscal Year-End Table, as well as limited narrative disclosures regarding executive compensation for our last completed fiscal year. Our “named executive officers” for Fiscal 2020, consisting of all individuals who served as our principal executive officers during such year and our two other most highly compensated executive officers serving at the end of such year, are:

- Steven L. Ortega, our former Chief Executive Officer and current Chairman;
- Michael R. Egeck, our Chief Executive Officer;
- Steven M. Weddell, our Executive Vice President and Chief Financial Officer; and
- Paula F. Baker, our Chief Revenue Officer.

Summary Compensation Table

The following table sets forth information regarding the compensation of our named executive officers for Fiscal 2020.

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)(1)	All Other Compensation (\$)(2)	Total (\$)
Steven L. Ortega(3) Former Chief Executive Officer and current Chairman	2020	1,000,000(4)	0	0	700,000(5)	78,950	1,778,950
Michael R. Egeck Chief Executive Officer	2020	654,987(6)	0	7,179,102(7)	1,460,916	143,235	9,438,240
Steven M. Weddell Executive Vice President and Chief Financial Officer	2020	450,000(8)	0	0	900,000	39,665	1,389,665
Paula F. Baker(9) Chief Revenue Officer	2020	327,224(10)	75,000(11)	633,750(12)	327,224(13)	127,342	1,490,539

- (1) The amounts in this column reflect cash awards expected to be earned by our named executive officers under the Company’s annual incentive plan for performance in Fiscal 2020. We will finalize and pay out these amounts (which are not expected to change) in November of 2020. Please see “—Annual Cash Bonus Opportunities” below for more information.
- (2) The amounts in this column are detailed in the table immediately below.

	Company Contribution to 401(k) Plan(a)	Personal Use of Company Plane(b)	Gross-Up on Company Plane Use(b)	Relocation Services(c)	Cash Allowance(d)	Gross-Up on Cash Allowance(e)	Reimbursement of Legal Expenses(f)	Total (\$)
Steven L. Ortega	5,600	15,680	2,218	0	31,114	24,338	0	78,950
Michael R. Egeck	0	88,320	9,239	0	25,000	19,555	1,121	143,235
Steven M. Weddell	5,600	0	0	0	19,114	14,951	0	39,665
Paula F. Baker	0	0	0	127,342	0	0	0	127,342

- (a) The amounts in this column represent the Company’s matching 401(k) plan contributions for the relevant named executive officers.

Table of Contents

- (b) The amounts in the “Personal Use of Company Plane” column represent the aggregate incremental cost to us of each of Mr. Ortega’s and Mr. Egeck’s personal use of Company-owned aircraft in accordance with the terms of the Company’s corporate aircraft policy, under which Messrs. Ortega, Egeck and Weddell were permitted personal use of the Company-owned aircraft and were entitled to gross-ups on related imputed income up to, respectively, 20, 20 and 10 hours of actual flight time per year, which estimated gross-ups are reflected in the “Gross-Up on Company Plane Use” column. The Company-owned aircraft was sold on October 14, 2020, so we do not anticipate any named executive officers incurring additional costs under the Company’s corporate aircraft policy.
 - (c) The amount in this column represents the aggregate amount of relocation benefits paid by the Company to Ms. Baker.
 - (d) The amounts in this column represent the annual cash allowances provided to Messrs. Ortega, Egeck and Weddell for expenses related to employment that might be considered partially or wholly personal in nature. We have eliminated these cash allowance arrangements in connection with this offering.
 - (e) The amounts in this column represent the estimated gross-ups to be paid by the Company on the cash allowances provided to Messrs. Ortega, Egeck and Weddell.
 - (f) The amount in this column represents Company reimbursement for legal expenses incurred by Mr. Egeck in connection with the negotiation of his employment agreement with us.
- (3) Mr. Ortega served as our Chief Executive Officer at the beginning of Fiscal 2020 (i.e., from September 29, 2019 to September 30, 2019) and became our Executive Chairman on October 1, 2019, the position in which he served for the remainder of Fiscal 2020. Accordingly, his compensation as reported in the Summary Compensation Table represents his compensation for both roles.
 - (4) For Fiscal 2020, Mr. Ortega received an annualized base salary of \$1,000,000 for serving initially as our Chief Executive Officer and thereafter as our Executive Chairman.
 - (5) For Fiscal 2020, Mr. Ortega earned an annual incentive of \$700,000 for serving initially as our Chief Executive Officer and thereafter as our Executive Chairman.
 - (6) For Fiscal 2020, Mr. Egeck received a prorated base salary of \$654,987.
 - (7) Mr. Egeck received an award of profits interest units in our Parent, and the amount reflects the aggregate grant date fair value of these profits interest units, computed in accordance with FASB ASC Topic 718 and based on the valuation assumptions described in Note 14 to our consolidated financial statements included elsewhere in this prospectus. All of these profits interest units will be cancelled in connection with the consummation of this offering and restricted stock units will be granted under the 2020 Omnibus Incentive Plan in respect of his unvested profits interest units, as described in “—Equity Compensation Plans—2020 Omnibus Incentive Plan—Grants in Connection with This Offering” below.
 - (8) For Fiscal 2020, Mr. Weddell received an annualized base salary of \$450,000.
 - (9) Ms. Baker joined us in November 2019 as our Chief Performance Officer (originally titled Chief People Officer) and transitioned to the role of Chief Revenue Officer in March 2020.
 - (10) For Fiscal 2020, Ms. Baker received an annualized base salary of \$300,000 for serving as our Chief Performance Officer, which increased to \$400,000 upon her transition to serving as our Chief Revenue Officer.
 - (11) Ms. Baker received a sign-on bonus of \$75,000 in connection with commencement of her employment.
 - (12) Ms. Baker received an award of profits interest units in our Parent, and the amount reflects the aggregate grant date fair value of these profits interest units, computed in accordance with FASB ASC Topic 718 and based on the valuation assumptions described in Note 14 to our consolidated financial statements included elsewhere in this prospectus. All of these profits interest units will be cancelled in connection with the consummation of this offering and restricted stock units will be granted under the

[Table of Contents](#)

- 2020 Omnibus Incentive Plan in respect of her unvested profits interest units, as described in “—Equity Compensation Plans—2020 Omnibus Incentive Plan—Grants in Connection with This Offering” below.
- (13) For Fiscal 2020, Ms. Baker earned a prorated annual incentive of \$327,224, the amount of which was based on her annualized base salary.

Narrative Disclosure to Summary Compensation Table

Elements of Compensation

The compensation of our named executive officers generally consists of base salary, annual cash bonus opportunities, long term incentive compensation in the form of equity awards and other benefits, each as described below.

Base Salary

The base salary payable to each named executive officer is intended to provide a fixed component of compensation reflecting the executive’s skill set, experience, role, responsibilities and contributions. As of the end of Fiscal 2020, our named executive officers were entitled to the following base salaries for Fiscal 2020:

Named Executive Officer	Base Salary
Steven L. Ortega	\$ 1,000,000
Michael R. Egeck	\$ 1,000,000
Steven M. Weddell	\$ 450,000
Paula F. Baker	\$ 400,000

The actual base salary amounts paid to the named executive officers during Fiscal 2020 are set forth in the “Summary Compensation Table” above.

Annual Cash Bonus Opportunities

The target performance-based cash bonus opportunity for each named executive officer (other than Mr. Ortega) is expressed as a percentage of his or her base salary and can be earned by meeting certain predetermined corporate performance objectives. Fiscal 2020 annual cash bonuses for Mr. Egeck, Mr. Weddell and Ms. Baker were targeted at 100%, 100% and 50% of their base salaries, respectively. Mr. Ortega’s target performance-based cash bonus opportunity for Fiscal 2020 was \$350,000 and able to be earned in accordance with the same terms as apply to our other named executive officers.

In the first quarter of Fiscal 2020, the Board set corporate performance objectives based on EBITDA. Based on actual performance, the annual cash bonus earned by each named executive officer for Fiscal 2020 is expected to equal 200% of his or her target amount, as reflected in the “Summary Compensation Table” above. We will finalize and pay out these amounts (which are not expected to change) in November of 2020. Mr. Egeck’s and Ms. Baker’s annual cash bonuses for Fiscal 2020 will be prorated based on their date of hire.

Long Term Equity Incentives

Our equity-based incentive awards are designed to align our interests and the interests of our stockholders with those of our employees, including our named executive officers.

Table of Contents

Prior to this offering, none of our named executive officers held any direct equity interests in our Company. Certain of our employees, including each of our named executive officers, were granted long-term equity incentive awards, in the form of equity interests of our Parent, designed to incentivize them to remain in our service and drive performance. These long-term equity incentive awards were granted to our named executive officers in the form of profits interest units (collectively, the “incentive units”), which are intended to be treated as “profits interests” for U.S. federal income tax purposes. The incentive units allowed our named executive officers to share in distributions made by our Parent in certain circumstances. The specific sizes of the incentive unit grants made to our named executive officers were determined in light of the named executive officer’s position and level of responsibilities with us and our Parent’s overall management equity compensation philosophy. Our Company is not party to the agreements governing the incentive units and is not liable for any payments due under the incentive units. In connection with this offering, we intend to grant restricted stock units and stock options under our 2020 Omnibus Incentive Plan, including to our named executive officers, to provide additional retention and performance incentives to these individuals. Please see “—Equity Compensation Plans—2020 Omnibus Incentive Plan—Grants in Connection with This Offering” below for more information.

Other Benefits

We currently provide broad-based welfare benefits that are available to all of our employees, including our named executive officers, including health, dental, life, vision and disability insurance.

In addition, we maintain, and the named executive officers participate in, a 401(k) plan that provides eligible employees with an opportunity to save for retirement on a tax-advantaged basis and under which we are permitted to make discretionary employer contributions. Employees’ pre-tax contributions are allocated to their respective individual accounts and are then invested in selected investment alternatives according to their directions. The 401(k) plan is intended to be qualified under Section 401(a) of the Code. We currently match participant contributions to the 401(k) plan up to 4% of eligible earnings, up to IRS limits.

We do not maintain any defined benefit pension plans or non-qualified deferred compensation plans.

Executive Officer Employment Arrangements

During Fiscal 2020, we were party to employment agreements with each of our named executive officers except Ms. Baker, the key terms of which are described below. The following is a summary of the material terms of each agreement. However, in connection with and effective upon this offering, we have amended and restated all of these employment agreements, as further described below.

Mr. Egeck’s employment agreement provides for an indefinite term of employment, and the employment agreement for each of Messrs. Ortega and Weddell provides for an initial term (six years for Mr. Ortega and five years for Mr. Weddell), with automatic one-year extensions beginning upon expiration of the initial term, which may be cancelled upon at least 90 days’ prior written notice from either the respective named executive officer or the Company. Under their respective employment agreements, Messrs. Ortega, Egeck and Weddell are entitled to receive annual base salaries of \$1,000,000, \$1,000,000 and \$450,000, respectively, in each case, subject to annual review by our board of directors. Further, each of Messrs. Egeck and Weddell has the opportunity to earn an annual cash bonus targeted at 100% of his respective annual base salary, and Mr. Ortega has the opportunity to earn an annual bonus targeted at \$350,000 for Fiscal Year 2020 and increasing thereafter. Each of

Table of Contents

Messrs. Ortega, Egeck and Weddell is also entitled to an annual cash allowance for personal expenses and to participate in the Company's employee and fringe benefit plans, as may be in effect from time to time, on the same basis as other employees of the Company generally.

In the event of a termination by the Company without "cause" or by the named executive officer for "good reason" (each as defined in his respective employment agreement), each of Messrs. Ortega and Weddell is generally eligible to receive an amount equal to two times the sum of his base salary and target bonus, payable in a lump sum within 14 days after the date of termination (together with certain other payments), as well as reimbursement for his COBRA premiums for up to 18 months post-termination and up to 6 months of outplacement and transition services, and Mr. Egeck is entitled to receive an amount equal to 100% of his base salary, payable in equal monthly installments over the 12-month period following his termination. Each of Messrs. Egeck and Weddell must execute a release of claims in favor of the Company as a condition to receipt of severance.

The employment agreement for each of Messrs. Ortega, Egeck and Weddell contains restrictive covenants prohibiting him from: (i) competing against the Company for 24 months (36 months for Mr. Weddell) after termination of his employment, (ii) soliciting (or interfering with the Company's relationships with) the Company's employees, consumers or suppliers for 24 months (36 months for Mr. Weddell) after termination of his employment, and (iii) disclosing the Company's proprietary information, developments and other intellectual property.

Messrs. Egeck's and Weddell's employment agreements have been amended and restated effective upon the IPO, resulting in the following changes to their existing agreements: annual base salaries of \$1,025,000 and \$570,000 (respectively), IPO bonuses of \$550,000 each, removal of the cash allowances, and, for Mr. Egeck, an increase in his severance entitlement (triggered upon a termination by the Company without "cause" or by Mr. Egeck for "good reason") to two times the sum of his base salary and target bonus, payable in equal monthly installments over the 24-month period following his termination. For complete terms of the amended and restated agreements, please see the respective agreements attached as exhibits to the registration statement of which this prospectus forms a part.

Also effective upon the IPO, Mr. Ortega's employment agreement will terminate and be replaced with a succession agreement detailing Mr. Ortega's service as our Chairman and payout of his existing entitlements under the employment agreement described above. This succession agreement is attached as an exhibit to the registration statement of which this prospectus forms a part, and described in greater detail above under "Director Compensation."

We are also party to an offer letter with Ms. Baker, which provides for employment at-will, an annual base salary of \$300,000 (which has subsequently been increased to \$400,000), a target annual bonus equal to 50% of her annual base salary, eligibility for benefits provided to our executives and certain payments that have already been made and benefits that have already been provided (including reimbursement of her relocation costs, a signing bonus of \$75,000 and an equity incentive grant). Ms. Baker also participates in our 2019 Executive Severance Plan (the "ESP"), pursuant to which, upon a termination of her employment by the Company without "cause" (as defined in the ESP), she will receive a minimum of 6 months of continued base salary payments, subject to her execution of a release of claims against the Company. Ms. Baker will also be subject to cooperation and non-disparagement covenants under the ESP. For complete terms of Ms. Baker's offer letter and the ESP, please see the respective documents attached as exhibits to the registration statement of which this prospectus forms a part.

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

The following table summarizes equity awards held by our named executive officers as of Fiscal 2020. Our named executive officers each held an indirect ownership stake in the Company by holding incentive units in our Parent.

Name	Option Awards(1)			Option Exercise Price (\$)(2)	Option Expiration Date
	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Number of Securities Underlying Unexercised Unearned Options (#)		
Steven L. Ortega	1,414,064	249,541(3)	215,288(4)	N/A	N/A
Michael R. Egeck	1,913,176	1,147,906(5)	874,594(4)	N/A	N/A
Steven M. Weddell	1,060,548	187,156(6)	0	N/A	N/A
Paula F. Baker	150,000	225,000(7)	0	N/A	N/A

- (1) The equity awards disclosed in this table are incentive units in our Parent, which are intended to be treated as profits interests for U.S. federal income tax purposes. For more information on the incentive units, see “Long Term Equity Incentives” above. Despite the fact that the incentive units do not require the payment of an exercise price or have an option expiration date, we believe they are economically similar to stock options and, as such, they are reported in this table as “Option” awards. Awards reflected as “Unexercisable” are time-vesting incentive units that have not yet vested. Awards reflected as “Unearned” are performance-vesting incentive units that have not yet vested and will not have vested as of completion of this offering. Awards reflected as “Exercisable” are incentive units that have vested (or will vest in connection with this offering) but remain outstanding. We expect all incentive units will be cancelled in connection with the consummation of this offering and restricted stock units will be granted under the 2020 Omnibus Incentive Plan in respect of any unvested incentive units, as described in “—Equity Compensation Plans—2020 Omnibus Incentive Plan—Grants in Connection with This Offering” below.
- (2) These awards are not traditional options, and therefore, there is no exercise price or expiration date associated with them. As the incentive units were intended to be treated as “profits interests” for U.S. federal income tax purposes, each was granted with the distribution threshold necessary to result in a liquidation value of \$0.
- (3) These incentive units are scheduled to vest on April 21, 2021, so long as Mr. Ortega remains continuously employed by our Parent or any of its affiliates through that date.
- (4) These incentive units are scheduled to vest upon key investors in our prior parent receiving a certain level of returns on their investment in our Parent and its subsidiaries, including the Company.
- (5) 12.5% of these incentive units are scheduled to vest on each six-month anniversary of August 4, 2020, in each case, so long as Mr. Egeck remains continuously employed by our Parent or any of its affiliates through the applicable vesting date.
- (6) These incentive units are scheduled to vest on April 21, 2021, so long as Mr. Weddell remains continuously employed by our Parent or any of its affiliates through that date.
- (7) 25% of these incentive units were scheduled to vest on each anniversary of November 21, 2019, in each case, so long as Ms. Baker remained continuously employed by our prior parent or any of its affiliates through the applicable vesting date.

Equity Compensation Plans

2020 Omnibus Incentive Plan

Our board of directors and stockholders plan to adopt a 2020 Omnibus Incentive Plan (the "2020 Omnibus Incentive Plan") to become effective upon the consummation of this offering. The following is a summary of certain terms and conditions of the 2020 Omnibus Incentive Plan. This summary is qualified in its entirety by reference to the 2020 Omnibus Incentive Plan attached as an exhibit to the registration statement of which this prospectus forms a part. You are encouraged to read the full 2020 Omnibus Incentive Plan.

Administration

Our board of directors (or subcommittee thereof) will administer the 2020 Omnibus Incentive Plan. The board of directors will have the authority to determine the terms and conditions of any agreements evidencing any awards granted under the 2020 Omnibus Incentive Plan and to adopt, alter, and repeal rules, guidelines, and practices relating to the 2020 Omnibus Incentive Plan. The board of directors will have full discretion to administer and interpret the 2020 Omnibus Incentive Plan and to adopt such rules, regulations, and procedures as it deems necessary or advisable and to determine, among other things, the time or times at which the awards may be exercised and whether and under what circumstances an award may be exercised.

Eligibility

Any current or prospective employees, directors, officers, consultants or advisors of the Company or its affiliates who are selected by the board of directors (or its designee) will be eligible for awards under the 2020 Omnibus Incentive Plan. Except as otherwise required by applicable law or regulation or stock exchange rules, the board of directors (or its designee) will have the sole and complete authority to determine who will be granted an award under the 2020 Omnibus Incentive Plan.

Number of Shares Authorized

The 2020 Omnibus Incentive Plan provides for 18,650,000 shares of our common stock (representing 10% of the shares of our common stock on a fully diluted basis and assuming that all shares available for issuance under the 2020 Omnibus Incentive Plan and are issued and outstanding). Shares of our common stock subject to awards are generally unavailable for future grant. If any award granted under the 2020 Omnibus Incentive Plan expires, terminates, is canceled or forfeited without being settled or exercised, or if a stock appreciation right is settled in cash or otherwise without the issuance of shares of our common stock, shares of our common stock subject to such award will again be made available for future grants. In addition, if any shares of our common stock are surrendered or tendered to pay the exercise price of an award or to satisfy withholding taxes owed, such shares will again be available for grants under the 2020 Omnibus Incentive Plan. The maximum number of shares of our common stock that may be granted during any fiscal year to any individual non-employee director will not exceed that number of share of our common stock that has an aggregate grant date fair value (computed as of the grant date in accordance with applicable financial accounting rules) of, when added to any cash compensation received by such non-employee director, \$750,000 (excluding awards made pursuant to deferred compensation arrangements made in lieu of all or a portion of cash retainers and any dividends payable in respect of outstanding awards).

Change in Capitalization

If there is a change in our capitalization in the event of a stock or extraordinary cash dividend, recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, split-off,

[Table of Contents](#)

spin-off, combination, repurchase or exchange of shares of our common stock or other relevant change in capitalization or applicable law or circumstances, such that the board of directors determines that an adjustment to the terms of the 2020 Omnibus Incentive Plan (or awards thereunder) is necessary or appropriate, then the board of directors may make adjustments in a manner that it deems equitable. Such adjustments may be to the number of shares reserved for issuance under the 2020 Omnibus Incentive Plan, the number of shares covered by awards then outstanding under the 2020 Omnibus Incentive Plan, the limitations on awards under the 2020 Omnibus Incentive Plan, the exercise price of outstanding options and such other equitable substitution or adjustments as it may determine appropriate.

Awards Available for Grant

The board of directors may grant awards of non-qualified stock options, incentive (qualified) stock options, stock appreciation rights ("SARs"), restricted stock awards, restricted stock units, other stock-based awards, performance compensation awards (including cash bonus awards), other cash-based awards, deferred awards or any combination of the foregoing. Awards may be granted under the 2020 Omnibus Incentive Plan in assumption of, or in substitution for, outstanding awards previously granted by an entity acquired by the Company or with which the Company combines (which are referred to herein as "Substitute Awards").

Stock Options

The board of directors will be authorized to grant options to purchase shares of our common stock that are either "qualified," meaning they are intended to satisfy the requirements of Section 422 of the Code for incentive stock options, or "non-qualified," meaning they are not intended to satisfy the requirements of Section 422 of the Code. All options granted under the 2020 Omnibus Incentive Plan will be non-qualified unless the applicable award agreement expressly states that the option is intended to be an "incentive stock option." Options granted under the 2020 Omnibus Incentive Plan will be subject to the terms and conditions established by the board of directors. Under the terms of the 2020 Omnibus Incentive Plan, the exercise price of the options will not be less than the fair market value of our common stock at the time of grant (except with respect to Substitute Awards). Options granted under the 2020 Omnibus Incentive Plan will be subject to such terms, including the exercise price and the conditions and timing of exercise, as may be determined by the board of directors and specified in the applicable award agreement. The maximum term of an option granted under the 2020 Omnibus Incentive Plan will be ten years from the date of grant (or five years in the case of a qualified option granted to a 10% stockholder). Payment in respect of the exercise of an option may be made in cash or shares of our common stock valued at the fair market value at the time the option is exercised or in other property having a fair market value equal to the exercise price, by means of a broker-assisted cashless exercise mechanism, or by means of a "net exercise" procedure effected by withholding the number of shares otherwise deliverable in respect of an option that are needed to pay the exercise price.

Stock Appreciation Rights

The board of directors will be authorized to award SARs under the 2020 Omnibus Incentive Plan. SARs will be subject to the terms and conditions established by the board of directors. A SAR is a contractual right that allows a participant to receive, either in the form of cash, shares or any combination of cash and shares, the appreciation, if any, in the value of a share over a certain period of time. Except as otherwise provided by the board of directors (in the case of Substitute Awards), the strike price per share of our common stock for each SAR will not be less than 100% of the fair market value of such share, determined as of the date of grant and the term may not exceed 10 years after the date of grant. The remaining terms of the SARs will be established by the board of directors and reflected in the award agreement.

[Table of Contents](#)

Restricted Stock

The board of directors will be authorized to grant restricted stock under the 2020 Omnibus Incentive Plan, which will be subject to the terms and conditions established by the board of directors. Restricted stock is common stock that generally is non-transferable and is subject to other restrictions determined by the board of directors for a specified period.

Restricted Stock Unit Awards

The board of directors will be authorized to award restricted stock unit awards, which will be subject to the terms and conditions established by the board of directors. A restricted stock unit award, once vested, may be settled in common shares equal to the number of units earned, or in cash equal to the fair market value of the number of vested shares, at the election of the board of directors. Restricted stock units may be settled at the expiration of the period over which the units are to be earned or at a later date selected by the board of directors. The board of directors (or subcommittee thereof) may specify in an award agreement that any or all dividends, dividend equivalents, or other distributions, as applicable, paid on awards prior to vesting or settlement, as applicable, be paid either in cash or in additional shares, either on a current or deferred basis, and that such dividends, dividend equivalents, or other distributions may be reinvested in additional shares, which may be subject to the same restrictions as the underlying awards.

Other Stock-Based Awards

The board of directors will be authorized to grant awards of unrestricted shares of common stock, rights to receive grants of awards at a future date or other awards denominated in shares of our common stock under such terms and conditions as the board of directors may determine and as set forth in the applicable award agreement.

Nontransferability

No award may be assigned, alienated, pledged, attached, sold, or otherwise transferred or encumbered by a participant other than by will or by the laws of descent and distribution unless the board of directors permits the award to be transferred in accordance with the terms of the 2020 Omnibus Incentive Plan.

Amendment

The 2020 Omnibus Incentive Plan will have a term of ten years. Our board of directors may amend, suspend or terminate the 2020 Omnibus Incentive Plan at any time, subject to stockholder approval if necessary to comply with any tax, or other applicable regulatory requirement.

The board of directors may, to the extent consistent with the terms of any applicable award agreement, waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate, any award theretofore granted or the associated award agreement, prospectively or retroactively; provided that any such waiver, amendment, alteration, suspension, discontinuance, cancellation or termination that would materially and adversely affect the rights of any participant will not to that extent be effective without the consent of the affected participant, except as otherwise provided in the 2020 Omnibus Incentive Plan.

Grants in Connection with This Offering

In connection with the consummation of this offering, we intend to grant the following awards under the 2020 Omnibus Incentive Plan, including to our named executive officers and certain of our

[Table of Contents](#)

directors, to provide additional retention and performance incentives to these individuals.

- 6,039,715 restricted stock units, which will be granted in respect of forfeited unvested incentive units. Certain of these restricted stock units will vest based on time only, in accordance with the relevant vesting schedules of the forfeited unvested incentive units in respect of which they are issued. The restricted stock units issued in respect of the unvested performance-vesting incentive units held by each of Messrs. Ortega and Egeck will vest only upon the achievement of volume weighted average price (“VWAP”) targets to be established by our compensation committee for each such named executive officer, with such VWAP measured over rolling 20-day trading periods, with the first such rolling 20-day trading period commencing on the six-month anniversary of the consummation of the offering. The number of restricted stock units expected to be granted to our named executive officers in respect of their unvested incentive units has not yet been determined.
- 5,250,000 stock options, which will consist of (a) stock options that will vest based on time and performance, to be granted to the named executive officers and certain key employees, and (b) stock options that will vest based on time only, to be granted to other key employees. We expect the time-vesting stock options will vest over a four-year period following the consummation of this offering, and we expect the performance-vesting stock options will vest 50% on the Company’s achievement of the net income target for fiscal year 2021 and 50% on the Company’s achievement of the net income target for fiscal year 2022. Our named executive officers are expected to receive the following stock options exercisable at a price of \$15 per share in connection with the consummation of this offering. For each named executive officer, 2/3 of the granted stock options will be subject to time-vesting only and 1/3 of the granted stock options will be subject to performance-vesting only.

<u>Name</u>	<u>Stock Options</u>
Steven L. Ortega	166,667
Michael R. Egeck	1,333,333
Steven M. Weddell	833,333
Paula F. Baker	133,333

These awards will be granted subject to the terms of the 2020 Omnibus Incentive Plan and individual award agreements. Each RSU will represent the right to receive one share of our common stock upon vesting and settlement. Each recipient of RSUs in connection with this offering and recipient of stock options who exercises any stock options will be subject to the lock-up agreements described in “Shares Eligible for Future Sale—Lock-up agreements.”

Clawback/Forfeiture

Awards may be subject to clawback or forfeiture to the extent required by applicable law (including, without limitation, Section 304 of the Sarbanes-Oxley Act, Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act), and/or the rules and regulations of the applicable securities exchange, or if so required pursuant to a written policy adopted by the Company or the provisions of an award agreement.

PRINCIPAL AND SELLING STOCKHOLDERS

The following table sets forth information with respect to the beneficial ownership of our shares as of October 26, 2020 by:

- Bubbles Holdings, L.P., the selling stockholder, and our sole stockholder as of the date of this prospectus;
- each of our named executive officers;
- each of our current directors;
- all of our directors and executive officers as a group; and
- each person or entity known by us to own beneficially more than 5% of our preferred stock and common stock (by number or by voting power).

Except as indicated in the footnotes below, we have determined beneficial ownership in accordance with the rules and regulations of the SEC, which generally includes any shares over which a person exercises sole or shared voting and/or investment power. The information is not necessarily indicative of beneficial ownership for any other purpose. Except as indicated by the footnotes below, we believe, based on information furnished to us, that the persons and entities named in the table below have sole or shared voting and/or investment power with respect to all shares that they beneficially own, subject to applicable community property laws.

Applicable percentage ownership before the offering is based on 156,602,667 shares of common stock outstanding as of October 26, 2020, after giving effect to the Stock Split. The number of shares and percentages of beneficial ownership after this offering set forth in the table below are based on the number of shares of our common stock to be issued and outstanding immediately after consummation of this offering, assuming no exercise by the underwriters of their option to purchase up to an aggregate of 6,000,000 shares of common stock. In computing the number of shares beneficially owned by a person and the percentage ownership of such person, we deemed to be outstanding all shares of common stock issuable upon settlement of restricted stock units expected to be issued following the completion of this offering in exchange for equity interests in our Parent and are expected to vest within 60 days following the date of effectiveness of the registration statement of which this prospectus forms a part.

Unless otherwise indicated, the address of each of the individuals named below is Leslie's, Inc., 2005 East Indian School Road, Phoenix, Arizona 85016.

Name of Beneficial Owner	Shares Beneficially Owned Prior to Offering		Shares to be Sold in the Offering Number	Shares Beneficially Owned After Offering ⁽¹⁾	
	Number	Percent (%)		Number	Percent (%)
Selling Stockholder:					
Bubbles Holdings, L.P. ⁽²⁾	156,602,667	100.0	10,000,000	146,602,667	78.6
5% Stockholder					
Entities Affiliated with L Catterton ⁽³⁾⁽⁵⁾⁽⁶⁾	84,465,517	53.9	—	78,630,086	42.1
Explorer Investment Pte. Ltd. ⁽⁴⁾⁽⁵⁾⁽⁶⁾	51,164,864	32.7	—	47,630,061	25.5
Named Executive Officers and Directors:					
Steven L. Ortega ⁽⁵⁾⁽⁶⁾	3,673,927	2.3	—	3,552,555	1.9
Michael R. Egeck ⁽⁵⁾	2,981,369	1.9	—	2,981,369	1.6
Steven M. Weddell ⁽⁵⁾⁽⁶⁾	2,363,346	1.5	—	2,298,800	1.2
Paula R. Baker ⁽⁵⁾	281,794	0.2	—	281,794	0.2
Yolanda Daniel ⁽⁵⁾	—	—	—	—	—
Jodee Kozlak ⁽⁵⁾	—	—	—	—	—
Marc Magliacano ⁽⁵⁾	—	—	—	—	—

[Table of Contents](#)

Name of Beneficial Owner	Shares Beneficially Owned Prior to Offering		Shares to be Sold in the Offering Number	Shares Beneficially Owned After Offering ⁽¹⁾	
	Number	Percent (%)		Number	Percent (%)
Matthew Lischick ⁽⁵⁾	—	—	—	—	—
Eric Kufel ⁽⁵⁾	50,920	*	—	50,920	*
Susan O'Farrell ⁽⁵⁾	—	—	—	—	—
John Strain ⁽⁵⁾	64,808	*	—	64,808	*
All Directors and Officers as a group (11 persons)	9,416,165	6.0	—	9,230,245	4.9

- (1) Assumes no exercise of the underwriters' option to purchase additional shares.
- (2) Bubbles Holdings, L.P. is our Parent and sole stockholder as of the date hereof and is the sole selling stockholder in this offering. Entities controlled by Catterton Management Company, L.L.C. hold a majority of the limited partnership interests in this entity through Bubbles Investor Aggregator, L.P. ("Bubbles Aggregator"). The rest of the limited partnership interests in our Parent are held by Explorer Investment Pte. Ltd. (the "GIC Investor") and others, including our current and former executive officers, directors and employees.
- (3) All of the shares of common stock are held by Bubbles Aggregator. C8 Management, L.L.C. is the general partner of Bubbles Aggregator, and the management of C8 Management, L.L.C. is controlled by a managing board. J. Michael Chu and Scott A. Dahnke are the members of the managing board of C8 Management, L.L.C. and as such could be deemed to share voting control and investment power over shares that may be deemed to be beneficially owned by the entities affiliated with Catterton Management Company, L.L.C., but each disclaims beneficial ownership of such shares except to the extent of his pecuniary interest therein. The address of the entities and individuals mentioned in this footnote is 599 West Putnam Avenue, Greenwich, CT 06830.
- (4) The GIC Investor shares the power to vote and the power to dispose of these shares with GIC Special Investments Pte. Ltd. ("GIC SI"), and GIC, both of which are private limited companies incorporated in Singapore. GIC SI is wholly owned by GIC and is the private equity investment arm of GIC. GIC is wholly owned by the Government of Singapore and was set up with the sole purpose of managing Singapore's foreign reserves. The Government of Singapore disclaims beneficial ownership of these shares. The business address for the GIC Investor is 168 Robinson Road, #37-01 Capital Tower, Singapore 068912.
- (5) The shares shown in this row are held by our Parent as of the date hereof but are required to be distributed to the beneficial owner shown in this row as soon as reasonably practicable after the date of this offering. The amounts in this row represent economic interests, indirectly, of our common stock based on an initial public offering price of \$15.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after giving effect to such share distribution.
- (6) Shares beneficially owned after the offering gives effect to cash distributions required to be paid to the beneficial owner in respect of such beneficial owner's economic interests in our Parent.

DESCRIPTION OF CAPITAL STOCK

General

The following description of our capital stock and certain provisions of our second amended and restated certificate of incorporation and amended and restated bylaws are summaries and are qualified by reference to the second amended and restated certificate of incorporation and the amended and restated bylaws that will be in effect on the completion of this offering. Copies of these documents have been filed with the SEC as exhibits to our registration statement, of which this prospectus forms a part. The descriptions of the common stock reflect changes to our capital structure that will be in effect on the completion of this offering.

Our second amended and restated certificate of incorporation that will be in effect on the completion of this offering will authorize shares of common stock and undesignated preferred stock, the rights, preferences and privileges of which may be designated from time to time by our board of directors.

On the completion of this offering, our authorized capital stock will consist of 1,001,000,000 shares, all with a par value of \$0.001 per share, of which:

- 1 billion shares are designated as common stock; and
- 1 million shares are designated as preferred stock.

As of June 27, 2020, we had outstanding:

- 156,500,000 shares of common stock assuming the Stock Split has occurred as of that date; and
- no shares of preferred stock.

Our outstanding capital stock was held by one stockholder of record as of October 22, 2020. Our board of directors is authorized, without stockholder approval except as required by the listing standards of Nasdaq, to issue additional shares of our capital stock.

Common Stock

Voting Rights

The common stock is entitled to one vote per share on any matter that is submitted to a vote of our stockholders. Holders of shares of our common stock will vote together as a single class on all matters (including the election of directors) submitted to a vote of stockholders.

Our second amended and restated certificate of incorporation that will be in effect on the completion of this offering will not provide for cumulative voting for the election of directors.

Economic Rights

Except as otherwise will be expressly provided in our second amended and restated certificate of incorporation that will be in effect on the completion of this offering or required by applicable law, all shares of our common stock will have the same rights and privileges and rank equally, share ratably and be identical in all respects for all matters, including those described below.

Dividends and Distributions. Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of our common stock will be entitled to share equally, on a per share basis, in such dividends and other distributions of cash, property or shares of stock of the Company as may be declared by the board of directors from time to time with respect to the common stock out of assets or funds of the Company legally available therefor.

Table of Contents

Liquidation Rights. On our liquidation, dissolution or winding-up, the holders of our common stock will be entitled to share ratably in all assets remaining after the payment of the Company of whatever kind available for distribution to the holders of common stock.

No Preemptive or Similar Rights

Our common stock is not entitled to preemptive rights, and are not subject to conversion, redemption or sinking fund provisions.

Preferred Stock

On the completion of this offering and under our second amended and restated certificate of incorporation that will be in effect on the completion of this offering, our board of directors may, without further action by our stockholders, fix the rights, preferences, privileges and restrictions of up to an aggregate of 1 million shares of preferred stock in one or more series and authorize their issuance. These rights, preferences and privileges could include dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences and the number of shares constituting any series or the designation of such series, any or all of which may be greater than the rights of our common stock. Any issuance of our preferred stock could adversely affect the voting power of holders of our common stock, and the likelihood that such holders would receive dividend payments and payments on liquidation. In addition, the issuance of preferred stock could have the effect of delaying, deferring or preventing a change of control or other corporate action. On the completion of this offering, no shares of preferred stock will be outstanding. We have no present plan to issue any shares of preferred stock.

Registration Rights

In connection with this offering, we will enter into an agreement that will provide that certain holders of our capital stock have certain registration rights and are subject to certain transfer restrictions. See the section titled "Certain Relationships and Related Party Transactions—Registration Rights."

Anti-Takeover Provisions

Stockholder Action; Special Meeting of Stockholders

Our second amended and restated certificate of incorporation and amended and restated bylaws to be effective on the completion of this offering will provide that, from and after the Trigger Event, our stockholders may not take action by written consent, but may only take action at annual or special meetings of our stockholders, provided, however, that any action required or permitted to be taken by the holders of preferred stock may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable certificate of designation relating to such series of preferred stock. Our second amended and restated certificate of incorporation and our amended and restated bylaws will also provide that, from and after the Trigger Event, except as otherwise required by law, special meetings of our stockholders can only be called by our chairman of the board or our board of directors.

Authorized But Unissued Shares

The authorized but unissued shares of our common stock and preferred stock are available for future issuance without stockholder approval, subject to any limitations imposed by the listing standards of Nasdaq. These additional shares may be used for a variety of corporate finance

[Table of Contents](#)

transactions, acquisitions, and employee benefit plans. The existence of authorized but unissued and unreserved common stock and preferred stock could make more difficult or discourage an attempt to obtain control of us by means of a proxy contest, tender offer, merger, or otherwise.

Classified Board

Our second amended and restated certificate of incorporation will provide that our board of directors will be classified into three classes of directors, each of which will hold office for staggered three-year terms. In addition, from and after the Trigger Event, directors may only be removed from the board of directors for cause and only by the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % in voting power of all the then-outstanding shares of stock of the Company entitled to vote thereon, voting together as a single class. The existence of a classified board could delay a potential acquirer from obtaining majority control of our board of directors, and the prospect of that delay might deter a potential acquirer. See the section titled "Management—Composition of the Board of Directors and Election of Directors."

Board of Directors Vacancies

Our second amended and restated certificate of incorporation and amended and restated bylaws will authorize only our board of directors to fill vacant directorships, including newly created seats. In addition, the number of directors constituting our board of directors will be permitted to be set only by a resolution adopted by a majority vote of our entire board of directors. These provisions would prevent a stockholder from increasing the size of our board of directors and then gaining control of our board of directors by filling the resulting vacancies with its own nominees. This will make it more difficult to change the composition of our board of directors and will promote continuity of management.

Advance Notice Requirements for Stockholder Proposals and Director Nominations

Our amended and restated bylaws will provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders or to nominate candidates for election as directors at our annual meeting of stockholders. Our amended and restated bylaws will also specify certain requirements regarding the form and content of a stockholder's notice. These provisions might preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our annual meeting of stockholders if the proper procedures are not followed. We expect that these provisions may also discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of our company.

No Cumulative Voting

The DGCL provides that stockholders are not entitled to cumulate votes in the election of directors unless a corporation's certificate of incorporation provides otherwise. Our second amended and restated certificate of incorporation does not provide for cumulative voting.

Amendment of Charter and Bylaws Provisions

From and after the Trigger Event, amendments to certain provisions of our second amended and restated certificate of incorporation regarding the amendment of our second amended and restated certificate of incorporation, the composition and authority of our board of directors, the election and removal of directors, limitations of director liability, stockholder meetings, corporate opportunities, choice of forum and the interpretation of our second amended and restated certificate of incorporation

Table of Contents

will require the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % in voting power of all the then-outstanding shares of stock of the Company entitled to vote thereon, voting together as a single class. Our amended and restated bylaws will authorize the board of directors to amend our bylaws without the assent or vote of shareholders, provided that, from and after the Trigger Event, stockholders may amend the bylaws with the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % in voting power of all the then-outstanding shares of stock of the Company entitled to vote thereon, voting together as a single class.

Choice of Forum

Our second amended and restated certificate of incorporation will provide that the Court of Chancery of the State of Delaware will be, to the fullest extent permitted by law, the exclusive forum for the following types of actions or proceedings under Delaware statutory or common law: (i) any derivative action or proceeding brought on our behalf; (ii) any action asserting a breach of fiduciary duty owed by any of our directors, officers, other employees or stockholders to us or our stockholders, creditors or other constituents, or a claim of aiding and abetting any such breach of fiduciary duty; (iii) any action asserting a claim against us or our directors or officers arising under the DGCL or our second amended and restated certificate of incorporation or the bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; (iv) any action to interpret, apply, enforce or determine the validity of our second amended and restated certificate of incorporation or our amended and restated bylaws; (v) any action asserting an "internal corporate claim" as that term is defined in Section 115 of the DGCL; or (vi) any action asserting a claim against us or our directors or officers that is governed by the internal affairs doctrine; *provided, however*, that, in the event that the Court of Chancery of the State of Delaware lacks subject matter jurisdiction over any such action or proceeding, any other state court of the State of Delaware, or if no state court of the State of Delaware has subject matter jurisdiction, the federal district court for the District of Delaware, unless we consent in writing to the selection of an alternative forum. Unless we consent in writing to the selection of an alternative forum, the federal district court for the District of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act against us or our directors or officers. Notwithstanding the foregoing, the provisions of this paragraph will not apply to suits brought to enforce any liability or duty created by the Exchange Act. Any person or entity purchasing or otherwise acquiring any interest in any shares of our capital stock shall be deemed to have notice of and to have consented to the forum provisions in the second amended and restated certificate of incorporation. If any action the subject matter of which is within the scope the forum provisions is filed in a court other than a court located within the State of Delaware (a "foreign action") in the name of any stockholder, such stockholder shall be deemed to have consented to: (x) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce the forum provisions (an "enforcement action"), and (y) having service of process made upon such stockholder in any such enforcement action by service upon such stockholder's counsel in the foreign action as agent for such stockholder.

This choice of forum provision in our second amended and restated certificate of incorporation may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers, or other employees, which may discourage lawsuits with respect to such claims. There is uncertainty as to whether a court would enforce such provisions, and the enforceability of similar choice of forum provisions in other companies' charter documents has been challenged in legal proceedings. It is possible that a court could find these types of provisions to be inapplicable or unenforceable, and if a court were to find the choice of forum provision contained in the second amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, results of operations, and financial condition.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock will be Computershare Trust Company, N.A.

Exchange

We intend to apply to have our common stock listed on Nasdaq under the symbol "LESL."

SHARES ELIGIBLE FOR FUTURE SALE

Of these shares, the 40,000,000 shares of common stock sold in this offering (or 46,000,000 shares if the underwriters exercise in full their option to purchase additional shares of our common stock) will be freely tradable without further restriction or registration under the Securities Act, except that any shares purchased by our affiliates may generally only be sold in compliance with Rule 144, which is described below.

Lock-up agreements

Our executive officers and directors and substantially all of our shareholders will enter into lock-up agreements under which they will agree not to sell or otherwise transfer their shares for a period of 180 days after the completion of this offering. These lock-up restrictions may be extended in specified circumstances and are subject to certain exceptions. As a result of these contractual restrictions, shares of our common stock subject to lock-up agreements will not be eligible for sale until these agreements expire or the restrictions are waived by the representatives of the underwriters.

In addition, we will agree with the underwriters not to sell any shares of our common stock or securities convertible into or exchangeable for shares of our common stock for a period of 180 days after the date of this prospectus, subject to certain exceptions.

See the section titled "Underwriting" for a more complete description of the lock-up agreements that we, our directors and executive officers, and substantially all of our shareholders will enter into with the representatives of the underwriters.

Rule 701

In general, under Rule 701, any of an issuer's employees, directors, officers, consultants, or advisors who purchases shares from the issuer in connection with a compensatory stock or option plan or other written agreement before the effective date of a registration statement under the Securities Act is entitled to sell such shares 90 days after such effective date in reliance on Rule 144. An affiliate of the issuer can resell shares in reliance on Rule 144 without having to comply with the holding period requirement, and non-affiliates of the issuer can resell shares in reliance on Rule 144 without having to comply with the current public information and holding period requirements.

The Securities and Exchange Commission has indicated that Rule 701 will apply to typical options granted by an issuer before it becomes subject to the reporting requirements of the Exchange Act, along with the shares acquired upon exercise of such options, including exercises after an issuer becomes subject to the reporting requirements of the Exchange Act.

Registration statement on Form S-8

We intend to file with the SEC a registration statement on Form S-8 covering the shares of common stock reserved for issuance under our 2020 Incentive Award Plan. That registration statement is expected to be filed and become effective as soon as practicable after the closing of this offering. Upon effectiveness, the shares of common stock covered by that registration statement will be eligible for sale in the public market, subject to the lock-up agreements and Rule 144 restrictions described above.

Rule 144

All shares of our common stock held by our "affiliates," as that term is defined in Rule 144 under the Securities Act, generally may be sold in the public market only in compliance with Rule 144. Rule

[Table of Contents](#)

144 defines an affiliate as any person who directly or indirectly controls, or is controlled by, or is under common control with, the issuer, which generally includes our directors, executive officers, and certain other related persons.

Under Rule 144 under the Securities Act, a person (or persons whose shares are aggregated) who is deemed to be an “affiliate” of ours would be entitled to sell within any three month period a number of shares of our common stock that does not exceed the greater of (i) 1% of the then outstanding shares of our capital stock, or (ii) an amount equal to the average weekly trading volume of our common stock on Nasdaq during the four calendar weeks preceding such sale. Sales under Rule 144 are also subject to a six-month holding period and requirements relating to manner of sale, notice and the availability of current public information about us.

Rule 144 also provides that a person who is not deemed to have been an affiliate of ours at any time during the three months preceding a sale, and who has for at least six months beneficially owned shares of our common stock that are restricted securities, will be entitled to freely sell such shares of our common stock without regard to the limitations described above, subject to our compliance with Exchange Act reporting obligations for at least 90 days prior to the sale, and provided that such sales comply with the current public information requirements of Rule 144. A person who is not deemed to have been an affiliate of ours at any time during the three months preceding a sale, and who has beneficially owned for at least one year shares of our common stock that are restricted securities, will be entitled to freely sell such shares of our common stock under Rule 144 without regard to the current public information requirements of Rule 144, subject to our compliance with Exchange Act reporting obligations for at least 90 days prior to the sale.

Registration rights

See the section titled “Certain Relationships and Related Party Transactions—Registration Rights.”

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Other than compensation arrangements for our directors and executive officers, which are described elsewhere in this prospectus, below we describe transactions since September 29, 2018 to which we were a party or will be a party, in which:

- the amounts exceeded or will exceed \$120,000; and
- any of our directors, executive officers or holders of more than 5% of our capital stock, or any member of the immediate family of, or person sharing the household with, the foregoing persons, had or will have a direct or indirect material interest.

Management Services Agreement

In February 2017, the Company entered into a management services agreement with affiliates of L Catterton and an affiliate of GIC in connection with the private equity sponsors' acquisition of the Company in February 2017. The management services agreement provides that the Company will pay an annual fee to provide management and advisory service to the Company and its affiliates, including general management consulting services, support, and analysis with respect to financing alternatives and strategic planning functions. During Fiscal 2019 and Fiscal 2018, the Company paid or accrued management fees in the amount of \$4.5 million and \$3.2 million, respectively. During the nine months ended June 27, 2020, the Company paid or accrued management fees in the amount of \$3.2 million. The management services agreement will automatically terminate upon the completion of this offering.

Operating Lease Agreement

In March 2013, the Company entered into an operating lease for its corporate headquarters with DM Ventures I, LLC. The former Chairman of the Board of Directors of the Company is one of the principals of DM Ventures I, LLC and holds a significant ownership position in the lessor entity. Aggregate rents paid to DM Ventures I, LLC for Leslie's corporate headquarters were \$1.6 million in Fiscal 2019 and \$1.6 million in Fiscal 2018, respectively. Aggregate rent paid to DM Ventures I, LLC in the nine months ended June, 27, 2020 was \$1.5 million.

Indemnification Agreements

Our second amended and restated certificate of incorporation that will be in effect on the completion of this offering will contain provisions limiting the liability of directors, and our amended and restated bylaws that will be in effect on the completion of this offering will provide that we will indemnify each of our directors and officers to the fullest extent permitted under Delaware law. Our second amended and restated certificate of incorporation and amended and restated bylaws that will be in effect on the completion of this offering will also provide our board of directors with discretion to indemnify our employees and other agents when determined appropriate by the board. In addition, we have entered into an indemnification agreement with each of our directors and executive officers, which requires us to indemnify them. For more information regarding these agreements, see the section titled "Management—Limitations on Liability and Indemnification Matters."

Policies and Procedures for Transactions with Related Persons

In connection with this offering, we have adopted a policy that our executive officers, directors, nominees for election as a director, beneficial owners of more than 5% of any class of our common

Table of Contents

stock and any members of the immediate family of any of the foregoing persons are not permitted to enter into a related person transaction with us without the approval or ratification of our audit and risk committee or other independent body of our board of directors. Any request for us to enter into a transaction with an executive officer, director, nominee for election as a director, beneficial owner of more than 5% of any class of our common stock, or any member of the immediate family of any of the foregoing persons, in which the amount involved exceeds \$120,000 and such person would have a direct or indirect interest, must be presented to our audit and risk committee or other independent body of our board for review, consideration, and approval. In approving or rejecting any such proposal, our audit and risk committee or other independent body of our board is to consider the relevant facts of the transaction, including the risks, costs, and benefits to us and whether the transaction is on terms no less favorable than terms generally available to an unaffiliated third party under the same or similar circumstances.

Registration Rights

Pursuant to the terms of a Registration Rights and Lock-up Agreement between us and certain holders of our stock, including affiliates of L Catterton and Explorer Investment Pte. Ltd. (the "GIC Investor"), an affiliate of GIC, certain holders of our stock are entitled to demand and piggyback registration rights. The stockholders who are a party to the Registration Rights and Lock-up Agreement will hold an aggregate of approximately 146.6 million shares, or approximately 79%, of our equity interests upon completion of this offering. We will be required to pay the registration expenses of L Catterton and the GIC Investor, other than any underwriting discounts and commissions applicable to the shares sold for each of their accounts and any transfer taxes payable by them on the sale of their shares pursuant to any such registration.

Demand Registrations. Under the Registration Rights and Lock-Up Agreement, L Catterton and the GIC Investor are able to require us to file a registration statement (a "Demand Registration") under the Securities Act and we are required to notify holders of such securities in the event of such request (a "Demand Registration Request"). L Catterton and the GIC Investor may each issue up to two Demand Registration Requests for long-form underwritten registrations on Form S-1 and unlimited Demand Registration Requests for short-form underwritten registrations on Form S-3 and take down offerings off of a shelf registration statement. All eligible holders will be entitled to participate in any Demand Registration upon proper notice to us and we are required to use our best efforts to effect such registration in accordance with the terms of the Demand Registration Request, subject to the Additional Lock-up and certain rights we have to delay or postpone such registration.

Piggyback Registrations. Under the Registration Rights and Lock-up Agreement, if at any time we propose or are required to register any of our equity securities under the Securities Act (other than a Demand Registration or pursuant to an employee benefit or dividend reinvestment plan) (a "piggyback registration"), we will be required to notify each eligible holder of its right to participate in such registration. We will use reasonable best efforts to cause all eligible securities requested to be included in the registration to be so included, subject to the Additional Lock-up. We have the right to withdraw or postpone a registration statement in which eligible holders have elected to exercise piggyback registration rights, and eligible holders are entitled to withdraw their registration requests prior to the execution of an underwriting agreement or custody agreement with respect to any such registration.

Additional Lock-up. Under the Registration Rights and Lock-up Agreement, eligible holders, including L Catterton and the GIC Investor, will be subject to lock-up provisions under which they will agree not to sell or otherwise transfer their shares for a period of 180 days following the date of the final prospectus for this offering or 90 days following the date of the final prospectus for any other public offering. Following the expiration of such 180-day lock-up period, certain eligible holders will not be permitted to sell or otherwise transfer their shares for an additional 540 days thereafter (the "Additional Lock-up"), subject to limited waivers and exceptions, including an exception permitting

[Table of Contents](#)

either *L Catterton* or the GIC Investor to initiate a sale of shares and a limited waiver for all other eligible holders to sell up to a pro rata amount calculated on the basis of the number of shares requested to be sold by *L Catterton* and the GIC Investor, collectively, as compared to the entire number of shares held by *L Catterton* and the GIC Investor, collectively, at the closing of this offering.

This summary is qualified in its entirety by reference to the Registration Rights and Lock-up Agreement attached as an exhibit to the registration statement of which this prospectus forms a part.

Director Designation Agreement

In connection with this offering, we intend to enter into a Director Designation Agreement between us and Bubbles Investor Aggregator, L.P. (“Bubbles Investor”), an affiliate of *L Catterton*. Pursuant to the terms of this agreement, among other things, we are required to take all necessary and desirable actions (including calling meetings of our board of directors and shareholder meetings and recommending, supporting and soliciting proxies) such that, for so long as the specified conditions in the agreements are satisfied, Bubbles Investor or its affiliates (including *L Catterton*) will have the right, but not the obligation, to designate for nomination or appointment either one or two directors to our board of directors (with such number being determined in accordance with the agreement based on the satisfaction of certain conditions therein). The agreement stipulates that in the event of vacancy of any of the directors appointed pursuant to the Director Designation Agreement, Bubbles Investor will be entitled to designate an individual to fill such vacancies. Each of the directors appointed pursuant to the Director Designation Agreement may, but will not be required to, qualify as independent pursuant to the Nasdaq listing standards.

This summary is qualified in its entirety by reference to the Form of Director Designation Agreement, which is attached as an exhibit to the registration statement of which this prospectus forms a part.

CERTAIN MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS

The following is a summary of certain United States federal income tax consequences relevant to non-United States holders' (as defined below) purchase, ownership, and disposition of our common stock issued pursuant to this offering, but does not purport to be a complete analysis of all the potential tax considerations relating thereto. This summary is based upon the provisions of the Code, Treasury regulations promulgated or proposed thereunder, judicial decisions, and published rulings and administrative pronouncements of the United States Internal Revenue Service (the "IRS"), in each case in effect as of the date hereof. These authorities may be changed, possibly with retroactive effect, so as to result in United States federal income tax consequences different from those set forth below. We have not sought, and will not seek, any rulings from the IRS regarding the matters discussed below, and there can be no assurance that the IRS will not take a position contrary to those discussed below or that any position taken by the IRS will not be sustained.

This summary is limited to non-United States holders who purchase our common stock pursuant to this offering and who hold shares of our common stock as capital assets within the meaning of Section 1221 of the Code (generally, property held for investment purposes). This summary does not address the tax consequences arising under the laws of any United States state or local or non-United States jurisdiction or under United States federal gift and estate tax laws or the effect, if any, of the alternative minimum tax, the base erosion and anti-abuse tax, the Medicare contribution tax imposed on net investment income, or the requirements of Section 451 of the Code with respect to conforming the timing of income accruals to financial statements. In addition, this discussion does not address tax considerations applicable to a non-United States holder's particular circumstances or to a non-United States holder that may be subject to special tax rules, including, without limitation:

- banks, insurance companies, or other financial institutions;
- pass-through entities or investors therein;
- tax-exempt organizations or governmental organizations;
- controlled foreign corporations, passive foreign investment companies, and corporations that accumulate earnings to avoid United States federal income tax;
- brokers or dealers in securities or currencies;
- traders in securities that elect to use a mark-to-market method of accounting for their securities holdings;
- United States expatriates and former citizens or former long-term residents of the United States;
- persons who hold our common stock as a position in a hedging transaction, "straddle," "conversion transaction," or other risk reduction transaction;
- persons who hold or receive our common stock pursuant to the exercise of any employee stock option or otherwise as compensation;
- tax-qualified retirement plans;
- "qualified foreign pension funds" (within the meaning of Section 897(l)(2) of the Code) and entities all of the interest which are held by qualified foreign pension funds;
- "qualified shareholders" (within the meaning of Section 897(k)(3) of the Code) or investors therein;
- persons deemed to sell our common stock under the constructive sale provisions of the Code; and
- persons who actually or constructively own more than 5% of our common stock.

Table of Contents

In addition, if a partnership (including an entity or arrangement classified as a partnership for United States federal income tax purposes) holds our common stock, the tax treatment of a partner generally will depend on the status of the partner and upon the activities of the partner and the partnership. Accordingly, partnerships that hold our common stock, and partners in such partnerships, are urged to consult their tax advisors.

YOU ARE URGED TO CONSULT YOUR TAX ADVISOR WITH RESPECT TO THE APPLICATION OF THE UNITED STATES FEDERAL INCOME TAX LAWS TO YOUR PARTICULAR SITUATION, AS WELL AS ANY TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP, AND DISPOSITION OF OUR COMMON STOCK ARISING UNDER THE UNITED STATES FEDERAL ESTATE OR GIFT TAX RULES, UNITED STATES ALTERNATIVE MINIMUM TAX RULES, OR UNDER THE LAWS OF ANY NON-UNITED STATES, STATE, OR LOCAL TAXING JURISDICTION OR UNDER ANY APPLICABLE INCOME TAX TREATY.

Non-United States Holder Defined

For purposes of this discussion, you are a “non-United States holder” if you are a beneficial owner of our common stock and you are neither a “United States person” nor an entity or arrangement classified as a partnership for United States federal income tax purposes. A United States person is any person that, for United States federal income tax purposes, is or is treated as:

- an individual who is a citizen or resident of the United States;
- a corporation or other entity taxable as a corporation created or organized in the United States or under the laws of the United States, any state thereof, or the District of Columbia;
- an estate whose income is subject to United States federal income tax regardless of its source; or
- a trust (x) whose administration is subject to the primary supervision of a United States court and which has one or more “United States person” (as defined in the Code) who have the authority to control all substantial decisions of the trust or (y) which has made an election under applicable Treasury regulations to be treated as a United States person for United States federal income tax purposes.

Distributions

As described under “Dividend Policy” in this prospectus, we do not currently expect to make any distributions for the foreseeable future. However, subject to the discussions below regarding FATCA and backup withholding, if we do make distributions of cash or property on our common stock, other than certain pro rata distributions of common stock, those distributions generally will constitute dividends for United States federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under United States federal income tax principles. To the extent distributions exceed both our current and our accumulated earnings and profits, they will first constitute a return of capital and will reduce your adjusted tax basis in our common stock, but not below zero, and then any excess will be treated as capital gain from the sale of our common stock, subject to the tax treatment described below in “—Gain on Sale or Other Taxable Disposition of Common Stock.”

Any dividend paid to you generally will be subject to United States federal withholding tax at a rate of 30% of the gross amount of the dividend, or such lower rate as may be specified by an applicable income tax treaty, except to the extent that the dividends are effectively connected with your conduct of a trade or business within the United States, as described below. In order to claim any treaty benefits to which you are entitled, you must provide us or our paying agent with a properly

[Table of Contents](#)

completed IRS Form W-8BEN or W-8BEN-E (or other appropriate form) certifying your qualification for the reduced treaty rate. If you do not timely furnish the required documentation, but are otherwise eligible for a reduced rate of United States federal withholding tax pursuant to an income tax treaty, you may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. If you hold our common stock through a financial institution or other agent acting on your behalf, you will be required to provide appropriate documentation to the agent, who then will be required to provide certification to us or our paying agent, either directly or through other intermediaries.

We may withhold up to 30% of the gross amount of the entire distribution even if greater than the amount constituting a dividend, as described above, to the extent provided for in the Treasury Regulations. If tax is withheld on the amount of a distribution in excess of the amount constituting a dividend, then you may be entitled to a refund of any such excess amounts if a claim for refund is timely filed with the IRS.

Dividends received by you that are effectively connected with your conduct of a trade or business within the United States (and, if an applicable income tax treaty requires, attributable to a permanent establishment or fixed base maintained by you in the United States) are exempt from the United States federal withholding tax described above. In order to claim this exemption, you must provide us or our paying agent with an IRS Form W-8ECI (or appropriate successor form) properly certifying that the dividends are effectively connected with your conduct of a trade or business within the United States. Such effectively connected dividends, although not subject to United States federal withholding tax, are generally taxed at the same graduated United States federal income tax rates applicable to United States persons (unless an applicable income tax treaty provides otherwise), net of certain applicable deductions. In addition, if you are a corporate non-United States holder, you may also be subject to a branch profits tax at a rate of 30% (or such lower rate as may be specified by an applicable income tax treaty) on your effectively connected earnings and profits for the taxable year that are attributable to such dividends, as adjusted for certain items.

Gain on Sale or Other Taxable Disposition of Common Stock

Subject to the discussions below regarding FATCA and backup withholding, you generally will not be subject to United States federal income tax (including withholding thereof) on any gain realized upon the sale or other taxable disposition of our common stock unless:

- the gain is effectively connected with your conduct of a United States trade or business (and, if an applicable income tax treaty requires, the gain is attributable to a permanent establishment or fixed base maintained by you in the United States);
- you are an individual who is present in the United States for a period or periods aggregating 183 days or more during the taxable year in which the sale or disposition occurs and certain other conditions are met; or
- our common stock constitutes a United States real property interest by reason of our status as a “United States real property holding corporation,” (a “USRPHC”), for United States federal income tax purposes, at any time during the shorter of the five-year period ending on the date of the sale or other taxable disposition of, or your holding period for, our common stock.

If you are a non-United States holder described in the first bullet above, you generally will be subject to United States federal income tax on the gain derived from the sale or other taxable disposition (net of certain deductions or credits) under regular graduated United States federal income tax rates generally applicable to United States persons (unless an applicable income tax treaty provides otherwise), and corporate non-United States holders described in the first bullet above also may be subject to the “branch profits tax” described above in the section entitled “—Distributions.”

Table of Contents

If you are an individual non-United States holder described in the second bullet above, you will be subject to United States federal income tax at a rate of 30% (or such lower rate as may be specified by an applicable income tax treaty) on the gain derived from the sale or other taxable disposition, which may be offset by certain United States source capital losses recognized in the same taxable year (even though you are not considered a resident of the United States), provided that you have timely filed U.S. federal income tax returns with respect to such losses.

With respect to the third bullet above, we believe that we are not currently and (based upon our projections as to our business) will not become a USRPHC.

Backup Withholding and Information Reporting

Payments of dividends on our common stock will not be subject to backup withholding, provided you either certify your non-United States status, such as by furnishing a valid IRS Form W-8BEN, W-8BEN-E, or W-8ECI (or other applicable form), or otherwise establish an exemption. However, information returns are required to be filed with the IRS in connection with any distributions on our common stock paid to you, regardless of whether such distributions constitute dividends or whether any tax was actually withheld. In addition, proceeds of the sale or other taxable disposition of our common stock within the United States or conducted through certain United States-related brokers generally will not be subject to backup withholding or information reporting, if the applicable withholding agent receives the certification described above or you otherwise establish an exemption. Proceeds of a disposition of our common stock conducted through a non-United States office of a non-United States broker generally will not be subject to backup withholding or information reporting.

Copies of information returns that are filed with the IRS may also be made available under the provisions of an applicable treaty or agreement to tax authorities in your country of residence, establishment, or organization.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed credit against a non-United States holder's United States federal income tax liability, and may entitle the non-United States holder to a refund, provided that the required information is furnished to the IRS in a timely manner.

Additional Withholding Tax on Payments Made to Foreign Accounts

Under legislation and related Treasury guidance (commonly referred to as "FATCA"), a 30% United States federal withholding tax will generally apply to any payments of dividends in respect of and, subject to the regulatory relief described below, gross proceeds from the sale or other disposition of, our common stock to (i) a "foreign financial institution" (as specifically defined in the Code and whether such foreign financial institution is the beneficial owner or an intermediary) which does not provide sufficient documentation, typically on IRS Form W-8BEN-E, evidencing either (x) an exemption from FATCA, or (y) its compliance (or deemed compliance) with FATCA (which may alternatively be in the form of compliance with an intergovernmental agreement with the United States) in a manner which avoids withholding, or (ii) a "non-financial foreign entity" (as specifically defined in the Code and whether such non-financial foreign entity is the beneficial owner or an intermediary) which does not provide sufficient documentation, typically on IRS Form W-8BEN-E, evidencing either (x) an exemption from FATCA, or (y) adequate information regarding certain substantial United States beneficial owners of such entity (if any). If a dividend payment is both subject to withholding under FATCA and subject to the withholding tax discussed above under "—Distributions," the withholding under FATCA may be credited against, and therefore reduce, such other withholding tax. Under proposed Treasury regulations that may be relied upon pending finalization, the withholding tax on gross proceeds would be eliminated and, consequently, FATCA withholding on gross proceeds is not currently expected to

[Table of Contents](#)

apply. You should consult your tax advisors regarding these rules and whether they may be relevant to your ownership and disposition of our common stock.

THE PRECEDING DISCUSSION OF UNITED STATES FEDERAL TAX CONSEQUENCES IS FOR GENERAL INFORMATION ONLY. THIS DISCUSSION IS NOT TAX ADVICE. EACH PROSPECTIVE INVESTOR IS URGED TO CONSULT ITS TAX ADVISOR REGARDING THE PARTICULAR UNITED STATES FEDERAL, STATE, AND LOCAL AND NON-UNITED STATES TAX CONSEQUENCES OF PURCHASING, HOLDING, AND DISPOSING OF OUR COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAWS.

[Table of Contents](#)

UNDERWRITING (CONFLICTS OF INTEREST)

We, the selling stockholder and the underwriters named below have entered into an underwriting agreement with respect to the shares being offered. Subject to certain conditions, each underwriter has severally agreed to purchase the number of shares indicated in the following table. Goldman Sachs & Co. LLC, Morgan Stanley & Co. LLC and BofA Securities, Inc. are the representatives of the underwriters.

Underwriters	Number of Shares
Goldman Sachs & Co. LLC	
Morgan Stanley & Co. LLC	
BofA Securities, Inc.	
Jefferies LLC	
Nomura Securities International, Inc.	
Robert W. Baird & Co. Incorporated	
Guggenheim Securities, LLC	
Piper Sandler & Co.	
William Blair & Company, L.L.C.	
Telsey Advisory Group LLC	
Loop Capital Markets LLC	
Samuel A. Ramirez & Company, Inc.	
AmeriVet Securities, Inc.	
Total	

The underwriters are committed to take and pay for all of the shares being offered, if any are taken, other than the shares covered by the option described below unless and until this option is exercised.

The underwriters have an option to buy up to an additional 6,000,000 shares from the selling stockholder to cover sales by the underwriters of a greater number of shares than the total number set forth in the table above. They may exercise that option for 30 days. If any shares are purchased pursuant to this option, the underwriters will severally purchase shares in approximately the same proportion as set forth in the table above.

The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters by us, which includes the underwriting discounts and commissions on the shares sold by the selling stockholder. Such amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase 6,000,000 additional shares.

Paid by Us

	No Exercise	Full Exercise
Per Share	\$	\$
Total	\$	\$

Shares sold by the underwriters to the public will initially be offered at the initial public offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to \$ per share from the initial public offering price. After the initial offering of the shares, the representatives may change the offering price and the other selling terms. The offering of the shares by the underwriters is subject to receipt and acceptance and subject to the underwriters' right to reject any order in whole or in part. The underwriters may offer and sell shares through certain of their affiliates or other registered broker-dealers or selling agents.

We estimate that our share of the total expenses of this offering, excluding underwriting discounts and commissions, will be approximately \$6 million. We have agreed to reimburse the underwriters for certain expenses in an amount up to \$30,000.

Table of Contents

We have agreed to indemnify the several underwriters against certain liabilities, including liabilities under the Securities Act.

Prior to the date hereof, certain persons have indicated an interest in purchasing an aggregate of up to \$100.0 million of our common stock in this offering at the initial public offering price. Because this indication of interest is not a binding agreement or commitment to purchase, one or more of these persons may determine to purchase more, fewer, or no shares in this offering or the underwriters could determine to sell more, fewer, or no shares to one or more of these persons. The underwriters will receive the same discount on any of our shares of common stock purchased by these persons as they will from any other shares of common stock sold to the public in this offering.

We have agreed with the underwriters from the date of this prospectus through the date that is 180 days after the date of this prospectus (the "Lock-Up Period") not to (i) offer, sell, contract to sell, pledge, grant any option to purchase, make any short sale or otherwise transfer or dispose of, directly or indirectly, or file with or confidentially submit to the SEC a registration statement under the Securities Act relating to, any securities of the Company that are substantially similar to shares of our common stock, including but not limited to any options or warrants to purchase shares of our stock or any securities that are convertible into or exchangeable for, or that represent the right to receive, stock or any such substantially similar securities, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of our stock or any such other securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of stock or such other securities, in cash or otherwise, other than (A) the shares of our common stock to be sold in this offering, (B) any shares of stock issued by the us upon the conversion or exchange of securities convertible into or exchangeable for stock, which securities are outstanding on the date hereof, and (C) the grant of equity incentives pursuant to plans in effect as of the consummation of this offering, unless we obtain the prior written consent of the representatives of the underwriters.

Our officers, directors, the selling stockholder and holders of substantially all of our common stock have agreed that, without the prior written consent of the representatives of the underwriters, they will not, during the Lock-Up Period (i) offer, sell, contract to sell, pledge, grant any option to purchase, lend or otherwise dispose of any shares of common stock of the Company, or any options or warrants to purchase any shares of common stock of the Company, or any securities convertible into, exchangeable for or that represent the right to receive shares of common stock of the Company, (ii) engage in any hedging or other transaction or arrangement or (iii) otherwise publicly announce any intention to engage in or cause any action or activity described in clause (i) or (ii) above. These restrictions are subject to certain exceptions for transfers, including customary exceptions related to open market transactions, in connection with gifts, charitable contributions or transfers to immediate family members or to any trust, beneficiary or estate of a beneficiary, in connection with transfers to partnerships, limited liability companies or other entities, transfers by operation of law, the establishment of Rule 10b5-1 plans, the grant or issuance by the Company pursuant to any employee benefit plans, in connection with the exercise of stock options or other instruments, including "cashless" or "net" exercises or transfers or forfeitures to satisfy tax withholding obligations, pursuant to any third-party tender offer, merger or similar transaction, a repurchase by the Company in connection with a termination of employment, or in the case of a corporation, partnership, limited liability company or other business entity, (A) transfers to limited partners, general partners, members, or holders of similar interests or to any investment holding company controlled or managed by a party subject to these restriction or (B) transfers to affiliates or other entities controlled or managed by a party subject to these restrictions or any of its affiliates, and transfers with the prior written consent of the representatives on behalf of the underwriters. In the event that, during the Lock-Up Period, the representatives of the underwriters release or waive, in full or in part, any prohibition set forth in the lock-up agreement for any person or entity that beneficially owns 2% of the total outstanding shares of

Table of Contents

common stock, subject to certain exceptions (a "Triggering Release"), at the time of such Triggering Release, L Catterton and GIC and their affiliates shall be entitled to concurrent releases of common stock on a pro rata basis on the same terms. The lock-up agreement entered into by L Catterton and GIC permits the pledge of such shares in connection with lending or other arrangements between third parties (or their affiliates or designees) and L Catterton and GIC or their affiliates or any similar arrangement relating to a financing arrangement for the benefit of L Catterton and GIC or their affiliates; provided, that the amount subject to such pledge shall be limited, in the aggregate, to 1% of the total outstanding shares of common stock as of the consummation of this offering. See "Shares Eligible for Future Sale" for discussions of certain transfer restrictions.

Prior to the offering, there has been no public market for the shares. The initial public offering price has been negotiated among us and the representatives. Among the factors to be considered in determining the initial public offering price of the shares, in addition to prevailing market conditions, will be our historical performance, estimates of our business potential and earnings prospects, an assessment of our management, and the consideration of the above factors in relation to market valuation of companies in related businesses.

We plan to apply to list our common stock on Nasdaq under the symbol "LESL."

Price Stabilization and Short Positions

In connection with the offering, the underwriters may purchase and sell shares of common stock in the open market. These transactions may include short sales, stabilizing transactions, and purchases to cover positions created by short sales. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering, and a short position represents the amount of such sales that have not been covered by subsequent purchases. A "covered short position" is a short position that is not greater than the amount of additional shares for which the underwriters' option described above may be exercised. The underwriters may cover any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to cover the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase additional shares pursuant to the option described above. "Naked" short sales are any short sales that create a short position greater than the amount of additional shares for which the option described above may be exercised. The underwriters must cover any such naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Purchases to cover a short position and stabilizing transactions, as well as other purchases by the underwriters for their own accounts, may have the effect of preventing or retarding a decline in the market price of our stock, and together with the imposition of the penalty bid, may stabilize, maintain or otherwise affect the market price of the common stock. As a result, the price of the common stock may be higher than the price that otherwise might exist in the open market. The underwriters are not required to engage in these activities and may end any of these activities at any time. These transactions may be effected on Nasdaq, in the over-the-counter market or otherwise.

Table of Contents

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage, and other financial and non-financial activities and services. Certain of the underwriters and their respective affiliates have provided, and may in the future provide, a variety of these services to the issuer and to persons and entities with relationships with the issuer, for which they received or will receive customary fees and expenses.

Other Relationships

In the ordinary course of their various business activities, the underwriters and their respective affiliates, officers, directors, and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps, and other financial instruments for their own account and for the accounts of their consumers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the issuer (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the issuer. The underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities, or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

Certain affiliates of Goldman Sachs & Co. LLC currently hold 100% of our Senior Unsecured Notes and a portion of our Term Loan and, as such, will receive 5% or more of the net proceeds of this offering due to the redemption in full of our Senior Unsecured Notes with the net proceeds of this offering. Therefore, Goldman Sachs & Co. LLC is deemed to have a conflict of interest within the meaning of Rule 5121. Accordingly, this offering is being conducted in accordance with Rule 5121, which requires, among other things, that a "qualified independent underwriter" participate in the preparation of, and exercise the usual standards of "due diligence" with respect to, the registration statement and this prospectus. Morgan Stanley & Co. LLC has agreed to act as a qualified independent underwriter for this offering and to undertake the legal responsibilities and liabilities of an underwriter under the Securities Act of 1933, as amended (the "Securities Act"), specifically including those inherent in Section 11 thereof. Morgan Stanley & Co. LLC will not receive any additional fees for serving as a qualified independent underwriter in connection with this offering. We have agreed to indemnify Morgan Stanley & Co. LLC against liabilities incurred in connection with acting as a qualified independent underwriter, including liabilities under the Securities Act.

Pursuant to Rule 5121, Goldman Sachs & Co. LLC will not confirm any sales to any account over which it exercises discretionary authority without the specific written approval of the account holder. See "Use of Proceeds" for additional information.

Selling Restrictions

Notice to Prospective Investors in the European Economic Area and the United Kingdom

In relation to each Member State of the European Economic Area and the United Kingdom, each, a Relevant State, no offer of the shares may be made to the public in that Relevant State prior to the publication of a prospectus in relation to the shares which has been approved by the competent authority in that Relevant State or, where appropriate, approved in another Relevant State and notified to the competent authority in that Relevant State, all in accordance with the Prospectus Regulation,

Table of Contents

except that offers of shares may be made to the public in that Relevant State at any time under the following exemptions under the Prospectus Regulation:

- to any legal entity which is a qualified investor as defined in the Prospectus Regulation;
- to fewer than 150 natural or legal persons (other than qualified investors as defined in the Prospectus Regulation), subject to obtaining the prior consent of the representatives; or
- in any other circumstances falling within Article 1(4) of the Prospectus Regulation;

provided that no such offer of ordinary shares referred to above shall result in a requirement for the Company or any representative to publish a prospectus pursuant to Article 3 of the Prospectus Regulation, or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation.

Each person in a Relevant State who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged, and agreed to and with the Company and the underwriters that it is a qualified investor within the meaning of the Prospectus Regulation.

In the case of any shares being offered to a financial intermediary as that term is used in Article 5 (1) of the Prospectus Regulation, each such financial intermediary will be deemed to have represented, acknowledged, and agreed that the shares acquired by it in the offer have not been acquired on a nondiscretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer to the public other than their offer or resale in a Relevant State to qualified investors, in circumstances in which the prior consent of the underwriters has been obtained to each such proposed offer or resale.

The Company, the underwriters and their affiliates will rely upon the truth and accuracy of the foregoing representations, acknowledgements, and agreements.

For the purposes of this provision, the expression an “offer to the public” in relation to any shares in any Relevant State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, and the expression “Prospectus Regulation” means Regulation (EU) 2017/1129.

References to the Prospectus Regulation includes, in relation to the United Kingdom, the Prospectus Regulation as it forms part of U.K. domestic law by virtue of the European Union (Withdrawal) Act 2018.

The above selling restriction is in addition to any other selling restrictions set out below.

Notice to Prospective Investors in the United Kingdom

This document is for distribution only to persons who (i) have professional experience in matters relating to investments and who qualify as investment professionals within the meaning of Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended, or the Financial Promotion Order; (ii) are persons falling within Article 49(2)(a) to (d) (“high net worth companies, unincorporated associations etc.”) of the Financial Promotion Order; (iii) are outside the United Kingdom; or (iv) are persons to whom an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000, as amended) in connection with the issue or sale of any securities may otherwise lawfully be communicated or caused to be communicated (all such persons together being referred to as “relevant persons”). This document is directed only at relevant persons and must not be acted on or relied on by

[Table of Contents](#)

persons who are not relevant persons. Any investment or investment activity to which this document relates is available only to relevant persons and will be engaged in only with relevant persons.

Notice to Prospective Investors in Canada

The shares may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors (as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario)), and are permitted clients (as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations). Any resale of the shares must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment hereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 Underwriting Conflicts (NI 33-105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

Notice to Prospective Investors in Hong Kong

The shares have not been will not be offered or sold in Hong Kong by means of any document other than (a) to "professional investors" as defined in the Securities and Futures Ordinance (Cap. 571) of Hong Kong and any rules made thereunder or (b) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong or which do not constitute an offer to the public within the meaning of that Ordinance. No advertisement, invitation or document relating to the shares has been or may be issued or has been or may be in the possession of any person for the purposes of issue, whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" as defined in the Securities and Futures Ordinance of Hong Kong and any rules made under that Ordinance.

Notice to Prospective Investors in Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of shares may not be circulated or distributed, nor may shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore, or the SFA; (ii) to a relevant person pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA; or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Table of Contents

Where shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

- a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or
- a trust (where the trustee is not an accredited investor) the sole purpose of which is to hold investments and each beneficiary of which is an individual who is an accredited investor,
- securities (as defined in Section 239(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the shares pursuant to an offer made under Section 275 of the SFA except:
 - to an institutional investor or to a relevant person defined in Section 275(2) of the SFA, or to any person arising from an offer referred to in Section 275(1A) or 276(4)(i)(B) of the SFA;
 - where no consideration is or will be given for the transfer;
 - where the transfer is by operation of law;
 - as specified in Section 276(7) of the SFA; or
 - as specified in Regulation 32 of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 of Singapore.

Notice to Prospective Investors in Japan

The shares have not been and will not be registered pursuant to Article 4, Paragraph 1 of the Financial Instruments and Exchange Act. Accordingly, neither the shares nor any interest therein may be offered or sold, directly or indirectly, in Japan or to, or for the benefit of, any "resident" of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to or for the benefit of a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Act and any other applicable laws, regulations and ministerial guidelines of Japan in effect at the relevant time.

Notice to Prospective Investors in Switzerland

The shares may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange, or SIX, or on any other stock exchange or regulated trading facility in Switzerland. This prospectus has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this prospectus nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this prospectus nor any other offering or marketing material relating to the offering, the Company or the shares have been or will be filed with or approved by any Swiss regulatory authority. In particular, this prospectus will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority, and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes, or CISA. The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

[Table of Contents](#)

Notice to Prospective Investors in Australia

No placement document, prospectus, product disclosure statement or other disclosure document has been lodged with the Australian Securities and Investments Commission, or the ASIC, in relation to this offering. This prospectus does not constitute a prospectus, product disclosure statement or other disclosure document under the Corporations Act 2001, or the Corporations Act, and does not purport to include the information required for a prospectus, product disclosure statement or other disclosure document under the Corporations Act.

Any offer in Australia of the shares may only be made to persons, or the Exempt Investors, who are “sophisticated investors” (within the meaning of section 708(8) of the Corporations Act), “professional investors” (within the meaning of section 708(11) of the Corporations Act) or otherwise pursuant to one or more exemptions contained in section 708 of the Corporations Act so that it is lawful to offer the shares without disclosure to investors under Chapter 6D of the Corporations Act.

The shares applied for by Exempt Investors in Australia must not be offered for sale in Australia in the period of 12 months after the date of allotment under this offering, except in circumstances where disclosure to investors under Chapter 6D of the Corporations Act would not be required pursuant to an exemption under section 708 of the Corporations Act or otherwise or where the offer is pursuant to a disclosure document which complies with Chapter 6D of the Corporations Act. Any person acquiring shares must observe such Australian on-sale restrictions.

This prospectus contains general information only and does not take account of the investment objectives, financial situation or particular needs of any particular person. It does not contain any securities recommendations or financial product advice. Before making an investment decision, investors need to consider whether the information in this prospectus is appropriate to their needs, objectives and circumstances, and, if necessary, seek expert advice on those matters.

Notice to Prospective Investors in the Dubai International Financial Centre

This prospectus relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority, or the DFSA. This prospectus is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus nor taken steps to verify the information set forth herein and has no responsibility for the prospectus. The shares to which this prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the shares offered should conduct their own due diligence on the shares. If you do not understand the contents of this prospectus you should consult an authorized financial advisor.

LEGAL MATTERS

The validity of the securities offered in this offering and certain legal matters in connection with this offering will be passed upon for us by Kirkland & Ellis LLP, New York, New York. Certain legal matters in connection with this offering will be passed upon for the underwriters by Latham & Watkins LLP, New York, New York.

EXPERTS

The consolidated financial statements of Leslie's, Inc. as of September 28, 2019 and September 29, 2018, and for each of the years then ended, appearing in this prospectus and registration statement have been audited by Ernst & Young LLP, an independent registered public accounting firm, as set forth in their report thereon appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of common stock offered by this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all the information set forth in the registration statement, some of which is contained in exhibits to the registration statement as permitted by the rules and regulations of the SEC. For further information with respect to us and our common stock, we refer you to the registration statement, including the exhibits filed as a part of the registration statement. Statements contained in this prospectus concerning the contents of any contract or any other document are not necessarily complete. If a contract or document has been filed as an exhibit to the registration statement, please see the copy of the contract or document that has been filed. Each statement in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit. The SEC maintains an internet website that contains reports and other information about issuers, like us, that file electronically with the SEC. The address of that website is www.sec.gov.

On the completion of this offering, we will be subject to the information reporting requirements of the Exchange Act, and we will file reports, proxy statements and other information with the SEC. These reports, proxy statements and other information will be available for inspection and copying at the public reference room and website of the SEC referred to above.

We also maintain a website at <https://www.lesliespool.com/>. **Information contained on, or accessible through, our website is not a part of this prospectus and you should not rely on that information when making a decision to invest in our common stock.**

[Table of Contents](#)

LESLIE'S, INC.
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Unaudited Condensed Consolidated Financial Statements as of June 27, 2020 and September 28, 2019 and for the nine months ended June 27, 2020 and June 29, 2019

Condensed Consolidated Balance Sheets	F-2
Condensed Consolidated Statements of Operations	F-3
Condensed Consolidated Statements of Stockholder's deficit	F-4
Condensed Consolidated Statements of Cash Flows	F-5
Notes to Condensed Consolidated Financial Statements	F-6

Audited Consolidated Financial Statements for the fiscal years ended September 28, 2019 and September 29, 2018

Report of Independent Registered Public Accounting Firm	F-16
Consolidated Balance Sheets	F-17
Consolidated Statements of Operations	F-18
Consolidated Statements of Stockholder's deficit	F-19
Consolidated Statements of Cash Flows	F-20
Notes to Consolidated Financial Statements	F-21

[Table of Contents](#)

LESLIE'S, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(Amounts in Thousands, Except Share and Per Share Amounts)
(unaudited)

As of	June 27, 2020	September 28, 2019
Assets		
Current assets		
Cash and cash equivalents	\$ 148,901	\$ 90,899
Accounts and other receivables, net	35,812	33,872
Inventories, net	181,108	149,729
Prepaid expenses and other current assets	24,581	7,589
Total current assets	390,402	282,089
Property and equipment, net	74,730	78,506
Goodwill and other intangibles, net	121,711	117,724
Other assets	1,188	1,402
Total assets	<u>\$ 588,031</u>	<u>\$ 479,721</u>
Liabilities and stockholder's deficit		
Current liabilities		
Accounts payable	\$ 133,090	\$ 68,347
Accrued expenses	119,298	82,121
Income taxes payable	—	6,713
Current portion of long-term debt	8,341	8,341
Total current liabilities	260,729	165,522
Deferred tax liabilities	518	1,240
Long-term debt, net	1,182,780	1,186,493
Other long-term liabilities	13,062	13,823
Total liabilities	<u>1,457,089</u>	<u>1,367,078</u>
Commitments and contingencies		
Stockholder's deficit		
Common stock, \$0.001 par value, 156,500,000 shares authorized, issued, and outstanding at June 27, 2020 and September 28, 2019	157	157
Capital deficit	(278,056)	(279,848)
Retained deficit	(591,159)	(607,666)
Total stockholder's deficit	<u>(869,058)</u>	<u>(887,357)</u>
Total liabilities and stockholder's deficit	<u>\$ 588,031</u>	<u>\$ 479,721</u>

See accompanying notes which are an integral part of these condensed consolidated financial statements.

[Table of Contents](#)

LESLIE'S, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in Thousands, Except Share and Per Share Amounts)
(unaudited)

	Nine Months Ended	
	June 27, 2020	June 29, 2019
Sales	\$ 730,916	\$ 629,984
Cost of merchandise and services sold	436,837	381,557
Gross profit	294,079	248,427
Selling, general and administrative expenses	215,752	185,776
Operating income	78,327	62,651
Other expense:		
Interest expense	65,513	74,641
Other expenses, net	910	4,409
Total other expense	66,423	79,050
Income (loss) before taxes	11,904	(16,399)
Income tax benefit	(4,603)	(16,321)
Net income (loss)	\$ 16,507	\$ (78)
Net income (loss) per share		
Basic and diluted	\$ 0.11	\$ (0.00)
Weighted average shares outstanding		
Basic and diluted	156,500,000	156,500,000

See accompanying notes which are an integral part of these condensed consolidated financial statements.

LESLIE'S, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDER'S DEFICIT
(Amounts in Thousands, Except Share and Per Share Amounts)
(unaudited)

	<u>Common Stock</u>		<u>Capital Deficit</u>	<u>Retained Deficit</u>	<u>Total Stockholder's Deficit</u>
	<u>Shares</u>	<u>Amount</u>			
Balance, September 29, 2018	156,500,000	\$ 157	\$ (281,978)	\$ (607,128)	\$ (888,949)
Equity-based compensation		—	1,451	—	1,451
Net loss		—	—	(78)	(78)
Payment of dividend		—	—	(1,188)	(1,188)
Balance, June 29, 2019	<u>156,500,000</u>	<u>\$ 157</u>	<u>\$ (280,527)</u>	<u>\$ (608,394)</u>	<u>\$ (888,764)</u>
Balance, September 28, 2019	156,500,000	\$ 157	\$ (279,848)	\$ (607,666)	\$ (887,357)
Equity-based compensation		—	1,792	—	1,792
Net income		—	—	16,507	16,507
Balance, June 27, 2020	<u>156,500,000</u>	<u>\$ 157</u>	<u>\$ (278,056)</u>	<u>\$ (591,159)</u>	<u>\$ (869,058)</u>

See accompanying notes which are an integral part of these condensed consolidated financial statements.

LESLIE'S, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in Thousands)
(unaudited)

	Nine Months Ended	
	June 27, 2020	June 29, 2019
Operating Activities		
Net income (loss)	\$ 16,507	\$ (78)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	20,585	22,870
Equity-based compensation	1,792	1,451
Amortization of deferred financing costs and debt discounts	2,548	2,412
Provisions for doubtful accounts	368	294
Deferred income taxes	(722)	(14,265)
Loss on disposition of assets	486	412
Changes in operating assets and liabilities:		
Accounts and other receivables	(2,308)	(11,812)
Inventories	(30,380)	(41,181)
Prepaid expenses and other current assets	(16,878)	(2,897)
Other assets	232	4,416
Accounts payable and accrued expenses	100,404	85,036
Income taxes payable	(6,713)	(4,099)
Net cash provided by operating activities	<u>85,921</u>	<u>42,559</u>
Investing Activities		
Purchases of property and equipment	(15,483)	(20,999)
Acquisitions, net of cash acquired	(6,188)	(9,616)
Proceeds from disposition of fixed assets	7	57
Net cash used in investing activities	<u>(21,664)</u>	<u>(30,558)</u>
Financing Activities		
Borrowings from the revolving commitment	238,750	190,900
Repayments of the revolving commitment	(238,750)	(190,900)
Principal payments on term loan	(6,255)	(6,255)
Payment of dividend	—	(1,187)
Net cash used in financing activities	<u>(6,255)</u>	<u>(7,442)</u>
Net increase in cash and cash equivalents	58,002	4,559
Cash and cash equivalents, beginning of period	90,899	77,569
Cash and cash equivalents, end of period	<u>\$ 148,901</u>	<u>\$ 82,128</u>
Supplemental Disclosure of Cash Payments for:		
Interest	\$ 68,599	\$ 79,036
Income taxes	<u>2,832</u>	<u>2,058</u>

See accompanying notes which are an integral part of these condensed consolidated financial statements.

LESLIE'S, INC.
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

Note 1—Business and Operations

Leslie's, Inc. ("Leslie's," "we," "our," "us," "its," or the "Company") is the leading direct-to-consumer pool and spa care brand. We market and sell pool and spa supplies and related products and services, which primarily consist of maintenance items such as chemicals, equipment and parts, cleaning accessories, as well as safety, recreational, and fitness-related products. We currently market our products through 934 company-operated locations in 37 states and e-commerce websites.

Note 2—Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

We prepared the accompanying interim condensed consolidated financial statements following U.S. generally accepted accounting principles ("GAAP"). The financial statements include all normal and recurring adjustments that are necessary for a fair presentation of our financial position and operating results. The condensed consolidated financial statements include the accounts of Leslie's, Inc. and our subsidiaries. All significant intercompany accounts and transactions have been eliminated. These interim condensed consolidated financial statements and the related notes should be read in conjunction with the audited consolidated financial statements and notes for the years ended September 28, 2019 and September 29, 2018.

All share and per share information included in the accompanying condensed consolidated financial statements has been adjusted to reflect a 156,500-for-1 stock split which was effected on October 23, 2020. The par value of the common stock was not adjusted as the result of the stock split.

Fiscal Periods

We operate on a fiscal calendar that results in a fiscal year consisting of a 52- or 53-week period ending on the Saturday closest to September 30th. In a 52-week fiscal year, each quarter contains 13 weeks of operations; in a 53-week fiscal year, each of the first, second and third quarters includes 13 weeks of operations and the fourth quarter includes 14 weeks of operations. References to fiscal 2019 refer to the fiscal year ended September 28, 2019, which contained 52 weeks. References to the nine months ended June 27, 2020 and the nine months ended June 29, 2019 refer to the 39 weeks ended June 27, 2020 and June 29, 2019, respectively.

Use of Estimates in the Preparation of Financial Statements

To prepare financial statements that conform to GAAP, we make estimates and assumptions that affect the amounts reported in our financial statements and accompanying notes. We continually review our estimates and make adjustments as necessary, but actual results could be significantly different from what we expected when we made these estimates.

Fair Value Measurements

As of June 27, 2020 and September 28, 2019, we held zero and \$85.5 million, respectively, in money market funds that are required to be measured at fair value on a recurring basis. These assets were determined to be Level 1 assets as they are actively traded and are classified as cash and cash equivalents.

Fair Value of Financial Instruments

We evaluate our financial assets and liabilities subject to fair value measurements on a recurring basis to determine the appropriate level of classification for each reporting period.

LESLIE'S, INC.
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

The fair value of the Term Loan due in 2023 was determined to be \$780.2 million at June 27, 2020. Fair value of the Senior Unsecured Notes (see Note 7) at June 27, 2020 and September 28, 2019 was estimated to be \$390.0 million. These fair value estimates, determined to be Level 2, are subjective in nature and involve uncertainties and matters of judgment and therefore cannot be determined with precision. Changes in assumptions could significantly affect these estimates.

The fair value of the interest rate cap agreements (see Note 7), determined to be level 2, and is included in other assets on the consolidated balance sheets as of June 27, 2020 and September 28, 2019. Changes in fair value of the interest rate cap are recorded in other expenses in the consolidated statement of operations.

The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses approximate fair value due to the short-term maturity of these instruments.

There were no transfers between levels in the fair value hierarchy during the nine months ended June 27, 2020 or during fiscal 2019, respectively.

Seasonality

Our business is highly seasonal. In general, sales and earnings are highest during our fiscal third and fourth quarters, which include April through September and represent the peak months of swimming pool use. Sales are substantially lower during our fiscal first and second quarters.

Recent Accounting Pronouncements

In March 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2020-04, "Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting" ("ASU 2020-04"). This ASU provides temporary optional expedients and exceptions to the GAAP guidance on contract modifications and hedge accounting to ease the financial reporting burdens related to the expected market transition from the London Interbank Offered Rate (LIBOR) and other interbank offered rates to alternative reference rates. This ASU is effective for all entities beginning as of its date of effectiveness, March 12, 2020. The guidance is temporary and can be applied through December 31, 2022. The guidance has not had a material effect and we do not expect this ASU to have a material effect on our condensed consolidated financial statements in the future.

In August 2018, the FASB issued ASU 2018-13, Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement. This ASU amends the Accounting Standards Codification ("ASC") 820, Fair Value Measurement to add, remove, and modify fair value measurement disclosure requirements. This ASU is effective for fiscal years beginning after December 15, 2019 and interim periods within those fiscal years, with early adoption permitted. We are currently evaluating the impact of implementation of this ASU on our condensed consolidated financial statements.

In May 2017, the FASB issued ASU 2018-07, Compensation—Stock Compensation (Topic 718): Scope of Modification Accounting, which amends the scope of modification accounting for share-based payment arrangements. The ASU provides guidance on the types of changes to the terms or conditions of share-based payment awards which would require an entity to apply this ASU

LESLIE'S, INC.
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

retrospectively with a cumulative-effect adjustment. This ASU is effective for entities other than private companies. The amendments in this ASU are effective for fiscal years beginning after December 15, 2019 and interim periods within those fiscal years. This ASU will be effective for our fiscal year ending on October 2, 2021, with early adoption permitted. We are currently evaluating the impact of implementation of this ASU on our condensed consolidated financial statements.

In June 2016, the FASB issued ASU 2016-13, Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments, which will require entities to measure all expected credit losses for financial instruments held at the reporting date based on historical experience, current conditions and reasonable supportable forecasts. This replaces the existing incurred loss model and is applicable to the measurement of credit losses on financial instruments measured at amortized cost and also applies to some off-balance sheet credit exposures. The ASU is effective for annual and interim reporting periods beginning after December 15, 2021, with early adoption permitted. We are currently evaluating the impact of implementation of this ASU on our condensed consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842) (“ASU 2016-02”). Under this ASU, an entity will be required to recognize right-of-use assets and lease liabilities on its balance sheet and disclose key information about leasing arrangements. The ASU offers specific accounting guidance for a lessee, a lessor and sale and leaseback transactions. Lessees and lessors are required to disclose qualitative and quantitative information about leasing arrangements to enable a user of the financial statements to assess the amount, timing and uncertainty of cash flows arising from leases. The ASU is effective for annual reporting periods beginning after December 15, 2020, with early adoption permitted. We are currently evaluating the impact that the ASU will have on our condensed consolidated financial statements.

In May 2014, the FASB issued ASU 2014-09 “Revenue from Contracts with Customers” (Topic 606) (“ASU 2014-09”). ASU 2014-09 is a comprehensive new revenue recognition model requiring a company to recognize revenue to depict the transfer of goods or services to a customer at an amount reflecting the consideration it expects to receive in exchange for those goods or services. In adopting ASU 2014-09, companies may use either a full retrospective or a modified retrospective approach.

This ASU will be effective for our fiscal year ending on October 2, 2021 with early adoption permitted. We are evaluating the provisions of this ASU and will utilize the modified retrospective method. We are currently evaluating the timing and impact of the adoption of the new standard on our consolidated financial statements.

Note 3—Business Combinations

Fiscal 2020 Acquisition

In October 2019, we acquired a retailer of supplies and services for hot tubs, swim spas, and saunas. The acquisition included six locations in the Pacific Northwest and expanded our presence to 37 states. The acquisition did not have a material impact on our financial position or results of operations. Our condensed consolidated financial statements include the results of operations of the acquisition from the date of acquisition. The goodwill resulting from acquisition is deductible for income tax purposes.

LESLIE'S, INC.
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

The recognition of goodwill was made based on the strategic benefits we expect to realize from the acquisition. During the measurement period, which will not exceed one year from each closing, we will continue to obtain information, primarily related to income taxes, to assist us in finalizing the acquisition date fair values. Any qualifying changes to our preliminary estimates will be recorded as adjustments to the respective assets and liabilities, with any residual amounts allocated to goodwill.

Fiscal 2019 Acquisition

In January 2019, we acquired a retailer of supplies and services for swimming pools, hot tubs, barbecues and fireplaces. The acquisition included nine locations in the Pacific Northwest and expanded our presence to 36 states. The acquisition did not have a material impact on our financial position or results of operations. Our condensed consolidated financial statements include the results of operations of the acquisition from the date of acquisition. The goodwill resulting from the acquisition is deductible for income tax purposes. The purchase accounting for this acquisition is complete.

Note 4—Goodwill and Other Intangibles, Net

Goodwill

The carrying amount of goodwill for the periods ended June 27, 2020 and September 28, 2019 were as follows (in thousands):

Balance, September 28, 2019	\$ 89,739
Acquisitions	3,082
Other adjustments	—
Balance, June 27, 2020	<u>\$ 92,821</u>

Other Intangible Assets

Our other intangible assets are as follows as of June 27, 2020:

	Weighted Average Remaining Useful Life (In years)	Gross Carrying Value	Accumulated Amortization (In thousands)	Net Carrying Amount
Trade name and trademarks (finite life)	2.4	\$ 5,540	\$ (5,111)	\$ 429
Trade name and trademarks (indefinite life)	Indefinite	17,750	—	17,750
Non-compete agreements	4.5	8,633	(6,410)	2,223
Consumer relationships	3.6	17,200	(9,683)	7,517
Internally developed software	2.6	4,000	(3,371)	629
Other	1.3	1,000	(950)	50
Total		<u>\$ 54,123</u>	<u>\$ (25,525)</u>	<u>\$ 28,598</u>

LESLIE'S, INC.
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

Our other intangible assets are as follows as of September 28, 2019:

	Weighted Average Remaining Useful Life (In years)	Gross Carrying Value	Accumulated Amortization (In thousands)	Net Carrying Amount
Trade name and trademarks (finite life)	2.8	\$ 5,540	\$ (5,026)	\$ 514
Trade name and trademarks (indefinite life)	Indefinite	17,150	—	17,150
Non-compete agreements	4.7	7,733	(6,181)	1,552
Consumer relationships	3.7	16,200	(8,655)	7,545
Internally developed software	2.8	4,000	(3,180)	820
Other	2.2	1,000	(925)	75
Total		\$ 51,623	\$ (23,967)	\$ 27,656

Amortization expense for the nine months ended June 27, 2020 and June 29, 2019 was \$1.6 million and \$1.9 million, respectively. No impairment of goodwill or other intangible assets was recorded in the nine months ended June 27, 2020 and June 29, 2019.

The estimated future amortization expense related to finite-lived intangible assets on our balance sheet as of June 27, 2020 is as follows (in thousands):

Remainder of fiscal 2020	\$ 996
2021	2,058
2022	1,936
2023	1,703
2024	1,065
Thereafter	3,090
Total	\$ 10,848

Intangible assets also include costs associated with acquiring mailing lists for our proprietary database. As of each of June 27, 2020 and June 29, 2019, the gross amounts capitalized on the consolidated balance sheets for mailing lists were \$1.6 million with a net carrying value of \$0.3 million.

Note 5—Inventories, Net

<u>As of</u>	(In thousands)	
	June 27, 2020	September 28, 2019
Raw materials	\$ 1,404	\$ 1,768
Finished goods	183,860	152,215
Inventory reserves	(4,156)	(4,254)
Inventories, net	\$ 181,108	\$ 149,729

LESLIE'S, INC.
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

Note 6—Accrued Expenses

Accrued expenses consist of the following:

<u>As of</u>	(In thousands)	
	June 27, 2020	September 28, 2019
Accrued payroll and employee benefits	\$ 25,758	\$ 14,694
Occupancy expenses	13,141	14,669
Interest	10,990	17,520
Sales taxes	15,411	9,045
Self-insurance reserves	6,639	6,242
All other current liabilities	47,359	19,951
Total	\$ 119,298	\$ 82,121

Note 7—Long-Term Debt

The table below presents our debt obligations as of the periods presented (in thousands):

	Effective Interest Rate (1)	June 27, 2020	September 28, 2019
Term Loan—due on August 16, 2023	3.67%(2)	\$ 815,349	\$ 821,605
Senior Unsecured Notes—due on August 16, 2024	9.81%(3)	390,000	390,000
ABL Credit Facility	1.43%(4)	—	—
Total long-term debt		1,205,349	1,211,605
Less: current portion of long-term debt		(8,341)	(8,341)
Less: unamortized discount		(9,955)	(11,589)
Less: deferred financing charges		(4,273)	(5,182)
Long-term debt, net		<u>\$ 1,182,780</u>	<u>\$ 1,186,493</u>

(1) Effective interest rates as of June 27, 2020.

(2) Carries interest at a specified margin over LIBOR of 3.50% with a minimum rate of 0.00%.

(3) Carries interest at a specified margin over LIBOR of 8.50% with a minimum rate of 1.00%.

(4) Carries interest at a specific margin of 0.25% and 0.75% with respect to Base Rate loans and between 1.25% and 1.75% with respect to Eurodollar Rate loans. Subsequent to June 27, 2020, we amended our ABL Credit Facility. Please refer to Note 12 – Subsequent Events.

Repayment of the Term Loan. We are required to make principal repayments equal to 0.25% of the Term Loan principal amount as stated in the third amendment executed February 27, 2018 on the last day of December, March, June, and September. We are also required to repay the term loan based on an annual calculation of excess cash flow, as defined in the agreement. At June 27, 2020, no amount of excess cash flows was required to be repaid.

The Term Loan does not require us to comply with any financial covenants. The Term Loan contains customary events of default, including default upon the nonpayment of principal, interest, fees or other amounts, or the occurrence of a change of control. No event of default had occurred under the Term Loan as of June 27, 2020 or September 28, 2019.

LESLIE'S, INC.
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

Principal maturities for the Term Loan are as follows as of June 27, 2020 (in thousands):

2020	\$	4,170
2021		8,341
2022		8,341
2023		794,497
Total	\$	<u>815,349</u>

Repayment of the ABL Credit Facility—We are obligated to pay the lender a commitment fee of 0.25% per annum, payable quarterly in arrears. We are also obligated to pay a commission on all outstanding letters of credit as well as customary administrative, issuance, fronting, amendment, payment, and negotiation fees. No amounts are outstanding on the \$150.0 million ABL Credit Facility as of June 27, 2020 and September 28, 2019. The amount available excludes \$11.6 million and \$10.6 million of existing standby letters of credit as of June 27, 2020 and September 28, 2019, respectively.

The ABL Credit Facility does not require us to comply with any financial covenants. The ABL Credit Facility contains customary events of default, including default upon the nonpayment of principal, interest, fees or other amounts, or the occurrence of a change of control. No event of default had occurred under the ABL Credit Facility as of June 27, 2020 and September 28, 2019.

Repayment of the Senior Unsecured Notes—The Senior Unsecured Notes are guaranteed on a senior basis by us and all our present and future domestic wholly owned subsidiaries. Interest-only payments on the Senior Unsecured Notes are payable quarterly on January 10, April 10, July 10, and October 10 of each year. The Senior Unsecured Notes bear interest of 8.50% plus LIBOR, subject to a minimum rate of 1.00%. The Senior Unsecured Notes have restrictive covenants that limit the ability to, among other things, incur or guarantee additional indebtedness or issue preferred stock; pay dividends and make other restricted payments; incur restrictions on the payment of dividends or other distributions; create or incur certain liens; make certain investments; transfer or sell assets; engage in transactions with affiliates; and merge or consolidate with other companies or transfer all or substantially all of our assets.

The entire maturity of the Senior Unsecured Notes is due in 2024.

Representations and covenants—The Term Loan, Senior Unsecured Notes, and ABL Credit Facility, contain customary representations and warranties, covenants, and conditions to borrowing. No event of default had occurred as of June 27, 2020 and September 28, 2019.

Interest Rate Cap Agreements

In March 2017, we entered into interest rate cap agreements in order to manage the variability of cash flows related to a portion of our floating rate indebtedness. Pursuant to the agreements, we have capped LIBOR at 3.00% with respect to the aggregate notional amount of \$750.0 million through the expiration of the agreements in March 2021. In the event LIBOR exceeds 3.00% we will pay interest at the capped rate. In the event LIBOR is less than 3.00%, we will pay interest at the prevailing LIBOR rate.

LESLIE'S, INC.
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

The fair value of the interest rate cap agreements was zero as of June 27, 2020 and September 28, 2019. We recognized a loss related to the interest rate cap agreements of zero and \$4.2 million for the nine months ended June 27, 2020 and June 29, 2019, respectively, which is recorded in other expenses in the condensed consolidated statements of operations.

Note 8—Leases

Lessee Arrangements

Operating Leases

We lease certain store, office, distribution, and manufacturing facilities under operating leases that expire at various dates through September 2031.

We are obligated to make cash payments in connection with various lease obligations and purchase commitments. All of these obligations require cash payments to be made by us over varying periods of time. Certain leases are renewable at our option for periods of one to ten years. Certain of these arrangements are cancelable on short notice and others require payments upon early termination.

Future annual minimum lease payments as of June 27, 2020, are as follows (in thousands):

Remainder of fiscal 2020	\$ 17,231
2021	66,006
2022	56,703
2023	44,641
2024	31,779
2025	17,689
Thereafter	14,651
Total	<u>\$ 248,700</u>

Rent expense totaled \$46.6 million and \$46.8 million for the nine months ended June 27, 2020 and June 29, 2019, respectively.

Note 9—Income Taxes

Our effective income tax rate was (38.7)% for the nine months ended June 27, 2020, compared to 99.3% for the nine months ended June 29, 2019. The difference between the statutory rate and our effective rate is primarily attributed to a decrease in the valuation allowance for our interest limitation carryforward from the impact of the CARES Act for the nine months ended June 27, 2020 and an increase in the valuation allowance for our interest limitation carryforward for the nine months ended June 29, 2019. Our effective income tax rate can fluctuate due to factors including valuation allowances, changes in tax law, federal and state audits and the impact of discrete items.

LESLIE'S, INC.
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

Note 10—Commitments & Contingencies**Contingencies**

We are defendants in lawsuits or potential claims encountered in the normal course of business. When the potential liability from a matter can be estimated and the loss is considered probable, we record the estimated loss. Due to uncertainties related to the resolution of lawsuits, investigations and claims, the ultimate outcome may differ from the estimates. We do not expect that the resolutions of any of these matters will have a material effect on our consolidated financial position or results of operations. We did not record any material loss contingencies as of June 27, 2020 or as of September 28, 2019.

Our workers' compensation insurance program, general liability insurance program, and employee group medical plan have self-insurance retention features of up to \$0.4 million per event as of June 27, 2020 and September 28, 2019, respectively. We had standby letters of credit outstanding in the amounts of \$11.6 million and \$10.6 million as of June 27, 2020 and September 28, 2019, respectively, for the purpose of securing such obligations under our workers' compensation self-insurance programs.

Purchase Commitments

In addition to our lease obligations, we maintain future purchase commitments to ensure our inventory and operational requirements.

Future minimum purchase commitments as of June 27, 2020 are as follows (in thousands):

Remainder of fiscal 2020	\$ 19,680
2021	64,733
2022	26,902
2023	20,164
2024	14,463
Thereafter	—
Total	\$ 145,942

Note 11—Related Party Transactions

In February 2017, we entered into a management services agreement with our private equity sponsors in connection with our acquisition in February 2017. The management services agreement provides that we will pay an annual fee for them to provide management and advisory services to us and our affiliates, including general management consulting services, support and analysis with respect to financing alternatives and strategic planning functions. During the nine months ended June 27, 2020 and June 29, 2019, we paid or accrued management fees in the amount of \$3.2 million and \$2.7 million, respectively.

In March 2013, we entered into an operating lease for our corporate headquarters with DM Ventures I, LLC. The former Chairman of our Board of Directors is one of the principals of DM Ventures I, LLC and holds a significant ownership position in the lessor entity. Aggregate rents and related costs paid to DM Ventures I, LLC for our corporate headquarters were \$1.5 million and \$1.3 million for the nine months ended June 27, 2020 and June 29, 2019, respectively.

LESLIE'S, INC.
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

Note 12—Subsequent Events

On August 13, 2020, we entered into Amendment No. 4 to the Credit Agreement (the Amendment). The Amendment provides us with a \$200 million asset based revolving credit facility (the ABL Credit Facility) and extends the final maturity to August 13, 2025. Amounts borrowed under the ABL Credit Facility are subject to interest at a rate per annum equal to, at the borrower's option, either (a) LIBOR plus a margin of 1.75% to 2.00%, and subject to a LIBOR floor of 0.75%, or (b) a base rate plus a margin of 0.75% to 1.00%, in each case depending on revolving line utilization. The ABL Credit Facility also contains customary covenants that provide for, among other things, limitations on indebtedness, liens, fundamental changes, restricted payments, and customary representations and warranties and events of default typical for credit facilities of this type.

We evaluated subsequent events through August 26, 2020, the date the interim condensed consolidated financial statements were available to be issued.

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors of Leslie's, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Leslie's, Inc. (the Company) as of September 28, 2019 and September 29, 2018, the related consolidated statements of operations, stockholder's deficit and cash flows for the years then ended, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at September 28, 2019 and September 29, 2018, and the results of its operations and its cash flows for the years then ended in conformity with U.S. generally accepted accounting principles.

Basis for Opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2000.

Phoenix, Arizona

August 26, 2020, except for the third paragraph of Note 2, as to which the date is October 24, 2020

[Table of Contents](#)

LESLIE'S, INC.
CONSOLIDATED BALANCE SHEETS
(Amounts in Thousands, Except Share and Per Share Amounts)

As of	September 28,	September 29,
Assets	2019	2018
Assets		
Current assets		
Cash and cash equivalents	\$ 90,899	\$ 77,569
Accounts and other receivables, net	33,872	28,703
Inventories, net	149,729	143,222
Prepaid expenses and other current assets	7,589	5,838
Total current assets	282,089	255,332
Property and equipment, net	78,506	80,262
Goodwill and other intangibles, net	117,724	111,646
Other assets	1,402	5,920
Total assets	<u>\$ 479,721</u>	<u>\$ 453,160</u>
Liabilities and stockholder's deficit		
Current liabilities		
Accounts payable	\$ 68,347	\$ 61,596
Accrued expenses	82,121	63,129
Income taxes payable	6,713	4,099
Current portion of long-term debt	8,341	8,341
Total current liabilities	165,522	137,165
Deferred tax liabilities	1,240	1,056
Long-term debt, net	1,186,493	1,189,521
Other long-term liabilities	13,823	14,367
Total liabilities	1,367,078	1,342,109
Commitments and contingencies		
Stockholder's deficit		
Common stock, \$0.001 par value, 156,500,000 shares authorized, issued, and outstanding at September 28, 2019 and September 29, 2018	157	157
Capital deficit	(279,848)	(281,978)
Retained deficit	(607,666)	(607,128)
Total stockholder's deficit	(887,357)	(888,949)
Total liabilities and stockholder's deficit	<u>\$ 479,721</u>	<u>\$ 453,160</u>

See accompanying notes which are an integral part of these consolidated financial statements.

[Table of Contents](#)

LESLIE'S, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in Thousands, Except Share and Per Share Amounts)

Fiscal Year Ended	September 28, 2019	September 29, 2018
Sales	\$ 928,203	\$ 892,600
Cost of merchandise and services sold	— 548,463	— 535,464
Gross profit	379,740	357,136
Selling, general and administrative expenses	— 258,152	— 241,669
Operating income	121,588	115,467
Other expense:		
Interest expense	98,578	91,656
Other expenses, net	— 7,453	— 1,759
Total other expense	106,031	93,415
Income (loss) before taxes	15,557	22,052
Income tax expense	— 14,855	— 4,926
Net income	\$ 702	\$ 17,126
Net income per share		
Basic and diluted	\$ 0.00	\$ 0.11
Weighted average shares outstanding		
Basic and diluted	156,500,000	156,500,000

See accompanying notes which are an integral part of these consolidated financial statements.

LESLIE'S, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDER'S DEFICIT
(Amounts in Thousands, Except Share and Per Share Amounts)

	Common Stock		Capital Deficit	Retained Deficit	Totals
	Shares	Amount			
Balance, September 30, 2017	156,500,000	\$ 157	\$ (283,763)	\$ (624,395)	\$ (908,001)
Equity-based compensation	—	—	1,785	—	1,785
Recovery of deemed distributions	—	—	—	141	141
Net income	—	—	—	17,126	17,126
Balance, September 29, 2018	156,500,000	\$ 157	(281,978)	(607,128)	(888,949)
Equity-based compensation	—	—	2,130	—	2,130
Payment of dividend	—	—	—	(1,240)	(1,240)
Net income	—	—	—	702	702
Balance, September 28, 2019	<u>156,500,000</u>	<u>\$ 157</u>	<u>\$ (279,848)</u>	<u>\$ (607,666)</u>	<u>\$ (887,357)</u>

See accompanying notes which are an integral part of these consolidated financial statements.

[Table of Contents](#)

LESLIE'S, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Dollar Amounts in Thousands)

Fiscal Year Ended	September 28, 2019	September 29, 2018
Operating Activities		
Net income	\$ 702	\$ 17,126
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	30,424	31,611
Equity-based compensation	2,130	1,785
Amortization of deferred financing costs and debt discounts	3,240	3,013
Provisions for doubtful accounts	463	259
Deferred income taxes	(754)	1,405
Loss on disposition of assets	1,751	1,057
Loss on extinguishment of debt	—	488
Changes in operating assets and liabilities:		
Accounts and other receivables	(5,632)	(4,304)
Inventories	(3,797)	(4,920)
Prepaid expenses and other current assets	(1,670)	289
Other assets	4,518	(2,759)
Accounts payable and accrued expenses	23,832	2,039
Income taxes payable	2,614	(3,809)
Net cash provided by operating activities	<u>57,821</u>	<u>43,280</u>
Investing Activities		
Purchases of property and equipment	(27,444)	(28,786)
Acquisitions, net of cash acquired	(9,616)	(11,758)
Proceeds from disposition of fixed assets	64	325
Net cash used in investing activities	<u>(36,996)</u>	<u>(40,219)</u>
Financing Activities		
Borrowings on revolving commitment	190,900	148,400
Repayments to revolving commitment	(190,900)	(148,400)
Principal payments on Term Loan	(6,255)	(23,662)
Recovery of deemed distribution	—	141
Payment of dividend	(1,240)	—
Payment of deferred financing costs	—	(865)
Net cash used in financing activities	<u>(7,495)</u>	<u>(24,386)</u>
Net increase (decrease) in cash and cash equivalents	13,330	(21,325)
Cash and cash equivalents, beginning of period	77,569	98,894
Cash and cash equivalents, end of period	<u>\$ 90,899</u>	<u>\$ 77,569</u>
Supplemental Disclosure of Cash Payments for:		
Interest	\$ 90,478	\$ 90,055
Income taxes	<u>12,944</u>	<u>7,329</u>

See accompanying notes which are an integral part of these consolidated financial statements.

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1—Business and Operations

Leslie's, Inc. ("Leslie's," "we," "our," "us," "its," or the "Company") is the leading direct-to-consumer pool and spa care brand. We market and sell pool and spa supplies and related products and services, which primarily consist of maintenance items such as chemicals, equipment and parts, cleaning accessories, as well as safety, recreational, and fitness-related products. We currently market our products through 952 company-operated locations in 36 states and e-commerce websites.

Note 2—Summary of Significant Accounting Policies

Basis of Presentation and Principles of Consolidation

We prepared the consolidated financial statements following U.S. generally accepted accounting principles ("GAAP"). The financial statements include all normal and recurring adjustments that are necessary for a fair presentation of our financial position and operating results. The consolidated financial statements include the accounts of Leslie's, Inc. and our subsidiaries.

All significant intercompany accounts and transactions have been eliminated.

All share and per share information included in the accompanying consolidated financial statements has been adjusted to reflect a 156,500-for-1 stock split which was effected on October 23, 2020. The par value of the common stock was not adjusted as the result of the stock split.

Fiscal Periods

We operate on a fiscal calendar that results in a fiscal year consisting of a 52- or 53-week period ending on the Saturday closest to September 30th. In a 52-week fiscal year, each quarter contains 13 weeks of operations; in a 53-week fiscal year, each of the first, second and third quarters includes 13 weeks of operations and the fourth quarter includes 14 weeks of operations. References to fiscal 2019 and fiscal 2018 refer to the 52 weeks ended September 28, 2019 and September 29, 2018, respectively.

Use of Estimates in the Preparation of Financial Statements

To prepare financial statements that conform to GAAP, we make estimates and assumptions that affect the amounts reported in our financial statements and accompanying notes. Our most significant estimates relate to the allowance for doubtful accounts, inventory obsolescence reserves, vendor programs, income taxes, self-insurance, and goodwill impairment evaluations. We continually review our estimates and make adjustments as necessary, but actual results could be significantly different from what we expected when we made these estimates.

Cash and Cash Equivalents

Cash and cash equivalents include cash on hand, demand deposits, money market funds and credit and debit card transactions. Our cash balance at financial institutions may exceed the FDIC insurance coverage limit. We consider all investments with an original maturity of three months or less and money market funds to be cash equivalents. All credit card and debit card transactions that process in less than seven days are classified as cash and cash equivalents. The amounts due from financial intermediaries for these transactions classified as cash and cash equivalents totaled \$5.7 million at September 28, 2019 and September 29, 2018.

Fair Value Measurements

We measure certain financial instruments and other items at fair value.

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

To determine the fair value, we maximize the use of observable inputs and minimize the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs market participants would use to value an asset or liability and are developed based on market data obtained from independent sources. Unobservable inputs are inputs based on assumptions about the factors market participants would use to value an asset or liability.

The fair value hierarchy is as follows, of which the first two are considered observable and the last unobservable:

Level 1—Quoted prices in active markets for identical assets or liabilities.

Level 2—Inputs other than Level 1 that are observable for the asset or liability, either directly or indirectly, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets or liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data by correlation or other means.

Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. Value is determined using pricing models, discounted cash flow methodologies, or similar techniques and also includes instruments for which the determination of fair value requires significant judgment or estimation.

As of September 28, 2019 and September 29, 2018, we held \$85.5 million and \$73.0 million, respectively, in money market funds that are required to be measured at fair value on a recurring basis. These assets were determined to be Level 1 assets as they are actively traded and are classified as cash and cash equivalents.

Fair Value of Financial Instruments

We evaluate our financial assets and liabilities subject to fair value measurements on a recurring basis to determine the appropriate level of classification for each reporting period within the fair value hierarchy.

The fair value of the Term Loan due in 2023 was determined to be \$783.6 million at September 28, 2019. Fair value of the Senior Unsecured Notes (see Note 8) at September 28, 2019 and September 29, 2018 was estimated to be \$390.0 million. These fair value estimates, determined to be Level 2, are subjective in nature and involve uncertainties and matters of judgment and therefore cannot be determined with precision. Changes in assumptions could significantly affect these estimates.

The fair value of the interest rate cap agreements (see Note 8), determined to be Level 2, and is included in other assets on the consolidated balance sheets as of September 28, 2019 and September 29, 2018. Changes in fair value of the interest rate cap are recorded in other expenses in the consolidated statement of operations.

The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable, and accrued expenses approximate fair value due to the short-term maturity of these instruments.

There were no transfers between levels in the fair value hierarchy during the fiscal years ended September 28, 2019 and September 29, 2018, respectively.

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Vendor Rebates

Many of our vendor arrangements provide for us to receive specified amounts of consideration when we achieve various measures. These measures generally relate to the volume level of purchases from our vendors. We account for vendor programs as a reduction of the prices of the vendor's products and therefore a reduction of inventory until we sell the product, at which time we recognize such consideration as a reduction of cost of merchandise and services sold in our consolidated statement of operations. Accounts and other receivables include vendor rebate receivables of \$16.7 million and \$13.0 million as of September 28, 2019 and September 29, 2018, respectively.

Allowance for Doubtful Accounts

Allowance for doubtful accounts is calculated based on historical experience, counterparty credit risk, consumer credit risk and application of the specific identification method and was not material in fiscal 2019 or 2018.

Inventories, Net

Inventories are stated at the lower of cost or market. We value inventory using the weighted-average cost method. We evaluate inventory for excess and obsolescence and record necessary reserves. When an inventory item is sold or disposed, the associated reserve is released at that time.

Property and Equipment, Net

Property and equipment are stated at cost, less accumulated depreciation and amortization. Costs of normal maintenance and repairs are charged to expense as incurred. Major replacements or improvements of property and equipment are capitalized. When items are sold or otherwise disposed of, the cost and related accumulated depreciation or amortization are removed from the accounts, and any resulting gain or loss is included in the consolidated statements of operations.

Depreciation and amortization are computed using the straight-line method. These charges are based on the following range of useful lives:

Buildings and improvements	5–39 years
Vehicles, machinery, and equipment	3–10 years
Office furniture and equipment	3–7 years
Leasehold improvements	5–10 years, not to exceed the lease life

We evaluate events and changes in circumstances that could indicate carrying amounts of long-lived assets, including property and equipment, may not be recoverable. When such events or changes in circumstances occur, we assess the recoverability of long-lived assets by determining whether or not the carrying value of such assets will be recovered through undiscounted future cash flows derived from their use and eventual disposition. For purposes of this assessment, long-lived assets are grouped with other assets and liabilities at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. If the sum of the undiscounted future cash flows is less than the carrying amount of an asset, we record an impairment loss for the amount by which the carrying amount of the assets exceeds its fair value. We recorded an impairment charge of \$1.2 million and \$0.7 million in fiscal 2019 and 2018, respectively. The impairment charge is recorded in selling, general and administrative expenses in the consolidated statements of operations.

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Internal Use Software

Expenditures for software developed for internal use are capitalized and amortized over a five-year period on a straight-line basis. Our policy provides for the capitalization of external direct costs of materials and services associated with developing or obtaining internal use computer software. In addition, we also capitalize certain payroll and payroll-related costs for employees who are directly associated with internal use computer software development projects. The amount of payroll costs capitalized with respect to these employees is limited to the time directly spent on such projects. Costs associated with preliminary project stage activities, training, maintenance and all other post-implementation stage activities are expensed as incurred.

Capitalized software additions were \$4.0 million and \$2.7 million in fiscal 2019 and 2018, respectively. Capitalized software amortization totaled approximately \$8.7 million and \$6.6 million in fiscal 2019 and 2018, respectively. Capitalized software and development costs remaining to be amortized were approximately \$6.4 million and \$4.5 million, as of September 28, 2019 and September 29, 2018, respectively.

Goodwill and Other Intangibles, net

Goodwill and intangible assets are recorded at cost, or at their estimated fair values at the date of acquisition. We review goodwill and indefinite lived intangible assets for impairment annually (in the fourth quarter) or on an interim basis whenever events or changes in circumstances indicate the fair value of such assets may be below their carrying amount.

We may first make a qualitative assessment of whether it is more likely than not that a reporting unit's fair value is less than its carrying value. The qualitative impairment assessment includes considering various factors including macroeconomic conditions, industry and market conditions, cost factors, a sustained share price or market capitalization decrease, and any reporting unit specific events. If it is determined through the qualitative assessment that a reporting unit's fair value is more likely than not greater than its carrying value, the quantitative impairment assessment is not required. If the qualitative assessment indicates it is more likely than not that a reporting unit's fair value is not greater than its carrying value, we must perform a quantitative impairment assessment. If it is determined a quantitative assessment is necessary, we would compare the fair value of the reporting unit to the respective carrying value, which includes goodwill. If the fair value of the reporting unit exceeds its carrying value, goodwill is not considered impaired. If the carrying value is higher than the fair value, the difference would be recognized as an impairment loss.

Similar to our test for impairment of goodwill, we may first make a qualitative assessment of whether it is more likely than not that an indefinite lived intangible assets' fair value is less than its carrying value to determine whether it is necessary to perform a quantitative impairment assessment. If it is determined a quantitative assessment is necessary, we would compare their estimated fair values to their carrying values. We would recognize an impairment charge when the estimated fair value of the indefinite lived intangible asset is less than its carrying value. We annually evaluate whether the trade names continue to have an indefinite life.

Finite-lived intangible assets are amortized to reflect the pattern of economic benefits consumed. We evaluate amortizable intangible assets for potential impairment whenever events or changes in circumstances indicate that the carrying amounts of the assets may not be fully recoverable. Intangible assets useful lives are reviewed annually.

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

After we made our qualitative assessments it was determined that there were no impairment charges related to goodwill or other indefinite lived intangible assets during the years ended September 28, 2019 and September 29, 2018.

Corporate Headquarters Lease Accounting

In March 2013, we entered into a 13 year lease agreement for our new corporate headquarters in Phoenix, Arizona. The lease agreement was with a third party that had purchased a shell building and made significant improvements to the space prior to us occupying it. We moved into the space in February 2014.

As a result of our involvement during the construction period, we were deemed to be the accounting owner of the construction project under lease accounting guidance. Upon completion of construction in February 2014, we did not meet the sale-leaseback criteria for de-recognition of the building; therefore, in accordance with applicable accounting guidance, the building and related assets subject to the lease are reflected on our consolidated balance sheets and will be depreciated over their respective useful lives. At completion of the construction of the building, we recorded a \$6.4 million asset, which includes the fair value of the building shell and structural construction costs incurred by the landlord and us. Further, a \$5.5 million liability was recorded representing the determined present value of the lease payments associated with the building.

Monthly lease payments are allocated between the land element of the lease (which is accounted for as an operating lease) and the liability recorded. The liability is amortized using the effective interest method and the interest rate is determined in accordance with the requirements of sale-leaseback accounting. Monthly lease payments, net of the land element portion of the lease, are considered to be an interest expense, that reduces the financing liability balance once the payment is made. At the end of the initial lease term, if we decide not to renew the lease, the net book value of the asset and the corresponding liability would be removed from our consolidated balance sheets.

Income Taxes

We account for income taxes under the asset and liability method, which requires the recognition of deferred tax assets and liabilities for the future tax consequences attributable to differences between the financial statement carrying amounts and tax bases of existing assets and liabilities. Deferred tax assets, including the benefit of net operating loss and tax credit carryforwards, are evaluated based on the guidelines for realization and are reduced by a valuation allowance if it is deemed more likely than not that such assets will not be realized. We consider several factors in evaluating the realizability of our deferred tax assets, including the nature, frequency and severity of recent losses, the remaining years available for carryforwards, changes in tax laws, the future profitability of the operations in the jurisdiction, and tax planning strategies. Our judgments and estimates concerning realizability of deferred tax assets could change if any of the evaluation factors change, resulting in an increase or decrease to income tax expense in any period.

The ultimate realization of deferred tax assets can be dependent upon the generation of future taxable income during the periods in which the associated temporary differences became deductible. On a quarterly basis, we evaluate whether it is more likely than not that our deferred tax assets will be realized in the future and conclude whether a valuation allowance must be established.

We record a liability for uncertain tax positions to the extent a tax position taken or expected to be taken in a tax return does not meet certain recognition or measurement criteria. Considerable

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

management judgment is necessary to assess the inherent uncertainties related to the interpretations of complex tax laws, regulations and taxing authority rulings, as well as to the expiration of statutes of limitations in the numerous and varied jurisdictions in which we operate. Our judgments and estimates may change as a result of the evaluation of new information, such as the outcome of tax audits or changes to or further interpretations of tax laws and regulations, resulting in an increase or decrease to income tax expense in any period. Interest and penalties accrued, if any, relating to uncertain tax positions will be recognized as a component of the income tax provision.

We determined there were no material uncertain tax positions as of September 28, 2019 and September 29, 2018.

Sales

We recognize product sales upon purchase of merchandise by the consumer. Sales related to services are recognized as persuasive evidence of an arrangement with a consumer exists, services are performed, the fee is fixed or determinable, and collection is probable. Terms are customarily point of sale or free on board shipping point, net of related discounts and sales tax. When we receive payment from a consumer before the consumer has taken possession of the merchandise or the service has been performed, the amount received is recorded as deferred revenue until the sale or service is complete. We do not provide an estimated allowance for sales returns or chargebacks, as they have been determined to be immaterial.

Cost of Merchandise and Services Sold

Cost of merchandise and services sold reflects the direct cost of purchased merchandise, costs to package certain chemical products, including direct materials and labor, costs to provide services, including labor and materials, as well as distribution and occupancy costs. Distribution costs include warehousing and transportation expenses, including costs associated with third-party fulfillment centers. Occupancy costs include the rent, common area maintenance, real estate taxes, and depreciation and amortization costs of all retail locations.

Selling, General and Administrative Expenses

Our selling, general and administrative expenses include selling and operating expenses at our retail locations and corporate-level general and administrative expenses. Selling and operating expenses at retail locations include payroll, bonus and benefit costs for personnel, supplies, and credit and debit card processing costs. Corporate expenses include payroll, bonus, and benefit costs for our corporate and field support functions, marketing and advertising, insurance, utilities, occupancy costs related to our corporate office facilities, professional services, and depreciation and amortization for all assets, except those related to our retail locations and distribution operations, which are included in cost of merchandise and services sold.

Consumer Loyalty Program

Our consumer loyalty program is a program that enables consumers to earn reward points based on their purchases. We accrue the cost of anticipated redemptions related to this program at the time of the initial purchase based on historical experience. The accrued liability related to this loyalty program at September 28, 2019 and September 29, 2018 was not material.

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Shipping and Handling Costs

We record shipping and handling costs paid by consumers as sales. The costs for shipping and handling are charged to cost of merchandise and services sold.

Advertising

We expense advertising costs as incurred. Advertising costs for fiscal 2019 and 2018 were approximately \$18.0 million and \$21.9 million, respectively, and are shown net of cooperative advertising of \$1.6 million and \$1.4 million for these periods, respectively.

Equity-Based Compensation

We recognize equity-based compensation expense based on the fair value of the awards at the grant date. We use the Black-Scholes model, which uses certain subjective assumptions in determining the fair value of the awards. Compensation cost is recognized ratably over the vesting period of the related equity-based compensation award.

Self-Insurance Reserves

We are self-insured for losses relating to workers' compensation, general liability, and employee medical. Stop-loss coverage has been purchased to limit exposure to any material level of claims. Self-insured liabilities include our estimates of the aggregate ultimate losses and claims incurred but not reported using historical experience.

Business Combinations

We account for business combinations using the acquisition method of accounting. This method requires that the purchase price of the acquisition be allocated to the assets acquired and liabilities assumed using the fair values determined by management as of the acquisition date. The excess of the purchase price over the amounts allocated to assets acquired and liabilities assumed is recorded as goodwill.

We use our best estimates and assumptions as part of the purchase price allocation process to accurately value assets acquired and liabilities assumed as of the acquisition date. Our estimates are inherently uncertain and subject to refinement. As a result, during the measurement period, which may be up to one year from the acquisition date, we record adjustments to the assets acquired and liabilities assumed, with the corresponding offset to goodwill to the extent we identify adjustments to the preliminary purchase price allocation. Upon the conclusion of the measurement period or final determination of the fair values of the assets acquired or liabilities assumed, whichever comes first, any subsequent adjustments are recorded in the consolidated statements of operations. Our consolidated financial statements include the results of operations from the date of acquisition for each business combination.

We expense all acquisition-related costs as incurred in selling, general and administrative expenses in the consolidated statements of operations.

Segment Reporting

Our Chief Operating Decision Maker is our Chief Executive Officer, who reviews financial information presented on a consolidated basis for purposes of allocating resources and assessing

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

performance. We operate all of our locations in the United States and offer consumers similar products, services, and methods of distribution through our retail locations and e-commerce websites. As a result, we have a single reportable segment.

Net Income Per Share

We calculate net income per share by dividing the net income or loss by the weighted average number of common shares outstanding. We had no potentially dilutive securities for any periods presented.

Recent Accounting Pronouncements

In March 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2020-04, "Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting" ("ASU 2020-04"). This ASU provides temporary optional expedients and exceptions to the GAAP guidance on contract modifications and hedge accounting to ease the financial reporting burdens related to the expected market transition from the London Interbank Offered Rate (LIBOR) and other interbank offered rates to alternative reference rates. This ASU is effective for all entities beginning as of its date of effectiveness, March 12, 2020. The guidance is temporary and can be applied through December 31, 2022. We do not expect this ASU to have a material effect on our condensed consolidated financial statements in the future.

In August 2018, the FASB issued ASU 2018-15, Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement that is a Service Contract ("ASU 2018-15"), which generally aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. We adopted this ASU prospectively. The adoption of this ASU did not have a material impact on our consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13, Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement. This ASU amends the Accounting Standards Codification ("ASC") 820, Fair Value Measurement to add, remove, and modify fair value measurement disclosure requirements. This ASU is effective for fiscal years beginning after December 15, 2019 and interim periods within those fiscal years, with early adoption permitted. We are currently evaluating the impact of implementation of this ASU on our consolidated financial statements.

In May 2017, the FASB issued ASU 2018-07, Compensation—Stock Compensation (Topic 718): Scope of Modification Accounting, which amends the scope of modification accounting for share-based payment arrangements. This ASU will be effective for our fiscal year ending on October 2, 2021 with early adoption permitted. We are currently evaluating the impact of implementation of this ASU on our consolidated financial statements.

In January 2017, the FASB issued ASU 2017-04, Intangibles—Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment. ASU 2017-04 simplifies the goodwill impairment test, eliminating the requirement for an entity to determine the fair value of its assets and liabilities at the impairment testing date following the procedure that would be required in determining the fair value of assets acquired and liabilities assumed in a business combination. Instead, an entity will be required to

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

perform its annual, or interim, goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount. An entity will be required to recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value; however, the loss recognized should not exceed the total amount of goodwill allocated to the reporting unit. We early adopted this ASU effective October 1, 2017. The adoption of this ASU did not have a material impact on our consolidated financial statements.

In June 2016, the FASB issued ASU 2016-13, Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments, which will require entities to measure all expected credit losses for financial instruments held at the reporting date based on historical experience, current conditions and reasonable supportable forecasts. This replaces the existing incurred loss model and is applicable to the measurement of credit losses on financial instruments measured at amortized cost and also applies to some off-balance sheet credit exposures. The ASU is effective for annual and interim reporting periods beginning after December 15, 2021, with early adoption permitted. We are currently evaluating the impact of implementation of this ASU on our consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842) ("ASU 2016-02"). Under this ASU, an entity will be required to recognize right-of-use assets and lease liabilities on its balance sheet and disclose key information about leasing arrangements. The ASU offers specific accounting guidance for a lessee, a lessor and sale and leaseback transactions. Lessees and lessors are required to disclose qualitative and quantitative information about leasing arrangements to enable a user of the financial statements to assess the amount, timing and uncertainty of cash flows arising from leases. The ASU is effective for annual reporting periods beginning after December 15, 2020, with early adoption permitted. We are currently evaluating the impact that the ASU will have on our consolidated financial statements.

In May 2014, the FASB issued ASU 2014-09 "Revenue from Contracts with Customers" (Topic 606) ("ASU 2014-09"). ASU 2014-09 is a comprehensive new revenue recognition model requiring a company to recognize revenue to depict the transfer of goods or services to a customer at an amount reflecting the consideration it expects to receive in exchange for those goods or services. In adopting ASU 2014-09 companies may use either a full retrospective or a modified retrospective approach. This ASU will be effective for our fiscal year ending on October 2, 2021 with early adoption permitted. We are evaluating the provisions of this ASU and will utilize the modified retrospective method. We are currently evaluating the timing and impact of the adoption of the new standard on our consolidated financial statements.

Note 3—Business Combinations

Fiscal 2019 Acquisition

In January 2019, we acquired a retailer of supplies and services for swimming pools, hot tubs, barbecues and fireplaces. The acquisition included nine locations in the Pacific Northwest and expanded our presence to 36 states. The acquisition did not have a material impact on our financial position or results of operations. Our consolidated financial statements include the results of operations of the acquisition from the date of acquisition. The goodwill resulting from the acquisition is deductible for income tax purposes.

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Fiscal 2018 Acquisitions

In January 2018, we completed the acquisition of a retailer of swimming pool and spa supplies, spas and above-ground pools, and related equipment. The acquisition included five locations in Pennsylvania and related warehouses and a corporate office. We also acquired the real estate related to two stores.

In May 2018, we acquired a pool and spa parts distributor in Arizona. The acquisition included inventory and assets at leased facilities located in Arizona and Tennessee.

The acquisitions did not have a material impact on our financial position or results of operations, either individually or in the aggregate. Our consolidated financial statements included the results of operations for the acquisitions from the date of each acquisition. The goodwill resulting from these acquisitions are deductible for income tax purposes. The purchase accounting for these acquisitions is complete.

Note 4—Goodwill and Other Intangibles, Net

Goodwill

The changes in the carrying amount of goodwill for fiscal 2019 and 2018 are as follows (in thousands):

Balance, September 30, 2017	\$ 81,919
Acquisitions	2,289
Other adjustments	310
Balance, September 29, 2018	84,518
Acquisitions	4,283
Other adjustments	938
Balance, September 28, 2019	<u>\$ 89,739</u>

Other Intangible Assets

Our other intangible assets are as follows as of September 28, 2019:

	Weighted Average Useful Life (In years)	Gross Carrying Value	Accumulated Amortization (In thousands)	Net Carrying Amount
Trade name and trademarks (finite life)	2.8	\$ 5,540	\$ (5,026)	\$ 514
Trade name and trademarks (indefinite life)	Indefinite	17,150	—	17,150
Non-compete	4.7	7,733	(6,181)	1,552
Consumer relationships	3.7	16,200	(8,655)	7,545
Internally developed software	2.8	4,000	(3,180)	820
Other	2.2	1,000	(925)	75
Total		<u>\$ 51,623</u>	<u>\$ (23,967)</u>	<u>\$ 27,656</u>

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Our other intangible assets are as follows as of September 29, 2018:

	Gross Carrying Value	Accumulated Amortization (In thousands)	Net Carrying Amount
Trade name and trademarks (finite life)	\$ 5,540	\$ (4,900)	\$ 640
Trade name and trademarks (indefinite life)	16,050	—	16,050
Non-compete	6,833	(5,474)	1,359
Consumer relationships	14,800	(7,329)	7,471
Internally developed software	4,000	(2,857)	1,143
Other	1,000	(881)	119
Total	\$ 48,223	\$ (21,441)	\$ 26,782

Other intangible assets amortization expense was \$2.5 million and \$3.8 million in fiscal 2019 and 2018, respectively.

Estimated future amortization of the other intangible assets for the next five years as of September 28, 2019 is as follows (in thousands):

<u>Fiscal Year Ended</u>	
2020	\$ 2,046
2021	1,877
2022	1,786
2023	1,553
2024	915
Thereafter	2,329
Total	\$ 10,506

Intangible assets also include costs associated with acquiring mailing lists for our proprietary database. As of September 28, 2019 and September 29, 2018, the gross amounts capitalized on the consolidated balance sheets for mailing lists were \$1.6 million and \$1.5 million, respectively.

Note 5—Inventories, Net

<u>As of</u>	(In thousands)	
	September 28, 2019	September 29, 2018
Raw materials	\$ 1,768	\$ 2,787
Finished goods	152,215	144,752
Inventory reserves	(4,254)	(4,317)
Total inventories, net	\$ 149,729	\$ 143,222

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Inventory excess and obsolescence reserves consist of the following:

	Balance at Beginning of Period	Additions Charged to Costs and Expenses	Deductions Sale or Disposal of Inventories	Balance at End of Period
	(In Thousands)			
Fiscal 2018	\$ 3,382	\$ 1,019	\$ (856)	\$ 3,545
Fiscal 2019	\$ 3,545	\$ 1,345	\$ (1,268)	\$ 3,622

Note 6—Property and Equipment

Property and equipment consist of the following:

As of	(In thousands)	
	September 28, 2019	September 29, 2018
Land	\$ 5,813	\$ 5,813
Buildings and improvements	15,976	17,418
Vehicles, machinery, and equipment	34,831	31,978
Leasehold improvements	166,640	158,503
Office furniture, equipment, and other	146,455	135,083
Software and construction in process	6,769	3,754
	376,484	352,549
Less: accumulated depreciation and amortization	(297,978)	(272,287)
Total	\$ 78,506	\$ 80,262

Depreciation and amortization expense on property and equipment was \$27.9 million and \$27.7 million in fiscal 2019 and 2018, respectively.

Software and construction in process is primarily composed of internal use software currently being developed and leasehold improvements related to new or remodeled stores where construction had not been completed by the end of the period.

Note 7—Accrued Expenses

Accrued expenses consist of the following (in thousands):

As of	September 28, 2019	September 29, 2018
Accrued payroll and employee benefits	\$ 14,694	\$ 11,139
Occupancy expenses	14,669	6,763
Interest	17,520	13,681
Sales taxes	9,045	6,777
Self-insurance reserves	6,242	5,191
All other current liabilities	19,951	19,578
Total accrued expenses	\$ 82,121	\$ 63,129

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 8—Long-Term Debt

The table below presents our debt obligations as of the periods presented (in thousands):

As of	Effective Interest Rate(1)	September 28, 2019	September 29, 2018
Term Loan—due on August 16, 2023	5.76%(2)	\$ 821,605	\$ 827,861
Senior Unsecured Notes—due on August 16, 2024	10.84%(3)	390,000	390,000
ABL Credit Facility	3.28%(4)	—	—
Total long-term debt		1,211,605	1,217,861
Less: current portion of long-term debt		(8,341)	(8,341)
Less: unamortized discount		(11,589)	(13,643)
Less: deferred financing charges		(5,182)	(6,356)
Long-term debt, net		<u>\$ 1,186,493</u>	<u>\$ 1,189,521</u>

- (1) Effective interest rates as of September 28, 2019.
- (2) Carries interest at a specified margin over LIBOR of 3.50% with a minimum rate of 0.00%. Prior to February 27, 2018, the Term Loan carried interest with a specified margin over LIBOR of 3.75% with a minimum rate of 1.00%.
- (3) Carries interest at a specified margin over LIBOR of 8.50% with a minimum rate of 1.00%.
- (4) Carries interest at a specific margin of 0.25% and 0.75% with respect to Base Rate loans and between 1.25% and 1.75% with respect to Eurodollar Rate loans. Subsequent to September 28, 2019, we amended our existing ABL Credit Facility. Please refer to Note 15—Subsequent Events.

Loss on extinguishment/modification of debt—On February 27, 2018, we amended the Term Loan including the incremental term loan, which resulted in a \$0.5 million loss on debt extinguishment related to the underlying loan tranches repaid in connection with the amendment.

We capitalize financing costs we incur related to implementing and in certain circumstances, amending our debt arrangements. We record any financing costs associated with our Term Loan and Senior Unsecured Notes as a reduction of long-term debt, net on our consolidated balance sheet and amortize them over the contractual life of the related debt arrangements. The table below summarizes changes in deferred financing costs associated with our Term Loan and Senior Unsecured Notes for the periods presented (in thousands):

As of	September 28, 2019	September 29, 2018
Deferred financing costs		
Balance, beginning of year	\$ 6,356	\$ 6,843
Financing costs deferred	10	605
Less: amortization expense	(1,184)	(1,092)
Deferred financing costs, net of accumulated amortization	<u>\$ 5,182</u>	<u>\$ 6,356</u>

We record any financing costs associated with our ABL Credit Facility in other assets on our consolidated balance sheets and amortize them over the contractual life of the related debt arrangement.

Repayment of the Term Loan—We are required to make principal repayments equal to 0.25% of the Term Loan principal amount as stated in the third amendment executed February 27, 2018 on the

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

last day of December, March, June, and September. We are also required to repay the term loan based on an annual calculation of excess cash flow, as defined in the agreement. As of September 28, 2019, no amount of excess cash flows was required to be repaid.

The Term Loan does not require us to comply with any financial covenants. The Term Loan contains customary events of default, including default upon the nonpayment of principal, interest, fees or other amounts, or the occurrence of a change of control. No event of default had occurred under the Term Loan as of September 28, 2019 or September 29, 2018.

Principal maturities for the Term Loan are as follows as of September 28, 2019 (in thousands):

2020	\$	10,426
2021		8,341
2022		8,341
2023		794,497
Total	\$	821,605

Repayment of the ABL Credit Facility—We are obligated to pay the lender a commitment fee of 0.25% per annum, payable quarterly in arrears. We are also obligated to pay a commission on all outstanding letters of credit as well as customary administrative, issuance, fronting, amendment, payment, and negotiation fees. No amounts are outstanding on the \$150.0 million ABL Credit Facility as of September 28, 2019 and September 29, 2018. The amount available excludes \$10.6 million and \$9.6 million of existing standby letters of credit as of September 28, 2019 and September 29, 2018, respectively.

The ABL Credit Facility does not require us to comply with any financial covenants. The ABL Credit Facility contains customary events of default, including default upon the nonpayment of principal, interest, fees or other amounts, or the occurrence of a change of control. No event of default had occurred under the ABL Credit Facility as of September 28, 2019 or September 29, 2018.

Repayment of the Senior Unsecured Notes—The Senior Unsecured Notes are guaranteed on a senior basis by us and all our present and future domestic wholly owned subsidiaries. Interest-only payments on the Senior Unsecured Notes are payable quarterly on January 10, April 10, July 10, and October 10 of each year. The Senior Unsecured Notes bear interest of 8.50% plus LIBOR, subject to a minimum rate of 1.00%. The Senior Unsecured Notes have restrictive covenants that limit the ability to, among other things, incur or guarantee additional indebtedness or issue preferred stock; pay dividends and make other restricted payments; incur restrictions on the payment of dividends or other distributions; create or incur certain liens; make certain investments; transfer or sell assets; engage in transactions with affiliates; and merge or consolidate with other companies or transfer all or substantially all of our assets.

The entire maturity of the Senior Unsecured Notes is due in 2024.

Representations and covenants—The Term Loan, Senior Unsecured Notes, and ABL Credit Facility contain customary representations and warranties, covenants, and conditions to borrowing. No event of default had occurred as of September 28, 2019 or September 29, 2018.

Substantially all of our assets are pledged as collateral to secure our indebtedness under our long-term debt agreements.

Interest Rate Cap Agreements

In March 2017, we entered into interest rate cap agreements in order to manage the variability of cash flows related to a portion of our floating rate indebtedness. Pursuant to the agreements, we have

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

capped LIBOR at 3.00% with respect to the aggregate notional amount of \$750.0 million through the expiration of the agreements in March 2021. In the event LIBOR exceeds 3.00% we will pay interest at the capped rate plus the applicable margin. In the event LIBOR is less than 3.00%, we will pay interest at the prevailing LIBOR rate plus the applicable margin.

The fair value of the interest rate cap agreements was zero and \$4.3 million as of September 28, 2019 and September 29, 2018, respectively, and is recorded in other assets on the consolidated balance sheets. We recognized a (loss) gain related to the interest rate cap agreements of \$(4.3) million and \$3.0 million in fiscal 2019 and 2018, respectively, which is recorded in other expenses in the consolidated statement of operations.

Note 9—Leases

We lease certain store, office, distribution, and manufacturing facilities under operating leases that expire at various dates through September 2031.

We are obligated to make cash payments in connection with various lease obligations and purchase commitments. All of these obligations require cash payments to be made by us over varying periods of time. Certain leases are renewable at our option for periods of one to ten years. Certain of these arrangements are cancelable on short notice and others require payments upon early termination.

Future annual minimum lease payments as of September 28, 2019, are as follows (in thousands):

2020	\$ 66,571
2021	57,868
2022	47,460
2023	35,490
2024	23,610
Thereafter	23,207
Total	<u>\$ 254,206</u>

Rent expense totaled \$63.6 million and \$59.9 million in fiscal 2019 and 2018, respectively.

Note 10—Income Taxes

The provision for income taxes comprises the following:

	(In thousands)	
	Fiscal 2019	Fiscal 2018
Current		
Federal	\$ 14,072	\$ 966
State	1,537	2,555
Total Current	<u>15,609</u>	<u>3,521</u>
Deferred		
Federal	(418)	2,752
State	(336)	(1,347)
Total Deferred	<u>(754)</u>	<u>1,405</u>
Total income tax provision	<u>\$ 14,855</u>	<u>\$ 4,926</u>

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

A reconciliation of the provision for income taxes to the amount computed at the federal statutory rate is as follows:

	(In thousands)	
	Fiscal 2019	Fiscal 2018
Federal income tax at statutory rate	\$ 3,198	\$ (190)
Permanent difference	286	27
Change in valuation allowance	11,060	5,738
State taxes, net of federal benefit	208	891
Federal rate change	—	(1,540)
Other	103	—
Total income tax provision	<u>\$ 14,855</u>	<u>\$ 4,926</u>

Our effective rate for fiscal 2019 was 103.7%. The increase in valuation allowance accounts for 72.6% of the overall effective rate. This increase is related to uncertainty about our ability to realize interest limitation carryforwards that have resulted from the impact of U.S. Tax Reform and the new provisions of Internal Revenue Code Section 163(j).

The Tax Cuts and Jobs Act (The Act) was enacted on December 22, 2017. The Act reduces the U.S. federal corporate tax rate from 35% to 21%, effective January 1, 2018, limits deductions for, among other things, interest expense and entertainment while enhancing deductions for equipment and other fixed assets. Our federal income tax at the statutory rate was a benefit in fiscal 2018, despite taxable income in fiscal 2018, due to the timing of The Act and the related decrease in corporate tax rate.

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and liabilities are summarized below.

As of	(In thousands)	
	September 28, 2019	September 29, 2018
Deferred tax assets:		
Compensation accruals	\$ 948	\$ 1,061
Deferred rent	1,228	1,427
Inventory	681	738
Interest limitation	17,886	5,738
Property, plant, and equipment	590	1,385
Total deferred tax assets	<u>21,333</u>	<u>10,349</u>
Deferred tax liabilities:		
Intangibles	(2,456)	(1,069)
Reserves and other accruals	(2,673)	(3,260)
Deferred financing cost	(646)	(1,337)
Total deferred tax liabilities	<u>(5,775)</u>	<u>(5,666)</u>
Valuation allowance	(16,798)	(5,738)
Deferred tax liabilities, net	<u>\$ (1,240)</u>	<u>\$ (1,055)</u>

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Management assesses the available positive and negative evidence to estimate if sufficient future taxable income will be generated to use the existing deferred tax assets. We are projecting future taxable income, however, the interest expense limitation passed in the Act created a deferred tax asset for the years ended September 28, 2019 and September 29, 2018, that we do not anticipate realizing in the immediate future. As of September 28, 2019 and September 29, 2018, we recorded a valuation allowance of \$16.8 million and \$5.7 million, respectively, for our U.S. deferred tax asset related to our interest expense limitation only.

Valuation Allowance consists of the following:

	Balance at Beginning of Period	Additions Charged to Costs and Expenses	Deductions	Balance at End of Period
	(In Thousands)			
Fiscal 2018	\$ —	\$ 5,738	\$ —	\$ 5,738
Fiscal 2019	\$ 5,738	\$ 11,060	\$ —	\$ 16,798

We are subject to U.S. federal and state taxes in the normal course of business and our income tax returns are subject examination by the relevant tax authorities. With few exceptions, we are no longer subject to U.S. federal examinations by taxing authorities for calendar years before 2016 and no longer subject to state examinations for calendar years before 2015.

We have not identified any material uncertain tax positions.

Note 11—Commitments & Contingencies

Contingencies

We are defendants in lawsuits or potential claims encountered in the normal course of business. When the potential liability from a matter can be estimated and the loss is considered probable, we record the estimated loss. Due to uncertainties related to the resolution of lawsuits, investigations and claims, the ultimate outcome may differ from the estimates. We do not expect that the resolutions of any of these matters will have a material effect on our consolidated financial position or results of operations. We did not record any material loss contingencies as of September 28, 2019 or as of September 29, 2018.

Our workers' compensation insurance program, general liability insurance program, and employee group medical plan have self-insurance retention features of \$0.4 million per event as of September 28, 2019 and September 29, 2018, respectively. We had standby letters of credit outstanding in the amounts of \$10.6 million and \$9.6 million as of September 28, 2019 and September 29, 2018, respectively, for the purpose of securing such obligations under our workers' compensation self-insurance programs.

Purchase Commitments

In addition to our lease obligations, we maintain future purchase commitments to ensure our inventory and operational requirements.

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Future minimum purchase commitments as of September 28, 2019 are as follows (in thousands):

2020	\$	89,919
2021		26,069
2022		—
2023		—
2024		—
Thereafter		—
Total	\$	<u>115,988</u>

Note 12—401(K) Plan

We provide for the benefit of our employees a voluntary defined contribution retirement plan under Section 401(k) of the Internal Revenue Code. The plan covers all eligible employees and provides for a matching contribution by us of 50% of each participant's contribution up to 4% of the individual's compensation as defined. The expenses related to this plan were \$1.0 million and \$1.1 million in fiscal 2019 and 2018, respectively.

Note 13—Related Party Transactions

In February 2017, we entered into a management services agreement with our private equity sponsors in connection with our acquisition in February 2017. The management services agreement provides that we will pay an annual fee for them to provide management and advisory services to us and our affiliates, including general management consulting services, support and analysis with respect to financing alternatives and strategic planning functions. During fiscal 2019 and 2018, we paid or accrued management fees in the amount of \$4.5 million and \$3.2 million, respectively.

In March 2013, we entered into an operating lease for our corporate headquarters with DM Ventures I, LLC. The former Chairman of our Board of Directors is one of the principals of DM Ventures I, LLC and holds a significant ownership position in the lessor entity. Aggregate rents paid to DM Ventures I, LLC for Leslie's corporate headquarters were \$1.6 million in fiscal 2019 and \$1.6 million in fiscal 2018, respectively.

Note 14—Equity-Based Compensation

Incentive Unit Grant Agreements

Our Parent has granted profits interests to our employees through Incentive Unit Grant Agreements. The units have economic characteristics similar to stock options and have the right to share in the appreciation of the equity value of our Parent. The sole asset of our Parent is indirect ownership of Leslie's, Inc. We concluded such units are classified as equity awards. The awards are spread over two tiers, a service-based (time) award tier and a performance-based award tier; the service-based awards vest over a four-year period at a rate of 25% annually on each anniversary of the date of grant. The performance-based awards vest based on performance conditions as defined in the Incentive Unit Grant Agreements. We recognized equity-based compensation on a straight-line basis for service-based awards.

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The fair value of the awards is estimated on the date of grant using the Black-Scholes option pricing model, which treats the Incentive Unit Grant Agreements as implicit call options with exercise prices determined based on their respective rights to participate in distributions. The Black-Scholes option pricing model requires the use of a number of assumptions, including expected volatility, risk-free interest rate, expected dividends, and expected term. Expected volatility is based on the historic volatility of a basket of certain publicly traded comparable companies. The expected term of the awards is equal to the vesting term and represents the estimated period of time until liquidity. The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant for the expected term of the unit. Our Parent does not intend to pay any dividends in the future to ultimate shareholders who hold the type of security subject to the unit arrangement. Due to the absence of a public market for our Parent's equity, the fair value of the profit interests has historically been determined by the General Partner of our Parent on each grant date.

For fiscal 2019 and 2018, we recognized \$2.1 million and \$1.8 million in compensation expense related to service-based Incentive Unit Grants. The performance-based Incentive Unit Grants were not deemed probable of achievement as of September 28, 2019 or September 29, 2018 and no expense has been recorded.

The fair value of Incentive Units granted was estimated at the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions. A summary of Incentive Unit activity and assumptions are as follows:

Fiscal Year Ended	September 28, 2019	September 29, 2018
Expected volatility	22.9%	21.0%
Risk-free interest rate	2.5%	2.2%
Dividend yield	0.0%	0.0%
Expected term (in years)	4.0	4.0
Weighted-average fair value per Incentive Unit granted	<u>\$ 1.69</u>	<u>\$ 1.54</u>

We granted 2,040,923 service-based Incentive Units and 1,360,615 performance-based Incentive Units during fiscal 2019. We granted 612,000 service-based Incentive Units and 408,000 performance-based Incentive Units during fiscal 2018.

A summary of Incentive Unit activity is as follows:

	Number of Incentive Units
Outstanding, September 30, 2017	7,841,743
Granted	1,020,000
Exercised	—
Forfeited	(915,750)
Outstanding, September 29, 2018	7,945,993
Granted	3,401,538
Exercised	—
Forfeited	(836,500)
Outstanding, September 28, 2019	<u>10,511,031</u>
Vested, September 29, 2018	1,163,512
Vested, September 28, 2019	<u>1,993,273</u>

LESLIE'S, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The amount of unrecognized equity-based compensation for unvested service-based Incentive Units was \$5.4 million as of September 28, 2019, which is expected to be recognized over approximately four years.

Note 15—Subsequent Events

In October 2019, we acquired a business for total consideration of \$6.2 million.

On August 13, 2020, we entered into Amendment No. 4, to extend the final maturity to the Credit Agreement (the Amendment). The Amendment provides us with a \$200 million asset based revolving credit facility (the ABL Credit Facility) and extends the final maturity to August 13, 2025. Amounts borrowed under the ABL Credit Facility are subject to interest at a rate per annum equal to, at the borrower's option, either (a) LIBOR plus a margin of 1.75% to 2.00%, and subject to a LIBOR floor of 0.75%, or (b) a base rate plus a margin of 0.75% to 1.00%, in each case depending on revolving line utilization. The ABL Credit Facility also contains customary covenants that provide for, among other things, limitations on indebtedness, liens, fundamental changes, restricted payments, and customary representations and warranties and events of default typical for credit facilities of this type.

We evaluated subsequent events through August 26, 2020, the date the consolidated financial statements were available to be issued.

40,000,000 Shares

Leslie's, Inc.

Common Stock

Preliminary Prospectus

Goldman Sachs & Co. LLC

Jefferies

Baird

Telsey Advisory Group

Guggenheim Securities

Loop Capital Markets

Morgan Stanley

Piper Sandler

Ramirez & Co., Inc.

BofA Securities

Nomura

William Blair

AmeriVet Securities

, 2020

Until , 2020, all dealers that buy, sell, or trade in our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

Estimated expenses, other than underwriting discounts and commissions, of the sale of our common stock, are as follows:

SEC registration fee	\$ 100,000
FINRA filing fee	100,000
Initial exchange listing fee	250,000
Legal fees and expenses	2,000,000
Accounting fees and expenses	2,000,000
Printing and engraving expenses	500,000
Blue Sky fees and expenses	30,000
Transfer agent and registrar fees	20,000
Miscellaneous expenses	1,000,000
Total	<u>\$ 6,000,000</u>

Item 14. Indemnification of Directors and Officers.

Limitation of Personal Liability of Directors and Indemnification

Section 102(b)(7) of the DGCL permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) under Section 174 of the DGCL (regarding, among other things, the payment of unlawful dividends or unlawful stock purchases or redemptions), or (4) for any transaction from which the director derived an improper personal benefit. Our second amended and restated certificate of incorporation will provide for such limitation of liability.

Section 145(a) of the DGCL empowers a corporation to indemnify any director, officer, employee or agent, or former director, officer, employee or agent, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), by reason of such person's service as a director, officer, employee or agent of the corporation, or such person's service, at the corporation's request, as a director, officer, employee or agent of another corporation or enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding; *provided* that such director or officer acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation and with respect to any criminal action or proceeding; and *provided, further*, that such director or officer had no reasonable cause to believe his conduct was unlawful.

Section 145(b) of the DGCL empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another enterprise, against expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit; *provided* that such director or officer acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification may be made in respect of any claim, issue or matter as to which such director or officer shall have been adjudged to be liable to the corporation, unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall

Table of Contents

determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such director or officer is fairly and reasonably entitled to indemnity for such expenses that the court shall deem proper. Notwithstanding the preceding sentence, except as otherwise provided in our bylaws, we shall be required to indemnify any such person in connection with a proceeding (or part thereof) commenced by such person only if the commencement of such proceeding (or part thereof) by any such person was authorized by the board of directors.

In addition, our second amended and restated certificate of incorporation will provide that we must indemnify our directors and officers to the fullest extent authorized by law. Under our bylaws, we are also expressly required to advance certain expenses to our directors and officers and we are permitted to, and currently intend to, carry directors' and officers' insurance providing indemnification for our directors and officers for some liabilities. We believe that these indemnification provisions and the directors' and officers' insurance are useful to attract and retain qualified directors and officers.

The proposed form of Underwriting Agreement filed as Exhibit 1.1 to this Registration Statement provides for indemnification of directors and officers of the Registrant by the underwriters against certain liabilities.

Item 15. Recent Sales of Unregistered Securities.

None.

Item 16. Exhibits and Financial Statement Schedules.

- (a) Exhibits: The list of exhibits set forth under "Exhibit Index" at the end of this Registration Statement is incorporated herein by reference.

Item 17. Undertakings.

- (i) The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreements, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.
- (ii) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.
- (iii) The undersigned registrant hereby undertakes that:
- (1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
 - (2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

EXHIBIT INDEX

<u>Number</u>	<u>Description</u>
1.1	Form of Underwriting Agreement
3.1**	Form of Second Amended and Restated Certificate of Incorporation, to be effective upon the completion of the offering
3.2**	Form of Amended and Restated Bylaws, to be effective upon the completion of this offering
4.1**	Indenture, dated as of August 16, 2016, by and among Leslie's Poolmart, Inc., Leslie's Holdings, Inc., the other guarantors party thereto and U.S. Bank National Association, as Trustee
4.2**	First Supplemental Indenture, dated as of October 26, 2016, by and among Leslie's Poolmart, Inc., Leslie's Holdings, Inc., the other guarantors party thereto and U.S. Bank National Association, as Trustee
4.3**	Second Supplemental Indenture, dated as of February 3, 2017, by and among Leslie's Poolmart, Inc., Leslie's Holdings, Inc., the other guarantors party thereto and U.S. Bank National Association, as Trustee
4.4##	Form of Registration Rights and Lock-up Agreement between Leslie's, Inc., Bubbles Investor Aggregator, L.P., Explorer Investment Pte. Ltd. and certain other investors
5.1	Opinion of Kirkland & Ellis LLP
10.1	Form of Indemnification Agreement between Leslie's, Inc. and its directors and officers
10.2###	2020 Omnibus Incentive Plan
10.3###	Form of Stock Option Agreement pursuant to 2020 Omnibus Incentive Plan
10.4###	Form of Restricted Stock Unit Agreement pursuant to 2020 Omnibus Incentive Plan
10.5###	Amended and Restated Employment Agreement, dated as of October 19, 2020, by and between Leslie's, Inc. and Michael R. Egeck
10.6###	Succession Agreement, dated as of October 20, 2020, by and among Leslie's Poolmart, Inc., Leslie's, Inc. and Steven L. Ortega
10.7###	Second Amended and Restated Employment Agreement, dated as of October 19, 2020, by and between Leslie's, Inc. and Steven M. Weddell
10.8###	Offer Letter, dated as of October 11, 2019, by and between Leslie's Poolmart, Inc. and Paula Baker
10.9###	Severance Plan, dated as of March 3, 2020, by and between Leslie's Poolmart, Inc. and Paula Baker
10.10###	Succession Agreement, dated as of October 19, 2020, by and among Leslie's Poolmart, Inc., Leslie's, Inc. and Eric Kufel
10.11###	Form of Director Designation Agreement, by and among Leslie's, Inc., Bubbles Investor Aggregator, L.P., and each other person that becomes party thereafter
10.12	Term Loan Credit Agreement, dated as of August 16, 2016, among Leslie's Poolmart, Inc., Leslie's Holdings, Inc., the lenders party thereto from time to time and Nomura Corporate Funding Americas, LLC, as administrative agent and as collateral agent

Table of Contents

<u>Number</u>	<u>Description</u>
10.13**	<u>Incremental Amendment No. 1, dated as of January 26, 2017, to the Term Loan Credit Agreement among Leslie's Poolmart, Inc., Leslie's Holdings, Inc., the lenders party thereto from time to time and Nomura Corporate Funding Americas, LLC, as administrative agent and as collateral agent</u>
10.14**	<u>Amendment No. 2, dated as of February 16, 2017, to the Term Loan Credit Agreement among Leslie's Poolmart, Inc., Leslie's Holdings, Inc., the lenders party thereto from time to time and Nomura Corporate Funding Americas, LLC, as administrative agent and as collateral agent</u>
10.15	<u>Amendment No. 3, dated as of February 27, 2018, to the Term Loan Credit Agreement among Leslie's Poolmart, Inc., Leslie's Holdings, Inc., the lenders party thereto from time to time and Nomura Corporate Funding Americas, LLC, as administrative agent and as collateral agent</u>
10.16**	<u>Credit Agreement entered into as of October 16, 2012, among Leslie's Poolmart, Inc. the subsidiary borrowers from time to time party thereto, Leslie's Holdings, Inc., each lender from time to time party thereto, Bank of America, N.A., as Administrative Agent, and U.S. Bank National Association, as Co-Collateral Agent</u>
10.17**	<u>Amendment No. 1, dated as of August 16, 2016, to the Credit Agreement among Leslie's Poolmart, Inc., the subsidiary borrowers from time to time party thereto, Leslie's Holdings, Inc., each lender from time to time party thereto, Bank of America, N.A., as Administrative Agent, and U.S. Bank National Association, as Co-Collateral Agent</u>
10.18	<u>Amendment No. 2, dated as of September 29, 2016, to the Credit Agreement among Leslie's Poolmart, Inc., the subsidiary borrowers from time to time party thereto, Leslie's Holdings, Inc., each lender from time to time party thereto, Bank of America, N.A., as Administrative Agent, and U.S. Bank National Association, as Co-Collateral Agent</u>
10.19**	<u>Amendment No. 3, dated as of January 13, 2017, to the Credit Agreement among Leslie's Poolmart, Inc., the subsidiary borrowers from time to time party thereto, Leslie's Holdings, Inc., each lender from time to time party thereto, Bank of America, N.A., as Administrative Agent, and U.S. Bank National Association, as Co-Collateral Agent</u>
10.20**	<u>Amendment No. 4, dated as of August 13, 2020, to the Credit Agreement among Leslie's Poolmart, Inc., the subsidiary borrowers from time to time party thereto, Leslie's Holdings, Inc., each lender from time to time party thereto, Bank of America, N.A., as Administrative Agent, and U.S. Bank National Association, as Co-Collateral Agent</u>
21.1**	<u>Subsidiaries of Registrant</u>
23.1	<u>Consent of Ernst & Young LLP</u>
23.2	<u>Consent of Kirkland & Ellis LLP (included in Exhibit 5.1)</u>
23.3**	<u>Consent of P.K. Data, Inc.</u>
24.1**	<u>Power of Attorney (included on signature page of this Registration Statement)</u>

** Previously filed.

Indicates management contract or compensatory plan.

Certain portions of this document have been omitted in accordance with Regulation S-K Item 601(b)(10).

Leslie's, Inc.
Common Stock

Underwriting Agreement

[•], 2020

Goldman Sachs & Co. LLC
Morgan Stanley & Co. LLC
BofA Securities, Inc.

As representatives (the "Representatives") of the several Underwriters
named in Schedule I hereto,

c/o Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282

c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

c/o BofA Securities, Inc.
One Bryant Park
New York, New York 10036

Ladies and Gentlemen:

Leslie's, Inc., a Delaware corporation (the "Company"), proposes, subject to the terms and conditions stated in this agreement (this "Agreement"), to issue and sell to the Underwriters named in Schedule I hereto (the "Underwriters") an aggregate of 30,000,000 shares, par value \$0.001 per share ("Stock") of the Company and the stockholder of the Company named in Schedule II hereto (the "Selling Stockholder") proposes, subject to the terms and conditions stated in this Agreement, to sell to the Underwriters an aggregate of 10,000,000 shares and, at the election of the Underwriters, up to 6,000,000 additional shares of Stock. The 40,000,000 shares to be issued and sold by the Company and the Selling Stockholder are herein called the "Firm Shares" and the 6,000,000 additional shares to be issued and sold by the Selling Stockholder are herein called the "Optional Shares". The Firm Shares and the Optional Shares that the Underwriters elect to purchase pursuant to Section 2 hereof are herein collectively called the "Shares".

The Company and the Underwriters, in accordance with the requirements of Rule 5121 ("Rule 5121") of Financial Industry Regulatory Authority Inc. ("FINRA") and subject to the terms and conditions stated herein, also hereby confirm the engagement of the services of Morgan Stanley & Co. LLC as a "qualified independent underwriter" (the "QIU") within the meaning of Rule 5121 in connection with the offering and sale of the Shares. No compensation will be paid to the QIU for its services.

1. (a) The Company represents and warrants to, and agrees with, each of the Underwriters that:

(i) A registration statement on Form S-1 (File No. 333-249372) (the “Initial Registration Statement”) in respect of the Shares has been filed with the Securities and Exchange Commission (the “Commission”); the Initial Registration Statement and any post-effective amendment thereto, each in the form heretofore delivered to you, have been declared effective by the Commission in such form; other than a registration statement, if any, increasing the size of the offering (a “Rule 462(b) Registration Statement”), filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended (the “Act”), which became effective upon filing, no other document with respect to the Initial Registration Statement has been filed with the Commission; and no stop order suspending the effectiveness of the Initial Registration Statement, any post-effective amendment thereto or the Rule 462(b) Registration Statement, if any, has been issued and no proceeding for that purpose has been initiated or, to the Company’s knowledge, threatened by the Commission (any preliminary prospectus included in the Initial Registration Statement or filed with the Commission pursuant to Rule 424(a) under the Act is hereinafter called a “Preliminary Prospectus”; the various parts of the Initial Registration Statement and the Rule 462(b) Registration Statement, if any, including all exhibits thereto and including the information contained in the form of final prospectus filed with the Commission pursuant to Rule 424(b) under the Act in accordance with Section 5(a) hereof and deemed by virtue of Rule 430A under the Act to be part of the Initial Registration Statement at the time it was declared effective, each as amended at the time such part of the Initial Registration Statement became effective or such part of the Rule 462(b) Registration Statement, if any, became or hereafter becomes effective, are hereinafter collectively called the “Registration Statement”; the Preliminary Prospectus relating to the Shares that was included in the Registration Statement immediately prior to the Applicable Time (as defined in Section 1(a)(iii) hereof) is hereinafter called the “Pricing Prospectus”; such final prospectus, in the form first filed pursuant to Rule 424(b) under the Act, is hereinafter called the “Prospectus”; any oral or written communication with potential investors undertaken in reliance on Section 5(d) of the Act or Rule 163B under the Act is hereinafter called a “Testing-the-Waters Communication”; and any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Act is hereinafter called a “Written Testing-the-Waters Communication”; and any “issuer free writing prospectus” as defined in Rule 433 under the Act relating to the Shares is hereinafter called an “Issuer Free Writing Prospectus”);

(ii) (A) No order preventing or suspending the use of any Preliminary Prospectus or any Issuer Free Writing Prospectus has been issued by the Commission, and (B) each Preliminary Prospectus, at the time of filing thereof, conformed in all material respects to the requirements of the Act and the rules and regulations of the Commission thereunder, and did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with the Underwriter Information (as defined in Section 9(b) of this Agreement);

(iii) For the purposes of this Agreement, the “Applicable Time” is [•] [a.m./p.m.] (Eastern time) on the date of this Agreement; the Pricing Prospectus, as supplemented by the information listed on Schedule III(c) hereto, taken together (collectively, the “Pricing Disclosure Package”), as of the Applicable Time, did not, and as of each Time of Delivery (as defined in Section 4(a) of this Agreement) will not, include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and each Issuer Free Writing Prospectus and

each Written Testing-the-Waters Communication does not conflict with the information contained in the Registration Statement, the Pricing Prospectus or the Prospectus, and each Issuer Free Writing Prospectus and each Written Testing-the-Waters Communication, as supplemented by and taken together with the Pricing Disclosure Package, as of the Applicable Time, did not, and as of each Time of Delivery, will not, include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not apply to statements or omissions made in reliance upon and in conformity with the Underwriter Information;

(iv) No documents were filed with the Commission since the Commission's close of business on the business day immediately prior to the date of this Agreement and prior to the execution of this Agreement, except as set forth on Schedule III(b) hereto;

(v) The Registration Statement conforms, and the Prospectus and any further amendments or supplements to the Registration Statement and the Prospectus will conform, in all material respects to the requirements of the Act and the rules and regulations of the Commission thereunder and do not and will not, as of the applicable effective date as to each part of the Registration Statement, as of the applicable filing date as to the Prospectus and any amendment or supplement thereto, and as of each Time of Delivery, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, however, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with the Underwriter Information;

(vi) Neither the Company nor any of its subsidiaries has, since the date of the latest audited financial statements included in the Pricing Prospectus, (i) sustained any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree or (ii) entered into any transaction or agreement (whether or not in the ordinary course of business) that is material to the Company and its subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Company and its subsidiaries taken as a whole, in each case otherwise than as set forth or contemplated in the Pricing Prospectus; and, since the respective dates as of which information is given in the Registration Statement and the Pricing Prospectus, there has not been (A) any change in the capital stock (other than as a result of (x) the exercise, if any, of stock options or the award, if any, of stock options or restricted stock in the ordinary course of business pursuant to the Company's equity plans that are described in the Pricing Prospectus and the Prospectus or (y) the issuance, if any, of stock upon conversion of Company securities as described in the Pricing Prospectus and the Prospectus) or long-term debt of the Company or any of its subsidiaries or (B) any Material Adverse Effect (as defined below); as used in this Agreement, "Material Adverse Effect" shall mean any material adverse change or effect, or any development involving a prospective material adverse change or effect, in or affecting (x) the business, properties, general affairs, prospects, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries, taken as a whole, except as set forth or contemplated in the Pricing Prospectus, or (y) the ability of the Company to perform its obligations under this Agreement, including the issuance and sale of the Shares, or to consummate the transactions contemplated in the Pricing Prospectus and the Prospectus;

(vii) The Company and its subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects except such as are described in the Pricing Prospectus or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and its subsidiaries; and any real property and buildings held under lease by the Company and its subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not materially interfere with the use made and proposed to be made of such property and buildings by the Company and its subsidiaries;

(viii) Each of the Company and each of its subsidiaries has been (i) duly organized and is validly existing and in good standing under the laws of its jurisdiction of organization, with power and authority (corporate and other) to own its properties and conduct its business as described in the Pricing Prospectus, and (ii) duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except, in the case of this clause (ii), where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Material Adverse Effect; and each subsidiary of the Company has been listed in the Registration Statement;

(ix) The Company has an authorized capitalization as set forth in the Pricing Prospectus and all of the issued shares of capital stock of the Company, including the Shares to be sold by the Selling Stockholder, have been duly and validly authorized and issued and are fully paid and non-assessable and conform, in all material respects, to the description of the Stock contained in the Pricing Disclosure Package and the Prospectus; and all of the issued shares of capital stock of each subsidiary of the Company have been duly and validly authorized and issued, are fully paid and non-assessable and (except, in the case of any foreign subsidiary, for directors' qualifying shares) are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims, except for such liens or encumbrances described in the Pricing Prospectus and the Prospectus;

(x) The Shares to be issued and sold by the Company have been duly and validly authorized and, when issued and delivered against payment therefor as provided herein, will be duly and validly issued and fully paid and non-assessable and will conform, in all material respects, to the description of the Stock contained in the Pricing Disclosure Package and the Prospectus; and the issuance of the Shares is not subject to any preemptive or similar rights;

(xi) The issue and sale of the Shares to be sold by the Company and the compliance by the Company with this Agreement and the consummation of the transactions contemplated in this Agreement and the Pricing Prospectus will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, (A) any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, except, in the case of this clause (A) for such defaults, breaches, or violations that would not, individually or in the aggregate, have a Material Adverse Effect, (B) the certificate of incorporation or by-laws (or other applicable organizational document) of the Company or any of its subsidiaries, or (C) any statute or any judgment, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties, except in the case of this clause (C), as would not, individually or in the

aggregate, have a Material Adverse Effect; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue of the Shares to be sold by the Company and the sale of the Shares or the consummation by the Company of the transactions contemplated by this Agreement, except such as have been obtained under the Act, the approval by FINRA of the underwriting terms and arrangements and such consents, approvals, authorizations, orders, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Shares by the Underwriters;

(xii) Neither the Company nor any of its subsidiaries is (i) in violation of its certificate of incorporation or by-laws (or other applicable organization document), (ii) in violation of any statute or any judgment, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties, or (iii) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, except, in the case of the foregoing clauses (ii) and (iii), for such defaults as would not, individually or in the aggregate, have a Material Adverse Effect;

(xiii) The statements set forth in the Pricing Prospectus and the Prospectus under the caption "Description of Capital Stock", insofar as they purport to constitute a summary of the terms of the Stock, are accurate, complete and fair in all material respects;

(xiv) The statements set forth in the Pricing Prospectus and the Prospectus under the caption "Certain Material United States Federal Income Tax Considerations", insofar as such statements constitute a summary of the legal matters or documents referred to therein, are accurate in all material respects;

(xv) Other than as set forth in the Pricing Prospectus, there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries or, to the Company's knowledge, any officer or director of the Company is a party or of which any property or assets of the Company or any of its subsidiaries or, to the Company's knowledge, any officer or director of the Company is the subject which, if determined adversely to the Company or any of its subsidiaries (or such officer or director), would individually or in the aggregate have a Material Adverse Effect; and, to the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or others;

(xvi) The Company is not and, immediately after giving effect to the offering and sale of the Shares and the application of the proceeds thereof, will not be required to register as an "investment company", as such term is defined in the Investment Company Act of 1940, as amended (the "Investment Company Act");

(xvii) At the time of filing the Initial Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or any offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) under the Act) of the Shares, and at the date hereof, the Company was not and is not an "ineligible issuer," as defined in Rule 405 under the Act;

(xviii) Ernst & Young LLP, who have certified certain financial statements of the Company and its subsidiaries, are independent public accountants as required by the Act and the rules and regulations of the Commission thereunder;

(xix) The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)) that (i) complies with the requirements of the Exchange Act, (ii) has been designed by the Company’s principal executive officer and principal financial officer, or under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and (iii) is sufficient to provide reasonable assurance that (A) transactions are executed in accordance with management’s general or specific authorization, (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets, (C) access to assets is permitted only in accordance with management’s general or specific authorization and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and the Company’s internal control over financial reporting is effective and the Company is not aware of any material weaknesses in its internal control over financial reporting;

(xx) Since the date of the latest audited financial statements included in the Pricing Prospectus, there has been no change in the Company’s internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting;

(xxi) The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) under the Exchange Act) that comply with the requirements of the Exchange Act; such disclosure controls and procedures have been designed to ensure that material information relating to the Company and its subsidiaries is made known to the Company’s principal executive officer and principal financial officer by others within those entities; and such disclosure controls and procedures are effective;

(xxii) This Agreement has been duly authorized, executed and delivered by the Company;

(xxiii) None of the Company or any of its subsidiaries or any director or officer of the Company or any of its subsidiaries nor, to the knowledge of the Company, any employee, agent, affiliate or other person associated with or acting on behalf of the Company or any of its subsidiaries has (i) made, offered, promised or authorized any unlawful contribution, gift, entertainment or other unlawful expense (or taken any act in furtherance thereof); (ii) made, offered, promised or authorized any direct or indirect unlawful payment; or (iii) violated or is in violation of any provision of the Foreign Corrupt Practices Act of 1977, the Bribery Act 2010 of the United Kingdom or any other applicable anti-bribery or anti-corruption law;

(xxiv) The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with the requirements of applicable anti-money laundering laws, including, but not limited to, the Bank Secrecy Act of 1970, as amended by the USA PATRIOT ACT of 2001, and the rules and regulations promulgated thereunder, and the anti-money laundering laws of the various jurisdictions in which the Company and its subsidiaries conduct business (collectively, the “Money Laundering Laws”) and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened;

(xxv) (A) None of the Company or any of its subsidiaries or any director or officer of the Company or any of its subsidiaries nor, to the knowledge of the Company, any employee, agent or affiliate of the Company or any of its subsidiaries is an individual or entity (“Person”) currently the subject or the target of any sanctions administered or enforced by the U.S. Government, including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”), or the U.S. Department of State and including, without limitation, the designation as a “specially designated national” or “blocked person,” the European Union, Her Majesty’s Treasury, the United Nations Security Council, or other relevant sanctions authority (collectively, “Sanctions”), nor is the Company or any of its subsidiaries located, organized, or resident in a country or territory that is the subject or target of Sanctions, and the Company will not directly or indirectly use the proceeds of the offering of the Shares hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person, or in any country or territory, that, at the time of such funding, is the subject or the target of Sanctions or (ii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions; and (B) for the past five years, the Company or any of its subsidiaries have not knowingly engaged in, and are not, as of the date of this Agreement, knowingly engaged in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject or target of Sanctions;

(xxvi) The financial statements included in the Registration Statement, the Pricing Prospectus and the Prospectus, together with the related schedules and notes, present fairly in all material respects the financial position of the Company and its subsidiaries at the dates indicated and the statement of operations, stockholders’ equity and cash flows of the Company and its subsidiaries for the periods specified; said financial statements have been prepared in conformity with U.S. generally accepted accounting principles (“GAAP”) applied on a consistent basis throughout the periods involved. The supporting schedules, if any, present fairly in all material respects in accordance with GAAP the information required to be stated therein. The selected financial data and the summary financial information included in the Registration Statement, the Pricing Prospectus and the Prospectus present fairly in all material respects the information shown therein and have been compiled on a basis consistent with that of the audited financial statements included therein. Except as included therein, no historical or pro forma financial statements or supporting schedules are required to be included in the Registration Statement, the Pricing Prospectus or the Prospectus under the Act or the rules and regulations promulgated thereunder. All disclosures contained in the Registration Statement, the Pricing Prospectus and the Prospectus regarding “non-GAAP financial measures” (as such term is defined by the rules and regulations of the Commission) comply with Regulation G of the Exchange Act and Item 10 of Regulation S-K of the Act in all material respects, to the extent applicable;

(xxvii) Any statistical and market-related data included in the Pricing Prospectus and the Prospectus are based on or derived from sources that the Company reasonably believes to be reliable and accurate and, to the extent required, the Company has obtained the written consent to the use of such data from such sources;

(xxviii) Except as would not, in the aggregate, reasonably be expected to result in a Material Adverse Effect, (A) the Company and its subsidiaries own or possess, or can acquire on reasonable terms, adequate patents, patent rights, licenses, inventions, copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), trademarks, service marks, trade names or

other intellectual property (collectively, “Intellectual Property”) necessary to carry on the business now operated by them, and (B) neither the Company nor any of its subsidiaries has received any notice or is otherwise aware of any infringement of or conflict with asserted rights of others with respect to any Intellectual Property or of any facts or circumstances which would render any Intellectual Property invalid or inadequate to protect the interest of the Company or any of its subsidiaries therein;

(xxvix) (A) The minimum funding standard under Sections 412 and 430 of the Internal Revenue Code of 1986, as amended (the “Code”) and Sections 302 and 303 of the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (“ERISA”), has been satisfied by each “pension plan” (as defined in Section 3(2) of ERISA) that has been established or maintained by the Company, its subsidiaries and their ERISA Affiliates (as defined below); (B) each of the Company and its subsidiaries has fulfilled its obligations, if any, under Section 515 of ERISA; (C) each pension plan and welfare plan established or maintained by the Company and its Subsidiaries is in compliance with the currently applicable provisions of ERISA; (D) the fair market value of the assets under each pension plan established or maintained by the Company and its subsidiaries exceeds the present value of all benefits accrued under such pension plan (determined based on those assumptions used to fund such pension plan); (E) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred with respect to any pension plan established or maintained by the Company and its subsidiaries excluding transactions effected pursuant to a statutory or administrative exemption; and (F) none of the Company and its subsidiaries has incurred or, except as set forth or contemplated in the Pricing Prospects and the Prospectus, would reasonably be expected to incur any withdrawal liability under Section 4201 of ERISA, any liability under Section 4062, 4063, or 4064 of ERISA, or any other liability under Title IV of ERISA (other than contributions to pension plans or premiums to the Pension Benefit Guaranty Corporation, in the ordinary course and without default); except, in each case with respect to clauses (A) through (F) hereof, as would not reasonably be expected to result in a Material Adverse Effect. “ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Company, could be deemed a “single employer” within the meaning of Section 4001(b)(1) of ERISA or within the meaning of Section 414(b), (c), (m) or (o) of the Code, and the regulations issued thereunder;

(xxx) (A)(x) To the Company’s knowledge, there has been no security breach or attack or other compromise of or relating to any of the Company’s and its subsidiaries’ information technology and computer systems, networks, hardware, software, data (including the data of their respective customers, employees, suppliers, vendors and any third party data maintained by or on behalf of them), equipment or technology (“IT Systems and Data”), except as set forth in the Pricing Prospectus and the Prospectus and (y) the Company and its subsidiaries have not been notified of, and have no knowledge of any event or condition that would reasonably be expected to result in, any security breach, attack or compromise to their IT Systems and Data, (B) the Company and its subsidiaries have complied, and are presently in compliance, with, all applicable laws, statutes or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority and all industry guidelines, standards, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification and (C) the Company and its subsidiaries have implemented backup and disaster recovery technology consistent with industry standards and practices, except, in each case with respect to clauses (A) through (C) hereof, as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect;

(xxxi) From the time of initial confidential submission of a registration statement relating to the Shares with the Commission through the date hereof, the Company has been and is an “emerging growth company” as defined in Section 2(a)(19) of the Act (an “Emerging Growth Company”).

(b) The Selling Stockholder represents and warrants to, and agrees with, each of the Underwriters and the Company that:

(i) All consents, approvals, authorizations and orders necessary for the execution and delivery by the Selling Stockholder of this Agreement and for the sale and delivery of the Shares to be sold by the Selling Stockholder hereunder, have been obtained, except for such consents, approvals, authorizations and orders as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Shares by the Underwriters, the approval of the underwriting terms and arrangements by FINRA or the approval for listing on Nasdaq Global Market (the “Exchange”) and except where the failure to obtain any such consent, approval, authorization or order would not reasonably be expected, individually or in the aggregate, to have a material adverse effect on the ability of such Selling Stockholder to consummate the transactions contemplated by this Agreement; and the Selling Stockholder has full right, power and authority to enter into this Agreement and to sell, assign, transfer and deliver the Shares to be sold by the Selling Stockholder hereunder;

(ii) The sale of the Shares to be sold by the Selling Stockholder hereunder and the compliance by the Selling Stockholder with this Agreement and the consummation of the transactions herein and therein contemplated will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any statute, indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the Selling Stockholder is a party or by which the Selling Stockholder is bound or to which any of the property or assets of the Selling Stockholder is subject, nor will such action result in any violation of the provisions of the Certificate of Limited Partnership or Limited Partnership Agreement of the Selling Stockholder (or similar applicable organizational document) or any statute or any judgment, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Selling Stockholder or any of its subsidiaries or any property or assets of the Selling Stockholder, except for any such conflict, breach, violation or default that would not, individually or in the aggregate, affect the validity of the Shares to be sold by the Selling Stockholder or reasonably be expected to materially impair the ability of the Selling Stockholder to consummate the transactions contemplated by this Agreement; and no consent, approval, authorization, order, registration or qualification of or with any such court or governmental body or agency is required for the performance by the Selling Stockholder of its obligations under this Agreement and the consummation by the Selling Stockholder of the transactions contemplated by this Agreement in connection with the Shares to be sold by the Selling Stockholder hereunder, except the registration under the Act of the Shares and such consents, approvals, authorizations, orders, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Shares by the Underwriters or such that, if not obtained, would not, individually or in the aggregate, affect the validity of the Shares to be sold by the Selling Stockholder or reasonably be expected to materially adversely affect the ability of the Selling Stockholder to consummate the transactions contemplated by this Agreement;

(iii) The Selling Stockholder has, and immediately prior to each Time of Delivery (as defined in Section 4 hereof) the Selling Stockholder will have, good and valid title to, or a valid "security entitlement" within the meaning of Section 8-501 of the New York Uniform Commercial Code in respect of, the Shares to be sold by the Selling Stockholder hereunder at such Time of Delivery, free and clear of all liens, encumbrances, equities or claims; and, upon delivery of such Shares and payment therefor pursuant hereto, good and valid title to such Shares, free and clear of all liens, encumbrances, equities or claims, will pass to the several Underwriters;

(iv) On or prior to the date of the Pricing Prospectus, the Selling Stockholder has executed and delivered to the Underwriters an agreement substantially in the form of Annex II hereto.

(v) The Selling Stockholder has not taken and will not take, directly or indirectly, any action that is designed to or that has constituted or might reasonably be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares;

(vi) To the extent that any statements or omissions made in the Registration Statement, any Preliminary Prospectus, the Prospectus or any amendment or supplement thereto are made in reliance upon and in conformity with written information furnished to the Company in writing by the Selling Stockholder pursuant to Items 7 and 11(m) of Form S-1 expressly for use therein, such Registration Statement and Preliminary Prospectus did, and the Prospectus and any further amendments or supplements to the Registration Statement and the Prospectus will, when they become effective or are filed with the Commission, as the case may be, conform in all material respects to the requirements of the Act and the rules and regulations of the Commission thereunder and not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, it being understood and agreed for the purposes of this Agreement, the Selling Stockholder Information for such Selling Stockholder consists only of (A) such Selling Stockholder's legal name, address and Stock beneficially owned by such Selling Stockholder before and after the offering contemplated hereby and (B) the other information with respect to such Selling Stockholder (excluding percentages) which appear under the caption "Principal and Selling Stockholders" in the Preliminary Prospectus;

(vii) In order to document the Underwriters' compliance with the reporting and withholding provisions of the Tax Equity and Fiscal Responsibility Act of 1982 with respect to the transactions herein contemplated, the Selling Stockholder will deliver to you prior to or at the First Time of Delivery a properly completed and executed United States Treasury Department Form W-9 (or other applicable form or statement specified by Treasury Department regulations in lieu thereof);

(viii) The Selling Stockholder will not directly or indirectly use the proceeds of the offering of the Shares hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, (i) to fund or facilitate any activities of or business with any person, or in any country or territory, that, at the time of such funding, is the subject or the target of Sanctions, or in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions, or (ii) 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 any Money Laundering Laws or any applicable anti-bribery or anti-corruption laws; and

(x) The Selling Stockholder represents and warrants that it is not (i) an employee benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), (ii) a plan or account subject to Section 4975 of the Internal Revenue Code of 1986, as amended or (iii) an entity deemed to hold "plan assets" of any such plan or account under Section 3(42) of ERISA, 29 C.F.R. 2510.3-101, or otherwise.

2. Subject to the terms and conditions herein set forth, (a) the Company agrees to issue and sell and the Selling Stockholder agrees to sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Company and the Selling Stockholder, at a purchase price per share of \$[*], the number of Firm Shares (to be adjusted by you so as to eliminate fractional shares) determined by multiplying the aggregate number of Firm Shares to be sold by the Company and the Selling Stockholder as set forth opposite their respective names in Schedule II hereto by a fraction, the numerator of which is the aggregate number of Firm Shares to be purchased by such Underwriter as set forth opposite the name of such Underwriter in Schedule I hereto and the denominator of which is the aggregate number of Firm Shares to be purchased by all of the Underwriters from the Company and the Selling Stockholder hereunder and (b) in the event and to the extent that the Underwriters shall exercise the election to purchase Optional Shares as provided below, the Selling Stockholder, as and to the extent indicated in Schedule II hereto, agrees to sell to each of the Underwriters, and each of the Underwriters agrees, severally and not jointly, to purchase from the Selling Stockholder, at the purchase price per share set forth in clause (a) of this Section 2 (provided that the purchase price per Optional Share shall be reduced by an amount per share equal to any dividends or distributions declared by the Company and payable on the Firm Shares but not payable on the Optional Shares), that portion of the number of Optional Shares as to which such election shall have been exercised (to be adjusted by you so as to eliminate fractional shares) determined by multiplying such number of Optional Shares by a fraction, the numerator of which is the maximum number of Optional Shares which such Underwriter is entitled to purchase as set forth opposite the name of such Underwriter in Schedule I hereto and the denominator of which is the maximum number of Optional Shares that all of the Underwriters are entitled to purchase hereunder.

The Selling Stockholder, as and to the extent indicated in Schedule II hereto, hereby grants to the Underwriters the right to purchase at their election up to [*] Optional Shares, at the purchase price per share set forth in the paragraph above, for the sole purpose of covering sales of shares in excess of the number of Firm Shares, provided that the purchase price per Optional Share shall be reduced by an amount per share equal to any dividends or distributions declared by the Company and payable on the Firm Shares but not payable on the Optional Shares. Any such election to purchase Optional Shares may be exercised only by written notice from you to the Company, given within a period of 30 calendar days after the date of this Agreement and setting forth the aggregate number of Optional Shares to be purchased and the date on which such Optional Shares are to be delivered, as determined by you but in no event earlier than the First Time of Delivery (as defined in Section 4 hereof) or, unless you and the Company otherwise agree in writing, earlier than two or later than ten business days after the date of such notice.

3. Upon the authorization by you of the release of the Firm Shares, the several Underwriters propose to offer the Firm Shares for sale upon the terms and conditions set forth in the Prospectus.

4. (a) The Shares to be purchased by each Underwriter hereunder, in definitive or book-entry form, and in such authorized denominations and registered in such names as the Representatives may request upon at least forty-eight hours' prior notice to the Company and the Selling Stockholder shall be delivered by or on behalf of the Company and the Selling Stockholder to the Representatives, through the facilities of the Depository Trust Company ("DTC"), for the account of such Underwriter,

against payment by or on behalf of such Underwriter of the purchase price therefor by wire transfer of Federal (same-day) funds to the accounts specified by the Company to the Representatives at least forty-eight hours in advance. The time and date of such delivery and payment shall be, with respect to the Firm Shares, 9:30 a.m., New York time, on [•], 2020 or such other time and date as the Representatives and the Company may agree upon in writing, and, with respect to the Optional Shares, 9:30 a.m., New York time, on the date specified by the Representatives in each written notice given by the Representatives of the Underwriters' election to purchase such Optional Shares, or such other time and date as the Representatives and the Company may agree upon in writing. Such time and date for delivery of the Firm Shares is herein called the "First Time of Delivery", each such time and date for delivery of the Optional Shares, if not the First Time of Delivery, is herein called the "Second Time of Delivery", and each such time and date for delivery is herein called a "Time of Delivery".

(b) The documents to be delivered at each Time of Delivery by or on behalf of the parties hereto pursuant to Section 8 hereof, including the cross receipt for the Shares and any additional documents requested by the Underwriters pursuant to Section 8(l) hereof will be delivered at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, New York, 10022 (the "Closing Location"), and the Shares will be delivered at the Designated Office, all at such Time of Delivery. A meeting will be held at the Closing Location at [•] p.m., New York City time, on the New York Business Day next preceding such Time of Delivery, at which meeting the final drafts of the documents to be delivered pursuant to the preceding sentence will be available for review by the parties hereto. For the purposes of this Section 4, "New York Business Day" shall mean each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in New York are generally authorized or obligated by law or executive order to close.

5. The Company agrees with each of the Underwriters:

(a) To prepare the Prospectus in a form approved by you and to file such Prospectus pursuant to Rule 424(b) under the Act not later than the Commission's close of business on the second business day following the execution and delivery of this Agreement, or, if applicable, such earlier time as may be required by Rule 430A(a)(3) under the Act; to make no further amendment or any supplement to the Registration Statement or the Prospectus prior to the last Time of Delivery which shall be disapproved by you promptly after reasonable notice thereof; to advise you, promptly after it receives notice thereof, of the time when any amendment to the Registration Statement has been filed or becomes effective or any amendment or supplement to the Prospectus has been filed and to furnish you with copies thereof; to file promptly all material required to be filed by the Company with the Commission pursuant to Rule 433(d) under the Act; to advise you, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or other prospectus in respect of the Shares, of the suspension of the qualification of the Shares for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or the Prospectus or for additional information; and, in the event of the issuance of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or other prospectus or suspending any such qualification, to promptly use its best efforts to obtain the withdrawal of such order;

(b) Promptly from time to time to take such action as you may reasonably request to qualify the Shares for offering and sale under the securities laws of such jurisdictions as you may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Shares, provided that in connection therewith the Company shall not be required to qualify as a foreign corporation (where not otherwise required) or to file a general consent to service of process in any jurisdiction (where not otherwise required);

(c) Prior to 10:00 a.m., New York City time, on the New York Business Day next succeeding the date of this Agreement and from time to time, to furnish the Underwriters with written and electronic copies of the Prospectus in New York City in such quantities as you may reasonably request, and, if the delivery of a prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the Act) is required at any time prior to the expiration of nine months after the time of issue of the Prospectus in connection with the offering or sale of the Shares and if at such time any event shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the Act) is delivered, not misleading, or, if for any other reason it shall be necessary during such same period to amend or supplement the Prospectus in order to comply with the Act, to notify you and upon your request to prepare and furnish without charge to each Underwriter and to any dealer in securities as many written and electronic copies as you may from time to time reasonably request of an amended Prospectus or a supplement to the Prospectus which will correct such statement or omission or effect such compliance; and in case any Underwriter is required to deliver a prospectus (or in lieu thereof, the notice referred to in Rule 173(a) under the Act) in connection with sales of any of the Shares at any time nine months or more after the time of issue of the Prospectus, upon your request but at the expense of such Underwriter, to prepare and deliver to such Underwriter as many written and electronic copies as you may request of an amended or supplemented Prospectus complying with Section 10(a)(3) of the Act;

(d) To make generally available to its securityholders as soon as practicable (which may be satisfied by filing with the Commission's Electronic Data Gathering Analysis and Retrieval System ("EDGAR")), but in any event not later than sixteen months after the effective date of the Registration Statement (as defined in Rule 158(c) under the Act), an earnings statement of the Company and its subsidiaries (which need not be audited) complying with Section 11(a) of the Act and the rules and regulations of the Commission thereunder (including, at the option of the Company, Rule 158);

(e) (i) During the period beginning from the date hereof and continuing to and including the date 180 days after the date of the Prospectus (the "Lock-Up Period"), not to (A) offer, sell, contract to sell, pledge, grant any option to purchase, make any short sale or otherwise transfer or dispose of, directly or indirectly, or file with or confidentially submit to the Commission a registration statement under the Act relating to, any securities of the Company that are substantially similar to the Shares, including but not limited to any options or warrants to purchase shares of Stock or any securities that are convertible into or exchangeable for, or that represent the right to receive, Stock or any such substantially similar securities, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing or (B) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Stock or any such other securities, whether any such transaction described in clause (A) or (B) above is to be settled by delivery of Stock or such other securities, in cash or otherwise (other than the Shares to be sold hereunder or pursuant to employee stock option plans existing on, or upon the conversion or exchange of convertible or exchangeable securities outstanding as of, the date of this Agreement), without the prior written consent of the Representatives; and

(ii) If the Representatives, in their sole discretion, agree to release or waive the restrictions in lock-up letters pursuant to Section 1(b)(iv) or Section 8(j) hereof, in each case for an officer or director of the Company, and provides the Company with notice of the impending release or waiver at least three business days before the effective date of the release or waiver, the Company agrees to announce the impending release or waiver by a press release substantially in the form of Annex I hereto through a major news service at least two business days before the effective date of the release or waiver;

(f) To furnish to its stockholders as soon as practicable after the end of each fiscal year an annual report (including a balance sheet and statements of income, stockholders' equity and cash flows of the Company and its consolidated subsidiaries certified by independent public accountants) and, as soon as practicable after the end of each of the first three quarters of each fiscal year (beginning with the fiscal quarter ending after the effective date of the Registration Statement), to make available to its stockholders consolidated summary financial information of the Company and its subsidiaries for such quarter in reasonable detail, provided, however, that the Company may satisfy the requirements of this Section 5(f) by filing such information through EDGAR;

(g) During a period of three years from the effective date of the Registration Statement, to furnish to you copies of all reports or other communications (financial or other) furnished to stockholders, and to deliver to you (i) as soon as they are available, copies of any reports and financial statements furnished to or filed with the Commission or any national securities exchange on which any class of securities of the Company is listed; and (ii) such additional information concerning the business and financial condition of the Company as you may from time to time reasonably request (such financial statements to be on a consolidated basis to the extent the accounts of the Company and its subsidiaries are consolidated in reports furnished to its stockholders generally or to the Commission);

(h) To use the net proceeds received by it from the sale of the Shares pursuant to this Agreement in the manner specified in the Pricing Prospectus under the caption "Use of Proceeds";

(i) To use its best efforts to list for trading, subject to official notice of issuance, the Shares on the Exchange;

(j) To file with the Commission such information on Form 10-Q or Form 10-K as may be required by Rule 463 under the Act;

(k) If the Company elects to rely upon Rule 462(b), the Company shall file a Rule 462(b) Registration Statement with the Commission in compliance with Rule 462(b) by 10:00 p.m., Washington, D.C. time, on the date of this Agreement, and the Company shall at the time of filing either pay to the Commission the filing fee for the Rule 462(b) Registration Statement or give irrevocable instructions for the payment of such fee pursuant to Rule 3a(c) of the Commission's Informal and Other Procedures (16 CFR 202.3a);

(l) Upon reasonable request of any Underwriter, to furnish, or cause to be furnished, to such Underwriter an electronic version of the Company's trademarks, servicemarks and corporate logo for use on the website, if any, operated by such Underwriter for the purpose of facilitating the on-line offering of the Shares (the "License"); provided, however, that the License shall be used solely for the purpose described above, is granted without any fee and may not be assigned or transferred;

(m) To promptly notify you if the Company ceases to be an Emerging Growth Company at any time prior to the later of (i) completion of the distribution of the Shares within the meaning of the Act and (ii) the last Time of Delivery.

6. (a) The Company represents and agrees that, without the prior consent of the Representatives, it has not made and will not make any offer relating to the Shares that would constitute a "free writing prospectus" as defined in Rule 405 under the Act; the Selling Stockholder represents and agrees that, without the prior consent of the Company and the Representatives, it has not made and will not make any offer relating to the Shares that would constitute a free writing prospectus; and each

Underwriter represents and agrees that, without the prior consent of the Company and the Representatives, it has not made and will not make any offer relating to the Shares that would constitute a free writing prospectus required to be filed with the Commission; any such free writing prospectus the use of which has been consented to by the Company and the Representatives is listed on Schedule III(a) hereto;

(b) The Company has complied and will comply with the requirements of Rule 433 under the Act applicable to any Issuer Free Writing Prospectus, including timely filing with the Commission or retention where required and legending; and the Company represents that it has satisfied and agrees that it will satisfy the conditions under Rule 433 under the Act to avoid a requirement to file with the Commission any electronic road show;

(c) The Company agrees that if at any time following issuance of an Issuer Free Writing Prospectus or Written Testing-the-Waters Communication any event occurred or occurs as a result of which such Issuer Free Writing Prospectus or Written Testing-the-Waters Communication would conflict with the information in the Registration Statement, the Pricing Prospectus or the Prospectus or would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances then prevailing, not misleading, the Company will give prompt notice thereof to the Representatives and, if requested by the Representatives, will prepare and furnish without charge to each Underwriter an Issuer Free Writing Prospectus, Written Testing-the-Waters Communication or other document which will correct such conflict, statement or omission; *provided*, however, that this covenant shall not apply to any statements or omissions in an Issuer Free Writing Prospectus made in reliance upon and in conformity with the Underwriter Information.

(d) The Company represents and agrees that (i) it has not engaged in, or authorized any other person to engage in, any Testing-the-Waters Communications, other than Testing-the-Waters Communications with the prior consent of the Representatives with entities that the Company reasonably believes are qualified institutional buyers as defined in Rule 144A under the Act or institutions that are accredited investors as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Act; and (ii) it has not distributed, or authorized any other person to distribute, any Written Testing-the-Waters Communication, other than those distributed with the prior consent of the Representatives that are listed on Schedule III(d) hereto; and the Company reconfirms that the Underwriters have been authorized to act on its behalf in engaging in Testing-the-Waters Communications;

(e) Each Underwriter represents and agrees that any Testing-the-Waters Communications undertaken by it were with entities that such Underwriter reasonably believes are qualified institutional buyers as defined in Rule 144A under the Act or institutions that are accredited investors as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7) or (a)(8) under the Act.

7. The Company covenants and agrees with the several Underwriters that (a) the Company will pay or cause to be paid the following: (i) the fees, disbursements and expenses of the Company's counsel and accountants in connection with the registration of the Shares under the Act and all other expenses in connection with the preparation, printing, reproduction and filing of the Registration Statement, any Preliminary Prospectus, any Written Testing-the-Waters Communication, any Issuer Free Writing Prospectus and the Prospectus and amendments and supplements thereto and the mailing and delivering of copies thereof to the Underwriters and dealers; (ii) the cost of printing or producing any Agreement among Underwriters, this Agreement, the Blue Sky Memorandum, closing documents (including any compilations thereof) and any other documents in connection with the offering, purchase, sale and delivery of the Shares; (iii) all expenses in connection with the qualification of the Shares for offering and sale under state securities laws as provided in Section 5(b) hereof, including the fees and

disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky survey (such fees and expenses of counsel not to exceed \$5,000); (iv) all fees and expenses in connection with listing the Shares on the Exchange; (v) the filing fees incident to, and the fees and disbursements of counsel for the Underwriters in connection with, any required review by the Financial Industry Regulatory Authority ("FINRA") of the terms of the sale of the Shares (such fees and expenses of counsel not to exceed \$25,000); (vi) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Shares, including, without limitation, expenses associated with the preparation or dissemination of any electronic road show, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives (not including the Underwriters and their representatives) and officers of the Company and any such consultants (not including the Underwriters and their representatives), and 50% of the cost of any aircraft chartered in connection with the road show; and (vii) the fees and disbursements of counsel for the QIU incurred in its capacity as "qualified independent underwriter"; and (b) the Company will pay or cause to be paid: (i) the cost of preparing stock certificates; if applicable (ii) the cost and charges of any transfer agent or registrar, and (iii) all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section. It is understood, however, that the Company shall bear the cost of any other matters not directly relating to the sale and purchase of the Shares pursuant to this Agreement, and that, except as provided in this Section, and Sections 9, 10 and 12 hereof, the Underwriters will pay all of their own costs and expenses, including the fees of their counsel, stock transfer taxes on resale of any of the Shares by them, and any advertising expenses connected with any offers they may make.

The Company agrees to pay or cause to be paid all expenses incident to the performance of the Selling Stockholder's obligations under this Agreement, including the fees, disbursements and expenses of the counsel for the Selling Stockholder and all other costs and expenses incident to the performance of the obligations of the Selling Stockholder (subject to Section 7(i) above) hereunder for which provision is not otherwise made in this Section.

8. The obligations of the Underwriters hereunder, as to the Shares to be delivered at each Time of Delivery, shall be subject, in their discretion, to the condition that all representations and warranties and other statements of the Company and the Selling Stockholder herein are, at and as of the Applicable Time and such Time of Delivery, true and correct, the condition that the Company and the Selling Stockholder shall have performed all of its obligations hereunder theretofore to be performed, and the following additional conditions:

(a) The Prospectus shall have been filed with the Commission pursuant to Rule 424(b) under the Act within the applicable time period prescribed for such filing by the rules and regulations under the Act and in accordance with Section 5(a) hereof; all material required to be filed by the Company pursuant to Rule 433(d) under the Act shall have been filed with the Commission within the applicable time period prescribed for such filing by Rule 433; if the Company has elected to rely upon Rule 462(b) under the Act, the Rule 462(b) Registration Statement shall have become effective by 10:00 p.m., Washington, D.C. time, on the date of this Agreement; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission no stop order suspending or preventing the use of the Pricing Prospectus, Prospectus or any Issuer Free Writing Prospectus shall have been initiated or threatened by the Commission; and all requests for additional information on the part of the Commission shall have been complied with to your reasonable satisfaction;

(b) Latham & Watkins LLP, counsel for the Underwriters, shall have furnished to you such written opinion or opinions, dated such Time of Delivery, in form and substance satisfactory to you, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters;

(c) Kirkland & Ellis LLP, counsel for the Company, shall have furnished to you their written opinion, dated such Time of Delivery, in form and substance satisfactory to you, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters;

(d) Kirkland & Ellis LLP, counsel for the Selling Stockholder, shall have furnished to you such written opinion or opinions, dated such Time of Delivery, in form and substance satisfactory to you, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters;

(e) On the date of the Prospectus at a time substantially concurrent with the execution of this Agreement, on the effective date of any post-effective amendment to the Registration Statement filed subsequent to the date of this Agreement and also at each Time of Delivery, Ernst & Young LLP shall have furnished to you a letter or letters, dated the respective dates of delivery thereof, in form and substance satisfactory to you;

(f) (i) Neither the Company nor any of its subsidiaries shall have sustained since the date of the latest audited financial statements included in the Pricing Prospectus any loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Pricing Prospectus, and (ii) since the respective dates as of which information is given in the Pricing Prospectus there shall not have been any change in the capital stock or long-term debt of the Company or any of its subsidiaries or any change or effect, or any development involving a prospective change or effect, in or affecting (x) the business, properties, general affairs, prospects, management, financial position, stockholders' equity or results of operations of the Company and its subsidiaries, taken as a whole, except as set forth or contemplated in the Pricing Prospectus and the Prospectus, or (y) the ability of the Company to perform its obligations under this Agreement, including the issuance and sale of the Shares, or to consummate the transactions contemplated in the Pricing Prospectus and the Prospectus, the effect of which, in any such case described in clause (i) and (ii), is in your judgment so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Shares being delivered at such Time of Delivery on the terms and in the manner contemplated in the Pricing Prospectus and the Prospectus;

(g) On or after the Applicable Time (i) no downgrading shall have occurred in the rating accorded the Company's debt securities by any "nationally recognized statistical rating organization", as defined in Section 3(a)(62) of the Exchange Act, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's debt securities;

(h) On or after the Applicable Time there shall not have occurred any of the following: (i) a suspension or material limitation in trading in securities generally on the Exchange; (ii) a suspension or material limitation in trading in the Company's securities on the Exchange; (iii) a general moratorium on commercial banking activities declared by either Federal or New York State authorities or a material disruption in commercial banking or securities settlement or clearance services in the United States; (iv) the outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war or (v) the occurrence of any other calamity or crisis or any change

in financial, political or economic conditions in the United States or elsewhere, if the effect of any such event specified in clause (iv) or (v) in your judgment makes it impracticable or inadvisable to proceed with the public offering or the delivery of the Shares being delivered at such Time of Delivery on the terms and in the manner contemplated in the Pricing Prospectus and the Prospectus;

(i) The Shares to be sold at such Time of Delivery shall have been duly listed, subject to official notice of issuance, on the Exchange;

(j) The Company shall have obtained and delivered to the Underwriters executed copies of an agreement from each stockholder of the Company listed on Schedule IV hereto, substantially to the effect set forth in Annex II hereto;

(k) The Company shall have complied with the provisions of Section 5(c) hereof with respect to the furnishing of prospectuses on the New York Business Day next succeeding the date of this Agreement;

(l) The Company and the Selling Stockholder shall have furnished or caused to be furnished to you at such Time of Delivery certificates of officers of the Company the Selling Stockholder, respectively, and such other documents satisfactory to you as to the accuracy of the representations and warranties of the Company and the Selling Stockholder herein at and as of such Time of Delivery, as to the performance by the Company and the Selling Stockholder of all of their respective obligations hereunder to be performed at or prior to such Time of Delivery, as to such other matters as you may reasonably request, and the Company shall have furnished or caused to be furnished certificates as to the matters set forth in subsections (a) and (f) of this Section 8; and

(m) On the date of this Agreement and at such Time of Delivery, the Company shall have furnished to you a certificate, dated the respective dates of delivery thereof and addressed to you, of its chief financial officer with respect to certain financial data contained in the Pricing Disclosure Package and the Prospectus, providing "management comfort" with respect to such information, in form and substance reasonably satisfactory to you.

9. (a) The Company and the Selling Stockholder, jointly and severally, will indemnify and hold harmless each Underwriter against any losses, claims, damages or liabilities to which such Underwriter may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, any Issuer Free Writing Prospectus, any "roadshow" as defined in Rule 433(h) under the Act (a "roadshow"), any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the Act or any Testing-the-Waters Communication, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Underwriter for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that the Company and the Selling Stockholder shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus or any Testing-the-Waters Communication, in reliance upon and in conformity with the Underwriter Information.

The Company also agrees to indemnify and hold harmless the QIU and each person, if any, who controls the QIU within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages, liabilities and judgments incurred as a result of the QIU's participation as a "qualified independent underwriter" within the meaning of Rule 5121 in connection with the offering of the Shares, except for any losses, claims, damages, liabilities, and judgments resulting from the QIU's, or such controlling person's, willful misconduct.

(b) The Selling Stockholder will indemnify and hold harmless each Underwriter against any losses, claims, damages or liabilities, joint or several, to which such Underwriter may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, any Issuer Free Writing Prospectus, any roadshow or any Testing-the-Waters Communication, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto or any Issuer Free Writing Prospectus, or any roadshow or any Testing-the-Waters Communication, in reliance upon and in conformity with written information furnished to the Company by the Selling Stockholder expressly for use therein; and will reimburse each Underwriter for any legal or other expenses reasonably incurred by such Underwriter in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that the Selling Stockholder shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus or any amendment or supplement thereto or any Issuer Free Writing Prospectus in reliance upon and in conformity with the Underwriter Information, provided, further, that the liability of such Selling Stockholders pursuant to this subsection (b) shall not exceed the net proceeds after underwriting commissions and discounts but before deducting expenses from the sale of Shares sold by the Selling Stockholder hereunder.

(c) Each Underwriter, severally and not jointly, will indemnify and hold harmless the Company and the Selling Stockholder against any losses, claims, damages or liabilities to which the Company or the Selling Stockholder may become subject, under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus, or any roadshow, or any Testing-the-Waters Communication, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, any Preliminary Prospectus, the Pricing Prospectus or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus, or any roadshow, or any Testing-the-Waters Communication, in reliance upon and in conformity with the Underwriter Information; and will reimburse the Company and the Selling Stockholder for any legal or other expenses reasonably incurred by the Company or the Selling Stockholder in connection with investigating or defending any such action or claim as such expenses are incurred. As used in this Agreement with respect to an Underwriter and an applicable document, "Underwriter Information" shall mean the written information furnished to the Company by such Underwriter through the Representatives expressly for use therein; it being understood and agreed

upon that the only such information furnished by any Underwriter consists of the following information in the Prospectus furnished on behalf of each Underwriter: the concession and reallowance figures appearing in the fifth paragraph under the caption "Underwriting", and the information contained in the twelfth, thirteenth and fourteenth paragraphs under the caption "Underwriting".

(d) Promptly after receipt by an indemnified party under subsection (a), (b) or (c) of this Section 9 of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; provided that the failure to notify the indemnifying party shall not relieve it from any liability that it may have under the preceding paragraphs of this Section 9 except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided further that the failure to notify the indemnifying party shall not relieve it from any liability that it may have to an indemnified party otherwise than under the preceding paragraphs of this Section 9. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party. Notwithstanding anything contained herein to the contrary, if indemnity may be sought pursuant to Section 9(a) in respect of such action or proceeding, then in addition to such separate firm for the indemnified parties, the indemnifying party shall be liable for the reasonable fees and expenses of not more than one separate firm (in addition to any local counsel) for the QIU in its capacity as a "qualified independent underwriter" and all persons, if any, who control the QIU within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act.

(e) If the indemnification provided for in this Section 9 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a), (b) or (c) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Selling Stockholder on the one hand and the Underwriters on the other from the offering of the Shares. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company and the Selling Stockholder on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company

and the Selling Stockholder on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company and the Selling Stockholder bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Selling Stockholder on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company, the Selling Stockholder and the Underwriters agree that it would not be just and equitable if contribution pursuant to this subsection (e) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (e). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (e) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (e), no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Shares underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this subsection (e) to contribute are several in proportion to their respective underwriting obligations and not joint.

(f) The obligations of the Company and the Selling Stockholder under this Section 9 shall be in addition to any liability which the Company and the Selling Stockholder may otherwise have and shall extend, upon the same terms and conditions, to each employee, officer and director of each Underwriter and each person, if any, who controls any Underwriter within the meaning of the Act and each broker-dealer or other affiliate of any Underwriter; and the obligations of the Underwriters under this Section 9 shall be in addition to any liability which the respective Underwriters may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Company and to each person, if any, who controls the Company or any Selling Stockholder within the meaning of the Act.

10. (a) If any Underwriter shall default in its obligation to purchase the Shares that it has agreed to purchase hereunder at a Time of Delivery, you may in your discretion arrange for you or another party or other parties to purchase such Shares on the terms contained herein. If within thirty-six hours after such default by any Underwriter you do not arrange for the purchase of such Shares, then the Company and the Selling Stockholder shall be entitled to a further period of thirty-six hours within which to procure another party or other parties satisfactory to you to purchase such Shares on such terms. In the event that, within the respective prescribed periods, you notify the Company and the Selling Stockholder that you have so arranged for the purchase of such Shares, or the Company or a Selling Stockholder notifies you that it has so arranged for the purchase of such Shares, you or the Company or the Selling Stockholder shall have the right to postpone such Time of Delivery for a period of not more than seven days, in order to effect whatever changes may thereby be made necessary in the Registration Statement or the Prospectus, or in any other documents or arrangements, and the Company agrees to file promptly any amendments or supplements to the Registration Statement or the Prospectus which in your opinion may thereby be made necessary. The term "Underwriter" as used in this Agreement shall include any person substituted under this Section with like effect as if such person had originally been a party to this Agreement with respect to such Shares.

(b) If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters by you, the Company and the Selling Stockholder as provided in subsection (a) above, the aggregate number of such Shares which remains unpurchased does not exceed one-eleventh of the aggregate number of all the Shares to be purchased at such Time of Delivery, then the Company and the Selling Stockholder shall have the right to require each non-defaulting Underwriter to purchase the number of Shares which such Underwriter agreed to purchase hereunder at such Time of Delivery and, in addition, to require each non-defaulting Underwriter to purchase its pro rata share (based on the number of Shares which such Underwriter agreed to purchase hereunder) of the Shares of such defaulting Underwriter or Underwriters for which such arrangements have not been made; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

(c) If, after giving effect to any arrangements for the purchase of the Shares of a defaulting Underwriter or Underwriters by you, the Company and the Selling Stockholder as provided in subsection (a) above, the aggregate number of such Shares which remains unpurchased exceeds one-eleventh of the aggregate number of all of the Shares to be purchased at such Time of Delivery, or if the Company and the Selling Stockholder shall not exercise the right described in subsection (b) above to require non-defaulting Underwriters to purchase Shares of a defaulting Underwriter or Underwriters, then this Agreement (or, with respect to a Second Time of Delivery, the obligations of the Underwriters to purchase and of the Selling Stockholder to sell the Optional Shares) shall thereupon terminate, without liability on the part of any non-defaulting Underwriter, the Company or the Selling Stockholder, except for the expenses to be borne by the Company, the Selling Stockholder and the Underwriters as provided in Section 7 hereof and the indemnity and contribution agreements in Section 9 hereof; but nothing herein shall relieve a defaulting Underwriter from liability for its default.

11. The respective indemnities, agreements, representations, warranties and other statements of the Company, the Selling Stockholder and the several Underwriters, as set forth in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of any Underwriter or any controlling person of any Underwriter, or the Company, or any of the Selling Stockholder, or any officer or director or controlling person of the Company, or any controlling person of any Selling Stockholder and shall survive delivery of and payment for the Shares.

12. If this Agreement shall be terminated pursuant to Section 10 hereof, neither the Company nor the Selling Stockholder shall then be under any liability to any Underwriter except as provided in Sections 7 and 9 hereof; but, if for any other reason any Shares are not delivered by or on behalf of the Company and the Selling Stockholder as provided herein, or the Underwriters decline to purchase the Shares for any reason permitted under this Agreement, the Company will reimburse the Underwriters through you for all out-of-pocket expenses approved in writing by you, including fees and disbursements of counsel, reasonably incurred by the Underwriters in making preparations for the purchase, sale and delivery of the Shares not so delivered, but the Company and the Selling Stockholder shall then be under no further liability to any Underwriter except as provided in Sections 7 and 9 hereof.

13. In all dealings hereunder, the Representatives shall act on behalf of each of the Underwriters, and the parties hereto shall be entitled to act and rely upon any statement, request, notice or agreement on behalf of any Underwriter made or given by the Representatives on behalf of the Underwriters.

In accordance with the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), the Underwriters are required to obtain, verify and record information that identifies their respective clients, including the Company and the Selling Stockholder, which information may include the name and address of their respective clients, as well as other information that will allow the Underwriters to properly identify their respective clients.

All statements, requests, notices and agreements hereunder shall be in writing, and if to the Underwriters shall be delivered or sent by mail, telex or facsimile transmission to Goldman Sachs & Co. LLC, 200 West Street, New York, New York 10282, Attention: Registration Department; Morgan Stanley & Co. LLC at 1585 Broadway, New York, New York 10036, Attention: Equity Syndicate Desk, with a copy to the Legal Department; and BofA Securities, Inc. at One Bryant Park, New York, New York 10036, attention of Syndicate Department (facsimile: (646) 855-3073), with a copy to ECM Legal (facsimile: (212) 230-8730); if to any Selling Stockholder shall be delivered or sent by mail, telex or facsimile transmission to counsel for such Selling Stockholder at its address set forth in Schedule II hereto; if to the Company shall be delivered or sent by mail, telex or facsimile transmission to the address of the Company set forth on the cover of the Registration Statement, Attention: Secretary; and if to any stockholder that has delivered a lock-up letter described in Section 8(j) hereof shall be delivered or sent by mail to his or her respective address provided in Schedule IV hereto or such other address as such stockholder provides in writing to the Company; provided, however, that any notice to an Underwriter pursuant to Section 9(c) hereof shall be delivered or sent by mail, telex or facsimile transmission to such Underwriter at its address set forth in its Underwriters' Questionnaire or telex constituting such Questionnaire, which address will be supplied to the Company or the Selling Stockholder by you on request; provided further that notices under subsection 5(e) shall be in writing, and if to the Underwriters shall be delivered or sent by mail, telex or facsimile transmission to the Representatives at Goldman Sachs & Co. LLC, 200 West Street, New York, New York 10282, Attention: Control Room; Morgan Stanley & Co. LLC at 1585 Broadway, New York, New York 10036, Attention: Equity Syndicate Desk, with a copy to the Legal Department; and BofA Securities, Inc. at One Bryant Park, New York, New York 10036, attention of Syndicate Department (facsimile: (646) 855-3073), with a copy to ECM Legal (facsimile: (212) 230-8730). Any such statements, requests, notices or agreements shall take effect upon receipt thereof.

14. This Agreement shall be binding upon, and inure solely to the benefit of, the Underwriters, the Company and the Selling Stockholder and, to the extent provided in Sections 9 and 11 hereof, the officers and directors of the Company and each person who controls the Company, any Selling Stockholder or any Underwriter, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. No purchaser of any of the Shares from any Underwriter shall be deemed a successor or assign by reason merely of such purchase.

15. Time shall be of the essence of this Agreement. As used herein, the term "business day" shall mean any day when the Commission's office in Washington, D.C. is open for business.

16. The Company and the Selling Stockholder acknowledge and agree that (i) the purchase and sale of the Shares pursuant to this Agreement is an arm's-length commercial transaction between the Company and the Selling Stockholder, on the one hand, and the several Underwriters, on the other, (ii) in connection therewith and with the process leading to such transaction each Underwriter is acting solely as a principal and not the agent or fiduciary of the Company or any Selling Stockholder, (iii) no Underwriter has assumed an advisory or fiduciary responsibility in favor of the Company or any Selling Stockholder with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company or any

Selling Stockholder on other matters) or any other obligation to the Company or any Selling Stockholder except the obligations expressly set forth in this Agreement and (iv) the Company and the Selling Stockholder has consulted its own legal and financial advisors to the extent it deemed appropriate. The Company and the Selling Stockholder agrees that it will not claim that the Underwriters, or any of them, has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to the Company or any Selling Stockholder, in connection with such transaction or the process leading thereto. None of the activities of the Underwriters in connection with the transactions contemplated herein constitutes a recommendation, investment advice or solicitation of any action by the Underwriters with respect to any entity or natural person.

17. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company, the Selling Stockholder and the Underwriters, or any of them, with respect to the subject matter hereof.

18. This Agreement and any transaction contemplated by this Agreement and any claim, controversy or dispute arising under or related thereto shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflict of laws that would result in the application of any other law than the laws of the State of New York. The Company and the Selling Stockholder agree that any suit or proceeding arising in respect of this Agreement or any transaction contemplated by this Agreement will be tried exclusively in the U.S. District Court for the Southern District of New York or, if that court does not have subject matter jurisdiction, in any state court located in The City and County of New York and the Company and the Selling Stockholder agree to submit to the jurisdiction of, and to venue in, such courts.

19. The Company, the Selling Stockholder and each of the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

20. This Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal E-SIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

21. Notwithstanding anything herein to the contrary, the Company and the Selling Stockholder are authorized to disclose to any persons the U.S. federal and state income tax treatment and tax structure of the potential transaction and all materials of any kind (including tax opinions and other tax analyses) provided to the Company and the Selling Stockholder relating to that treatment and structure, without the Underwriters imposing any limitation of any kind. However, any information relating to the tax treatment and tax structure shall remain confidential (and the foregoing sentence shall not apply) to the extent necessary to enable any person to comply with securities laws. For this purpose, "tax structure" is limited to any facts that may be relevant to that treatment. This Section 21 is intended to cause the transaction as not having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) of the Treasury Regulations promulgated under the Internal Revenue Code of 1986, as amended, and shall be construed in a manner consistent with such purpose.

22. Recognition of the U.S. Special Resolution Regimes.

(a) In the event that any Underwriter that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Underwriter of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that any Underwriter that is a Covered Entity or a BHC Act Affiliate of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Underwriter are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

(c) As used in this section:

“BHC Act Affiliate” has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

“Covered Entity” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“U.S. Special Resolution Regime” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

If the foregoing is in accordance with your understanding, please sign and return to us counterparts hereof, and upon the acceptance hereof by you, on behalf of each of the Underwriters, this letter and such acceptance hereof shall constitute a binding agreement among each of the Underwriters, the Company and the Selling Stockholder. It is understood that your acceptance of this letter on behalf of each of the Underwriters is pursuant to the authority set forth in a form of Agreement among Underwriters, the form of which shall be submitted to the Company and the Selling Stockholder for examination, upon request, but without warranty on your part as to the authority of the signers thereof.

Very truly yours,

Leslie's, Inc.

By: _____
Name:
Title:

Bubbles Holdings, L.P.

By: _____
Name:
Title:

Accepted as of the date hereof

Goldman Sachs & Co. LLC

By: _____
Name:
Title:

Morgan Stanley & Co. LLC

By: _____
Name:
Title:

BofA Securities, Inc.

By: _____
Name:
Title:

On behalf of each of the Underwriters

SCHEDULE I

<u>Underwriter</u>	<u>Total Number of Firm Shares to be Purchased</u>	<u>Number of Optional Shares to be Purchased if Maximum Option Exercised</u>
Goldman Sachs & Co. LLC	[•]	[•]
Morgan Stanley & Co. LLC	[•]	[•]
BofA Securities, Inc.	[•]	[•]
Nomura Securities International, Inc.	[•]	[•]
Jefferies LLC	[•]	[•]
Robert W. Baird & Co. Incorporated	[•]	[•]
Guggenheim Securities, LLC	[•]	[•]
Piper Sandler & Co.	[•]	[•]
William Blair & Company, L.L.C	[•]	[•]
Telsey Advisory Group LLC	[•]	[•]
Loop Capital Markets LLC	[•]	[•]
Samuel A. Ramirez & Company, Inc.	[•]	[•]
AmeriVet Securities, Inc.	[•]	[•]
Total	=====	=====

SCHEDULE II

	Total Number of Firm Shares to be Sold	Number of Optional Shares to be Sold if Maximum Option Exercised
The Company.		
The Selling Stockholder(s):		
Bubbles Holdings, L.P.		
Total		

SCHEDULE III

- (a) Issuer Free Writing Prospectuses not included in the Pricing Disclosure Package
 - [Electronic Roadshow dated [•]]
- (b) Additional documents incorporated by reference
 - [None]
- (c) Information other than the Pricing Prospectus that comprise the Pricing Disclosure Package
 - The initial public offering price per share for the Shares is \$ [•]
 - The number of Shares purchased by the Underwriters is [•]
 - [Add any other pricing disclosure.]
- (d) Written Testing-the-Waters Communications
 - [•]

SCHEDULE IV

Name of Stockholder

Address

[FORM OF PRESS RELEASE]

Leslie's, Inc.
[Date]

("Leslie's, Inc.") announced today that Goldman Sachs & Co. LLC, Morgan Stanley & Co. LLC and BofA Securities, Inc. the lead book-running managers in the recent public sale of _____ shares of the Company's common stock, is [waiving] [releasing] a lock-up restriction with respect to _____ shares of the Company's common stock held by [certain officers or directors] [an officer or director] of the Company. The [waiver] [release] will take effect on _____, 20____, and the shares may be sold on or after such date.

This press release is not an offer for sale of the securities in the United States or in any other jurisdiction where such offer is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the United States Securities Act of 1933, as amended.

[FORM OF LOCK-UP AGREEMENT]

Leslie's, Inc.

Lock-Up Agreement

_____, 2020

Goldman Sachs & Co. LLC
Morgan Stanley & Co. LLC
BofA Securities, Inc.

As representatives of the several Underwriters

c/o Goldman Sachs & Co. LLC
200 West Street
New York, NY 10282-2198

c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, NY 10036

c/o BofA Securities, Inc.
One Bryant Park
New York, NY 10036

Re: Leslie's, Inc.—Lock-Up Agreement

Ladies and Gentlemen:

The undersigned understands that you, as representatives (the "Representatives"), propose to enter into an Underwriting Agreement (the "Underwriting Agreement") on behalf of the several Underwriters named in Schedule I to such agreement (collectively, the "Underwriters"), with Leslie's, Inc., a Delaware corporation (the "Company"), providing for a public offering (the "Public Offering") of the common stock (the "Common Stock") of the Company (the "Shares") pursuant to a Registration Statement on Form S-1 to be filed with the Securities and Exchange Commission (the "SEC").

In consideration of the agreement by the Underwriters to offer and sell the Shares, and of other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the undersigned agrees that, during the period beginning from the date of this Lock-Up Agreement and continuing to and including the date 180 days after the date set forth on the final prospectus used to sell the Shares (the "Lock-Up Period"), the undersigned shall not, and shall not cause or direct any of its affiliates to, (i) offer, sell, contract to sell, pledge, grant any option to purchase, lend or otherwise dispose of any shares of Common Stock of the Company, or any options or warrants to purchase any shares of Common Stock of the Company, or any securities convertible into, exchangeable for or that represent the right to receive shares of Common Stock of the Company (such options, warrants or other securities,

collectively, “Derivative Instruments”), including without limitation any such shares or Derivative Instruments now owned or hereafter acquired by the undersigned, (ii) engage in any hedging or other transaction or arrangement (including, without limitation, any short sale or the purchase or sale of, or entry into, any put or call option, or combination thereof, forward, swap or any other derivative transaction or instrument, however described or defined) which is designed to or which reasonably could be expected to lead to or result in a sale, loan, pledge or other disposition (whether by the undersigned or someone other than the undersigned), or transfer of any of the economic consequences of ownership, in whole or in part, directly or indirectly, of any shares of Common Stock of the Company or Derivative Instruments, whether any such transaction or arrangement (or instrument provided for thereunder) would be settled by delivery of Common Stock or other securities, in cash or otherwise (any such sale, loan, pledge or other disposition, or transfer of economic consequences, a “Transfer”) or (iii) otherwise publicly announce any intention to engage in or cause any action or activity described in clause (i) above or transaction or arrangement described in clause (ii) above. The undersigned represents and warrants that the undersigned is not, and has not caused or directed any of its affiliates to be or become, currently a party to any agreement or arrangement that provides for, is designed to or which reasonably could be expected to lead to or result in any Transfer during the Lock-Up Period. For the avoidance of doubt, the undersigned agrees that the foregoing provisions shall be equally applicable to any issuer-directed or other Shares the undersigned may purchase in the offering.

If the undersigned is not a natural person, the undersigned represents and warrants that no single natural person, entity or “group” (within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)), other than a natural person, entity or “group” (as described above) that has executed a Lock-Up Agreement in substantially the same form as this Lock-Up Agreement, beneficially owns, directly or indirectly, 50% or more of the common equity interests, or 50% or more of the voting power, in the undersigned.

If the undersigned is an officer or director of the Company, (i) the Representatives agree that, at least three business days before the effective date of any release or waiver of the foregoing restrictions in connection with a transfer of shares of Common Stock, the Representatives will notify the Company of the impending release or waiver, and (ii) the Company has agreed in the Underwriting Agreement to announce the impending release or waiver by press release through a major news service at least two business days before the effective date of the release or waiver. Any release or waiver granted by the Representatives hereunder to any such officer or director shall only be effective two business days after the publication date of such press release. The provisions of this paragraph will not apply if (a) the release or waiver is effected solely to permit a transfer not for consideration and (b) the transferee has agreed in writing to be bound by the same terms described in this letter to the extent and for the duration that such terms remain in effect at the time of the transfer.

Notwithstanding the foregoing, the undersigned may transfer the undersigned’s shares of Common Stock of the Company or Derivative Instruments:

- (i) as a *bona fide* gift or gifts, or as charitable contributions;
- (ii) to any trust, partnership, limited liability company or any other entity for the direct or indirect benefit of the undersigned or the immediate family of the undersigned;
- (iii) to any beneficiary of or estate of a beneficiary of the undersigned pursuant to a trust, will, other testamentary document or intestate succession or applicable laws of descent;
- (iv) to a partnership, limited liability company or other entity of which the undersigned and the immediate family of the undersigned are the legal and beneficial owner of all the outstanding equity securities or similar interests;
- (v) by operation of law, such as pursuant to a qualified domestic order of a court (including a divorce settlement, divorce decree or separation agreement) or regulatory agency;
- (vi) in transactions relating to shares of Common Stock acquired in open market transactions after the completion of the Public Offering;

(vii) by (A) the exercise of stock options solely with cash granted pursuant to equity incentive plans described in the Registration Statement, and the receipt by the undersigned from the Company of shares of Common Stock upon such exercise; (B) transfers of shares of Common Stock to the Company upon the “net” or “cashless” exercise of stock options or other equity awards granted pursuant to equity incentive plans described in the Registration Statement; (C) transfers of shares of Common Stock of the Company for the primary purpose of satisfying any tax or other governmental withholding obligation with respect to any award of equity-based compensation granted pursuant to the Company’s equity incentive plans; or (D) forfeitures of shares of Common Stock to the Company to satisfy tax withholding requirements of the undersigned or the Company upon the vesting, during the Lock-Up Period, of equity based awards granted under equity incentive plans or pursuant to other stock purchase arrangements, in each case described in the Registration Statement; provided that, in each case, the underlying shares of Common Stock shall continue to be subject to the restrictions on transfer set forth in this Lock Up Agreement;

(viii) pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction made to all holders of the Company’s capital stock after the consummation of the offering, involving a change of control of the Company, provided that in the event that such tender offer, merger, consolidation or other such transaction is not completed, the undersigned’s shares of Common Stock shall remain subject to the provisions of this Lock-Up Agreement;

(ix) to the Company in connection with the repurchase by the Company from the undersigned of shares of Common Stock of the Company or Derivative Instruments pursuant to a repurchase right arising upon the termination of the undersigned’s employment with the Company, provided that such repurchase right is pursuant to contractual agreements with the Company;

(x) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Common Stock; provided that (A) such plan does not provide for the transfer of Common Stock during the Lock-Up Period and (B) to the extent a public announcement or filing under the Exchange Act, if any, is required of or voluntarily made by or on behalf of the undersigned or the Company regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of Common Stock may be made under such plan during the Lock-Up Period;

(xi) if the undersigned is a corporation, partnership, limited liability company or other business entity, by (A) distributions of shares of Common Stock or any Derivative Instrument to limited partners, general partners, members, stockholders holders of similar interests of the undersigned (or in each case its nominee or custodian) or to any investment holding company controlled or managed by the undersigned or (B) transfers of shares of Common Stock or any Derivative Instrument to affiliates (as defined in Rule 405 of the Securities Act of 1933, as amended) or other entities controlled or managed by the undersigned or any of its affiliates (other than the Company and its subsidiaries);

[(xii) to any third-party pledgee in a bona fide transaction as collateral to secure obligations pursuant to lending or other arrangements between such third parties (or their affiliates or designees) and the undersigned and/or its affiliates or any similar arrangement relating to a financing arrangement for the benefit of the undersigned and/or its affiliates, provided that the aggregate number of shares of Common Stock pledged as collateral pursuant to this clause (xii) during the Lock-Up Period shall not exceed 1% of the total number of shares of Common Stock issued and outstanding on the closing date of the offering;]¹

(xiii) the transfer of the undersigned’s shares of Common Stock of the Company pursuant to the terms of the Underwriting Agreement; or

¹ To be included only in lock-ups for L Catterton and GIC entities

(xiv) with the prior written consent of the Representatives on behalf of the Underwriters, provided, that, (A) in the case of (iii), (iv), (v) and (xi) above, such transfer shall not involve of a disposition for value, (B) in the case of (i), (ii), (iii), (iv), (v) and (xi) above, it shall be a condition to the transfer or distribution that the donee, transferee or distributee, as the case may be, agrees in writing to be bound by the restrictions set forth herein, (C) in the case of (iii), (iv) and (vi) above, no filing under Section 16 of the Exchange Act (other than a Form 5, which shall not be filed on or prior date that is 120 days after the date set forth on the final prospectus used to sell the Shares) reporting a reduction in beneficial ownership of shares of Common Stock shall be required or shall be voluntarily made during the Lock-Up Period, and (D) in the case of (i), (ii), (v), (vii) and (ix) above, no filing under Section 16 of the Exchange Act (other than a Form 5) reporting a reduction in beneficial ownership of shares of Common Stock shall be voluntarily made during the Lock-Up Period and, if the undersigned is required to file a report under Section 16 of the Exchange Act during the Lock-Up Period, the undersigned shall include a statement in such report explaining the circumstances of such reduction in beneficial ownership.

For purposes of this Lock-Up Agreement, “immediate family” shall mean any relationship by blood, marriage or adoption, not more remote than first cousin, and “change of control” shall mean any bona fide third-party tender offer, merger, consolidation or other similar transaction approved by the board of directors of the Company the result of which is that any “person” (as defined in Section 13(d)(3) of the Exchange Act), or group of persons, other than the Company, shall become, after the closing of the transaction, the beneficial owner (as defined in Rules 13d-3 and 13d-5 of the Exchange Act) of more than 50% of total voting power of the voting stock of the Company. In addition, notwithstanding the foregoing, if the undersigned is a corporation, the corporation may transfer the capital stock of the Company to any wholly owned subsidiary of such corporation; provided, however, that in any such case, it shall be a condition to the transfer that the transferee execute an agreement stating that the transferee is receiving and holding such capital stock subject to the provisions of this Lock-up Agreement and there shall be no further transfer of such capital stock except in accordance with this Lock-up Agreement, and provided further that any such transfer shall not involve a disposition for value. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company’s transfer agent and registrar against the transfer of the undersigned’s shares of Common Stock of the Company except in compliance with the foregoing restrictions.

[In addition, notwithstanding the foregoing, in the event that a release is granted to any Major Holder (as defined below) other than the undersigned relating to the lock-up restrictions set forth herein, the same percentage of the undersigned’s shares of Common Stock of the Company (the “Pro-rata Release”) shall be immediately and fully released on the same terms from any remaining lock-up restrictions set forth herein; provided, however, that such Pro-rata Release shall not be applied in the event of (a) releases granted from such lock-up restrictions to any individual by the Representatives in an amount less than or equal to 1% of the Company’s total outstanding Common Stock, or (b) any primary or secondary public offering or sale that is underwritten (the “Underwritten Sale”) of the Common Stock during the Lock-Up Period, provided, however, that the undersigned is offered the opportunity to participate on a pro rata basis with and otherwise on the same terms as any other equity holders in such Underwritten Sale. In the event that any percentage of such Common Stock released from the lockup restrictions are subject to any restrictions of the type set forth in this Lock-up Agreement, the same restrictions shall be applicable to the release of the same percentage of the Common Stock held by the undersigned. In the event that the undersigned is released from any of its obligations under this Lock-up Agreement or, by virtue of this Lock-up Agreement, becomes entitled to offer, pledge, sell, contract to sell, or otherwise dispose of any Common Stock (or any securities convertible into Common Stock) prior to the expiration of the Lock-Up Period, the Representatives shall use their commercially reasonable efforts to provide notification of such to the undersigned within three (3) business days thereof; provided that the failure to provide such notice shall not give rise to any claim or liability against the Representatives or the Underwriters. Notwithstanding any other provisions of this Lock-up Agreement, if the Representatives in their sole judgment determine that a record or beneficial owner of any securities should be granted an early release from a lock-up agreement due to circumstances of an emergency or hardship, then the Major Holders shall not have any right to be granted an early release pursuant to the terms of this paragraph. For purposes of this Lock-Up Agreement, each of the following persons is a “Major Holder”: each director and executive officer of the Company, as well as each record or beneficial owner, as of the date hereof, of more than 2% of the total outstanding Common Stock (for purposes of determining record or beneficial ownership of a stockholder, all shares of securities held by investment funds affiliated with such stockholder shall be aggregated).]²

2 To be included only in lock-ups for L Catterton and GIC entities

The undersigned acknowledges and agrees that the underwriters have not provided any recommendation or investment advice nor have the underwriters solicited any action from the undersigned with respect to the offering of the securities and the undersigned has consulted their own legal, accounting, financial, regulatory and tax advisors to the extent deemed appropriate.

The undersigned understands that the Company and the Underwriters are relying upon this Lock-Up Agreement in proceeding toward consummation of the offering. The undersigned further understands that this Lock-Up Agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors, and assigns.

This Lock-up Agreement will automatically terminate upon the earliest to occur, if any, of (a) the date that the Company advises the Representatives, in writing, prior to the execution of the Underwriting Agreement, that it has determined not to proceed with the offering, (b) the date that the Representatives advise the Company, in writing, prior to the execution of the Underwriting Agreement, that the Underwriters have determined not to proceed with the offering, (c) the date of termination of the Underwriting Agreement if prior to the closing of the offering, or (d) November 30, 2020 if the offering of the Shares has not been completed by such date.

This Lock-up Agreement may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

This Lock-up Agreement and any claim, controversy or dispute arising under or related to this Lock-up Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the conflict of laws principles thereof.

Very truly yours,

Exact Name of Shareholder

Authorized Signature

Title

LESLIE'S, INC.

REGISTRATION RIGHTS AND LOCK-UP AGREEMENT

THIS REGISTRATION RIGHTS AND LOCK-UP AGREEMENT (this "Agreement") is made as of [●], 2020, among (i) Leslie's, Inc., a Delaware corporation (the "Company"), (ii) Bubbles Investor Aggregator, L.P., a Delaware limited partnership (including its successors and permitted assigns, "LCP"), (iii) Explorer Investment Pte Ltd, a Singapore private limited company (including its successors and permitted assigns, "GIC" and, together with LCP, collectively, the "Sponsor Investors") and (iv) each Person listed on the signature pages under the caption "Other Investors" or who becomes party to and bound by this Agreement as an "Other Investor" after the date hereof on the terms and subject to the conditions of this Agreement (collectively, the "Other Investors"). Except as otherwise specified herein, all capitalized terms used in this Agreement are defined in Exhibit A attached hereto.

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

Section 1 Demand Registrations: Requests for Registration.

(a) Requests for Registration. At any time and from time to time, subject to Section 3 and on the terms and subject to the other conditions herein, each of the Holders of a majority of the LCP Registrable Securities and the Holders of a majority of the GIC Registrable Securities may request, by delivering written notice to the Company, registration (a "Demand Request") under the Securities Act of all or any portion of their Registrable Securities on Form S-1 or any similar long-form registration statement ("Long-Form Registrations"), or on Form S-3 or any similar short-form registration statement ("Short-Form Registrations"), if available (any such requested registration, a "Demand Registration"); provided, however, that, on the terms and subject to the other conditions herein, (i) each of the Holders of a majority of the LCP Registrable Securities and the Holders of a majority of the GIC Registrable Securities shall be entitled to two (2) Long-Form Registrations and unlimited number of Short-Form Registrations; provided that (i) (x) the proposed maximum aggregate offering value of the Registrable Securities requested to be registered in any Long-Form Registration must equal at least \$25,000,000 based on the public offering price of shares of Registrable Securities set forth in the registration statement applicable to such Long-Form Registration or (y) all of the remaining LCP Registrable Securities or GIC Registrable Securities are sold in such offering; and (ii) the Company will not be obligated to register the Registrable Securities of any Holder pursuant to a Demand Registration if the Company has filed within the immediately preceding six (6) month period a registration statement or effected an offering of Common Equity with respect to (x) a Demand Registration or (y) which a Holder has or had the right to have its Registrable Securities included pursuant to a Piggyback Registration; provided further that, following the one-year anniversary of the closing of the initial Public Offering, if the Company is ineligible to use a Short-Form Registration to effect a Demand Registration for any period of four (4) consecutive months, then each of the Holders of a majority of the LCP Registrable Securities and the Holders of a majority of the GIC Registrable Securities shall be entitled to one (1) additional Long-Form Registration. Each of the Holders of a majority of the LCP Registrable Securities and the Holders of a majority of the GIC Registrable Securities

may request that any Demand Registration be made pursuant to Rule 415 under the Securities Act (a “Shelf Registration”), which may be a Long-Form Registration or a Short-Form Registration, and (if the Company is a WKSJ at the time any Demand Request is submitted to the Company or will become one by the time of the filing of such Shelf Registration) that such Shelf Registration be a Short-Form Registration in the form of an automatic shelf registration statement (as defined in Rule 405 under the Securities Act) (an “Automatic Shelf Registration Statement”). Each Demand Request must specify the approximate number or dollar value of Registrable Securities requested to be registered by the requesting Holders and (if known) whether the Demand Registration is requested to be (x) a Long-Form Registration or a Short-Form Registration, (y) a Shelf Registration or not and (z) an underwritten offering or not. A Demand Registration shall not count as one of the permitted Long-Form Registrations (A) until it has become effective and (B) unless the Holders of a majority of the LCP Registrable Securities, in the case of a Demand Request initiated by such Holders, or the Holders of a majority of the GIC Registrable Securities, in the case of a Demand Request initiated by such Holders, is able to register and sell at least 90% of the LCP Registrable Securities or GIC Registrable Securities, as applicable, requested to be included in such registration.

(b) Notice to Other Holders. Within four (4) Business Days after receipt of any Demand Request, the Company will give written notice of the Demand Registration to all other Holders and, subject to the terms of Section 1(c) and Section 3, will include in such Demand Registration (and in all related registrations and qualifications under state blue sky laws and in any related underwriting) all Registrable Securities with respect to which the Company has received written requests for inclusion therein within seven (7) days after the receipt of the Company’s notice; provided that, with the written consent of the Holders of a majority of the LCP Registrable Securities, in the case of a Demand Request initiated by such Holders, or the Holders of a majority of the GIC Registrable Securities, in the case of a Demand Request initiated by such Holders, the Company may, or, at the written request of the Holders of a majority of the LCP Registrable Securities, in the case of a Demand Request initiated by such Holders, or the Holders of a majority of the GIC Registrable Securities, in the case of a Demand Request initiated by such Holders, the Company shall, instead provide written notice of the Demand Registration to all other Holders within three (3) Business Days following the non-confidential filing of the registration statement with respect to the Demand Registration; provided further that, if a Demand Request is delivered prior to the expiration of the IPO Lock-up Period, the Company shall not be obligated to file (but shall be obligated to prepare) the applicable registration statement prior to the expiration of the IPO Lock-up Period.

(c) Form of Registrations. All Long-Form Registrations will be underwritten registrations unless otherwise approved by the Holders of a majority of the LCP Registrable Securities, in the case of a Demand Request initiated by such Holders, or the Holders of a majority of the GIC Registrable Securities, in the case of a Demand Request initiated by such Holders. Demand Registrations will be Short-Form Registrations whenever the Company is permitted to use any applicable short form unless otherwise requested by the Holders of a majority of the LCP Registrable Securities, in the case of a Demand Request initiated by such Holders, or the Holders of a majority of the GIC Registrable Securities, in the case of a Demand Request initiated by such Holders (but subject to the limitations contained herein with respect to Long-Form Registrations).

(d) Shelf Registrations.

(i) For so long as a registration statement for a Shelf Registration (a “Shelf Registration Statement”) is and remains effective, subject to the requirements in Section 1(d)(v) and Section 4(a)(iii), each of the Holders of a majority of the LCP Registrable Securities and the Holders of a majority of the GIC Registrable Securities will have the right at any time or from time to time, subject to the applicable provisions of Section 3, to elect to sell pursuant to an offering (including an underwritten offering) Registrable Securities pursuant to such registration statement (“Shelf Registrable Securities”). If the Holders of a majority of the LCP Registrable Securities or the Holders of a majority of the GIC Registrable Securities desire to sell Registrable Securities pursuant to an underwritten offering, then the Holders of a majority of the LCP Registrable Securities or the Holders of a majority of the GIC Registrable Securities may deliver to the Company a written notice (a “Shelf Offering Notice”) specifying the number of Shelf Registrable Securities that such Holders desire to sell pursuant to such underwritten offering (the “Shelf Offering”). As promptly as practicable, but in no event later than two (2) Business Days after receipt of a Shelf Offering Notice, the Company will give written notice of such Shelf Offering Notice to all other Holders of Shelf Registrable Securities that have been identified as selling stockholders in such Shelf Registration Statement and are otherwise permitted to sell in such Shelf Offering, which such notice shall request that each such Holder specify, within seven (7) days after the Company’s receipt of the Shelf Offering Notice, the maximum number of Shelf Registrable Securities such Holder desires to be disposed of in such Shelf Offering. The Company, subject to Section 1(e), Section 3 and Section 7, will include in such Shelf Offering all Shelf Registrable Securities with respect to which the Company has received timely written requests for inclusion. The Company will, as expeditiously as possible (and in any event within fourteen (14) days after the receipt of a Shelf Offering Notice), but subject to Section 1(e), use its reasonable best efforts to consummate such Shelf Offering.

(ii) If the Holders of a majority of the LCP Registrable Securities or the Holders of a majority of the GIC Registrable Securities desire to engage in an underwritten block trade or bought deal pursuant to a Shelf Registration Statement (either through filing an Automatic Shelf Registration Statement or through a take-down from an already existing Shelf Registration Statement) (each, an “Underwritten Block Trade”), then notwithstanding the time periods set forth in Section 1(d)(i), the Sponsor Investors may notify (an “Underwritten Block Trade Notice”) the Company of the Underwritten Block Trade by 10:00 a.m. on the day such offering is first anticipated to commence. The Company shall promptly notify other Holders of such Underwritten Block Trade and, subject to the applicable provisions of Section 3, such notified Holders (each, a “Potential Participant”) may elect whether or not to participate no later than noon on such day (unless a longer period is agreed to by the Holders of a majority of the LCP Registrable Securities, in the case of an Underwritten Block Trade Notice initiated by such Holders, or the Holders of a majority of the GIC Registrable Securities, in the case of an Underwritten Block Trade Notice initiated by such Holder), and the Company will as expeditiously as possible use its reasonable best efforts to facilitate such Underwritten Block Trade (which may close as early as two (2) Business Days after the date it commences); provided further that, notwithstanding the provisions of Section 1(d)(i), no Holder (other than Holders of a

majority of the LCP Registrable Securities and Holders of a majority of the GIC Registrable Securities) will be permitted to participate in an Underwritten Block Trade without the written consent of Holders of a majority of the LCP Registrable Securities, in the case of an Underwritten Block Trade Notice initiated by such Holders, or the Holders of a majority of the GIC Registrable Securities, in the case of an Underwritten Block Trade Notice initiated by such Holder. Any Potential Participant's request to participate in an Underwritten Block Trade shall be binding on the Potential Participant.

(iii) All determinations as to whether to complete any Shelf Offering and as to the timing, manner, price and other terms of any Shelf Offering contemplated by this Section 1(d) shall be determined by the Holders of a majority of the LCP Registrable Securities, in the case of a Shelf Offering Notice delivered by such Holders, or the Holders of a majority of the GIC Registrable Securities, in the case of a Shelf Notice delivered by such Holders, and the Company shall use its reasonable best efforts to cause any Shelf Offering to occur in accordance with such determinations as promptly as practicable.

(iv) The Company will, at the request of the Holders of a majority of the LCP Registrable Securities or the Holders of a majority of the GIC Registrable Securities, file any prospectus supplement or any post-effective amendments and otherwise take any action necessary to include therein all disclosure and language deemed necessary or advisable by such Holders to effect such Shelf Offering.

(v) Subject to the terms of Section 1(f), the Company will use reasonable best efforts to keep the Shelf Registration Statement continuously effective until the date on which any and all LCP Registrable Securities and GIC Registrable Securities covered by the Shelf Registration Statement have been sold thereunder in accordance with the plan and method of distribution disclosed in the prospectus included in the Shelf Registration Statement, or otherwise (the "Shelf Period"). Subject to Section 1(f), the Company shall not be deemed to have used its reasonable best efforts to keep the Shelf Registration Statement effective during the Shelf Period if the Company voluntarily takes any action or omits to take any action that could reasonably result in Holders of Registrable Securities covered thereby not being able to offer and sell any Registrable Securities pursuant to such Shelf Registration Statement during the Shelf Period, unless such action or omission is required by applicable law.

(e) Priority on Demand Registrations and Shelf Offerings. The Company will not include in any Demand Registration any securities which are not Registrable Securities without the prior written consent of the Holders of a majority of the LCP Registrable Securities, in the case of a Demand Request initiated by such Holders, or the Holders of a majority of the GIC Registrable Securities, in the case of a Demand Request initiated by such Holders. If a Demand Registration or a Shelf Offering is an underwritten offering and the managing underwriters advise the Company in writing that in their opinion the number of Registrable Securities and (if permitted hereunder) other securities requested to be included in such offering exceeds the number of Registrable Securities and other securities (if any), which can be sold therein without adversely affecting the marketability, proposed offering price, timing or method of distribution of the offering, then the Company will include in such offering (prior to the inclusion of any securities which are not Registrable Securities and subject to Section 3) first, the number of Registrable Securities

requested to be included by the Holders of a majority of the LCP Registrable Securities and the Holders of a majority of the GIC Registrable Securities which, in the opinion of such underwriters, can be sold, without any such adverse effect, pro rata among such Holders on the basis of the number of Registrable Securities then owned by each such group of Holders; and second, the number of Registrable Securities requested to be included by the Holders of the Other Investor Registrable Securities which, in the opinion of such underwriters, can be sold, without any such adverse effect, pro rata among such Holders.

(f) Restrictions on Demand Registration and Shelf Offerings.

(i) The Company may postpone, for up to an aggregate of 60 days in any 12 months (or with the consent of the Holders of a majority of the LCP Registrable Securities and the Holders of a majority of the GIC Registrable Securities, a longer period) from the date of the request (the “Suspension Period”), the filing or the effectiveness (but not the preparation) of a registration statement for a Demand Registration or suspend the use of a prospectus that is part of a Shelf Registration Statement (and therefore suspend sales of the Shelf Registrable Securities) by providing written notice to the Holders if the following conditions are met: (A) the Company determines that the offer or sale of Registrable Securities would reasonably be expected to have a material adverse effect on any proposal or plan by the Company or any Subsidiary to engage in any material acquisition of assets or stock (other than in the ordinary course of business) or any material merger, consolidation, tender offer, recapitalization, reorganization, financing or other transaction involving the Company; and (B) upon written advice of counsel, the sale of Registrable Securities pursuant to the registration statement would require disclosure of material non-public information not otherwise required to be disclosed under applicable law, and either (x) the Company has a bona fide business purpose for preserving the confidentiality of such transaction, (y) disclosure would have a material adverse effect on the Company or the Company’s ability to consummate such transaction or (z) such transaction renders the Company unable to comply with SEC requirements, in each case under circumstances that would make it impractical or inadvisable to cause the registration statement (or such filings) to become effective or to promptly amend or supplement the registration statement on a post effective basis, as applicable. For the avoidance of doubt, any suspension under this provision does not derogate from the Company’s rights and obligations under Section 4(a)(vi). The Company may delay or suspend the effectiveness of a Demand Registration or Shelf Registration Statement pursuant to this Section 1(f)(i) only twice in any twelve (12)-month period.

(ii) In the case of an event that causes the Company to suspend the use of a Shelf Registration Statement as set forth in Section 1(f)(i) above or pursuant to Section 4(a)(vi) (a “Suspension Event”), the Company will give a notice to the Holders whose Registrable Securities are registered pursuant to such Shelf Registration Statement (a “Suspension Notice”) to suspend sales of the Registrable Securities and such notice must state generally the basis for the notice and that such suspension will continue only for so long as the Suspension Event or its effect is continuing. Each Holder agrees not to effect any sales of its Registrable Securities pursuant to such Shelf Registration Statement (or such filings) at any time after it has received a Suspension Notice from the Company and prior to receipt of an End of Suspension Notice. A Holder may recommence effecting sales

of the Registrable Securities pursuant to the Shelf Registration Statement (or such filings) following further written notice to such effect (an “End of Suspension Notice”) from the Company, which End of Suspension Notice will be given by the Company to the Holders promptly following the conclusion of any Suspension Event (and in any event during the permitted Suspension Period). Notwithstanding any provision herein to the contrary, if the Company gives a Suspension Notice with respect to any Shelf Registration Statement pursuant to this Section 1(f), the Company will extend the period of time during which such Shelf Registration Statement will be maintained effective pursuant to this Agreement by the number of days during the period from the date of receipt by the Holders of the Suspension Notice to and including the date of receipt by the Holders of the End of Suspension Notice and provide copies of the supplemented or amended prospectus necessary to resume sales, with respect to each Suspension Event.

(g) Selection of Underwriters. The Holders of a majority of the outstanding Registrable Securities held by the Sponsor Investors, collectively, at the applicable time of any Public Offering shall have the right to select the investment banker(s) and manager(s) to administer any underwritten offering in connection with any Demand Registration or Shelf Offering.

(h) Other Registration Rights. Except as provided in this Agreement, the Company will not grant to any Person(s) the right to request the Company or any Subsidiary to register any equity securities of the Company or any Subsidiary, or any securities convertible or exchangeable into or exercisable for such securities, without the prior written consent of the Holders of a majority of the LCP Registrable Securities and Holders of a majority of the GIC Registrable Securities.

(i) Revocation of Demand Notice or Shelf Offering Notice. At any time prior to the effective date of the registration statement relating to a Demand Registration or the “pricing” of any offering relating to a Shelf Offering Notice, the Holders of a majority of the LCP Registrable Securities or GIC Registrable Securities who initiated such Demand Registration or delivered such Shelf Offering Notice may revoke or withdraw such notice of a Demand Registration or Shelf Offering Notice on behalf of all Holders participating in such Demand Registration or Shelf Offering without liability to such Holders (including, for the avoidance of doubt, the other Participating Sponsor Investors), in each case by providing written notice to the Company.

(j) Confidentiality. Each Holder expressly agrees to maintain the confidentiality of, and not to disclose the receipt of any notice hereunder (including a Demand Request, a Shelf Offering Notice and a Suspension Notice) and the information contained therein to any Person other than its officers, directors, employees, agents, fiduciaries, stockholders, managers, partners, members, Affiliates, direct and indirect equityholders, financial planners, accountants, attorneys, consultants, agents and representatives, and employees of each of them, in each case, on a need-to-know basis and who are directed by such Holder to be bound by the confidentiality terms of this Agreement to the same extent as if they were parties hereto, and any successors and assigns thereof, and not to disclose or use the information contained in any such notice (or the existence thereof), except (i) as otherwise required by applicable law or by any regulatory or self-regulatory organization having jurisdiction or by order of a court of competent jurisdiction, in which case (except with respect to disclosure that is required in connection with the filing of federal, state and local tax returns) prior to making such disclosure such Holder shall

give written notice to the Company describing in reasonable detail the proposed content of such disclosure and shall permit the Company to review and comment upon the form and substance of such disclosure and allow the Company to seek confidential treatment therefor, and (ii) in the case of any Holder who is employed by the Company or any of its Subsidiaries, in the ordinary course of his or her duties to the Company or any of its Subsidiaries; provided, however, that a Holder of LCP Registrable Securities or GIC Registrable Securities may report to its stockholders, limited partners, members or other owners, as the case may be, regarding the general status of its investment in the Company (without disclosing specific confidential information). Notwithstanding the provisions of this Section 1(j) to the contrary, if any Holder desires to undertake any transfer of its Registrable Securities permitted by this Agreement (other than a transfer to a Permitted Transferee), such Holder may, upon the execution of a confidentiality agreement (in a form reasonably acceptable to the Company's legal counsel) by any *bona fide* potential transferee, disclose to such potential transferee information of the sort otherwise restricted by this Section 1(j) if such Holder reasonably believes such disclosure is necessary for the purpose of transferring such Registrable Securities to the *bona fide* potential transferee.

Section 2 Piggyback Registrations.

(a) Right to Piggyback for Non-Demand Registrations, etc. Whenever the Company proposes to register any of its equity securities under the Securities Act (including primary and secondary registrations, other than (i) in connection with the initial Public Offering, (ii) any registration pursuant to a Demand Registration, Shelf Offering or Underwritten Block Trade (which is addressed in Section 1(b), Section 1(d)(i) and Section 1(d)(ii), respectively, and, with respect to matters of priority, Section 1(e), as applicable to each of them) or (iii) in connection with registrations on Form S-4 or S-8 promulgated by the SEC or any successor or similar forms) (a "Piggyback Registration"), the Company will give prompt written notice (and in any event within three (3) Business Days after the public filing of the registration statement relating to the Piggyback Registration) to all Holders of its intention to effect such Piggyback Registration and, subject to the terms of Section 2(b), Section 2(c) and Section 3, will include in such Piggyback Registration (and in all related registrations or qualifications under blue sky laws and in any related underwriting) all Registrable Securities with respect to which the Company has received written requests for inclusion therein within ten (10) days after delivery of the Company's notice. Any Participating Sponsor Investor may withdraw its request for inclusion at any time prior to executing the underwriting agreement relevant to such Piggyback Registration, or if none, prior to the applicable registration statement becoming effective.

(b) Priority on Primary Registrations. If a Piggyback Registration is an underwritten primary registration on behalf of the Company, and the managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering without adversely affecting the marketability, proposed offering price, timing or method of distribution of the offering, the Company will include in such registration, subject to Section 3, (i) first, the securities the Company proposes to sell, (ii) second, the Registrable Securities requested to be included in such registration by any Holder which, in the opinion of such underwriters, can be sold without any such adverse effect, pro rata among such Holders on the basis of the number of such Registrable Securities owned by each such Holder (provided that, to the extent that a Holder does not desire to include the entirety of such Holder's pro rata portion in such offering, the opportunity

shall be provided to remaining participating Holders, pro rata amongst such participating Holders, to include an additional amount of their Registrable Securities in such offering) and (iii) third, other securities requested to be included in such registration which, in the opinion of the underwriters, can be sold without any such adverse effect.

(c) Priority on Secondary Registrations. If a Piggyback Registration is an underwritten secondary registration on behalf of Holders of the Company's equity securities (other than pursuant to Section 1 hereof), and the managing underwriters advise the Company in writing that in their opinion the number of securities requested to be included in such registration exceeds the number which can be sold in such offering without adversely affecting the marketability, proposed offering price, timing or method of distribution of the offering, the Company will include in such registration, subject to Section 3, (i) first, the Registrable Securities requested to be included in such registration by any Holder which, in the opinion of such underwriters, can be sold, without any such adverse effect, pro rata among such Holders on the basis of the number of Registrable Securities owned by each such Holder at the time of the offering, and (ii) second, other securities requested to be included in such registration which, in the opinion of the underwriters, can be sold without any such adverse effect.

(d) Selection of Underwriters. The Holders of a majority of the outstanding Registrable Securities held by the Sponsor Investors, collectively, at the applicable time of any Public Offering shall have the right to select the investment banker(s) and manager(s) to administer any underwritten offering in connection with any Piggyback Registration.

(e) Right to Terminate Registration. The Company will have the right to terminate or withdraw any registration initiated by it under this Section 2, whether or not any Holder of Registrable Securities has elected to include securities in such registration.

Section 3 Stockholder Lock-Up and Company Holdback Agreement.

(a) Stockholder Lock-up Agreements. In connection with any underwritten Public Offering, each Holder will enter into anylock-up, holdback or similar agreements requested by the underwriter(s) managing such offering, in each case with such modifications and exceptions as may be approved by (1) the Holders of a majority of the GIC Registrable Securities, in the event that the number of GIC Registrable Securities being sold in the applicable offering is greater than the number of LCP Registrable Securities being sold in the applicable offering (each a "GIC Approval Event"), or (2) in any other event, the Holders of a majority of the LCP Registrable Securities. Without limiting the generality of the foregoing, each Holder hereby agrees, in connection with the initial Public Offering and in connection with any Demand Registration, Shelf Offering or Piggyback Registration that is an underwritten Public Offering, not to (i) offer, sell, contract to sell, pledge or otherwise dispose of (including sales pursuant to Rule 144), directly or indirectly, any Lock-up Equity of the Company (including Lock-up Equity that may be deemed to be beneficially owned by such Holder in accordance with the rules and regulations of the SEC) (collectively, "Securities"), or any securities, options or rights convertible into or exchangeable or exercisable for Securities (collectively, "Other Securities"); (ii) enter into a transaction which would have the same effect as described in clause (i) above; (iii) enter into any swap, hedge or other arrangement that transfers, in whole or in part, any of the economic consequences or ownership of any Securities or Other Securities, whether such transaction is to be settled by

delivery of such Securities or Other Securities, in cash or otherwise (each of (i), (ii) and (iii) above, a “Sale Transaction”); or (iv) publicly disclose the intention to enter into any Sale Transaction, in each case of (i) through (iv), commencing on the date on which the Company gives notice to the Holders that a preliminary prospectus has been circulated for such underwritten Public Offering or the “pricing” of such offering and continuing to the date that is (x) 180 days following the date of the final prospectus for such underwritten Public Offering in the case of the initial Public Offering or (y) 90 days following the date of the final prospectus in the case of any other such underwritten Public Offering (each such period, or such shorter period as agreed to by the managing underwriters, a “Holdback Period,” and such 180-day period, the “IPO Lock-up Period”), in each case with such modifications and exceptions as may be approved by the Holders of a majority of the LCP Registrable Securities or, in the event of a GIC Approval Event, the Holders of a majority of the GIC Registrable Securities; provided, however, that the foregoing restrictions shall not apply (i) to Securities acquired in the public market subsequent to the initial Public Offering, (ii) to in-kind distributions pursuant to Section 4(e), (iii) to transfers to Permitted Transferees, (iv) with respect to any Public Offering, to the extent otherwise set forth in the lock-up, holdback or similar agreements entered into by each Holder who was requested to enter into any such agreements by the managing underwriters in connection with such underwritten Public Offering and (v) to any transfer in response to a request from a Holder to alleviate hardship faced by such Holder so long as such transfer is approved by the Board; provided that any release from the provisions described in this Section 3(a) will be determined by the Holders of a majority of the LCP Registrable Securities or, in the event of a GIC Approval Event, the Holders of a majority of the GIC Registrable Securities, notwithstanding any release by the managing underwriters to any Holder in any such lock-up, holdback or similar agreements. The Company may impose stop-transfer instructions with respect to any Securities or Other Securities subject to the restrictions set forth in this Section 3(a) until the end of such Holdback Period.

(b) Additional Stockholder Lock-up Agreement.

(i) During the period beginning the date of expiration of the IPO Lock-up Period to and including the 540th day thereafter (the “Additional Lock-up Termination Date”), (A) no Holder of Management Registrable Securities shall transfer any interest in such Holder’s Management Lock-up Equity, except (1) transfers to Permitted Transferees pursuant to Section 3(b)(ii) below, (2) pursuant to Section 3(b)(iv) below or (3) to any transfer in response to a request from a Holder to alleviate hardship faced by such Holder so long as such transfer is approved by the Board and (B) no Holder of LCP Registrable Securities shall transfer any interest in such Holder’s LCP Lock-up Equity and no Holder of GIC Registrable Securities shall transfer any interest in such Holder’s GIC Lock-up Equity, except (1) with respect to a Holder of LCP Registrable Securities, transfers to an Affiliate of LCP and, with respect to a Holder of GIC Registrable Securities, transfers to an Affiliate of GIC, and (2) transfers in connection with a Sponsor Sale. Unless earlier amended, modified or waived pursuant to Section 11(a), the provisions of this Section 3(b) shall terminate on the earlier of (i) if the 60-day VWAP on the 365th day following the date of expiration of the IPO Lock-up Period (the “Early Lock-up Termination Date”) is greater than or equal to twice the price per share of the Common Equity set forth on the registration statement for the initial Public Offering, the Early Lock-up Termination Date and (ii) the Additional Lock-up Termination Date.

(ii) Unless the Holders of a majority of the LCP Registrable Securities and Holders of a majority of the GIC Registrable Securities consent otherwise in advance in writing, in no event shall any transfer of Common Equity (other than to a Permitted Transferee) by any Holder of Management Registrable Securities be made for any consideration other than cash payable upon consummation of such transfer or in installments over time.

(iii) If a Holder of Management Registrable Securities or its Permitted Transferee is a trust or estate planning vehicle or entity of which a beneficiary, or a member of the Family Group of a beneficiary, is an employee, officer, director, other service provider or consultant of the Company or its Subsidiaries (such trust, the "Trust," and such employee, officer, director, other service provider or consultant, the "Service Provider"), then any provision of this Agreement or any other agreements relating to the Management Lock-up Equity held by the Trust that refers to such Holder's employment or engagement by the Company or its Subsidiaries shall, as it relates to the Trust, be deemed to be a reference to the Service Provider's employment or engagement by the Company or its Subsidiaries, and the Trust shall be bound by and subject to any terms, conditions or restrictions under such agreements by and to which the Service Provider would be bound and subject if the Management Lock-up Equity held by the Trust were held by the Service Provider instead of the Trust.

(iv) Prior to the Additional Lock-up Termination Date, a Holder of Management Registrable Securities may transfer Common Equity only at such time as a Holder of LCP Registrable Securities or GIC Registrable Securities is also selling Common Equity (excluding any transfer of Common Equity or distribution to, with respect to a Holder of LCP Registrable Securities, an Affiliate of LCP and, with respect to a Holder of GIC Registrable Securities, an Affiliate of GIC) in a Sponsor Sale and then only up to a number of shares of Common Equity (a "Transfer Amount") equal to the product of (x) the aggregate number of shares of Common Equity held by such Holder of Management Registrable Securities immediately prior to such Sponsor Sale (excluding for this purpose shares of Common Equity that are already transferable by such Holder of Management Registrable Securities as a result of one or more Transfer Amounts available to such Holder of Management Registrable Securities as a result of the application of the next occurring proviso below), multiplied by (y) a fraction, the numerator of which is the aggregate number of LCP Registrable Securities and GIC Registrable Securities being sold in such Sponsor Sale and the denominator of which is the total number of LCP Registrable Securities and GIC Registrable Securities immediately following the closing of the initial Public Offering; provided that, if at the time of any Sponsor Sale, a Holder of Management Registrable Securities chooses not to transfer any Transfer Amount or is otherwise restricted from transferring or not permitted to transfer all or any portion of any Transfer Amount at such time (including as part of the initial Public Offering), such Holder of Management Registrable Securities shall retain the right to transfer an aggregate number of shares of Common Equity in connection with a future Sponsor Sale by a Holder of the LCP Registrable Securities or the GIC Registrable Securities (in addition to any rights to transfer shares of Common Equity in accordance with this Section 3(b)(iv) in connection with such future Sponsor Sale by a Holder of the LCP Registrable Securities the GIC Registrable Securities) equal to such prior Transfer Amount(s) not sold by such Holder of

Management Registrable Securities. Upon the written request from time to time of any Holder of Management Registrable Securities, the Company shall inform such Holder of Management Registrable Securities of the number of shares of Common Equity that such Holder of Management Registrable Securities may transfer in reliance on this Section 3(b)(iv) subject to the terms and conditions hereof.

(v) In the event that in a Sponsor Sale a Holder of the LCP Registrable Securities plans to sell LCP Lock-up Equity or a Holder of the GIC Registrable Securities plans to sell GIC Lock-up Equity, then, unless this Agreement provides for different procedures applicable to such particular Sponsor Sale (in which case, such other procedures set forth in this Agreement shall control), such Holder of LCP Registrable Securities or GIC Registrable Securities will notify the Company in writing as promptly as practicable in advance of such Sponsor Sale, and the Company will, within three Business Days after receiving such notice from such Holders, notify each Holder of Management Registrable Securities in writing of the proposed Sponsor Sale, which written notice shall set forth (i) such Holder of Management Registrable Securities' Transfer Amount as a result of such Sponsor Sale and (ii) the number of shares of Management Lock-up Equity, if any, that are already transferable by such Holder of Management Registrable Securities as a result of one or more Transfer Amounts available to such Holder of Management Registrable Securities as a result of the application of the proviso in the first sentence of Section 3(b)(iv). Any Holder of Management Registrable Securities shall be permitted to transfer such shares of Management Lock-up Equity pursuant to this Section 3(b) at any time following the date of such Sponsor Sale.

(c) Company Holdback Agreement. The Company (i) will not file any registration statement for a Public Offering or cause any such registration statement to become effective, or effect any public sale or distribution of its equity securities or any securities, options or rights convertible into or exchangeable or exercisable for its equity securities (together, the "Company Holdback Securities") during any Holdback Period (other than as part of such underwritten Public Offering, or a registration on Form S-4 or Form S-8 or any successor or similar form which is (x) then in effect or (y) shall become effective upon the conversion, exchange or exercise of any then outstanding Company Holdback Securities), and (ii) will cause each Holder of Company Holdback Securities (including each of its directors and executive officers) to agree not to effect any Sale Transaction during any Holdback Period, except as part of such underwritten registration (if otherwise permitted), unless approved in writing by the Holders of a majority of the LCP Registrable Securities and the underwriters managing the Public Offering and to enter into any lock-up, holdback or similar agreements requested by the underwriters managing such offering, in each case with such modifications and exceptions as may be approved by the Holders of a majority of the LCP Registrable Securities.

(d) Effect on Registration Rights. The provisions of this Section 3 shall govern and control any allocations or rights to registrations of the Holders, including, but not limited to, pursuant to Sections 1(a), 1(b), 1(d)(i), 1(d)(ii), 1(e), 2(a), 2(b) and 2(c) above.

Section 4 Registration Procedures.

(a) Company Obligations. Whenever the Holders have requested that any Registrable Securities be registered pursuant to this Agreement or have initiated a Shelf Offering, the Company will use its reasonable best efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof, and pursuant thereto the Company will as expeditiously as reasonably possible:

(i) prepare and file with (or submit confidentially to) the SEC a registration statement, and all amendments and supplements thereto and related prospectuses, with respect to such Registrable Securities and use its reasonable best efforts to cause such registration statement to become effective, all in accordance with the Securities Act and all applicable rules and regulations promulgated thereunder (provided that, before filing or confidentially submitting a registration statement or prospectus or any amendments or supplements thereto, the Company will furnish to the counsel selected by the Holders of a majority of the LCP Registrable Securities and counsel selected by the Holders of a majority of the GIC Registrable Securities covered by such registration statement copies of all such documents proposed to be filed or submitted, which documents will be subject to the review and comment of such counsel);

(ii) notify each Holder of (A) the issuance by the SEC of any stop order suspending the effectiveness of any registration statement or the initiation of any proceedings for that purpose, (B) the receipt by the Company or its counsel of any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, and (C) the effectiveness of each registration statement filed hereunder;

(iii) prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period ending when any and all LCP Registrable Securities and GIC Registrable Securities covered by such registration statement have been disposed of in accordance with the intended methods of distribution by the sellers thereof set forth in such registration statement (but not in any event before the expiration of any longer period required under the Securities Act or, if such registration statement relates to an underwritten Public Offering, such longer period as in the opinion of counsel for the underwriters a prospectus is required by law to be delivered in connection with sale of Registrable Securities by an underwriter or dealer) and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such registration statement;

(iv) furnish, without charge, to each seller of Registrable Securities thereunder and each underwriter, if any, such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus) (in each case including all exhibits and documents incorporated by reference therein), each amendment and supplement thereto, each Free Writing Prospectus and such other documents as such seller

or underwriter, if any, may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller (the Company hereby consenting to the use in accordance with all applicable laws of each such registration statement, each such amendment and supplement thereto, and each such prospectus (or preliminary prospectus or supplement thereto) or Free Writing Prospectus by each such seller of Registrable Securities and the underwriters, if any, in connection with the offering and sale of the Registrable Securities covered by such registration statement or prospectus);

(v) use its reasonable best efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions as any seller reasonably requests and do any and all other acts and things which may be reasonably necessary or advisable to enable such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller (provided that the Company will not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph, (B) consent to general service of process in any such jurisdiction or (C) subject itself to taxation in any such jurisdiction);

(vi) notify in writing each seller of such Registrable Securities (A) promptly after it receives notice thereof, of the date and time when such registration statement and each post-effective amendment thereto has become effective or a prospectus or supplement to any prospectus relating to a registration statement has been filed and when any registration or qualification has become effective under a state securities or blue sky law or any exemption thereunder has been obtained, (B) promptly after receipt thereof, of any request by the SEC for the amendment or supplementing of such registration statement or prospectus or for additional information, (C) at any time when a prospectus relating thereto is required to be delivered under the Securities Act, of the happening of any event or of any information or circumstances as a result of which the prospectus included in such registration statement contains an untrue statement of a material fact or omits any fact necessary to make the statements therein not misleading, and, subject to Section 1(f), if required by applicable law or to the extent requested by the Holders of a majority of the LCP Registrable Securities or Holders of a majority of the GIC Registrable Securities, the Company will use its reasonable best efforts to promptly prepare and file a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus will not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading, and (D) if at any time the representations and warranties of the Company in any underwriting agreement, securities sale agreement or other similar agreement, relating to the offering shall cease to be true and correct;

(vii) (A) use reasonable best efforts to cause all such Registrable Securities to be listed on each securities exchange on which similar securities issued by the Company are then listed and, if not so listed, to be listed on a securities exchange and, without limiting the generality of the foregoing, to arrange for at least two market makers to register as such with respect to such Registrable Securities with FINRA, and (B) comply (and continue to comply) with the requirements of any self-regulatory organization applicable to the Company, including without limitation all corporate governance requirements;

(viii) use reasonable best efforts to provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such registration statement;

(ix) enter into and perform such customary agreements (including, as applicable, underwriting agreements in customary form) and take all such other actions as the Holders of a majority of the LCP Registrable Securities and the Holders of a majority of the GIC Registrable Securities or the underwriters, if any, reasonably request in order to expedite or facilitate the disposition of their Registrable Securities (including, without limitation, making available the executive officers of the Company and participating in "road shows," investor presentations, marketing events and other selling efforts, and effecting a stock or unit split or combination, recapitalization or reorganization);

(x) make available for inspection by any seller of Registrable Securities any underwriter participating in any disposition or sale pursuant to such registration statement and any attorney, accountant or other agent retained by any such seller or underwriter, all financial and other records, pertinent corporate and business documents, and properties of the Company as will be necessary to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors, employees, agents, representatives and independent accountants to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such registration statement and the disposition of such Registrable Securities pursuant thereto;

(xi) take all actions to ensure that any Free Writing Prospectus utilized in connection with any Demand Registration or Piggyback Registration or Shelf Offering hereunder complies in all material respects with the Securities Act, is filed in accordance with the Securities Act to the extent required thereby, is retained in accordance with the Securities Act to the extent required thereby and, when taken together with the related prospectus, prospectus supplement and related documents, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(xii) otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the SEC, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months beginning with the first day of the Company's first full calendar quarter after the effective date of the registration statement, which earnings statement will satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder;

(xiii) permit any Holder which, in its sole and exclusive judgment, might be deemed to be an underwriter or a controlling person of the Company, to participate in the preparation of such registration or comparable statement and to allow such Holder to provide language for insertion therein, in form and substance satisfactory to the Company, which in the reasonable judgment of such Holder and its counsel should be included;

(xiv) use its reasonable best efforts to (A) make Short-Form Registration available for the sale of Registrable Securities and (B) prevent the issuance of any stop order suspending the effectiveness of a registration statement, or the issuance of any order suspending or preventing the use of any related prospectus or suspending the qualification of any Common Equity included in such registration statement for sale in any jurisdiction use, and in the event any such order is issued, reasonable best efforts to obtain promptly the withdrawal of such order;

(xv) use its reasonable best efforts to cause such Registrable Securities covered by such registration statement to be registered with or approved by such other governmental agencies or authorities as may be necessary to enable the sellers thereof to consummate the disposition of such Registrable Securities;

(xvi) cooperate with the Holders covered by the registration statement and the managing underwriters or agents, if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing securities to be sold under the registration statement, or the removal of any restrictive legends associated with any account at which such securities are held, and enable such securities to be in such denominations and registered in such names as the managing underwriters, or agents, if any, or such Holders may request;

(xvii) have appropriate officers of the Company prepare and make presentations at any “road shows” and before analysts and rating agencies, as the case may be, take other actions to obtain ratings for any Registrable Securities (if they are eligible to be rated) and otherwise use its reasonable best efforts to cooperate as reasonably requested by the selling Holders and the underwriters in the offering, marketing or selling of the Registrable Securities;

(xviii) have appropriate officers of the Company, and cause representatives of the Company’s independent registered public accountants, to participate in any due diligence discussions reasonably requested by any selling Holder or any underwriter;

(xix) if requested by any underwriter or the Holders of a majority of the LCP Registrable Securities, agree, and cause the Company and any directors or officers of the Company to agree, to be bound by customary “lock-up” agreements restricting the ability to dispose of Company securities and file or cause the filing of any registration statement under the Securities Act;

(xx) if reasonably requested by any managing underwriter, include in any prospectus or prospectus supplement updated financial or business information for the Company’s most recent period or current quarterly period (including estimated results or ranges of results) if required for purposes of marketing the offering in the view of the managing underwriters;

(xxi) use reasonable best efforts to cooperate and assist in any filings required to be made with the FINRA and in the performance of any due diligence investigation by any underwriter that is required to be undertaken in accordance with the rules and regulations of FINRA;

(xxii) otherwise use reasonable best efforts to cooperate as reasonably requested by the selling Holders and the underwriters in the offering, marketing or selling of the Registrable Securities;

(xxiii) otherwise use reasonable best efforts to comply with all applicable rules and regulations of the SEC and all reporting requirements under the rules and regulations of the Exchange Act;

(xxiv) cause any officer of the Company to use reasonable best efforts to participate fully in the sale process in a manner customary for persons in like positions and consistent with his or her other duties with the Company, including the preparation of the registration statement and the preparation and presentation of any road shows and other investor meetings;

(xxv) take no direct or indirect action prohibited by Regulation M under the Exchange Act; provided, however, that, to the extent that any prohibition is applicable to the Company, the Company will take such action as is necessary to make any such prohibition inapplicable;

(xxvi) use reasonable best efforts to cooperate with each Holder covered by the registration statement and each underwriter or agent participating in the disposition of such Registrable Securities and their respective counsel in connection with the preparation and filing of applications, notices, registrations and responses to requests for additional information with FINRA, the New York Stock Exchange, Nasdaq or any other national securities exchange on which the shares of Common Equity are or are to be listed, and to the extent required by the rules and regulations of FINRA, retain a Qualified Independent Underwriter acceptable to the managing underwriters;

(xxvii) in the case of any underwritten offering, use its reasonable best efforts to obtain, and deliver to the underwriter(s), in the manner and to the extent provided for in the applicable underwriting agreement, one or more cold comfort letters from the Company's independent public accountants in customary form and covering such matters of the type customarily covered by cold comfort letters;

(xxviii) use its reasonable best efforts to provide (A) a legal opinion of the Company's outside counsel, dated the effective date of such registration statement addressed to the Company and (B) on the date that such Registrable Securities are delivered to the underwriters for sale in connection with a Demand Registration or Shelf Offering, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the closing date of the applicable sale, (1) one or more legal opinions of the Company's outside counsel, dated such date, in form and substance as customarily given to underwriters in an underwritten public offering or, in the case of a

non-underwritten offering, to the broker, placement agent or other agent of the Holders assisting in the sale of the Registrable Securities, (2) one or more “negative assurances letters” of the Company’s outside counsel, dated such date, in form and substance as is customarily given to underwriters in an underwritten public offering or, in the case of a non-underwritten offering, to the broker, placement agent or other agent of the Holders assisting in the sale of the Registrable Securities, in each case, addressed to the underwriters, if any, or, if requested, in the case of a non-underwritten offering, to the broker, placement agent or other agent of the Holders assisting in the sale of the Registrable Securities and (3) customary certificates executed by authorized officers of the Company as may be requested by any Holder or any underwriter of such Registrable Securities;

(xxix) if the Company files an Automatic Shelf Registration Statement covering any Registrable Securities, use its reasonable best efforts to remain a WKSI (and not become an ineligible issuer (as defined in Rule 405 under the Securities Act)) during the period during which such Automatic Shelf Registration Statement is required to remain effective;

(xxx) if the Company does not pay the filing fee covering the Registrable Securities at the time an Automatic Shelf Registration Statement is filed, pay such fee at such time or times as the Registrable Securities are to be sold;

(xxxi) if the Automatic Shelf Registration Statement has been outstanding for at least three (3) years, at the end of the third year, refile a new Automatic Shelf Registration Statement covering the Registrable Securities, and, if at any time when the Company is required to re-evaluate its WKSI status the Company determines that it is not a WKSI, use its reasonable best efforts to refile the Shelf Registration Statement on Form S-3 and, if such form is not available, Form S-1, and keep such registration statement effective during the period during which such registration statement is required to be kept effective;

(xxxii) if requested by any Participating Sponsor Investor, cooperate with such Participating Sponsor Investor and with the managing underwriters or agents, if any, on reasonable notice to facilitate any Charitable Gifting Event and to prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to permit any such recipient Charitable Organization to sell in the underwritten offering if it so elects; and

(xxxiii) use reasonable best efforts to take any action requested by the selling Holders, including any action described in clauses (i) through (xxxiii) above to prepare for and facilitate any “over-night deal” or other proposed sale of Registrable Securities over a limited timeframe.

(b) Officer Obligations. Each Holder that is an officer of the Company agrees that, if and for so long as he or she is employed by the Company or any Subsidiary thereof, he or she will participate fully in the sale process in a manner customary for persons in like positions and consistent with his or her other duties with the Company, including the preparation of the registration statement and the preparation and presentation of any road shows.

(c) Automatic Shelf Registration Statements. If the Company files any Automatic Shelf Registration Statement for the benefit of the holders of any of its securities other than the Holders, and the Holders of a majority of the LCP Registrable Securities or the Holders of a majority of the GIC Registrable Securities do not request that their Registrable Securities be included in such Shelf Registration Statement, the Company agrees that, at the request of the Holders of a majority of the LCP Registrable Securities or the Holders of a majority of the GIC Registrable Securities, as applicable, it will include in such Automatic Shelf Registration Statement such disclosures as may be required by Rule 430B in order to ensure that the Holders of a majority of the LCP Registrable Securities or the Holders of a majority of the GIC Registrable Securities, as applicable, may be added to such Shelf Registration Statement at a later time through the filing of a prospectus supplement rather than a post-effective amendment. If the Company has filed any Automatic Shelf Registration Statement for the benefit of the Holders of any of its securities other than the Holders of a majority of the LCP Registrable Securities and the Holders of a majority of the GIC Registrable Securities, the Company shall, at the request of the Holders of a majority of the LCP Registrable Securities or the Holders of a majority of the GIC Registrable Securities, file any post-effective amendments necessary to include therein all disclosure and language necessary to ensure that the Holders of LCP Registrable Securities or the Holders of a majority of the GIC Registrable Securities, as applicable, may be added to such Shelf Registration Statement.

(d) Additional Information. The Company may require each seller of Registrable Securities as to which any registration is being effected to furnish the Company such information regarding such seller and the distribution of such securities as the Company may from time to time reasonably request in writing, as a condition to such seller's participation in such registration.

(e) In-Kind Distributions. In the event that LCP or GIC distributes, or has distributed, all of its Registrable Securities to any of its Permitted Transferees, such distributees shall be treated as LCP or GIC, as applicable, hereunder; provided that only the Holders of a majority of the Registrable Securities held by all such distributees, as reasonably and in good faith determined by the Company, shall be entitled to take any action under this Agreement that a Holder of LCP Registrable Securities or GIC Registrable Securities is entitled to take; provided further that such distributees, taken as a whole, shall not be entitled to rights in excess of those conferred to LCP or GIC, as if it remained a single entity party to this Agreement. In the event the Holders of a majority of the LCP Registrable Securities or the Holders of a majority of the GIC Registrable Securities request to participate in a registration pursuant to Section 1 in connection with a distribution of Registrable Securities to any of its Permitted Transferees, the registration shall provide for resale by such partners or members, if requested by such Holders.

(f) Stock Splits, etc. If, and as often as, there are any changes in the Common Equity by way of stock split, stock dividend, combination or reclassification, or through merger, consolidation, reorganization, recapitalization or sale, or by any other means, appropriate adjustment shall be made in the provisions of this Agreement, as may be required, so that the rights, privileges, duties and obligations hereunder shall continue with respect to the Common Equity as so changed.

(g) Suspended Distributions. Each Person participating in a registration hereunder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 4(a)(vi), such Person will immediately discontinue the disposition of its Registrable Securities pursuant to the registration statement until such Person's receipt of the copies of a supplemented or amended prospectus as contemplated by Section 4(a)(vi), subject to the Company's compliance with its obligations under Section 4(a)(vi).

(h) Trading Windows. The Company shall (i) use its reasonable best efforts to notify the Sponsor Investors of each "closing" and "opening" date under the trading windows established by the Company's insider trading policy, in each case, at least five Business Days prior to each such date and (ii) at the request of the Holders of a majority of the LCP Registrable Securities or the Holders of a majority of the GIC Registrable Securities, confirm to such Holders whether a trading window is open at such time.

(i) Other. To the extent that any of the Participating Sponsor Investors is or may be deemed to be an "underwriter" of Registrable Securities pursuant to any SEC comments or policies, the Company agrees that (i) the indemnification and contribution provisions contained in Section 6 shall be applicable to the benefit of such Participating Sponsor Investor in their role as an underwriter or deemed underwriter in addition to their capacity as a Holder and (ii) such Participating Sponsor Investor shall be entitled to conduct the due diligence which they would normally conduct in connection with an offering of securities registered under the Securities Act, including without limitation receipt of customary opinions and comfort letters addressed to such Participating Sponsor Investor.

Section 5 Registration Expenses. Except as expressly provided herein, all out-of-pocket expenses incurred by the Company or any Holders of the LCP Registrable Securities or the GIC Registrable Securities in connection with the performance of or compliance with this Agreement and/or in connection with any Demand Registration, Piggyback Registration or Shelf Offering, whether or not the same shall become effective, shall be paid by the Company, including, without limitation: (i) all registration and filing fees, and any other fees and expenses associated with filings required to be made with the SEC or FINRA; (ii) all fees and expenses in connection with compliance with any securities or "blue sky" laws; (iii) all printing, duplicating, word processing, messenger, telephone, facsimile and delivery expenses (including expenses of printing certificates for the Registrable Securities in a form eligible for deposit with The Depository Trust Company or other depository and of printing prospectuses and Company Free Writing Prospectuses); (iv) all fees and disbursements of counsel for the Company and of all independent certified public accountants of the Company (including the expenses of any special audit and cold comfort letters required by or incident to such performance); (v) Securities Act liability insurance or similar insurance if the Company so desires or the underwriters so require in accordance with then-customary underwriting practice; (vi) all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange on which similar securities of the Company are then listed (or on which exchange the Registrable Securities are proposed to be listed in the case of the initial Public Offering); (vii) all applicable rating agency fees with respect to the Registrable Securities, (viii) all fees and disbursements of legal counsel for the Company; (ix) reasonable fees and expenses of counsel for LCP and counsel for GIC; (x) reasonable fees and expenses of one counsel selected by LCP for any Holder participating in the relevant offering; (xi) when required by the underwriters, reasonable fees and expenses of legal counsel for each Holder

participating in such registration (or, in the case of a Shelf Registration, each Holder selling Registrable Securities under the Shelf Registration Statement) solely in connection with the preparation of any legal opinions requested by the underwriters in respect of such Holder personally; (xii) any fees and disbursements of underwriters customarily paid by issuers or sellers of securities; (xiii) all fees and expenses of any special experts or other Persons retained by the Company, the Holders of a majority of the LCP Registrable Securities or the Holders of a majority of the GIC Registrable Securities in connection with any registration; (xiv) all of the Company's internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties) and (xv) all expenses related to the "road-show" for any underwritten offering, including all travel, meals and lodging. All such expenses are referred to herein as "Registration Expenses." The Company shall not be required to pay, and each Person that sells securities pursuant to a Demand Registration, Shelf Offering or Piggyback Registration hereunder will bear and pay, all underwriting discounts and commissions applicable to the Registrable Securities sold for such Person's account and all transfer taxes (if any) attributable to the sale of Registrable Securities.

Section 6 Indemnification and Contribution.

(a) By the Company. The Company will indemnify and hold harmless, to the fullest extent permitted by law and without limitation as to time, each Holder, such Holder's officers, directors, employees, agents, fiduciaries, stockholders, managers, partners, members, Affiliates, direct and indirect equityholders, accountants, attorneys, consultants, agents and representatives, and employees of each of them, and any successors and assigns thereof, and each Person who controls such Holder (within the meaning of the Securities Act) (the "Indemnified Parties," and each an "Indemnified Party") against all losses, claims, actions, damages, liabilities and expenses (including with respect to actions or proceedings, whether commenced or threatened, and including reasonable attorney fees and expenses) (collectively, "Losses") caused by, resulting from, arising out of, based upon or related to any of the following (each, a "Violation") by the Company: (i) any untrue or alleged untrue statement of material fact contained in (A) any registration statement, prospectus, preliminary prospectus, roadshows or Free Writing Prospectus, or any amendment thereof or supplement thereto, or (B) any application or other document or communication (in this Section 6, collectively called an "application") executed by or on behalf of the Company or based upon written information furnished by or on behalf of the Company filed in any jurisdiction in order to qualify any securities covered by such registration under the "blue sky" or securities laws thereof; (ii) any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading or (iii) any violation or alleged violation by the Company of the Securities Act or any other similar federal or state securities laws or any rule or regulation promulgated thereunder applicable to the Company and relating to action or inaction required of the Company in connection with any such registration, qualification or compliance. In addition, the Company will reimburse such Indemnified Party for any legal or any other expenses reasonably incurred by them in connection with investigating or defending any such Losses. Notwithstanding the foregoing, the Company will not be liable in any such case to the extent that any such Losses result from, arise out of, are based upon, or relate to an untrue statement or omission, made in such registration statement, any such prospectus, preliminary prospectus or Free Writing Prospectus or any amendment or supplement thereto, or in any application, in reliance upon and in conformity with, written information prepared and furnished in writing to the Company by such Indemnified Party expressly for use therein or by

such Indemnified Party's failure to deliver a copy of the registration statement or prospectus or any amendments or supplements thereto after the Company has furnished such Indemnified Party with a sufficient number of copies of the same. In connection with an underwritten offering, the Company will indemnify such underwriters, their officers and directors, and each Person who controls such underwriters (within the meaning of the Securities Act) to the same extent as provided above with respect to the indemnification of the Indemnified Parties or as otherwise agreed to in the underwriting agreement executed in connection with such underwritten offering. Such indemnity and reimbursement of expenses shall remain in full force and effect regardless of any investigation made by or on behalf of such Indemnified Party and shall survive the transfer of such securities by such seller.

(b) By Holders. In connection with any registration statement in which a Holder is participating, each such Holder will furnish to the Company in writing such information and affidavits as the Company reasonably requests for use in connection with any such registration statement or prospectus and, to the extent permitted by law, will indemnify the Company, its officers, directors, employees, agents and representatives, and each Person who controls the Company (within the meaning of the Securities Act) against any Losses resulting from (as determined by a final and appealable judgment, order or decree of a court of competent jurisdiction) any untrue statement of material fact contained in the registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission is contained in any information or affidavit so furnished in writing by such Holder expressly for use therein; provided that the obligation to indemnify will be individual, not joint and several, for each Holder and will be limited to the net amount of proceeds received by such Holder from the sale of Registrable Securities pursuant to such registration statement.

(c) Claim Procedure. Any Person entitled to indemnification hereunder will (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that the failure to give prompt notice will impair any Person's right to indemnification hereunder only to the extent such failure has prejudiced the indemnifying party) and (ii) unless in such Indemnified Party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the Indemnified Party. If such defense is assumed, the indemnifying party will not be subject to any liability for any settlement made by the Indemnified Party without its consent (but such consent will not be unreasonably withheld, conditioned or delayed). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any Indemnified Party a conflict of interest may exist between such Indemnified Party and any other of such Indemnified Parties with respect to such claim. In such instance, the conflicted Indemnified Parties will have a right to retain one separate counsel, chosen by the majority of the conflicted Indemnified Parties involved in the indemnification, at the expense of the indemnifying party.

(d) Contribution. If the indemnification provided for in this Section 6 is held by a court of competent jurisdiction to be unavailable to, or is insufficient to hold harmless, an

Indemnified Party or is otherwise unenforceable with respect to any Loss referred to herein, then such indemnifying party will contribute to the amounts paid or payable by such indemnified party as a result of such Loss, (i) in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the Indemnified Party on the other hand in connection with the statements or omissions which resulted in such Loss as well as any other relevant equitable considerations or (ii) if the allocation provided by clause (i) of this Section 6(d) is not permitted by applicable law, then in such proportion as is appropriate to reflect not only such relative fault but also the relative benefit of the Company on the one hand and of the sellers of Registrable Securities and any other sellers participating in the registration statement on the other in connection with the statement or omissions which resulted in such Losses, as well as any other relevant equitable considerations; provided that the maximum amount of liability in respect of such contribution will be limited, in the case of each seller of Registrable Securities, to an amount equal to the net proceeds actually received by such seller from the sale of Registrable Securities effected pursuant to such registration. The relative fault of the indemnifying party and of the Indemnified Party will be determined by reference to, among other things, whether the untrue (or, as applicable, alleged untrue) statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just or equitable if the contribution pursuant to this Section 6(d) were to be determined by pro rata allocation or by any other method of allocation that does not take into account such equitable considerations. The amount paid or payable by an Indemnified Party as a result of the Losses referred to herein will be deemed to include any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending against any action or claim which is the subject hereof. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who is not guilty of such fraudulent misrepresentation.

(e) Release. No indemnifying party will, except with the consent of the Indemnified Party, consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

(f) Non-exclusive Remedy; Survival. The indemnification and contribution provided for under this Agreement will be in addition to any other rights to indemnification or contribution that any Indemnified Party may have pursuant to law or contract (and the Company and its Subsidiaries shall be considered the indemnitors of first resort in all such circumstances to which this Section 6 applies) and will remain in full force and effect regardless of any investigation made by or on behalf of the Indemnified Party or any officer, director or controlling Person of such Indemnified Party and will survive the transfer of Registrable Securities and the termination or expiration of this Agreement.

Section 7 Cooperation with Underwritten Offerings. No Person may participate in any underwritten registration hereunder unless such Person (i) agrees to sell such Person's securities on the basis provided in any underwriting arrangements approved by the Person or Persons entitled hereunder to approve such arrangements (including, without limitation, pursuant to the terms of any over-allotment or "green shoe" option requested by the underwriters;

provided that no Holder will be required to sell more than the number of Registrable Securities such Holder has requested to include in such registration) and (ii) completes, executes and delivers all questionnaires, powers of attorney, stock powers, custody agreements, indemnities, underwriting agreements and other documents and agreements required under the terms of such underwriting arrangements or as may be reasonably requested by the Company and the managing underwriters. To the extent that any such agreement is entered into pursuant to, and consistent with, Section 3, Section 4 and/or this Section 7, the respective rights and obligations created under such agreement will supersede the respective rights and obligations of the Holders, the Company and the underwriters created thereby with respect to such registration.

Section 8 Subsidiary Public Offering. If, after an initial Public Offering of the common equity securities of one of its Subsidiaries, the Company distributes securities of such Subsidiary to its equityholders, then the rights and obligations of the Company pursuant to this Agreement will apply, *mutatis mutandis*, to such Subsidiary, and the Company will cause such Subsidiary to comply with such Subsidiary's obligations under this Agreement as if it were the Company hereunder.

Section 9 Joinder; Additional Parties; Transfer of Registrable Securities.

(a) Joinder. The Company may from time to time (with the prior written consent of the Holders of a majority of the LCP Registrable Securities) permit any Person who acquires Common Equity (or rights to acquire Common Equity) to become a party to this Agreement and to be entitled to and be bound by all of the rights and obligations as a Holder by obtaining an executed joinder to this Agreement from such Person in the form of Exhibit B attached hereto (a "Joinder"); provided that a Permitted Transferee need not execute a Joinder in order to become a party to this Agreement pursuant to Section 11(e). Upon the execution and delivery of a Joinder by such Person, the Common Equity held by such Person shall become the category of Registrable Securities, and such Person shall be deemed the category of Holder, in each case as set forth on the signature page to such Joinder.

(b) Legend. Each certificate (if any) evidencing any Registrable Securities and each certificate issued in exchange for or upon the transfer of any Registrable Securities (unless such Registrable Securities would no longer be Registrable Securities after such transfer) will be stamped or otherwise imprinted with a legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS SET FORTH IN A REGISTRATION RIGHTS AND LOCK-UP AGREEMENT DATED AS OF _____, 2020 AMONG THE ISSUER OF SUCH SECURITIES (THE "COMPANY") AND CERTAIN OF THE COMPANY'S EQUITYHOLDERS, AS AMENDED. A COPY OF SUCH AGREEMENT WILL BE FURNISHED WITHOUT CHARGE BY THE COMPANY TO THE HOLDER HEREOF UPON WRITTEN REQUEST."

The Company will imprint such legend on certificates evidencing Registrable Securities outstanding prior to the date hereof. The legend set forth above will be removed from the certificates evidencing any securities that have ceased to be Registrable Securities.

Section 10 Rules 144 and 144A and Regulation S. The Company covenants that it will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the reasonable request of the Holders of a majority of the LCP Registrable Securities or the Holders of a majority of the GIC Registrable Securities, make publicly available such necessary information for so long as necessary to permit sales pursuant to Rule 144, Rule 144A or Regulation S under the Securities Act, as such rules may be amended from time to time), and it will take such further action as the Holders of a majority of the LCP Registrable Securities or the Holders of a majority of the GIC Registrable Securities may reasonably request, all to the extent required from time to time to enable such Holders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144, Rule 144A or Regulation S under the Securities Act, as such rules may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Upon the reasonable request of any Holder, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements and, if not, the specifics thereof.

Section 11 General Provisions.

(a) Amendments and Waivers. Except as otherwise provided herein, the provisions of this Agreement may be amended, modified or waived only with the prior written consent of the Company and LCP; provided that, if any such amendment, modification or waiver would adversely affect GIC's rights or obligations hereunder, then the prior written consent of GIC will also be required for such amendment, modification or waiver. The failure or delay of any Person to enforce any of the provisions of this Agreement will in no way be construed as a waiver of such provisions and will not affect the right of such Person thereafter to enforce each and every provision of this Agreement in accordance with its terms. A waiver or consent to or of any breach or default by any Person in the performance by that Person of his, her or its obligations under this Agreement will not be deemed to be a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person under this Agreement.

(b) Remedies. The parties to this Agreement will be entitled to enforce their rights under this Agreement specifically (without posting a bond or other security) to recover damages caused by reason of any breach of any provision of this Agreement and to exercise all other rights existing in their favor. The parties hereto agree and acknowledge that a breach of this Agreement would cause irreparable harm and money damages would not be an adequate remedy for any such breach and that, in addition to any other rights and remedies existing hereunder, any party will be entitled to specific performance and/or other injunctive relief from any court of law or equity of competent jurisdiction (without posting any bond or other security) in order to enforce or prevent violation of the provisions of this Agreement.

(c) Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision

of this Agreement is held to be prohibited, invalid, illegal or unenforceable in any respect under any applicable law or regulation in any jurisdiction, such prohibition, invalidity, illegality or unenforceability will not affect the validity, legality or enforceability of any other provision of this Agreement in such jurisdiction or in any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such prohibited, invalid, illegal or unenforceable provision had never been contained herein.

(d) Entire Agreement. Except as otherwise provided herein, this Agreement contains the complete agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements or representations by or among the parties hereto, written or oral, which may have related to the subject matter hereof in any way.

(e) Successors and Assigns. This Agreement and the rights, duties and obligations of the Company hereunder may not be assigned or delegated by the Company in whole or in part. This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the parties and its successors and the permitted assigns of the Holders (whether so expressed or not), which shall include any Permitted Transferee regardless of whether such Permitted Transferee has executed a Joinder pursuant to Section 9(a), and upon becoming a successor or permitted assign, such successor or permitted assign (including any applicable Permitted Transferee) shall be treated as a Holder and as LCP or GIC or Other Investor, as applicable, hereunder. This Agreement shall not confer any rights or benefits on any persons that are not parties hereto, other than as expressly set forth in this Agreement, including this Section 11(e).

(f) Termination. This Agreement terminates with respect to any Holder when such Holder has disposed of all of its Registrable Securities in a sale pursuant to which the rights are not assigned to a Permitted Transferee.

(g) Notices. Any notice, demand or other communication to be given under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (i) when delivered personally to the recipient; (ii) when sent by electronic mail or facsimile if sent during normal business hours of the recipient, but if not, then on the next Business Day (provided that any such notice under this clause (ii) will not be effective unless within one Business Day after the notice is sent, a copy of such notice is sent to the recipient by first-class mail, return receipt requested, or reputable overnight courier service (charges prepaid)); (iii) one Business Day after it is sent to the recipient by reputable overnight courier service (charges prepaid); or (iv) three Business Days after it is mailed to the recipient by first class mail, return receipt requested. Such notices, demands and other communications will be sent to the Company, LCP and GIC at the address specified for each below or any Joinder and to any Holder, or at such address or to the attention of such other Person as the recipient party has specified on the signature page hereto or any Joinder or by prior written notice to the sending party. Any party may change such party's address for receipt of notice by giving prior written notice of the change to the sending party as provided herein. The Company's address is:

Leslie's, Inc.

2005 East Indian School Road

Phoenix, Arizona 85016

Attn: Steve Weddell

Brad Gazaway

Email: sweddell@lesl.com

bgazaway@lesl.com

Facsimile: (602) 366-3944

with a copy, which shall not constitute notice, to:

Kirkland & Ellis LLP

601 Lexington Avenue

New York, New York 10022

Attn: Christian O. Nagler

Joshua Kogan, P.C.

Ryan Brissette

Aslam Rawoof

Email: cnagler@kirkland.com

jkogan@kirkland.com

ryan.brissette@kirkland.com

aslam.rawoof@kirkland.com

Facsimile: (212) 446-4900

LCP's address is:

Bubbles Investor Aggregator, L.P.

c/o C8 Management, LLC

599 West Putnam Avenue

Greenwich, CT 06839

Facsimile: (203) 629-4903

Attn: Scott Dahnke

Marc Magliacano

Matt Lischick

Email: scott@catterton.com

marcm@catterton.com

Matt.Lischick@lcatterton.com

Facsimile: (203) 629-4903

with a copy, which shall not constitute notice, to:

Kirkland & Ellis LLP

601 Lexington Avenue
New York, New York 10022
Attn: Christian O. Nagler
Joshua Kogan, P.C.
Ryan Brissette
Aslam Rawoof
Email: cnagler@kirkland.com
jkogan@kirkland.com
ryan.brissette@kirkland.com
aslam.rawoof@kirkland.com
Facsimile: (212) 446-4900

GIC's address is:

Explorer Investment Pte Ltd.

c/o GIC Special Investments Pte Ltd
280 Park Ave, 9th Floor
New York, New York 10017
Attn: Daphne Tong
Email: daphnetong@gic.com.sg

with a copy, which shall not constitute notice, to:

Sidley Austin LLP

787 Seventh Avenue
New York, New York 10019
Attn: Asi Kirmayer
Email: akirmayer@sidley.com
Facsimile: 212-839-5599

or to such other address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party.

(h) Business Days. If any time period for giving notice or taking action hereunder expires on a day that is not a Business Day, the time period automatically will be extended to the Business Day immediately following such Saturday, Sunday or legal holiday.

(i) Governing Law. The corporate law of the State of Delaware will govern all issues and questions concerning the relative rights of the Company and its equityholders. All issues and questions concerning the construction, validity, interpretation and enforcement of this Agreement and the exhibits and schedules hereto will be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

(j) WAIVER OF JURY TRIAL. AS A SPECIFICALLY BARGAINED FOR INDUCEMENT FOR EACH OF THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT (AFTER HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL), EACH PARTY HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

(k) CONSENT TO JURISDICTION AND SERVICE OF PROCESS. EACH OF THE PARTIES IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS AGREEMENT, ANY RELATED AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY. EACH OF THE PARTIES HERETO FURTHER AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY U.S. REGISTERED MAIL TO SUCH PARTY'S RESPECTIVE ADDRESS SET FORTH ABOVE WILL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION, SUIT OR PROCEEDING WITH RESPECT TO ANY MATTERS TO WHICH IT HAS SUBMITTED TO JURISDICTION IN THIS PARAGRAPH. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF THIS AGREEMENT, ANY RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, AND HEREBY AND THEREBY FURTHER IRREVOCABLY AND UNCONDITIONALLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(l) No Recourse. Notwithstanding anything to the contrary in this Agreement, the Company and each Holder agrees and acknowledges that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement will be had against any current or future director, officer, employee, general or limited partner or member of any Holder or any Affiliate or assignee thereof, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever will attach to, be imposed on or otherwise be incurred by any current or future officer, agent or employee of any Holder or any current or future member of any Holder or any current or future director, officer, employee, partner or member of any Holder or of any Affiliate or assignee thereof, as such for any obligation of any Holder under this Agreement or any documents or instruments delivered in connection with this Agreement for any claim based on, in respect of or by reason of such obligations or their creation.

(m) Descriptive Headings: Interpretation. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. The use of the word "including" in this Agreement will be by way of example rather than by limitation.

(n) No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party.

(o) Counterparts. This Agreement may be executed in multiple counterparts, any one of which need not contain the signature of more than one party, but all such counterparts taken together will constitute one and the same agreement.

(p) Electronic Delivery. This Agreement, the agreements referred to herein and each other agreement or instrument entered into in connection herewith or therewith or contemplated hereby or thereby, and any amendments hereto or thereto, to the extent executed and delivered by means of a photographic, photostatic, facsimile or similar reproduction of such signed writing using a facsimile machine or electronic mail will be treated in all manner and respects as an original agreement or instrument and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument will raise the use of a facsimile machine or electronic mail to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or electronic mail as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

(q) Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Holder agrees to execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the provisions of this Agreement and the transactions contemplated hereby.

(r) Dividends, Recapitalizations, etc. If at any time or from time to time there is any change in the capital structure of the Company by way of a stock split, stock dividend, combination or reclassification, or through a merger, consolidation, reorganization or recapitalization, or by any other means, appropriate adjustment will be made in the provisions hereof so that the rights and privileges granted hereby will continue.

(s) No Third-Party Beneficiaries. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any Person not a party hereto, and no such other Person shall have any right or cause of action hereunder, except as otherwise expressly provided herein.

* * * * *

IN WITNESS WHEREOF, the parties have executed this Registration Rights and Lock-up Agreement as of the date first written above.

Leslie's, Inc.

By: _____

Its: _____

SPONSOR INVESTORS:

BUBBLES INVESTOR AGGREGATOR, L.P.

By: C8 Management, L.L.C.
Its: General Partner

By: _____
Name:
Title:

EXPLORER INVESTMENT PTE LTD

By: _____
Name:
Title:

OTHER INVESTORS:¹

By: _____

Name: _____

Title: _____

Address: _____

Attn: _____

Email: _____

Facsimile: _____

By: _____

Name: _____

Title: _____

Address: _____

Attn: _____

Email: _____

Facsimile: _____

¹ NTD: To be signed by each rollover partner party to the Bubbles Holdings, L.P. limited partnership agreement.

DEFINITIONS

“60-day VWAP” means, as of any date, the volume-weighted average price per share of the Common Equity measured from 9:30 a.m. Eastern time on the Scheduled Trading Day that is sixty (60) Scheduled Trading Days preceding such date to 4:00 p.m. Eastern time on the Scheduled Trading Day immediately preceding such date.

“Additional Lock-up Termination Date” has the meaning set forth in Section 3(b)(i).

“Affiliate” of any Person means any other Person controlled by, controlling or under common control with such Person and, in the case of an individual, also includes any member of such individual’s Family Group; provided that (i) the Company and its Subsidiaries will not be deemed to be Affiliates of any Holder of Registrable Securities and (ii) (x) LCP, the LCP Investors and any private equity fund or entity affiliated with C8 Management, or any investment vehicle sponsored thereby and any affiliate thereof and (y) GIC, GIC Pte Ltd and its subsidiaries and entities managed or advised by GIC Pte Ltd and its subsidiaries, in each case, will not be deemed to be Affiliates of any Holder of Other Investor Registrable Securities. As used in this definition, “control” (including, with its correlative meanings, “controlling,” “controlled by” and “under common control with”) will mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities, by contract or otherwise). As this definition is used with respect to LCP, Affiliates of LCP include each of the LCP Investors and any private equity fund or entity affiliated with C8 Management, or any investment vehicle sponsored thereby and any affiliate thereof. As this definition is used with respect to GIC, Affiliates of GIC include GIC Pte Ltd and its subsidiaries and entities managed or advised by GIC Pte Ltd and its subsidiaries.

“Agreement” has the meaning set forth in the preamble to this Agreement.

“application” has the meaning set forth in Section 6(a).

“Automatic Shelf Registration Statement” has the meaning set forth in Section 1(a).

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

“Business Day” means any calendar day other than a Saturday, Sunday or other day on which commercial banks in New York, New York or Phoenix, Arizona are authorized or required to close.

“C8 Management” means C8 Management, L.L.C., a Delaware limited liability company, or any successor thereto or assignee of all or a substantial portion of the business or assets thereof.

“Charitable Gifting Event” means any transfer by any Holders of the LCP Registrable Securities or the GIC Registrable Securities, or any subsequent transfer by such Holder’s members, partners or other employees, in connection with a bona fide gift to any Charitable Organization on the date of, but prior to, the execution of the underwriting agreement entered into in connection with any underwritten offering.

“Charitable Organization” means a charitable organization as described by Section 501(c)(3) of the Internal Revenue Code of 1986, as in effect from time to time.

“Common Equity” means the Company’s common stock, par value \$0.001 per share and any shares of capital stock of the Company issued or issuable with respect to such common stock by way of a stock dividend or distribution payable thereon or stock split, reverse stock split, recapitalization, reclassification, reorganization, exchange, subdivision or combination thereof.

“Company” has the meaning set forth in the preamble and shall include its successor(s).

“Company Holdback Securities” has the meaning set forth in Section 3(c).

“Demand Registration” has the meaning set forth in Section 1(a).

“Demand Request” has the meaning set forth in Section 1(a).

“Early Lock-up Termination Date” has the meaning set forth in Section 3(b)(i).

“End of Suspension Notice” has the meaning set forth in Section 1(f)(ii).

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, or any successor federal law then in force, together with all rules and regulations promulgated thereunder.

“Family Group” means, with respect to any individual, such individual’s current or former spouse, their respective parents, descendants of such parents (whether natural or adopted) and the spouses of such descendants, any trust, limited partnership, corporation or limited liability company established solely for the benefit of such individual or such individual’s current or former spouse, their respective parents, descendants of such parents (whether natural or adopted) or the spouses of such descendants.

“FINRA” means the Financial Industry Regulatory Authority.

“Free Writing Prospectus” means a free-writing prospectus, as defined in Rule 405.

“GIC” has the meaning set forth in the preamble to this Agreement.

“GIC Pte Ltd” means GIC Pte Ltd, a Singapore private limited company, or any successor thereto or assignee of all or a substantial portion of the business or assets thereof.

“GIC Approval Event” has the meaning set forth in Section 3(a).

“GIC Lock-up Equity” means (i) any Common Equity held (directly or indirectly) by GIC or any of its Affiliates immediately following the closing of the initial Public Offering,

and (ii) any equity securities of the Company or any Subsidiary issued or issuable with respect to the securities referred to in clause (i) above by way of dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization.

“GIC Registrable Securities” means (i) any Common Equity held (directly or indirectly) by GIC or any of its Affiliates, and (ii) any equity securities of the Company or any Subsidiary issued or issuable with respect to the securities referred to in clause (i) above by way of dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization.

“Holdback Period” has the meaning set forth in Section 3(a).

“Holder” means a holder of Registrable Securities who is a party to this Agreement (including by way of Joinder).

“Indemnified Parties” has the meaning set forth in Section 6(a).

“IPO Lock-up Period” has the meaning set forth in Section 3(a).

“Joinder” has the meaning set forth in Section 9(a).

“LCP” has the meaning set forth in the preamble to this Agreement.

“LCP Investors” means each of L Catterton Partners VIII, L.P., a Delaware limited partnership, and L Catterton VIII Offshore, L.P., a Cayman Island limited partnership.

“LCP Lock-up Equity” means (i) any Common Equity held (directly or indirectly) by LCP or any of its Affiliates immediately following the closing of the initial Public Offering, and (ii) any equity securities of the Company or any Subsidiary issued or issuable with respect to the securities referred to in clause (i) above by way of dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization.

“LCP Registrable Securities” means (i) any Common Equity held (directly or indirectly) by LCP or any of its Affiliates, and (ii) any equity securities of the Company or any Subsidiary issued or issuable with respect to the securities referred to in clause (i) above by way of dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization.

“Lock-up Equity” means any LCP Lock-up Equity, any GIC Lock-up Equity and any Other Investor Lock-up Equity.

“Long-Form Registrations” has the meaning set forth in Section 1(a).

“Losses” has the meaning set forth in Section 6(a).

“Management Lock-up Equity” means Other Investor Lock-up Equity that constitutes (i) any Common Equity held (directly or indirectly) by any Person listed on Exhibit C or any of their Affiliates immediately following the closing of the initial Public Offering, (ii) any

restricted stock units issued (directly or indirectly) to any Person listed on Exhibit C or any of their Affiliates under the Company's 2020 Omnibus Incentive Plan in respect of Class B Units of Bubbles Holdings, L.P. that were unvested as of the closing of the initial Public Offering and in respect of which Common Equity may be issued following such closing and (iii) any equity securities of the Company or any Subsidiary issued or issuable with respect to the securities referred to in clause (i) or clause (ii) above by way of dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization.

"Management Registrable Securities" means Other Investor Registrable Securities that constitute (i) any Common Equity held (directly or indirectly) by any Person listed on Exhibit C or any of their Affiliates, and (ii) any equity securities of the Company or any Subsidiary issued or issuable with respect to the securities referred to in clause (i) above by way of dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization.

"Other Investors" has the meaning set forth in the preamble to this Agreement.

"Other Investor Lock-up Equity" means (i) any Common Equity held (directly or indirectly) by any Other Investors or any of their Affiliates immediately following the closing of the initial Public Offering, (ii) any restricted stock units issued (directly or indirectly) to any Other Investors or any of their Affiliates under the Company's 2020 Omnibus Incentive Plan in respect of Class B Units of Bubbles Holdings, L.P. that were unvested as of the closing of the initial Public Offering and in respect of which Common Equity may be issued following such closing and (iii) any equity securities of the Company or any Subsidiary issued or issuable with respect to the securities referred to in clause (i) or clause (ii) above by way of dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization.

"Other Investor Registrable Securities" means (i) any Common Equity held (directly or indirectly) by any Other Investors or any of their Affiliates, and (ii) any equity securities of the Company or any Subsidiary issued or issuable with respect to the securities referred to in clause (i) above by way of dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization.

"Other Securities" has the meaning set forth in Section 3(a).

"Participating Sponsor Investors" means any Holders of LCP Registrable Securities or GIC Registrable Securities participating in the request for a Demand Registration, Shelf Offering, Piggyback Registration or Underwritten Block Trade.

"Permitted Transferees" means, in the case of any Holder, (i) such Holder's Family Group, (ii) any trust for the direct or indirect benefit of such Holder or such Holder's Family Group, (iii) if such Holder is a trust, to the trustor or beneficiary of such trust or to the estate of a beneficiary of such trust, (iv) any officer, director, general partner, limited partner, shareholder, member or owner of similar equity interests in such Holder and (v) any Affiliate of such Holder or such Affiliate's Family Group.

“Person” means an individual, partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization or governmental entity, or any department, agency or political subdivision thereof.

“Piggyback Registration” has the meaning set forth in Section 2(a).

“Potential Participant” has the meaning set forth in Section 1(d)(ii).

“Public Offering” means any sale or distribution by the Company, one of its Subsidiaries and/or Holders to the public of Common Equity or other securities convertible into or exchangeable for Common Equity pursuant to an offering registered under the Securities Act.

“Qualified Independent Underwriter” means a qualified independent underwriter, as defined under the FINRA Rule 5121.

“Registrable Securities” means any LCP Registrable Securities, GIC Registrable Securities and Other Investor Registrable Securities. As to any particular Registrable Securities, such securities will cease to be Registrable Securities when they have been (a) sold or distributed pursuant to a Public Offering, (b) sold in compliance with Rule 144 following the consummation of the initial Public Offering or (c) repurchased by the Company or a Subsidiary of the Company. For purposes of this Agreement, a Person will be deemed to be a Holder of Registrable Securities, and the Registrable Securities will be deemed to be in existence, whenever such Person has the right to acquire, directly or indirectly, such Registrable Securities (upon conversion or exercise in connection with a transfer of securities or otherwise, but disregarding any restrictions or limitations upon the exercise of such right), whether or not such acquisition has actually been effected, and such Person will be entitled to exercise the rights of a Holder of Registrable Securities hereunder (it being understood that a Holder of Registrable Securities may only request that Registrable Securities in the form of Common Equity be registered pursuant to this Agreement).

“Rule 144,” “Rule 158,” “Rule 405” and “Rule 415” mean, in each case, such rule promulgated under the Securities Act (or any successor provision) by the SEC, as the same will be amended from time to time, or any successor rule then in force.

“Sale Transaction” has the meaning set forth in Section 3(a).

“Scheduled Trading Day” means any day on which the Nasdaq Global Market (or any successor to such exchange or any substitute to such exchange to which trading in the Common Equity has been relocated) is scheduled to be open for trading for its regular trading session.

“SEC” means the United States Securities and Exchange Commission.

“Securities” has the meaning set forth in Section 3(a).

“Securities Act” means the Securities Act of 1933, as amended from time to time, or any successor federal law then in force, together with all rules and regulations promulgated thereunder.

“Service Provider” has the meaning set forth in Section 3(b)(iii).

“Shelf Offering” has the meaning set forth in Section 1(d)(i).

“Shelf Offering Notice” has the meaning set forth in Section 1(d)(i).

“Shelf Period” has the meaning set forth in Section 1(d)(v).

“Shelf Registrable Securities” has the meaning set forth in Section 1(d)(i).

“Shelf Registration” has the meaning set forth in Section 1(a).

“Shelf Registration Statement” has the meaning set forth in Section 1(d)(i).

“Short-Form Registrations” has the meaning set forth in Section 1(a).

“Sponsor Investors” has the meaning set forth in the preamble to this Agreement.

“Sponsor Sale” means a sale of Common Equity by a Holder of LCP Registrable Securities or GIC Registrable Securities (i) in a Public Offering, (ii) to the public pursuant to Rule 144 (or any similar rule then in effect) effected through a broker, dealer or market maker, (iii) in an unregistered block sale to a financial institution, (iv) in a privately negotiated transaction under “Section 4(a)(1)-1/2” of the Securities Act or (v) in any other transaction in which such Holders transfer Common Equity to a party other than, with respect to a Holder of LCP Registrable Securities, an Affiliate of LCP and, with respect to a Holder of GIC Registrable Securities, an Affiliate of GIC.

“Subsidiary” means, with respect to the Company, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by the Company or one or more of the other Subsidiaries of the Company or a combination thereof; or (ii) if a limited liability company, partnership, association or other business entity, a majority of the limited liability company, partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by the Company or one or more Subsidiaries of the Company or a combination thereof. For purposes hereof, a Person or Persons will be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons will be allocated a majority of limited liability company, partnership, association or other business entity gains or losses, or will be or control the managing director or general partner of such limited liability company, partnership, association or other business entity.

“Suspension Event” has the meaning set forth in Section 1(f)(ii).

“Suspension Notice” has the meaning set forth in Section 1(f)(ii).

“Suspension Period” has the meaning set forth in Section 1(f)(i).

“Transfer Amount” has the meaning set forth in Section 3(b)(iv).

“Trust” has the meaning set forth in Section 3(b)(iii).

“Underwritten Block Trade” has the meaning set forth in Section 1(d)(ii).

“Underwritten Block Trade Notice” has the meaning set forth in Section 1(d)(ii).

“Violation” has the meaning set forth in Section 6(a).

“WKSI” means a “well-known seasoned issuer” as defined under Rule 405.

The undersigned is executing and delivering this Joinder pursuant to the Registration Rights and Lock-up Agreement dated as of _____, 2020 (as amended, modified and waived from time to time, the "Registration Agreement"), among Leslie's, Inc., a Delaware corporation (the "Company"), and the other persons named as parties therein (including pursuant to other Joinders). Capitalized terms used herein have the meaning set forth in the Registration Agreement.

By executing and delivering this Joinder to the Company, the undersigned hereby agrees to become a party to, to be bound by and to comply with the provisions of the Registration Agreement as a Holder in the same manner as if the undersigned were an original signatory to the Registration Agreement, and the undersigned will be deemed for all purposes to be a Holder, an [LCP// GIC// Sponsor Investor // Other Investor] and the undersigned's _____ shares of Common Equity will be deemed for all purposes to be [LCP// GIC// Sponsor Investor // Other Investor] Registrable Securities under the Registration Agreement.

Accordingly, the undersigned has executed and delivered this Joinder as of the ____ day of _____, 20__.

Signature

Print Name

Address:

Agreed and Accepted as of

_____, 20__:

Leslie's, Inc.

By: _____

Its: _____

[*]

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

601 Lexington Avenue
New York, NY 10022
United States
+1 212 446 4800
www.kirkland.com

October 26, 2020

Leslie's, Inc.
2005 East Indian School Road
Phoenix, Arizona 85016

Ladies and Gentlemen:

We are acting as special counsel to Leslie's, Inc., a Delaware corporation (the "Company"), in connection with the preparation and filing of a Registration Statement on Form S-1, originally filed with the Securities and Exchange Commission (the "Commission") on October 7, 2020 (File No. 333-249372), under the Securities Act of 1933, as amended (the "Act") (such Registration Statement, as amended or supplemented, is hereinafter referred to as the "Registration Statement"), relating to the proposed registration by the Company of 46,000,000 shares of common stock, par value \$0.001 per share, of the Company ("Common Stock"), including 30,000,000 shares of Common Stock to be sold by the Company (the "Company Shares"), 10,000,000 shares of Common Stock to be sold by the selling stockholder identified in the Registration Statement (the "Firm Secondary Shares") and up to 6,000,000 additional shares of Common Stock to be sold by such selling stockholder to cover the underwriters' option to purchase additional shares, if any (the "Option Shares" and, together with the Firm Secondary Shares, the "Secondary Shares"). The Company Shares and Secondary Shares are collectively referred to herein as the "Shares." The offering of the Shares is referred to herein as the "Offering."

In that connection, we have examined originals, or copies certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary for the purposes of this opinion, including (i) the Second Amended and Restated Certificate of Incorporation of the Company in the form filed as Exhibit 3.1 to the Registration Statement and to be filed with the Secretary of State of the State of Delaware prior to the sale of any Shares (the "New Charter"); (ii) the Amended and Restated Bylaws of the Company in the form filed as Exhibit 3.2 to the Registration Statement to be adopted by the board of directors of the Company prior to the sale of any Shares (the "New Bylaws"); (iii) the form of Underwriting Agreement in the form filed as Exhibit 1.1 to the Registration Statement (the "Underwriting Agreement"); (iv) resolutions of the board of directors of the Company; and (v) the Registration Statement.

For purposes of this opinion, we have assumed the authenticity of all documents submitted to us as originals, the conformity to the originals of all documents submitted to us as copies and the authenticity of the originals of all documents submitted to us as copies. We have also assumed the legal capacity of all natural persons, the genuineness of the signatures of persons signing all documents in connection with which this opinion is rendered, the authority of such persons signing on behalf of the parties thereto and the due authorization, execution and delivery of all documents by the parties thereto other than the Company. We have not independently established or verified any facts relevant to the opinion expressed herein, but have relied upon statements and representations of officers and other representatives of the Company and others as to factual matters.

Based upon and subject to the foregoing qualifications, assumptions and limitations and the further limitations set forth below, we are of the opinion that, upon (i) the filing of the New Charter with the Secretary of State for the State of Delaware and the effectiveness thereof under Delaware law, (ii) the adoption of the New Bylaws by the board of directors of the Company, (iii) due action by the board of directors of the Company or a duly appointed

Beijing Boston Chicago Dallas Hong Kong Houston London Los Angeles Munich Palo Alto Paris San Francisco Shanghai Washington, D.C.

Page 2

committee thereof to determine the price per share of the Shares, (iv) the due execution and delivery of the Underwriting Agreement by the parties thereto and (v) the effectiveness of the Registration Statement under the Act, (1) the Company Shares will have been duly authorized and, when issued upon receipt by the Company of the consideration therefore, will be validly issued, fully paid and non-assessable and (2) the Secondary Shares (including any Option Shares) will have been duly authorized and will be validly issued, fully paid and non-assessable.

Our opinions expressed above are subject to the qualifications that we express no opinion as to the applicability of, compliance with, or effect of any laws except the General Corporation Law of the State of Delaware.

We hereby consent to the filing of this opinion with the Commission as Exhibit 5.1 to the Registration Statement. We also consent to the reference to our firm under the heading "Legal Matters" in the Registration Statement. In giving this consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission.

We do not find it necessary for the purposes of this opinion, and accordingly we do not purport to cover herein, the application of the securities or "Blue Sky" laws of the various states to the Offering.

This opinion is limited to the specific issues addressed herein, and no opinion may be inferred or implied beyond that expressly stated herein. We assume no obligation to revise or supplement this opinion should the General Corporation Law of the State of Delaware be changed by legislative action, judicial decision or otherwise.

This opinion is furnished to you in connection with the filing of the Registration Statement.

Sincerely,

/s/ KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS LLP

Name: _____
Position: _____
Effective Date: _____

INDEMNIFICATION AGREEMENT

This **INDEMNIFICATION AGREEMENT** ("Agreement"), effective as of the effective date set forth above, is by and between Leslie's, Inc., a Delaware corporation ("Company"), and the director and/or officer of the Company identified above ("Executive"). Certain defined terms used in this Agreement are set forth in Paragraph 18.

WITNESSETH:

WHEREAS, the Statute, which sets forth certain provisions relating to the mandatory and permissive indemnification of directors and officers (amongst others) of a Delaware corporation by such corporation, is specifically not exclusive of other rights to which those indemnified thereunder may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise and, thus, does not by itself limit the extent to which the Company may indemnify or advance expenses to persons serving as its directors and officers (amongst others);

WHEREAS, in order to induce and encourage highly experienced and capable individuals, such as the Executive, to serve as a director and/or officer of the Company and to otherwise promote the desirable end that such directors and officers will feel unrestrained by the threat of incurring personal liability and, therefore, take the business and entrepreneurial risks necessary to ensure the continued success and growth of the Company, secure in the knowledge that they will receive the maximum indemnification protection against such risks and liabilities as may be afforded by law, the Board has determined, after due consideration and investigation of the terms and provisions of this Agreement, in light of the circumstances and considerations set forth in these recitals and in the exercise of its good faith business judgment, that this Agreement is not only reasonable, fair and prudent, but also necessary to promote and ensure the best interests of the Company and its stockholders;

WHEREAS, in entering into this Agreement, both the Company and the Executive represent and agree, to the best of their knowledge, that at present there is no pending litigation or proceeding involving the Executive or any other director and/or officer of the Company where indemnification or advancement of Expenses under this Agreement (or other similar agreement or provision) would be required or permitted, nor does the Company or the Executive, to the best of their knowledge, know of any threatened litigation or proceeding or set of existing facts which may result in a claim for indemnification or advancement of Expenses under this Agreement (or under any other similar agreement or provision) by the Executive or any other director and/or officer; and

WHEREAS, the Company desires to have the Executive serve as a director and/or officer of the Company, free from undue concern for unpredictable, inappropriate and/or unreasonable legal risks and personal liabilities by reason of performing his or her duties to the

Company and its stockholders or his or her status as such as a director and/or officer; and the Executive desires to serve as a director and/or officer of the Company; provided, and on the express condition, that he or she is furnished with the protections set forth hereinafter.

NOW, THEREFORE, in consideration of Executive's continued service to the Company and in consideration of the premises, mutual covenants and agreements of the parties contained herein and the mutual benefits to be derived from this Agreement, and the delivery of other good and valuable consideration by the Executive, the receipt and sufficiency of which is hereby acknowledged by the Company, the parties hereto, intending to be legally bound, hereby covenant and agree as follows:

1. Indemnification.

A. The Company hereby covenants and agrees, subject to the conditions and limitations set forth hereinafter in this Paragraph 1 and elsewhere in this Agreement, to indemnify and hold the Executive harmless, to the fullest extent permitted by applicable law, if he or she is or was a party, or is threatened to be made a party, to any Action by reason of his or her status as, or the fact that he or she is or was or has agreed to become, a director and/or officer of the Company, and/or is or was serving or has agreed to serve as a director and/or officer of an Affiliate, and/or as to acts performed (or not performed) in the course of the Executive's duties to the Company and/or to an Affiliate, against Liabilities and reasonable Expenses incurred by or on behalf of the Executive in connection with any Action, including, without limitation, in connection with the investigation, defense, settlement or appeal of any Action.

B. To the extent the Executive has been successful on the merits or otherwise in connection with any Action, including, without limitation, the settlement, dismissal, abandonment or withdrawal of any such Action where the Executive does not pay, incur or assume any material Liabilities, or in connection with any claim, issue or matter therein, he or she shall be indemnified by the Company against reasonable Expenses incurred by or on behalf of him or her in connection therewith. The Company shall pay such Expenses to the Executive (net of all Expenses, if any, previously advanced to the Executive pursuant to Paragraph 2), or to such other person or entity as the Executive may designate in writing to the Company, within ten (10) days after the receipt of the Executive's written request therefor, without regard to the provisions of Paragraph 3.

C. Notwithstanding any other provision contained in this Agreement to the contrary, the Company shall not:

(i) indemnify or advance Expenses to the Executive with respect to any Action initiated or brought voluntarily by the Executive (including any proceedings against the Company or its directors, officers, employees or other indemnitees and not by way of defense), except with respect to Actions:

(a) brought to establish or enforce a right to indemnification and/or an advancement of Expenses under this Agreement or under the Statute as it may then be in effect or any other applicable statute or law or otherwise as required (unless a court of competent jurisdiction determines that each of the material assertions made by the Executive in such proceeding was not made in good faith or was frivolous); or

(b) as to which the Board has consented to the initiation of such proceedings; or

(ii) indemnify the Executive against judgments, fines or penalties incurred in a Derivative Action if the Executive is finally adjudged liable to the Company by a court (unless the court before which such Derivative Action was brought determines that the Executive is fairly and reasonably entitled to indemnity for any or all of such judgments, fines or penalties); or

(iii) indemnify the Executive under this Agreement for any amounts paid in settlement or any Action effected without the Company's written consent, which shall not be unreasonably withheld.

D. The Company shall not settle any Action in any manner which would impose any Liabilities or other type of limitation on the Executive without the Executive's written consent. Neither the Company nor the Executive shall unreasonably withhold its, his or her consent to any proposed settlement.

E. The Executive's conduct with respect to an employee benefit plan sponsored by or otherwise associated with the Company and/or an Affiliate for a purpose he or she reasonably believed to be in the interests of the participants in, and/or beneficiaries of, such plan is conduct which does not constitute a breach or failure to perform his or her duties to the Company or an Affiliate, as the case may be.

F. To the fullest extent allowable under applicable law, the Company shall also indemnify against, and, if requested by the Executive, shall advance to the Executive subject to and in accordance with Paragraph 2, any Expenses actually and reasonably paid or incurred by the Executive in connection with any action or proceeding by the Executive for (a) indemnification or reimbursement or advance payment of Expenses by the Company under any provision of this Agreement, or under any other agreement or provision of the charter provisions or the bylaws of the Company now or hereafter in effect relating to Actions relating to indemnifiable events under this Agreement, and/or (b) recovery under any directors' and officers' liability insurance policies maintained by the Company. However, in the event that the Executive is ultimately determined not to be entitled to such indemnification or insurance recovery, as the case may be, then all amounts advanced under this Paragraph 1F shall be repaid. the Executive shall be required to reimburse the Company in the event that a final judicial determination is made that such action brought by the Executive was frivolous or not made in good faith.

2. Advance Payment of Expenses

A. The Company shall pay to the Executive, or such other person or entity as the Executive may designate in writing to the Company, in advance of the final disposition or conclusion of any Action (or claim, issue or matter associated with such Action) the Executive's reasonable Expenses incurred by or on behalf of the Executive in connection with such Action (or claim, issue or matter associated with any such Action), within ten (10) days after the receipt of Executive's written request therefor.

B. In the event the Company makes an advancement of Expenses to the Executive pursuant to this Paragraph 2, the Company shall be subrogated to every right of recovery the Executive may have against any insurance carrier from whom the Company has purchased insurance for such purpose.

3. Determination of Right to Indemnification. Except as otherwise set forth in this Paragraph 3, any indemnification to be provided to the Executive by the Company under Paragraph 1A of this Agreement upon the final disposition or conclusion of any Action, or a claim, issue or matter associated with any such Action, unless otherwise ordered by a court, shall be paid by the Company to the Executive (net of all Expenses, if any, previously advanced to the Executive pursuant to Paragraph 2), or to such other person or entity as the Executive may designate in writing to the Company, within thirty (30) days after the receipt of Executive's written request therefor. Such request shall include an accounting of all amounts for which indemnification is being sought. No further corporate authorization for such payment shall be required other than this Paragraph 3.

4. Presumption. For purposes of this Agreement, and without creating any presumption as to a lack of good faith if the following circumstances do not exist, the Executive shall be deemed to have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company if the Executive's actions or omissions to act are taken in good faith reliance upon the records of the Company, including its financial statements, or upon information, opinions, reports or statements furnished to the Executive by the officers or employees of the Company or any of its subsidiaries in the course of their duties, or by committees of the Board or by any other Person (including legal counsel, accountants and financial advisors) as to matters the Executive reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company. In addition, the knowledge and/or actions, or failures to act, of any director, officer, agent or employee of the Company shall not be imputed to the Executive for purposes of determining the right to indemnity hereunder. For purposes of this Agreement, the termination of any Action by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere or its equivalent, will not create a presumption that the Executive did not meet any applicable standard of conduct or have any particular belief, or that indemnification hereunder is otherwise not permitted. The Company acknowledges that a settlement or other disposition short of final judgment may be successful on the merits or otherwise for purposes of this Agreement if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any Action relating to an indemnifiable event under this Agreement to which the Executive is a party is resolved in any manner other than by adverse judgment against the Executive (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that the Executive has been successful on the merits or otherwise for purposes of this Agreement. The Company shall have the burden of proof to overcome this presumption.

5. Partial Indemnification. If the Executive is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the Expenses and Liabilities, but not, however, for all of the total amount thereof, the Company shall nevertheless indemnify the Executive for the portion thereof to which the Executive is entitled. Moreover, notwithstanding any other provision of this Agreement, to the extent that the Executive has been successful on the merits or otherwise in defense of any or all Actions relating in whole or in part to an indemnifiable event under this Agreement or in defense of any issue or matter therein, including dismissal without prejudice, the Executive shall be indemnified against all Expenses incurred in connection therewith.

6. Insurance; Subrogation.

A. The Company may purchase and maintain insurance on behalf of the Executive against any Liability and/or Expense asserted against him or her and/or incurred by or on behalf of him or her in such capacity as a director and/or officer or other employee or agent of the Company and/or of an Affiliate, or arising out of his or her status as such, whether or not the Company would have the power to indemnify him or her against such Liability or advancement of Expenses under the provisions of this Agreement or under the Statute as it may then be in effect. Except as expressly provided herein, the purchase and maintenance of such insurance shall not in any way limit or affect the rights and obligations of the Company and/or the Executive under this Agreement and the execution and delivery of this Agreement by the Company and the Executive shall not in any way be construed to limit or affect the rights and obligations of the Company and/or of the other party or parties thereto under any such policy or agreement of insurance. In all policies providing such insurance, the Executive shall be named as an insured in such a manner as to provide the Executive the same rights and benefits as are accorded to the most favorably insured of the Company's officers and directors.

B. In the event the Executive shall receive payment from any insurance carrier and/or from the plaintiff in any Action against the Executive in respect of indemnified or advanced amounts after payments on account of all or part of such indemnified or advanced amounts have been made by the Company pursuant to this Agreement, the Executive shall promptly reimburse the Company for the amount, if any, by which the sum of such payment by such insurance carrier and/or such plaintiff and payments by the Company to the Executive exceeds such indemnified or advanced amounts; provided, however, that such portions, if any, of such insurance proceeds that are required to be reimbursed to the insurance carrier under the terms of its insurance policy, such as co-insurance, retention or deductible amounts, shall not be deemed to be payments to the Executive hereunder.

C. In addition, upon payment of indemnified or advanced amounts under this Agreement, the Company shall be subrogated to the Executive's rights against any insurance carrier in respect of such indemnified or advanced amounts, and the Executive shall execute and deliver any and all instruments and/or documents and perform any and all other acts or deeds which the Company deems necessary or advisable to secure such rights. The Executive shall do nothing to prejudice such rights of recovery or subrogation.

7. Witness Expenses. The Company shall pay in advance or reimburse any and all reasonable Expenses incurred by the Executive in connection with his or her appearance as a witness in any Action at a time when he or she has not been formally named a defendant or respondent to such an Action, within ten (10) days after the receipt of the Executive's written request therefor.

8. Nonexclusivity of Agreement.

A. The rights to indemnification and the advancement of Expenses provided to the Executive by this Agreement shall not be deemed exclusive of any other rights to which the Executive may be entitled under any charter provision, bylaw, agreement, resolution, vote of stockholders or disinterested directors of the Company or otherwise, including, without limitation, under the Statute as it may then be in effect, both as to acts in his or her Official Capacity as such director, officer or other employee or agent of the Company and/or of an Affiliate or as to acts in any other capacity while holding such office or position, whether or not the Company would otherwise have the power to indemnify, contribute or advance Expenses to the Executive (collectively, the "Other Indemnity Provisions"); provided, however, that (a) to the extent that the Executive otherwise would have any greater right to indemnification under any Other Indemnity Provision, the Executive will be deemed to have such greater right hereunder and (b) to the extent that any change is made to any Other Indemnity Provision which permits any greater right to indemnification than that provided under this Agreement as of the date hereof, the Executive will be deemed to have such greater right hereunder. The Company will not adopt any amendment to any charter provision or bylaws the effect of which would be to deny, diminish or encumber the Executive's right to indemnification under this Agreement or any Other Indemnity Provision.

B. The Company hereby acknowledges that the Executive may have certain rights to indemnification, advancement of Expenses and/or insurance provided by one or more Persons with whom or which the Executive may be associated (including, without limitation, any Sponsor Entity). The Company hereby acknowledges and agrees that (i) the Company shall be the indemnitor of first resort with respect to any Action, Expense, Liability or matter that is the subject of the Indemnity Obligations, (ii) the Company shall be primarily liable for all Indemnity Obligations and any indemnification afforded to the Executive in respect of any Action, Expense, Liability or matter that is the subject of Indemnity Obligations, whether created by law, organizational or constituent documents, contract (including, without limitation, this Agreement) or otherwise, (iii) any obligation of any other Persons with whom or which the Executive may be associated (including, without limitation, any Sponsor Entity) to indemnify the Executive and/or advance Expenses to the Executive in respect of any proceeding shall be secondary to the obligations of the Company hereunder, (iv) the Company shall be required to indemnify the Executive and advance Expenses to the Executive hereunder to the fullest extent provided herein without regard to any rights the Executive may have against any other Person with whom or which the Executive may be associated (including, without limitation, any Sponsor Entity) or insurer of any such Person and (v) the Company irrevocably waives, relinquishes and releases any other Person with whom or which the Executive may be associated (including, without limitation, any Sponsor Entity) from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the Company hereunder. In the event that any other Person with whom or which the Executive may be associated (including, without limitation, any Sponsor Entity) or their insurers advances or extinguishes any liability or loss which is the subject of any Indemnity Obligation owed by the Company or payable under any

insurance policy provided under this Agreement, the payor shall have a right of subrogation against the Company or its insurer or insurers for all amounts so paid which would otherwise be payable by the Company or its insurer or insurers under this Agreement. In no event will payment of an Indemnity Obligation of the Company under this Agreement by any other Person with whom or which the Executive may be associated (including, without limitation, any Sponsor Entity) or their insurers, affect the obligations of the Company hereunder or shift primary liability for any Indemnity Obligation to any other Person with whom or which the Executive may be associated (including, without limitation, any Sponsor Entity). Any indemnification and/or insurance or advancement of Expenses provided by any other Person with whom or which the Executive may be associated (including, without limitation, any Sponsor Entity), with respect to any liability arising as a result of the Executive's capacity as an officer or director of any Person, is specifically in excess of any Indemnity Obligation of the Company or valid and any collectible insurance (including, without limitation, any malpractice insurance or professional errors and omissions insurance) provided by the Company under this Agreement, and any obligation to provide indemnification and/or insurance or advance Expenses provided by any other Person with whom or which the Executive may be associated (including, without limitation, any Sponsor Entity) shall be reduced by any amount that the Executive collects from the Company as an indemnification payment or advancement of Expenses pursuant to this Agreement.

9. Notice to the Company; Defense of Actions.

A. The Executive agrees to promptly notify the Company in writing upon being served with or having actual knowledge of any citation, summons, complaint, indictment or any other similar document relating to any Action which may result in a claim of indemnification or advancement of Expenses hereunder, but the omission so to notify the Company will not relieve the Company from any liability which it may have to the Executive otherwise than under this Agreement. If at the time of the receipt of such notice, the Company has directors' and officers' liability insurance in effect under which coverage for Actions related to indemnifiable events under this Agreement is potentially available, the Company shall give prompt written notice to the applicable insurers in accordance with the procedures set forth in the applicable policies. The Company shall provide to the Executive a copy of such notice delivered to the applicable insurers, and copies of all subsequent correspondence between the Company and such insurers regarding the Action, in each case substantially concurrently with the delivery or receipt thereof by the Company.

B. With respect to any such Action as to which the Executive notifies the Company of the commencement thereof, except as otherwise provided below in Paragraph 9C, the Company (or any other indemnifying party, including any insurance carrier, similarly notified by the Executive and/or the Company) shall be entitled to assume the defense thereof, with counsel selected by the Company (or such other indemnifying party) and reasonably satisfactory to the Executive, or if the Company (or any other indemnifying party) does not assume the defense thereof, the Company shall be entitled to participate therein at its own expense.

C. After notice from the Company (or such other indemnifying party) to the Executive of its election to assume the defense of an Action, the Company shall not be liable to the Executive under this Agreement for any Expenses subsequently incurred by the Executive in connection with the defense thereof, other than reasonable costs of investigation or as otherwise provided below. The Executive shall have the right to employ his or her counsel in such Action but the Expenses of such counsel incurred after notice from the Company (or such other indemnifying party) of its assumption of the defense thereof shall be at the expense of the Executive unless: (i) the employment of counsel by the Executive has been authorized by the Company; (ii) the Executive shall have reasonably concluded that there may be a conflict of interest between the Company (or such other indemnifying party) and the Executive in the conduct of the defense of such Action; or (iii) the Company (or such other indemnifying party) shall not in fact have employed counsel to assume the defense of such Action, in each of which cases the Expenses of counsel shall be at the expense of the Company. The Company shall not be entitled to assume the defense of any Derivative Action or any Action as to which the Executive shall have made the conclusion provided for in clause (ii) above.

10. Continuation of Rights and Obligations. Subject to Paragraph 17, the terms and provisions of this Agreement shall continue as to the Executive subsequent to the Termination Date, and such terms and provisions shall inure to the benefit of the heirs, executors, estate and administrators of the Executive and the successors and assigns of the Company, including, without limitation, any successor to the Company by way of merger, consolidation and/or sale or disposition of all or substantially all of the assets or capital stock of the Company. Except as provided herein, all rights and obligations of the Company and the Executive hereunder shall continue in full force and effect despite the subsequent amendment or modification of the Company's Certificate of Incorporation or bylaws, as such are in effect on the date hereof, and such rights and obligations shall not be affected by any such amendment or modification, any resolution of directors or stockholders of the Company, or by any other corporate action which conflicts with or purports to amend, modify, limit or eliminate any of the rights or obligations of the Company and/or of the Executive hereunder.

11. Change in Control. The Company agrees that if there is a Change in Control of the Company, other than a Change in Control which has been approved by a majority of the Company's Board who were directors immediately prior to such Change in Control, then with respect to all matters thereafter arising concerning the rights of the Executive to indemnity payments and advancement of Expenses under this Agreement or any other agreement or under applicable law or the Company's charter provisions or bylaws now or hereafter in effect relating to indemnification for indemnifiable events under this Agreement, the Company shall seek legal advice only from Independent Counsel selected by the Executive and approved by the Company, which approval shall not be unreasonably withheld. Such Independent Counsel shall not have otherwise performed services for the Company or the Executive, other than in connection with such matters, within the last five years. Such Independent Counsel shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or the Executive in an action to determine the Executive's rights under this Agreement. Such counsel, among other things, shall render its written opinion to the Company and the Executive as to whether and to what extent the Executive would be permitted to be indemnified under applicable law. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to indemnify fully such counsel against any and all expenses (including attorneys' fees), claims, liabilities and damages arising out of or relating to this Agreement or the engagement of special Independent Counsel pursuant to this Agreement.

12. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to the Executive for any reason whatsoever, the Company, in lieu of indemnifying the Executive, shall contribute to the amount incurred by the Executive, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of the Action in order to reflect (a) the relative benefits received by the Company and the Executive as a result of the event(s) and/or transaction(s) giving cause to such Action; and/or (b) the relative fault of the Company (and its directors, officers, employees and agents) and the Executive in connection with such event(s) and/or transaction(s).

13. Enforcement. The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce the Executive to serve as an officer or director of the Company, and the Company acknowledges that the Executive is relying upon this Agreement in serving as an officer or director of the Company. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof. The Company shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting the the Executive's rights to receive advancement of expenses under this Agreement.

14. Amendment, Modification and Waiver. This Agreement may only be amended, modified or supplemented by the written agreement of the Company and the Executive. No amendment, modification or supplement of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver. Any such mutually agreed upon amendment, modification or supplement shall not require stockholder or Board approval and/or ratification if such amendment, modification or supplement:

(i) is made in order to conform to or reflect any amendment or revision of the DGCL, including, without limitation, the Statute, which (a) expands or permits the expansion of the Executive's rights to indemnification or advancement of Expenses thereunder; (b) limits or eliminates, or permits the limitation or elimination, of the liability of the Executive; or (c) or is otherwise beneficial to the Executive; or

(ii) in the sole judgment and discretion of the Board, does not materially adversely affect the rights and protections of the stockholders of the Company.

15. Governing Law. All matters with respect to this Agreement, including, without limitation, matters of validity, construction, effect and performance shall be governed by the internal laws of the State of Delaware applicable to contracts made and to be performed therein between the residents thereof (regardless of the laws that might otherwise be applicable under principles of conflicts of law).

16. Counterparts. This Agreement may be executed in two or more fully or partially executed counterparts each of which shall be deemed an original binding the signer thereof against the other signing parties, but all counterparts together shall constitute one and the same instrument. Executed signature pages may be delivered by any electronic means and may be removed from counterpart agreements and attached to one or more fully executed copies of this Agreement.

17. Severability. If any provision of this Agreement shall be deemed invalid or inoperative, or in the event a court of competent jurisdiction determines that any of the provisions of this Agreement contravene public policy in any way, this Agreement shall be construed so that the remaining provisions shall not be affected, but shall remain in full force and effect, and any such provisions which are invalid or inoperative or which contravene public policy shall be deemed, without further action or deed on the part of any person, to be modified, amended and/or limited, but only to the limited extent necessary to render the same valid and enforceable, and the Company shall indemnify and hold harmless the Executive against Liabilities and reasonable Expenses with respect to any Action to the fullest extent permitted by any applicable provision of this Agreement that shall not have been invalidated and otherwise to the fullest extent otherwise permitted by the Statute as it may then be in effect.

18. Certain Definitions. The following terms as used in this Agreement shall be defined as follows:

A. "Action(s)" shall include, without limitation, any threatened, pending or completed action, claim, litigation, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative, or any inquiry, hearing or investigation that the Executive determines might lead to the institution of any such action, claim, litigation, suit, proceeding or alternative dispute resolution mechanism, whether predicated on foreign, Federal, state or local law, whether brought under and/or predicated upon the Securities Act of 1933, as amended, and/or the Securities Exchange Act of 1934, as amended, and/or their respective state counterparts and/or any rule or regulation promulgated thereunder, whether a Derivative Action and whether formal or informal.

B. "Affiliate" shall include, without limitation, any corporation, partnership, joint venture, employee benefit plan, trust, or other similar enterprise that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Company.

C. "Board" shall mean the Board of Directors of the Company.

D. "Change in Control" shall be deemed to have occurred if (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), other than the Sponsor Entities and other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company or a Person owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their

ownership of shares of the Company, is or becomes the “beneficial owner” (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing 50% or more of the total voting power represented by the Company’s then outstanding voting securities; (ii) during any period of two consecutive years, individuals who at the beginning of such period constitute the Board and any new director whose election by the Board or nomination for election by the Company’s stockholders was approved by a vote of at least a majority of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or (iii) the stockholders of the Company approve a merger or consolidation of the Company with any other Person other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving Person) more than 50% of the total voting power represented by the voting securities of the Company or such surviving Person outstanding immediately after such merger or consolidation, or the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of (in one transaction or a series of transactions) all or substantially all of the Company’s assets, other than to any Sponsor Entity. Notwithstanding the foregoing, a “Change in Control” shall be deemed not to have occurred as a result of any transaction or series of transactions following which the Sponsor Entities possess, directly or indirectly, the power to direct or cause the direction of the management and policies of the Company (or any successor thereto), whether through the ownership of voting securities, by contract or otherwise, including, without limitation, the ownership, directly or indirectly, of securities having the power to elect a majority of the Board or the board of directors or similar body governing the affairs of any successor to the Company. For the purpose hereof, references to “fines” shall include any excise tax assessed with respect to any employee benefit plan; references to “serving at the request of the Company” shall include, without limitation, any service as a director, officer or employee of the Company which imposes duties on, or involves services by, such director, officer or employee with respect to an employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in manner “not opposed to the best interests of the Company” as referred to in this Agreement.

E. “Derivative Action” shall mean any Action brought by or in the right of the Company and/or an Affiliate.

F. “DGCL” shall mean the Delaware General Corporation Law.

G. “Duty of Loyalty” shall mean a breach of fiduciary duty by the Executive which constitutes a willful failure to deal fairly with the Company or its stockholders in connection with a transaction in which the Executive has a material undisclosed personal conflict of interest.

H. “Expenses” shall include, without limitation, any and all expenses, fees, costs, charges, attorneys’ and experts’ fees and disbursements, transcript costs, travel expenses, duplicating, printing and binding costs, telephone charges, other out-of-pocket costs, reasonable compensation for time spent by the Executive in connection with the Action for which he or she

is not otherwise compensated by the Company, any Affiliate, any third party or other entity, and any and all other direct and indirect costs incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, be a witness or participate in any Action. Expenses also shall include (i) Expenses incurred in connection with any appeal resulting from any Action, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, and (ii) for purposes of Paragraph 1F only, Expenses incurred by the Executive in connection with the interpretation, enforcement or defense of the Executive's rights under this Agreement, by litigation or otherwise. Expenses, however, shall not include amounts paid in settlement by the Executive or the amount of judgments or fines against the Executive. The parties agree that for the purposes of any advancement of Expenses for which the Executive has made written demand to the Company in accordance with this Agreement, all Expenses included in such demand that are certified by affidavit of the Executive's counsel as being reasonable shall be presumed conclusively to be reasonable.

I. "Liabilities" shall include, without limitation, any and all claims, liabilities, damages, losses, judgments, amounts incurred in settlement, orders, fines, penalties, and, with respect to any employee benefit plan, any excise tax or penalty incurred in connection therewith, and other amounts payable in connection with, arising out of, in respect of or relating to or occurring as a direct or indirect consequence of any Action, including, without limitation, amounts paid in whole or partial settlement of any Action, all Expenses in complying with any judgment, order or decree issued or entered in connection with any Action or any settlement agreement, stipulation or consent decree entered into or issued in settlement of any Action, and any consequential damages resulting from any Action or the settlement, judgment, or result thereof.

J. "Independent Counsel" shall mean an attorney or firm of attorneys (following a Change in Control, selected in accordance with the provisions of Paragraph 11 hereof) that is experienced in matters of corporation law and neither presently is, nor in the past three years has been, retained to represent: (i) the Company or the Executive in any matter material to either such party (other than with respect to matters concerning the Executive under this Agreement, or of other indemnitees under similar indemnification agreements) or (ii) any other party to the Action giving rise to a claim for indemnification; provided, however, that the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or the Executive in an action to determine the Executive's rights under this Agreement.

K. "Indemnity Obligations" means all obligations of the Company to Executive under this Agreement, including, without limitation, the Company's obligations to provide indemnification to the Executive and advance Expenses to the Executive under this Agreement.

L. "Official Capacity" shall mean the office of director or officer in the Company, membership on any committee of directors, any other offices in the Company held by the Executive and any other employment or agency relationship between the Executive and the Company and "Official Capacity," as such term is used herein, shall not include service for any Affiliate or other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

M. "Sponsor Entities" shall mean any of L Catterton Partners VIII, L.P., a Delaware limited partnership, and L Catterton VIII Offshore, L.P., a Cayman Island limited partnership, any private equity fund or entity affiliated with C8 Management, or any investment vehicle sponsored thereby and any affiliate thereof who beneficially own shares of common stock, par value \$0.001 per share, of the Company, and any securities into which such shares of common stock shall have been changed or any securities resulting from any reclassification or recapitalization of such shares of common stock from time to time; provided, however, that neither the Company nor any of its subsidiaries shall be considered Sponsor Entities hereunder.

N. "Statute" shall mean DGCL Section 145 (or any successor provisions).

O. "Termination Date" shall mean the date the Executive ceases, for whatever reason, to serve as a director or officer the Company and/or any Affiliate.

[Signature Page Follows]

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

LESLIE'S, INC.

By: _____

Its: _____

EXECUTIVE

Name:

\$810,000,000

TERM LOAN CREDIT AGREEMENT,

dated as of August 16, 2016,

among

LESLIE'S HOLDINGS, INC.,
as Holdings,

LESLIE'S POOLMART, INC.,
as the Borrower,

THE LENDERS PARTY HERETO,

and

NOMURA CORPORATE FUNDING AMERICAS, LLC,
as Administrative Agent and Collateral Agent,

NOMURA SECURITIES INTERNATIONAL, INC.,
as Sole Bookrunner and Arranger

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS

SECTION 1.01.	Defined Terms	1
SECTION 1.02.	Terms Generally	47
SECTION 1.03.	Accounting Terms; GAAP	48
SECTION 1.04.	Effectuation of Transfers	48
SECTION 1.05.	Currencies	48
SECTION 1.06.	Required Financial Statements	48
SECTION 1.07.	Certain Calculations and Tests	49

ARTICLE II

THE CREDITS

SECTION 2.01.	Term Loans and Borrowings	50
SECTION 2.02.	Request for Borrowing	50
SECTION 2.03.	Funding of Borrowings	51
SECTION 2.04.	Interest Elections	51
SECTION 2.05.	Promise to Pay; Evidence of Debt	52
SECTION 2.06.	Repayment of Term Loans	53
SECTION 2.07.	Optional Prepayment of Term Loans	53
SECTION 2.08.	Mandatory Prepayment of Term Loans	53
SECTION 2.09.	Fees	56
SECTION 2.10.	Interest	56
SECTION 2.11.	Alternate Rate of Interest	57
SECTION 2.12.	Increased Costs	57
SECTION 2.13.	Break Funding Payments	58
SECTION 2.14.	Taxes	59
SECTION 2.15.	Payments Generally; Pro Rata Treatment; Sharing of Set-offs	61
SECTION 2.16.	Mitigation Obligations; Replacement of Lenders	62
SECTION 2.17.	Illegality	63
SECTION 2.18.	Incremental Facilities	63
SECTION 2.19.	Other Term Loans	65
SECTION 2.20.	Extensions of Term Loans	66
SECTION 2.21.	Repricing Event	67

ARTICLE III

REPRESENTATIONS AND WARRANTIES

SECTION 3.01.	Organization; Powers	67
SECTION 3.02.	Authorization	68
SECTION 3.03.	Enforceability	68
SECTION 3.04.	Governmental Approvals	68
SECTION 3.05.	Title to Properties; Possession Under Leases	69
SECTION 3.06.	Subsidiaries	69
SECTION 3.07.	Litigation; Compliance with Laws	69
SECTION 3.08.	Federal Reserve Regulations	70
SECTION 3.09.	Investment Company Act	70
SECTION 3.10.	Use of Proceeds	70

		<u>Page</u>
SECTION 3.11.	Tax Returns	70
SECTION 3.12.	No Material Misstatements	70
SECTION 3.13.	Environmental Matters	71
SECTION 3.14.	Security Documents	71
SECTION 3.15.	Location of Real Property and Leased Premises	72
SECTION 3.16.	Solvency	72
SECTION 3.17.	No Material Adverse Effect	72
SECTION 3.18.	Insurance	72
SECTION 3.19.	USA PATRIOT Act; FCPA; OFAC; Anti-Terrorism	73
SECTION 3.20.	Intellectual Property; Licenses, Etc	73
SECTION 3.21.	Employee Benefit Plans	73
SECTION 3.22.	Regulation H	74

ARTICLE IV

CONDITIONS OF LENDING

SECTION 4.01.	Conditions Precedent	74
---------------	----------------------	----

ARTICLE V

AFFIRMATIVE COVENANTS

SECTION 5.01.	Existence; Businesses and Properties	76
SECTION 5.02.	Insurance	76
SECTION 5.03.	Taxes	77
SECTION 5.04.	Financial Statements, Reports, etc	77
SECTION 5.05.	Litigation and Other Notices	79
SECTION 5.06.	Compliance with Laws	79
SECTION 5.07.	Maintaining Records; Access to Properties and Inspections	79
SECTION 5.08.	Use of Proceeds	80
SECTION 5.09.	Compliance with Environmental Laws	80
SECTION 5.10.	Further Assurances; Additional Security	80
SECTION 5.11.	Credit Ratings	82
SECTION 5.12.	Preparation of Environmental Reports	83
SECTION 5.13.	Post-Closing Matters	83

ARTICLE VI

NEGATIVE COVENANTS

SECTION 6.01.	Indebtedness	83
SECTION 6.02.	Liens	87
SECTION 6.03.	Sale and Lease-Back Transactions	91
SECTION 6.04.	Investments, Loans and Advances	91
SECTION 6.05.	Mergers, Consolidations, Sales of Assets and Acquisitions	94
SECTION 6.06.	Restricted Payments	96
SECTION 6.07.	Transactions with Affiliates	99
SECTION 6.08.	Business of the Borrower and its Subsidiaries	101
SECTION 6.09.	Limitation on Payments and Modifications of Indebtedness; Modifications of Certificate of Incorporation, By Laws and Certain Other Agreements; etc	101

ARTICLE VII

HOLDINGS COVENANT

SECTION 7.01.	Holdings Covenant	103
---------------	-------------------	-----

ARTICLE VIII

EVENTS OF DEFAULT

SECTION 8.01.	Events of Default	104
---------------	-------------------	-----

ARTICLE IX

THE AGENTS

SECTION 9.01.	Appointment	107
SECTION 9.02.	Delegation of Duties	108
SECTION 9.03.	Exculpatory Provisions	109
SECTION 9.04.	Reliance by Administrative Agent	110
SECTION 9.05.	Notice of Default	110
SECTION 9.06.	Non-Reliance on Agents and Other Lenders	110
SECTION 9.07.	Indemnification	111
SECTION 9.08.	Agent in Its Individual Capacity	111
SECTION 9.09.	Successor Agent	111
SECTION 9.10.	Arranger	111

ARTICLE X

MISCELLANEOUS

SECTION 10.01.	Notices; Communications	112
SECTION 10.02.	Survival of Agreement	112
SECTION 10.03.	Binding Effect	113
SECTION 10.04.	Successors and Assigns	113
SECTION 10.05.	Expenses; Indemnity	120
SECTION 10.06.	Right of Set-off	121
SECTION 10.07.	Applicable Law	122
SECTION 10.08.	Waivers; Amendment	122
SECTION 10.09.	Interest Rate Limitation	124
SECTION 10.10.	Entire Agreement	124
SECTION 10.11.	WAIVER OF JURY TRIAL	124
SECTION 10.12.	Severability	124
SECTION 10.13.	Counterparts	124
SECTION 10.14.	Headings	125
SECTION 10.15.	Jurisdiction; Consent to Service of Process	125
SECTION 10.16.	Confidentiality	125
SECTION 10.17.	Platform; Borrower Materials	126
SECTION 10.18.	Release of Liens and Guarantees	127
SECTION 10.19.	USA PATRIOT Act Notice	127
SECTION 10.20.	Security Documents and Intercreditor Agreements	127
SECTION 10.21.	No Advisory or Fiduciary Responsibility	128
SECTION 10.22.	Cashless Settlement	128
SECTION 10.23.	Acknowledgement and Consent to Bail-In of EEA Financial Institutions	128

Exhibits and Schedules

Exhibit A	Form of Assignment and Acceptance
Exhibit B	Form of Solvency Certificate
Exhibit C	Form of Borrowing Request
Exhibit D	Form of Interest Election Request
Exhibit E	Form of Non-Debt Fund Affiliate Assignment and Acceptance
Exhibit F	U.S. Tax Compliance Certificate
Exhibit G	Form of First Lien Intercreditor Agreement
Exhibit H	Form of Junior Lien Intercreditor Agreement
Exhibit I	Form of Term Note
Exhibit J	Form of Notice of Prepayment
Schedule 2.01	Commitments
Schedule 3.04	Governmental Approvals
Schedule 3.05	Possession under Leases
Schedule 3.06	Subsidiaries
Schedule 3.11	Taxes
Schedule 3.13	Environmental Matters
Schedule 3.15(1)	Owned Material Real Property
Schedule 3.15(2)	Leased Material Real Property
Schedule 3.18	Insurance
Schedule 3.20	Intellectual Property
Schedule 5.13	Post-Closing Matters
Schedule 6.01	Indebtedness
Schedule 6.02	Liens
Schedule 6.04	Investments
Schedule 6.07	Transactions with Affiliates
Schedule 10.01	Notice Information

TERM LOAN CREDIT AGREEMENT, dated as of August 16, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time, this "**Agreement**"), among Leslie's Poolmart, Inc., a Delaware corporation (the "**Borrower**"), Leslie's Holdings, Inc., a Delaware corporation ("**Holdings**"), the Lenders party hereto from time to time and Nomura Corporate Funding Americas, LLC, as administrative agent (in such capacity, and as further defined in Section 1.01, the "**Administrative Agent**") and as collateral agent (in such capacity, and as further defined in Section 1.01, the "**Collateral Agent**").

RECITALS

(1) The Borrower is party to that certain Credit Agreement (the "**Existing Term Loan Agreement**"), dated as of October 16, 2012, by and among, Holdings, the Borrower, Bank of America, N.A., as administrative agent, and the lenders party thereto under which it has previously borrowed senior secured term loans.

(2) On the Closing Date, the Borrower, Holdings and the subsidiaries of the Borrower party thereto will enter into the ABL Credit Agreement (as defined herein).

(3) On the Closing Date, the Borrower will obtain the Tranche B Term Loans (as defined herein) in an aggregate principal amount of \$810.0 million.

(4) On the Closing Date, the Borrower will issue the New Senior Notes (as defined herein) in the aggregate principal amount of \$390.0 million.

(5) On the Closing Date, the Borrower and Holdings will use a portion of the proceeds of the Tranche B Term Loans and the New Senior Notes to repay all indebtedness outstanding under the Existing Term Loan Agreement and redeem the Holdco Senior Notes (as defined in the Existing Term Loan Agreement) and the Senior Notes (as defined in the Existing Term Loan Agreement) (the "**Refinancing**").

(6) On or about the Closing Date, the Borrower and Holdings will make a distribution to the equity holders of up to \$226,602,805.

(7) All fees and expenses in connection with the forgoing will be paid.

The transactions described above are collectively referred to herein as the "**Transactions**."

AGREEMENT

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

Definitions

SECTION 1.01. **Defined Terms.** As used in this Agreement, the following terms have the meanings specified below:

"**ABL Claims**" means claims of the ABL Secured Parties (as defined in the Intercreditor Agreement) in respect of ABL Obligations (as defined in the Intercreditor Agreement).

"**ABL Credit Agreement**" means that certain credit agreement, dated as of October 16, 2012 and amended on the Closing Date, by and among the Borrower, the lenders party thereto, Bank of America, N.A., as administrative agent, and the other parties thereto.

"**ABL Loan Documents**" means the ABL Credit Agreement and the other "**Loan Documents**" as defined in the ABL Credit Agreement, as each such document may be amended, restated, supplemented or otherwise modified.

“**ABL Obligations**” means the “*Obligations*” as defined in the ABL Credit Agreement.

“**ABL Priority Collateral**” means the “*ABL Priority Collateral*” as defined in the Intercreditor Agreement.

“**ABL Priority Collateral Asset Sale**” means any Asset Sale to the extent, and only to the extent, consisting of the disposition of ABL Priority Collateral.

“**ABR**” means, for any day, a fluctuating rate per annum equal to the highest of:

- (1) the Federal Funds Rate *plus* 1/2 of 1.00%;
- (2) the Prime Rate; and
- (3) the Adjusted LIBO Rate for a one month Interest Period commencing on such date (or, if such day is not a Business Day, the preceding Business Day) *plus* 1.00%.

Any change in the ABR due to a change in the Federal Funds Rate, the “prime rate” or the LIBO Rate will be effective on the effective date of such change in the Federal Funds Rate, the “prime rate” or the LIBO Rate, as the case may be.

“**ABR Borrowing**” means a Borrowing comprised of ABR Loans.

“**ABR Loan**” means any Term Loan bearing interest at a rate determined by reference to the ABR.

“**Additional Lender**” means the banks, financial institutions and other institutional lenders and investors (other than natural persons) that become Lenders in connection with an Incremental Term Loan or Other Term Loan; *provided* that no Disqualified Institution may be an Additional Lender.

“**Adjusted LIBO Rate**” means, with respect to any Eurocurrency Borrowing for any Interest Period, an interest rate per annum equal to the greater of (1) the LIBO Rate in effect for such Interest Period *divided by one minus* the Statutory Reserves applicable to such Eurocurrency Borrowing, if any, and (2) solely in respect of Tranche B Term Loans, 1.00%.

“**Administrative Agent**” means Nomura Corporate Funding Americas, LLC, in its capacity as administrative agent for itself and the Lenders hereunder, and any duly appointed successor in such capacity.

“**Administrative Agent Fees**” has the meaning assigned to such term in Section 2.09(1).

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

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

“**Affiliated Lender**” means each Sponsor, the New Sponsor (from and after a Permitted Change of Control) and each of their respective Affiliates, other than (1) Holdings or any of its Subsidiaries (including the Borrower) and (2) any natural person.

“**Agents**” means the Administrative Agent and the Collateral Agent, in their respective capacities as such.

“**Agreement**” has the meaning assigned to such term in the introductory paragraph hereof.

“**Annual Financial Statements**” has the meaning assigned to such term in Section 5.04(1).

“**Applicable Margin**” means:

- (1) with respect to any Tranche B Term Loans made on the Closing Date, (a) for ABR Loans, 3.25% and (b) for Eurocurrency Loans, 4.25%;
 - (2) with respect to any Incremental Term Loans, the “Applicable Margin” set forth in the Incremental Facility Amendment establishing the terms thereof;
 - (3) with respect to any Other Term Loans, the “Applicable Margin” set forth in the Refinancing Amendment establishing the terms thereof;
- and
- (4) with respect to any Extended Term Loans, the “Applicable Margin” set forth in the Extension Amendment establishing the terms thereof.

“**Approved Fund**” has the meaning assigned to such term in Section 10.04(2).

“**Arranger**” means Nomura Securities International, Inc.

“**Asset Sale**” means any loss, damage, destruction or condemnation of, or any sale, transfer or other disposition (including any Sale and Lease-Back Transaction) to any Person of any asset or assets of the Borrower or any Restricted Subsidiary.

“**Asset Sale Proceeds Account**” means one or more deposit accounts or securities accounts (as such terms are defined in the Uniform Commercial Code) containing only the Net Cash Proceeds of Asset Sales or any Below Threshold Asset Sale Proceeds, any investments thereof in Cash Equivalents and the proceeds thereof, pending the application of such Net Cash Proceeds in accordance with Section 2.08(1), which accounts have been pledged to the Collateral Agent, for the benefit of the Secured Parties, on a first-priority basis pursuant to documentation in form and substance reasonably satisfactory to the Collateral Agent.

“**Assignee**” has the meaning assigned to such term in Section 10.04(2).

“**Assignment and Acceptance**” means an assignment and acceptance entered into by a Lender and an Assignee, and accepted by the Administrative Agent and the Borrower (if required by Section 10.04), substantially in the form of Exhibit A or such other form that is approved by the Administrative Agent.

“**Available Amount**” means, as of any date, an amount, not less than zero, determined on a cumulative basis, equal to the sum, without duplication, of:

- (1) \$25.0 million; *plus*
- (2) the Cumulative Retained Excess Cash Flow Amount as of such date (measured annually); *plus*
- (3) the cumulative amount of cash proceeds and the fair market value of property (other than cash) received by the Borrower or any Parent Entity in connection with the sale or issuance of Equity Interests of the Borrower or any Parent Entity after the Closing Date and on or prior to such date (including upon exercise of warrants or options or in connection with a Permitted Acquisition or other Permitted Investment) which, with respect to proceeds or property received in connection with the sale or issuance of Equity Interests of a Parent Entity, have been contributed to the capital of the Borrower or exchanged for Equity Interest of the Borrower, other than the proceeds of Disqualified Stock, Excluded Contributions, any net cash proceeds that are used prior to such date for Restricted Payments under Section 6.06(1) or Section 6.06(2)(b), and equity used to incur Contribution Indebtedness; *plus*
- (4) 100% of the aggregate amount of cash contributions to the capital of the Borrower and the fair market value of property other than cash contributed to the capital of the Borrower after the Closing

Date, other than the proceeds of Disqualified Stock, Excluded Contributions, any net cash proceeds that are used prior to such date for Restricted Payments under Section 6.06(1) or Section 6.06(2)(b), and equity used to incur Contribution Indebtedness; *plus*

(5) 100% of the aggregate principal amount of any Indebtedness (including the liquidation preference or maximum fixed repurchase price, as the case may be, of any Disqualified Stock) of the Borrower or any Restricted Subsidiary issued after the Closing Date (other than Indebtedness (including Disqualified Stock) issued to Holdings, the Borrower or a Restricted Subsidiary), which has been converted into or exchanged for Equity Interests (other than Disqualified Stocks) of the Borrower or any Parent Entity; *plus*

(6) 100% of the aggregate amount of cash (and the fair market value of property other than cash) received by the Borrower or any Restricted Subsidiary after the Closing Date from (a) the sale (other than to Holdings, the Borrower or any Restricted Subsidiary) of the Equity Interests of any Unrestricted Subsidiary or (b) any dividend or other distribution (including any payment on intercompany Indebtedness) by any such Unrestricted Subsidiary; *plus*

(7) in the event any Unrestricted Subsidiary becomes a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, Holdings, the Borrower or any Restricted Subsidiary, the lesser of (a) the fair market value of the Investments of the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary at the time such Unrestricted Subsidiary becomes a Restricted Subsidiary or at the time of such merger, consolidation, amalgamation, transfer or liquidation (or of the assets transferred or conveyed, as applicable) and (b) the fair market value of the original Investments by the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary, in each case, (i) as determined by a Responsible Officer of the Borrower in good faith and (ii) to the extent the Investment in such Unrestricted Subsidiary was made using the Available Amount; *plus*

(8) any mandatory prepayment declined by a Lender; *minus*

(9) the use of such Available Amount since the Closing Date.

Notwithstanding the foregoing, upon the occurrence of the Permitted Change of Control Effective Date, (A) the Available Amount shall be automatically reduced (or if applicable, increased) to \$25.0 million and (B) each reference to "Closing Date" in this definition shall be deemed a reference to "Permitted Change of Control Effective Date."

"Available Incremental Term Loan Facility Amount" has the meaning assigned to such term in Section 2.18(3).

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

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Below Threshold Asset Sale Proceeds" means the cash proceeds of Asset Sales involving aggregate consideration of \$5.0 million or less.

"Beneficial Owner" has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will not be deemed to have beneficial ownership of any securities that such "person" has the right to acquire or vote only upon the happening of any future event or contingency (including the passage of time) that has not yet occurred. The terms **"Beneficially Owns," "Beneficially Owned"** and **"Beneficial Ownership"** have a corresponding meaning.

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

“**Board of Directors**” means, as to any Person, the board of directors, board of managers or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers or other governing body of such entity, and the term “**directors**” means members of the Board of Directors.

“**Borrower**” has the meaning assigned to such term in the recitals to this Agreement.

“**Borrower Materials**” has the meaning assigned to such term in Section 10.17(1).

“**Borrowing**” means a group of Term Loans of a single Type made on a single date under a single Term Facility and, in the case of Eurocurrency Loans, as to which a single Interest Period is in effect.

“**Borrowing Request**” means a request by the Borrower in accordance with the terms of Section 2.02 and substantially in the form of Exhibit C.

“**Budget**” has the meaning assigned to such term in Section 5.04(5).

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close; *provided* that when used in connection with a Eurocurrency Loan, the term “Business Day” also excludes any day on which banks are not open for dealings in deposits in the London interbank market.

“**Capital Expenditures**” means, for any period, the aggregate of all expenditures incurred by the Borrower and the Restricted Subsidiaries during such period that, in accordance with GAAP, are or should be included in “additions to property, plant or equipment” or similar items reflected in the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries for such period; *provided* that Capital Expenditures will not include:

- (1) expenditures to the extent they are made with (a) Equity Interests of any Parent Entity or (b) proceeds of the issuance of Equity Interests of, or a cash capital contribution to, the Borrower after the Closing Date;
- (2) expenditures with proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Borrower and its Subsidiaries;
- (3) interest capitalized during such period;
- (4) expenditures that are accounted for as capital expenditures of such Person and that actually are paid for by a third party (excluding the Borrower and any Restricted Subsidiary) and for which none of the Borrower or any Restricted Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other Person (whether before, during or after such period) (it being understood that notwithstanding the foregoing, landlord financed improvements to leased real properties shall be excluded from “Capital Expenditures” pursuant to this clause (4));
- (5) the book value of any asset owned by the Borrower or any Restricted Subsidiary prior to or during such period to the extent that such book value is included as a Capital Expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period; *provided* that any expenditure necessary in order to permit such asset to be reused will be included as a Capital Expenditure during the period that such expenditure is actually made;

(6) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (a) used or surplus equipment traded in at the time of such purchase or (b) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business;

(7) Investments in respect of a Permitted Acquisition;

(8) [reserved]; or

(9) the purchase of property, plant, equipment or other capital assets to the extent purchased with the proceeds of Asset Sales that are not applied to prepay Term Loans pursuant to Section 2.08.

“**Capital Lease Obligations**” means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for purposes hereof, the amount of such obligations at any time will be the capitalized amount thereof at such time determined in accordance with GAAP.

“**Capital Stock**” means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“**Captive Insurance Company**” means a Wholly Owned Subsidiary of the Borrower created solely for providing self-insurance for the Borrower and its Subsidiaries and engaging in no other activities other than activities ancillary thereto and necessary for the maintenance of corporate existence.

“**Cash Equivalents**” means:

(1) Dollars, Canadian dollars, Japanese yen, pounds sterling, euros or the national currency of any participating member of the European Union or, in the case of any Foreign Subsidiary, any local currencies held by it from time to time in the ordinary course of business and not for speculation;

(2) direct obligations of the United States of America or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America or any member of the European Union or any agency thereof, in each case, with maturities not exceeding two years;

(3) time deposits, eurodollar time deposits, certificates of deposit and money market deposits, in each case, with maturities not exceeding one year from the date of acquisition thereof, and overnight bank deposits, in each case, with any commercial bank having capital, surplus and undivided profits of not less than \$250.0 million;

(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above and clause (6) below entered into with a bank meeting the qualifications described in clause (3) above;

(5) commercial paper or variable or fixed rate notes maturing not more than one year after the date of acquisition issued by a corporation rated at least "P-1" by Moody's or "A 1" by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(6) securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, having one of the two highest rating categories obtainable from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(7) Indebtedness issued by Persons (other than the Sponsors) with a rating of at least "A 2" by Moody's or "A" by S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case, with maturities not exceeding one year from the date of acquisition, and marketable short-term money market and similar securities having a rating of at least "P-2" or "A-2" from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(8) Investments in money market funds with average maturities of 12 months or less from the date of acquisition that are rated "Aaa3" by Moody's and "AAA" by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(9) instruments equivalent to those referred to in clauses (1) through (8) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above customarily utilized in the countries where any such Restricted Subsidiary is located or in which such Investment is made; and

(10) shares of mutual funds whose investment guidelines restrict 95% of such funds' investments to those satisfying the provisions of clauses (1) through (9) above.

"Cash Management Bank" means any provider of Cash Management Services that, at the time such Cash Management Obligations were entered into or, if entered into prior to the Closing Date, on the Closing Date, was the Administrative Agent, a Lender or an Affiliate of the foregoing, whether or not such Person subsequently ceases to be the Administrative Agent, a Lender or an Affiliate of the foregoing.

"Cash Management Obligations" means obligations owed by any Loan Party to any Cash Management Bank in respect of or in connection with Cash Management Services and designated by the Cash Management Bank and the Borrower in writing to the Administrative Agent as "Cash Management Obligations" under this Agreement (but only if such obligations have not been designated as "Cash Management Obligations" under the ABL Credit Agreement).

"Cash Management Services" means any treasury, depository, pooling, netting, overdraft, stored value card, purchase card (including so called "procurement card" or "P-card"), debit card, credit card, cash management, supply chain finance services (including, without limitation, trade payable services and supplier accounts receivables purchases) and similar services and any automated clearing house transfer of funds.

"Change in Law" means:

- (1) the adoption of any treaty, law, rule or regulation after the Closing Date;
- (2) any change in treaty, law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date; or

(3) compliance by any Lender (or, for purposes of Section 2.12(2), by any Lending Office of such Lender or by such Lender's holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority, made or issued after the Closing Date; *provided* that, notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives promulgated thereunder or issued in connection therewith and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, in each case will be deemed to be a "Change in Law," regardless of the date enacted, adopted, promulgated or issued.

A "**Change of Control**" will be deemed to occur if:

- (1) at any time,
 - (a) Holdings ceases to Beneficially Own, directly or indirectly, 100% of the issued and outstanding Equity Interests of the Borrower; or
 - (b) a "change of control" (or comparable event) occurs under the ABL Credit Agreement (other than as a result of a Permitted Change of Control) or the New Senior Notes Indenture or the documentation governing any Permitted Refinancing Indebtedness in respect of any of the foregoing, in each case, if any Indebtedness is outstanding under such agreement; or
 - (c) a majority of the seats (other than vacant seats) on the Board of Directors of Holdings shall at any time be occupied by persons who were not (A) nominated by or whose nomination was not approved by the Board of Directors of Holdings or a Permitted Holder, (B) appointed by directors so nominated or approved or (C) appointed by a Permitted Holder;
- (2) at any time prior to the consummation of a Qualified IPO, the Permitted Holders, taken together, cease to Beneficially Own, directly or indirectly, Voting Stock representing 50% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings (determined on a fully diluted basis but without giving effect to contingent voting rights not yet vested); or
- (3) at any time after the consummation of a Qualified IPO, any person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, but excluding any employee benefit plan of such Person and its subsidiaries and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the Permitted Holders, acquires Beneficial Ownership of Voting Stock of a Parent Entity representing (a) more than 35% of the aggregate ordinary voting power for the election of directors represented by the issued and outstanding Equity Interests of such Parent Entity (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested) and (b) more than the percentage of the aggregate ordinary voting power for the election of directors that is at the time Beneficially Owned, directly or indirectly, by the Permitted Holders, taken together (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested);

provided that the occurrence of a Permitted Change of Control shall not be deemed to be a Change of Control.

"**Charges**" has the meaning assigned to such term in Section 10.09.

"**Class**" means, with respect to a Term Facility, (a) when used with respect to Lenders, the Lenders under such Term Facility, and (b) when used with respect to Term Loans or Borrowings, Term Loans or Borrowings under such Term Facility. As of the Closing Date, there is one Term Facility and one Class of Term Loans, the Tranche B Term Loans.

"**Closing Date**" means August 16, 2016.

“**Code**” means the Internal Revenue Code of 1986, as amended (unless as specifically provided otherwise).

“**Collateral**” means the “*Collateral*” as defined in the Collateral Agreement and also includes all other property that is subject to any Lien in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to any Security Document.

“**Collateral Agent**” means Nomura Corporate Funding Americas, LLC, in its capacity as Collateral Agent for itself and the other Secured Parties, and any duly appointed successor in that capacity.

“**Collateral Agreement**” means the Term Loan Guarantee and Collateral Agreement dated as of the Closing Date, among the Loan Parties and the Collateral Agent, as amended, supplemented or otherwise modified from time to time.

“**Commitments**” means the Tranche B Term Loan Commitments. On the Closing Date, the aggregate amount of Commitments of all Term Loans is \$810.0 million.

“**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.

“**Company**” has the meaning assigned to such term in the recitals hereto.

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

“**Consolidated Debt**” means, as of any date, the aggregate outstanding principal amount (without duplication) of all Indebtedness (other than letters of credit or bank guarantees, to the extent undrawn) consisting of Capital Lease Obligations, Indebtedness for borrowed money, and Disqualified Stock of the Borrower and the Restricted Subsidiaries and all Guarantees of the foregoing, determined on a consolidated basis in accordance with GAAP, based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“**Consolidated EBITDA**” means, for any period, the Consolidated Net Income of the Borrower for such period:

- (1) *increased*, in each case to the extent deducted in calculating such Consolidated Net Income (and without duplication), by:
 - (a) provision for taxes based on income, profits or capital, including state, franchise, excise and similar taxes and foreign withholding taxes paid or accrued, including any penalties and interest relating to any tax examinations, and state taxes in lieu of business fees (including business license fees) and payroll tax credits, income tax credits and similar tax credits, and including an amount equal to the amount of tax distributions actually made to the holders of Equity Interests of the Borrower or any Parent Entity in respect of such period (in each case, to the extent attributable to the operations of the Borrower and its Subsidiaries), which will be included as though such amounts had been paid as income taxes directly by the Borrower; *plus*
 - (b) Consolidated Interest Expense; *plus*
 - (c) cash dividend payments (excluding items eliminated in consolidation) on any series of preferred stock or Disqualified Stock of the Borrower or any Restricted Subsidiary; *plus*
 - (d) all depreciation and amortization charges and expenses; *plus*

-
- (e) all
- (i) losses, charges and expenses relating to the Transactions;
 - (ii) transaction fees, costs and expenses incurred in connection with the consummation of any transaction that is out of the ordinary course of business (or any transaction proposed but not consummated) permitted under this Agreement, including equity issuances, investments, acquisitions, dispositions, recapitalizations, mergers, option buyouts and the incurrence, modification or repayment of Indebtedness permitted to be incurred under this Agreement (including any Permitted Refinancing Indebtedness in respect thereof) or any amendments, waivers or other modifications under the agreements relating to such Indebtedness or similar transactions, and any Permitted Change of Control Costs; and
 - (iii) without duplication of any of the foregoing, non-operating or non-recurring professional fees, costs and expenses for such period; *plus*
- (f) any expense or deduction attributable to minority Equity Interests of third parties in any Restricted Subsidiary that is not a Wholly Owned Subsidiary of the Borrower; *plus*
- (g) the amount of management, monitoring, consulting, transaction and advisory fees (including termination fees) and related indemnities, charges and expenses paid or accrued to or on behalf of any Parent Entity or any of the Permitted Holders, in each case, to the extent permitted by Section 6.07; *plus*
- (h) earn-out obligations incurred in connection with any Permitted Acquisition or other Investment; *plus*
- (i) all charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of Equity Interests held by officers or employees of the Borrower and all losses, charges and expenses related to payments made to holders of options or other derivative Equity Interests in the common equity of the Borrower or any Parent Entity in connection with, or as a result of, any distribution being made to equityholders of such Person or any of its direct or indirect parents, which payments are being made to compensate such option holders as though they were equityholders at the time of, and entitled to share in, such distribution; *plus*
- (j) all non-cash losses, charges and expenses, including any write-offs or write-downs; *provided* that if any such non-cash charge represents an accrual or reserve for potential cash items in any future four-fiscal quarter period (i) the Borrower may determine not to add back such non-cash charge in the period for which Consolidated EBITDA is being calculated and (ii) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future four-fiscal quarter period will be subtracted from Consolidated EBITDA for such future four-fiscal quarter period; *plus*
- (k) all costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities that were not already excluded in calculating such Consolidated Net Income; *and*
- (2) *decreased*, without duplication and to the extent increasing such Consolidated Net Income for such period, by non-cash gains (excluding any non-cash gains that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that were deducted (and not added back) in the calculation of Consolidated EBITDA for any prior period ending after the Closing Date).

To the extent items excluded in the calculation of Consolidated Net Income have been excluded on an after-tax basis, these same items shall be excluded on a pre-tax basis for purposes of the calculation of Consolidated EBITDA.

“**Consolidated First Lien Net Debt**” means, as of any date, all Consolidated Debt as of such date that is secured by a Lien on the Term Priority Collateral that is *pari passu* with the Lien securing the Obligations or that is secured by a Lien on the ABL Priority Collateral that is senior to or *pari passu* with the Lien securing the Obligations, minus all Unrestricted Cash as of such date, in each case, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis; *provided* that for purposes of calculating the amount of Consolidated First Lien Net Debt with respect to any Indebtedness being incurred in reliance on compliance with any financial ratio-based incurrence test, Unrestricted Cash will not include any proceeds received from such Indebtedness. For the avoidance of doubt, Indebtedness in respect of the ABL Credit Agreement will constitute Consolidated First Lien Net Debt.

“**Consolidated Interest Expense**” means, with respect to any Person for any period, the sum, without duplication, of:

- (1) the aggregate interest expense of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP, to the extent such expense was deducted in computing Consolidated Net Income (including pay-in-kind interest payments, amortization of original issue discount, the interest component of Capital Lease Obligations and net payments and receipts (if any) pursuant to Hedge Agreements relating to interest rates (other than in connection with the early termination thereof) but excluding any non-cash interest expense attributable to the movement in the mark-to-market valuation of hedging obligations, all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees, and all discounts, commissions, fees and other charges associated with any Receivables Facility); *plus*
- (2) consolidated capitalized interest of the referent Person and its Restricted Subsidiaries for such period, whether paid or accrued *plus*
- (3) any amounts paid or payable in respect of interest on Indebtedness the proceeds of which have been contributed to the referent Person and that has been Guaranteed by the referent Person; *less*
- (4) interest income of the referent Person and its Restricted Subsidiaries for such period.

For purposes of this definition, interest on Capital Lease Obligations will be deemed to accrue at the interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such Capital Lease Obligations in accordance with GAAP.

“**Consolidated Net Income**” means, with respect to any Person for any period, the aggregate of the net income (or loss) of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP (adjusted to reflect any charge, tax or expense incurred or accrued by Holdings or any Parent Entity during such period attributable to the operations of the Borrower and its Subsidiaries as though such charge, tax or expense had been incurred by the Borrower, to the extent that the Borrower has made or would be entitled under the Loan Documents to make any Restricted Payment or other payment to or for the account of Holdings in respect thereof) and before any deduction for preferred stock dividends; *provided* that:

- (1) all net after-tax extraordinary, nonrecurring or unusual gains, losses, income, expenses and charges, and in any event including all restructuring, severance, relocation, retention, consolidation, integration or other similar charges and expenses, contract termination costs, litigation costs, excess pension charges, system establishment charges, start-up or closure or transition costs, expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to curtailments or modifications to pension and post-retirement employee benefit plans in connection with a Permitted Change of Control or otherwise, expenses associated with strategic initiatives, facilities shutdown and opening costs, and any fees, expenses, charges or change in control payments related to a Permitted Change of Control or otherwise (including any transition-related expenses incurred before, on or after the Closing Date), will be excluded;

(2) all net after-tax income, loss, expense or charge from abandoned, closed or discontinued operations and any net after-tax gain or loss on the disposal of abandoned, closed or discontinued operations will be excluded;

(3) all net after-tax gain, loss, expense or charge attributable to business dispositions and asset dispositions other than in the ordinary course of business (as determined in good faith by a Responsible Officer of the Borrower) will be excluded;

(4) all net after-tax income, loss, expense or charge attributable to the early extinguishment or cancellation of Indebtedness, Hedge Agreements or other derivative instruments will be excluded;

(5) all non-cash gain, loss, expense or charge attributable to the movement in the mark-to-market valuation of Hedge Agreements or other derivative instruments will be excluded;

(6) (a) the net income for such period of any Person that is not a Restricted Subsidiary of the referent Person, or that is accounted for by the equity method of accounting, will be included only to the extent of the amount of dividends or distributions or other payments that are paid in cash (or converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period; and (b) the net income for such period will include any ordinary course dividends, distributions or other payments in cash received from any such Person during such period in excess of the amounts included in clause (a) hereof;

(7) the cumulative effect of a change in accounting principles during such period will be excluded;

(8) the effects of purchase accounting, fair value accounting or recapitalization accounting adjustments (including the effects of such adjustments pushed down to the referent Person and its Restricted Subsidiaries) resulting from the application of purchase accounting, fair value accounting or recapitalization accounting in relation to a Permitted Change of Control or any acquisition consummated before or after the Closing Date, and the amortization, write-down or write-off of any amounts thereof, net of taxes, will be excluded;

(9) all non-cash impairment charges and asset write-ups, write-downs and write-offs will be excluded;

(10) all non-cash expenses realized in connection with or resulting from stock option plans, employee benefit plans or agreements or post-employment benefit plans or agreements, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other similar rights will be excluded;

(11) any costs or expenses incurred in connection with the payment of dividend equivalent rights to option holders pursuant to any management equity plan, stock option plan or any other management or employee benefit plan or agreement or post-employment benefit plan or agreement will be excluded;

(12) accruals and reserves for liabilities or expenses that are established or adjusted as a result of a Permitted Change of Control within 18 months after the Permitted Change of Control Effective Date will be excluded;

(13) all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees, will be excluded;

(14) any currency translation gains and losses related to changes in currency exchange rates (including remeasurements of Indebtedness and any net loss or gain resulting from Hedge Agreements for currency exchange risk), will be excluded;

(15) (a) the non-cash portion of “straight-line” rent expense will be excluded and (b) the cash portion of “straight-line” rent expense that exceeds the amount expensed in respect of such rent expense will be included;

(16) expenses and lost profits with respect to liability or casualty events or business interruption will be disregarded to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer, but only to the extent that such amount (a) has not been denied by the applicable carrier in writing and (b) is in fact reimbursed within 365 days of the date on which such liability was discovered or such casualty event or business interruption occurred (with a deduction for any amounts so added back that are not reimbursed within such 365-day period); *provided* that any proceeds of such reimbursement when received will be excluded from the calculation of Consolidated Net Income to the extent the expense or lost profit reimbursed was previously disregarded pursuant to this clause (16);

(17) losses, charges and expenses that are covered by indemnification or other reimbursement provisions in connection with any asset disposition will be excluded to the extent actually reimbursed, or, so long as such Person has made a determination that a reasonable basis exists for indemnification or reimbursement, but only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days);

(18) (a) cash costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities for any four-quarter period, and all non-cash pre-opening costs and expenses, will be excluded, and (b) all income, loss, charges and expenses associated with stores, distribution centers and other facilities closed in any period, or scheduled for closure within 12 months of the date on which Consolidated Net Income is being calculated, will be excluded;

(19) non-cash charges for deferred tax asset valuation allowances will be excluded; and

(20) solely for the purpose of determining the amount available for Restricted Payments under Section 6.06(15), the net income (or loss) for such period of any Restricted Subsidiary (other than a Guarantor) will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived; *provided* that Consolidated Net Income of such Person will be increased by the amount of dividends or other distributions or other payments actually paid in cash (or to the extent converted into cash) to such Person or any of its Restricted Subsidiaries in respect of such period, to the extent not already included therein.

“**Consolidated Secured Net Debt**” means, as of any date, all Consolidated Debt as of such date that is secured by a Lien on the Collateral, minus all Unrestricted Cash as of such date, in each case, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis; *provided* that for purposes of calculating the amount of Consolidated Secured Net Debt with respect to any Indebtedness being incurred in reliance on compliance with any financial ratio-based incurrence test, Unrestricted Cash will not include any proceeds received from such Indebtedness.

“**Consolidated Total Assets**” means, as of any date, the total assets of the Borrower and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“**Consolidated Total Net Debt**” means, as of any date, the Consolidated Debt as of such date minus all Unrestricted Cash as of such date, in each case, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis; *provided* that for purposes of calculating the Consolidated Total Net Debt with respect to any Indebtedness being incurred in reliance on compliance with any financial ratio-based incurrence test, Unrestricted Cash will not include any proceeds received from such Indebtedness.

“**continuing**” means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

“**Contribution Indebtedness**” has the meaning assigned to such term in Section 6.01(16).

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

“**Credit Agreement Refinancing Indebtedness**” means secured or unsecured Indebtedness of the Borrower in the form of one or more series of term loans or notes; *provided* that:

(1) such Indebtedness is incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace or refinance, in whole or part (and such exchange, extension, renewal, replacement or refinancing occurs substantially concurrently with such incurrence or obtainment), Indebtedness (“**Refinanced Debt**”) that is either Term Loans or other Credit Agreement Refinancing Indebtedness;

(2) such Indebtedness is in an original aggregate principal amount not greater than the principal amount of the Refinanced Debt *plus* the amount of unpaid accrued or capitalized interest and premiums thereon (including tender premiums), underwriting discounts, defeasance costs, fees, commissions and expenses);

(3) the Weighted Average Life to Maturity of such Indebtedness is equal to or longer than the remaining Weighted Average Life to Maturity of the Refinanced Debt, and the final maturity date of such Credit Agreement Refinancing Indebtedness may not be earlier than the Latest Maturity Date;

(4) such Indebtedness may participate on a *pro rata* basis or on a less than *pro rata* basis (but not on a greater than *pro rata* basis) in any mandatory prepayments hereunder; *provided* that in no event shall such Indebtedness be permitted to be mandatorily prepaid prior to the repayment in full of all Term Facilities, unless accompanied by a ratable prepayment of each Term Facility hereunder;

(5) such Indebtedness is not secured by any assets or property of Holdings, the Borrower or any Restricted Subsidiary that does not constitute Collateral;

(6) such Indebtedness is not guaranteed by any Subsidiary of the Borrower other than a Subsidiary Loan Party;

(7) if such Indebtedness is secured:

(a) the security agreements relating to such Indebtedness are substantially similar to or the same as the Security Documents (as determined in good faith by a Responsible Officer of the Borrower);

(b) if such Indebtedness is secured on a *pari passu* basis with the Term Loans, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a First Lien Intercreditor Agreement and, if applicable, the Intercreditor Agreement;

(c) if such Indebtedness is secured on a junior basis to the Term Loans, a Debt Representative, acting on behalf of the holders of such Indebtedness, has become party to or is otherwise subject to the provisions of a Junior Lien Intercreditor Agreement and, if applicable, the Intercreditor Agreement;

(8) the terms and conditions of such Indebtedness are substantially identical to, or, taken as a whole, no more favorable to the lenders or holders providing such Indebtedness than, those applicable to such Refinanced Debt as determined in good faith by a Responsible Officer of the Borrower; *provided* that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof); *provided* that this clause (8) will not apply to:

- (a) terms addressed in the preceding clauses (1) through (7);
- (b) (i) interest rate, fees, funding discounts and other pricing terms; (ii) redemption, prepayment or other premiums; (iii) optional prepayment terms; and (iv) redemption terms;
- (c) subordination terms; and
- (d) covenants or other provisions applicable only to periods after the Latest Maturity Date at the time of incurrence of such Indebtedness.

Credit Agreement Refinancing Indebtedness will include any Registered Equivalent Notes issued in exchange therefor.

“Cumulative Retained Excess Cash Flow Amount” means, as of any date, an amount, not less than zero in the aggregate, determined on a cumulative basis, equal to the Retained Percentage of Excess Cash Flow for all Excess Cash Flow Periods ending after the Closing Date and prior to such date.

“Current Assets” means, as of any date, all assets (other than Cash Equivalents or other cash equivalents) that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries as “current assets” (other than amounts related to current or deferred Taxes based on income or profits), determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“Current Liabilities” means, as of any date, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries as “current liabilities,” other than:

- (1) the current portion of any Indebtedness;
- (2) accruals of Consolidated Interest Expense (excluding Consolidated Interest Expense that is due and unpaid);
- (3) accruals for current or deferred Taxes based on income or profits;
- (4) accruals, if any, of transaction costs resulting from the Transactions; and
- (5) accruals of any costs or expenses related to (a) severance or termination of employees prior to the Closing Date or (b) bonuses, pension and other post-retirement benefit obligations;

in each case, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“**CVC**” means any funds or limited partnerships managed or advised by Affiliates of CVC Capital Partners Limited or their respective direct or indirect Subsidiaries or any investors in such funds or limited partnerships (but excluding, in each case, (i) any portfolio companies in which such funds or limited partnerships hold an investment and (ii) any funds or entities managed or advised by CVC Credit Partners Group Holding Foundation and each of its direct or indirect Subsidiaries and any funds or entities managed or advised by them from time to time) who are investors in such funds or limited partnerships as of the Closing Date, investing directly or indirectly in Holdings.

“**Debt Fund Affiliate**” means:

(1) any Affiliate, division or internal group of a Permitted Investor that has the principal purpose of investing in, acquiring or trading commercial loans, bonds or similar extensions of credit in the ordinary course; and

(2) any investment fund or account of a Permitted Investor managed by third parties (including by way of a managed account, a fund or an index fund in which a Permitted Investor has invested) or a division or internal group within a Permitted Investor that is not organized or used primarily for the purpose of making equity investments, in each case, with respect to which a Sponsor does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such entity.

“**Debt Representative**” means, with respect to any Indebtedness that is secured on *pari passu* basis with, or on a junior basis to, the Term Loans, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“**Default**” means any event or condition which, but for the giving of notice, lapse of time or both, would constitute an Event of Default.

“**Defaulting Lender**” means any Lender whose acts or failure to act, whether directly or indirectly,

constitutes a Lender Default.

“**Designated Non-Cash Consideration**” means the fair market value of non-cash consideration received by the Borrower or any Restricted Subsidiary in connection with an Asset Sale that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-Cash Consideration.

“**Disinterested Director**” means, with respect to any Person and transaction, a member of the Board of Directors of such Person who does not have any material direct or indirect financial interest in or with respect to such transaction.

“**Disqualified Institution**” means:

(1) (a) any Person that is a competitor of the Borrower and identified by the Borrower in writing to the Arranger and the Administrative Agent on or prior to the Closing Date;

(b) any Person that is a competitor of the Borrower and identified by the Borrower in good faith in writing to the Administrative Agent from time to time after the Closing Date; and

(c) together with any Affiliates of such competitors described in the foregoing clauses (a) and (b) that are reasonably identifiable as such (other than any such Affiliate that is a bank, financial institution or fund (other than a Person described in clause (2) below) that regularly invest in commercial loans or similar extensions of credit in the ordinary course of business and for which no personnel involved with the relevant competitor or person referred to in clause (2) below make investment decisions); or

(2) certain banks, financial institutions, other institutional lenders and investors and other entities that are identified by the Borrower in writing to the Arranger and the Administrative Agent on or prior to the Closing Date.

Notwithstanding anything in the Loan Documents to the contrary, the Administrative Agent shall not be responsible (or have any liability) for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions thereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (1) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Institution or (2) have any liability with respect to or arising out of any assignment or participation of Term Loans or commitments, or disclosure of confidential information, to any Disqualified Institution. The list of Disqualified Institutions shall be available to Lenders upon request but shall not otherwise be posted to the Lenders.

“**Disqualified Stock**” means, with respect to any Person, any Equity Interests of such Person that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are redeemable or exchangeable at the option of the holder thereof), or upon the happening of any event or condition:

- (1) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale are subject to the prior repayment in full of the Term Loans and all other Obligations that are accrued and payable and the termination of the Commitments);
- (2) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part;
- (3) provide for the scheduled payments of dividends in cash; or
- (4) either mandatorily or at the option of the holders thereof, are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Stock,

in each case, prior to the date that is 91 days after the earlier of (x) the Latest Maturity Date; and (y) the date on which the Term Loans and all other Obligations (other than Obligations in respect of (i) Specified Hedge Agreements and Cash Management Obligations that are not then due and payable and (ii) contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) are repaid in full and the Commitments are terminated; *provided* that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; *provided, further*, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of Holdings or its Subsidiaries or by any such plan to such employees, such Equity Interests will not constitute Disqualified Stock solely because they may be required to be repurchased by Holdings or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability; and *provided, further*, that any class of Equity Interests of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Equity Interests that is not Disqualified Stock will not be deemed to be Disqualified Stock.

“**Distressed Person**” has the meaning assigned to such term in the definition of “Lender-Related Distress Event.”

“**Dollars**” or “**\$**” means lawful money of the United States of America.

“**Domestic Subsidiary**” means any Subsidiary of the Borrower that is organized under the laws of the United States, any state thereof or the District of Columbia, and “**Domestic Subsidiaries**” means any two or more of them. Unless otherwise indicated in this Agreement, all references to Domestic Subsidiaries will mean Domestic Subsidiaries of the Borrower.

“**Dutch Auction**” means an auction of Term Loans conducted:

- (1) pursuant to Section 10.04(10) to allow an Affiliated Lender to acquire Term Loans at a discount to par value and on *pro rata* basis; or
- (2) pursuant to Section 10.04(14) to allow a Purchasing Borrower Party to prepay Term Loans at a discount to par value and on *pro rata* basis,

in each case, in accordance with the applicable Dutch Auction Procedures.

“**Dutch Auction Procedures**” means, with respect to a purchase of Term Loans in a Dutch Auction, Dutch auction procedures as reasonably agreed upon by the applicable Affiliated Lender or Purchasing Borrower Party, as the case may be, and the Administrative Agent.

“**EEA Financial Institution**” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent;

“**EEA Member Country**” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“**EEA Resolution Authority**” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“**Enterprise Transformative Event**” means any merger, acquisition or Investment, in any such case by the Borrower, any Restricted Subsidiary, Holdings or any of the direct or indirect parent companies of Holdings (other than the Sponsors) that results in Consolidated EBITDA for the most recent four fiscal quarter period for which financial statements have been delivered increasing by more than 25% on a Pro Forma Basis for such event.

“**Environment**” means ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, and natural resources such as flora and fauna.

“**Environmental Laws**” means all applicable laws (including common law), statutes, rules, regulations, codes, ordinances, orders, binding agreements and final, binding decrees or judgments, in each case, promulgated or entered into by or with any Governmental Authority, relating in any way to the Environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or exposure to, any Hazardous Material or to occupational health and safety matters (to the extent relating to the Environment or exposure to Hazardous Materials).

“**Equity Interests**” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time, and any final regulations promulgated and the rulings issued thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with Holdings or any of its Subsidiaries, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“**ERISA Event**” means:

- (1) a Reportable Event, or the requirements of Section 4043(b) of ERISA apply, with respect to a Plan;
- (2) a withdrawal by Holdings or any of its Subsidiaries or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations by Holdings or any of its Subsidiaries or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate that is treated as a termination under Section 4062(e) of ERISA;
- (3) a complete or partial withdrawal by Holdings or any of its Subsidiaries or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate from a Multiemployer Plan, receipt of written notification by Holdings or any of its Subsidiaries or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate concerning the imposition of Withdrawal Liability or written notification that a Multiemployer Plan is, or is expected to be, insolvent within the meaning of Title IV of ERISA or endangered or in critical status within the meaning of Section 305 of ERISA;
- (4) the provision by a Plan administrator or the PBGC of notice of intent to terminate a Plan, to appoint a trustee to administer a Plan, the treatment of a Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA or the commencement of proceedings by the PBGC to terminate a Plan or Multiemployer Plan;
- (5) the incurrence by Holdings or any of its Subsidiaries or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan, other than for the payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA;
- (6) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Plan;
- (7) the imposition of a lien under Section 303(k) of ERISA with respect to any Plan; and
- (8) a determination that any Plan is in “at risk” status (within the meaning of Section 303 of ERISA).

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“**Eurocurrency Borrowing**” means a Borrowing comprised of Eurocurrency Loans.

“**Eurocurrency Loan**” means any Term Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“**Event of Default**” has the meaning assigned to such term in Section 8.01.

“**Excess Cash Flow**” means, for any Excess Cash Flow Period, the Consolidated Net Income of the Borrower for such period, *minus*, without duplication:

- (1) repayments, prepayments and other cash payments made with respect to the principal of any Indebtedness or the principal component of any Capital Lease Obligations of the Borrower or any Restricted Subsidiary during such period (excluding voluntary and mandatory prepayments of Term Loans, voluntary prepayments of Indebtedness described in Section 2.08(2)(b) and prepayments of other revolving Indebtedness (except to the extent accompanied by a corresponding reduction in commitments), but including all premium, make-whole or penalty payments paid in cash (to the extent such payments were not

already deducted in calculating Consolidated Net Income and are not otherwise prohibited under this Agreement)); *provided* that a mandatory prepayment of Indebtedness will only be deducted pursuant to this clause (1) to the extent not already deducted in the computation of Net Cash Proceeds of Asset Sales; *minus*

(2) (a) cash payments made by the Borrower or any Restricted Subsidiary during such period in respect of Capital Expenditures, Permitted Acquisitions, Investments and Restricted Payments (excluding Restricted Payments made pursuant to Sections 6.06(15), (16), or (17), Investments in Cash Equivalents and other items (including Investments and Restricted Payments) that are eliminated in consolidation) and (b) cash payments that the Borrower or any Restricted Subsidiary is required to make in respect of Capital Expenditures, Permitted Acquisitions and Investments within 365 days after the end of such period pursuant to binding obligations entered into prior to or during such period; *provided* that amounts described in this clause (b) will not reduce Excess Cash Flow in subsequent periods and, to the extent not so paid, will increase Excess Cash Flow in the subsequent period; *minus*

(3) cash payments made by the Borrower or any Restricted Subsidiary during such period in respect of (a) long-term liabilities other than Indebtedness or (b) items for which an accrual or reserve was established in a prior period; *minus*

(4) (a) cash payments made by the Borrower or any Restricted Subsidiary during such period in respect of Taxes (including distributions to any Parent Entity in respect of Taxes), to the extent such payments exceed the amount of tax expense deducted in calculating such Consolidated Net Income, and (b) cash payments that the Borrower or any Restricted Subsidiary will be required to make in respect of Taxes (including distributions to any Parent Entity in respect of Taxes) within 180 days after the end of such period; *provided* that amounts described in this clause (b) will not reduce Excess Cash Flow in subsequent periods; *minus*

(5) all cash payments and other cash expenditures made by the Borrower or any Restricted Subsidiary during such period (a) with respect to items that were excluded in the calculation of such Consolidated Net Income pursuant to clauses (1) through (19) of the definition of Consolidated Net Income or (b) that were not expensed during such period in accordance with GAAP; *minus*

(6) all non-cash credits included in calculating such Consolidated Net Income (including insured or indemnified losses referred to in clauses (16) and (17) of Consolidated Net Income to the extent not reimbursed in cash during such period); *minus*

(7) an amount equal to the sum of (a) the increase in the Working Capital of the Borrower during such period, if any *plus* (b) the increase in long-term accounts receivable of the Borrower and the Restricted Subsidiaries, if any (other than any such increases contemplated by clauses (a) and (b) of this clause (7) that are directly attributable to acquisitions of a Person or business unit by the Borrower and the Restricted Subsidiaries during such period); *plus*

(8) all non-cash charges, losses and expenses of the Borrower or any Restricted Subsidiary that were deducted in calculating such Consolidated Net Income; *plus*

(9) all cash payments received by the Borrower or any Restricted Subsidiary during such period pursuant to Hedge Agreements that were not treated as revenue or net income under GAAP; *plus*

(10) an amount equal to the sum of (a) the decrease in Working Capital of the Borrower during such period, if any *plus* (b) the decrease in long-term accounts receivable of the Borrower and the Restricted Subsidiaries, if any; *plus*

(11) all amounts referred to in clauses (1), (2) and (3) above to the extent funded with the proceeds of the issuance or the incurrence of Indebtedness (other than proceeds of revolving loans), the sale or issuance of Equity Interests or any loss, damage, destruction or condemnation of, or any sale, transfer or other disposition to any Person of, any assets.

“*Excess Cash Flow Period*” means each fiscal year of the Borrower.

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

“*Excluded Assets*” means “*Excluded Assets*” as defined in the Collateral Agreement.

“*Excluded Contributions*” means, as of any date, the aggregate amount of the net cash proceeds and Cash Equivalents, together with the aggregate fair market value (determined in good faith by a Responsible Officer of the Borrower) of other assets that are used or useful in a business permitted under Section 6.08, received by the Borrower after the Closing Date from:

- (1) contributions to its common equity capital; or
- (2) the sale of Capital Stock of the Borrower;

in each case, designated as Excluded Contributions pursuant to a certificate of a Responsible Officer of the Borrower on the date such contribution is made or such Capital Stock is sold, less the aggregate amount of Investments made pursuant to Section 6.04(29) in each case prior to such date; *provided* that the proceeds of Disqualified Stock and any net cash proceeds that are used prior to such date (A) to make Restricted Payments under Section 6.06(1) or Section 6.06(2)(b), (B) to make an Investment under Section 6.04(3), a Restricted Payment under Section 6.06(15) or a payment in respect of Junior Financing under Section 6.09(2)(a), in each case utilizing the Available Amount or (C) for Contribution Indebtedness, will not be treated as Excluded Contributions.

“*Excluded Equity Interests*” means “*Excluded Equity Interests*” as defined in the Collateral Agreement.

“*Excluded Indebtedness*” means all Indebtedness not incurred in violation of Section 6.01.

“*Excluded Subsidiary*” means any Subsidiary (if and to the extent such Subsidiary is not a borrower or guarantor under the ABL Credit Agreement) that is an:

- (1) Immaterial Subsidiary;
- (2) Subsidiary that is not a Wholly Owned Subsidiary of the Borrower;
- (3) Unrestricted Subsidiary;
- (4) Foreign Subsidiary;
- (5) Domestic Subsidiary of a Foreign Subsidiary;
- (6) Subsidiary substantially all the assets of which are Equity Interests and, if any, indebtedness in one or more Foreign Subsidiaries;
- (7) Subsidiary if acting as a Guarantor, or its Guarantee, would, and only so long as it would, (a) be prohibited by law or regulation or by any contractual obligation existing on the (but not incurred in anticipation of) Closing Date or on the date such subsidiary is acquired or organized (as long as, in the case of an acquisition of a subsidiary, such prohibition did not arise as part of such acquisition) or (b) require a governmental or third-party consent, approval, license or authorization (unless such consent, approval, license or authorization has been received); and
- (8) any Subsidiary that is a Captive Insurance Company, not-for-profit Subsidiary or Subsidiary which is a special purpose entity for securitization transaction (including any Receivables Subsidiary) or like special purposes;

in each case, unless the Borrower determines in its sole discretion, upon notice to the Administrative Agent, that any of the foregoing Persons (other than an Unrestricted Subsidiary or Subsidiary that is not a Wholly Owned Subsidiary of the Borrower) should not be an Excluded Subsidiary until the date on which the Borrower has informed the Administrative Agent that it elects to have such Person be an Excluded Subsidiary; *provided* that the Guarantee and the security interest provided by such Person is full and unconditional and fully enforceable in the jurisdiction of organization of such Person.

“**Excluded Swap Obligation**” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor 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 Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“**Excluded Taxes**” means, with respect to any Recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder:

(1) Taxes imposed on or measured by its net income (however denominated) or franchise Taxes imposed in lieu of net income Taxes, and branch profits Taxes, in each case, (a) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (b) that are Other Connection Taxes;

(2) any U.S. federal withholding Tax imposed on amounts payable hereunder to or for the account of a Recipient under any law applicable at the time such Recipient becomes a party to this Agreement (or in the case of a Lender, under any law applicable at the time such Lender changes its Lending Office), except to the extent that the Recipient’s assignor (if any), at the time of assignment (or such Lender immediately before it changed its Lending Office), was entitled to receive additional amounts from the Loan Party with respect to any withholding Tax pursuant to Section 2.14(1) or Section 2.14(3);

(3) Taxes that are attributable to such Lender’s or Administrative Agent’s failure to comply with Section 2.14(5) or Section 2.14(6); and

(4) any U.S. federal withholding Taxes imposed under FATCA.

“**Executive Order**” has the meaning assigned to such term in Section 3.19(3)(a).

“**Existing Term Loan Agreement**” has the meaning assigned to such term in the recitals hereto.

“**Extended Term Loan Installment Date**” has the meaning assigned to such term in Section 2.06(2).

“**Extended Term Loans**” has the meaning assigned to such term in Section 2.20(1).

“**Extending Term Lender**” has the meaning assigned to such term in Section 2.20(1).

“**Extension**” has the meaning assigned to such term in Section 2.20(1).

“**Extension Amendment**” has the meaning assigned to such term in Section 2.20(2).

“**Extension Offer**” has the meaning assigned to such term in Section 2.20(1).

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

“**FCPA**” has the meaning assigned to such term in Section 3.19(2).

“**Federal Funds Rate**” means, for any day, the rate calculated by the Federal Reserve Board of New York based on such day’s federal funds transactions by depository institutions, as determined in such manner as the Federal Reserve Board of New York shall set forth on its public website from time to time, and published on the next succeeding Business Day by the Federal Reserve Board of New York as the federal funds rate, or, if such rate is not so published for any Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1.00%) of the quotations for such day for such transactions received by the Administrative Agent from three U.S. banks of recognized standing selected by it.

“**Fees**” means the Administrative Agent Fees and all other fees payable to a Lender, the Administrative Agent, or any Arranger, in each case, with respect to Term Loans.

“**Financial Officer**” means, with respect to any Person, the chief financial officer, president, principal accounting officer, director of financial services, treasurer, assistant treasurer or controller of such Person.

“**First Lien Intercreditor Agreement**” means a “*pari passu*” intercreditor agreement substantially in the form attached hereto as Exhibit G (as the same may be modified in a manner satisfactory to the Administrative Agent). Upon the request of the Borrower, the Administrative Agent and Collateral Agent will execute and deliver a First Lien Intercreditor Agreement with the Loan Parties and one or more Debt Representatives for Indebtedness permitted hereunder that is permitted to be secured on a *pari passu* basis with the Term Loans.

“**Fixed Amounts**” has the meaning assigned to such term in Section 1.07(b).

“**Flood Certificate**” means a “Standard Flood Hazard Determination Form” of the Federal Emergency Management Agency and any successor Governmental Authority performing a similar function.

“**Flood Program**” means the National Flood Insurance Program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004, in each case as amended from time to time, and any successor statutes.

“**Flood Zone**” means areas having special flood hazards as described in the National Flood Insurance Act of 1968, as amended from time to time, and any successor statute.

“**Foreign Lender**” means any Lender that is organized under the laws of a jurisdiction other than the United States of America. For purposes of this definition, the United States of America, each state thereof and the District of Columbia will be deemed to constitute a single jurisdiction.

“**Foreign Subsidiary**” means any Subsidiary that is not a Domestic Subsidiary.

“**GAAP**” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the SEC applicable only to public companies).

Notwithstanding anything to the contrary above or in the definition of Capital Lease Obligations or Capital Expenditures, in the event of a change under GAAP (or the application thereof) requiring any leases to be capitalized that are not required to be capitalized as of the Closing Date, only those leases that would result or would have resulted in Capital Lease Obligations or Capital Expenditures on the Closing Date (assuming for purposes hereof that they were in existence on the Closing Date) will be considered capital leases and all calculations under this Agreement will be made in accordance therewith.

“**Governmental Authority**” means any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

“**Guarantee**” of or by any Person (the “**guarantor**”) means:

(1) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect:

(a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take or pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligations;

(b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof;

(c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation;

(d) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part); or

(e) as an account party in respect of any letter of credit, bank guarantee or other letter of credit guaranty issued to support such Indebtedness or other obligation; or

(2) any Lien on any assets of the guarantor securing any Indebtedness (or any existing right, contingent or otherwise, of the holder of Indebtedness to be secured by such a Lien) of any other Person, whether or not such Indebtedness or other obligation is assumed by the guarantor;

provided, that the term “Guarantee” will not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted by this Agreement (other than such obligations with respect to Indebtedness).

The amount of any Guarantee will be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

“**Guarantor**” means (1) Holdings; (2) each Subsidiary Loan Party; and (3) each Parent Entity or Restricted Subsidiary (other than any Restricted Subsidiary that is not a Wholly Owned Subsidiary) that the Borrower may elect in its sole discretion, from time to time, upon written notice to the Administrative Agent, to cause to Guarantee the Obligations until such date that the Borrower has informed the Administrative Agent that it elects not to have

such Person Guarantee the Obligations; *provided* that, in the case of this clause (3), the Guarantee and the security interest provided by such Person is full and unconditional and fully enforceable in the jurisdiction of organization of such Person.

“**Hazardous Materials**” means all pollutants, contaminants, wastes, chemicals, materials, substances and constituents, including explosive or radioactive substances or petroleum or petroleum byproducts or distillates, friable asbestos or friable asbestos-containing materials, polychlorinated biphenyls or radon gas, in each case, that are regulated or would reasonably be expected to give rise to liability under any Environmental Law.

“**Hedge Agreement**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, not entered into for speculative purposes; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Holdings or any of its Subsidiaries will be a Hedge Agreement.

“**Holdings**” has the meaning assigned to such term in the introductory paragraph hereof.

“**Immaterial Subsidiary**” means, as of any date, any Subsidiary that (i) did not, as of the last day of the most recent fiscal quarter of the Borrower for which Required Financial Statements have been delivered (or were required to be delivered), have assets with a value in excess of 2.50% of the Consolidated Total Assets or revenues representing in excess of 2.50% of total revenues of the Borrower and the Restricted Subsidiaries for the period of four consecutive fiscal quarters for which Required Financial Statements have been delivered (or were required to be delivered), calculated on a consolidated basis in accordance with GAAP; and (ii) taken together with all Immaterial Subsidiaries as of the last day of the most recent fiscal quarter of the Borrower for which Required Financial Statements have been delivered (or were required to be delivered), did not have assets with a value in excess of 5.00% of Consolidated Total Assets or revenues representing in excess of 5.00% of total revenues of the Borrower and the Restricted Subsidiaries on a consolidated basis for such four-quarter period.

“**Incremental Equivalent Term Debt**” means secured or unsecured Indebtedness of the Borrower in the form of term loans or notes; *provided* that:

(1) either (x) the aggregate outstanding principal amount of such Indebtedness incurred, when taken together with the aggregate principal amount of Incremental Term Loans incurred in reliance on the Non-Ratio Based Incremental Facility Cap, does not exceed the Non-Ratio Based Incremental Facility Cap or (y) (I) with respect to any such Indebtedness secured on a pari passu basis with the Term Loans, the Senior Secured First Lien Net Leverage Ratio (determined on the date on which the Incremental Equivalent Term Debt is incurred (and after giving effect to such incurrence) and after giving effect to any acquisition or other transaction consummated in connection with the incurrence of such Incremental Equivalent Term Debt) is equal to or less than 4.50 to 1.00, (II) with respect to any such Indebtedness to be secured on a junior basis to the Term Loans, the Total Secured Net Leverage Ratio (determined on the date on which the Incremental Equivalent Term Debt is incurred (and after giving effect to such incurrence) and after giving effect to any acquisition or other transaction consummated in connection with the incurrence of such Incremental Equivalent Term Debt) is equal to or less than 7.25 to 1.00 and (III) with respect to any such Indebtedness that is unsecured, the Total Net Leverage Ratio (determined on the date on which the applicable Incremental Equivalent Term Debt is incurred (and after giving effect to such incurrence) and after giving effect to any acquisition or other transaction consummated in connection with the incurrence of such Incremental Equivalent Term Debt) is equal to or less than 7.25 to 1.00; *provided*, for the avoidance of doubt, that amounts under clause (x) and clause (y) may be incurred in the same transaction and that amounts under clause (y) may be utilized prior to amounts under clause (x);

(2) the final maturity date of such Incremental Equivalent Term Debt may not be earlier than the Latest Maturity Date of the Term Loans (and in the case of any junior secured or unsecured Incremental Equivalent Term Debt, the final maturity date may not be earlier than the date that is 91 days after the Latest Maturity Date of the Term Loans);

(3) the Weighted Average Life to Maturity of such Incremental Equivalent Term Debt may be no shorter than the longest remaining Weighted Average Life to Maturity of the Term Loans;

(4) if such Indebtedness is secured on a *pari passu* basis with the Term Loans, such Indebtedness consist of notes and a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a First Lien Intercreditor Agreement and, if applicable, the Intercreditor Agreement; and

(5) if such Indebtedness is secured on a junior basis to the Term Loans, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a Junior Lien Intercreditor Agreement.

Incremental Equivalent Term Debt will include any Registered Equivalent Notes issued in exchange therefor.

“**Incremental Facility**” has the meaning assigned to such term in Section 2.18(1).

“**Incremental Facility Amendment**” has the meaning assigned to such term in Section 2.18(5).

“**Incremental Lenders**” has the meaning assigned to such term in Section 2.18(5).

“**Incremental Term Loan Installment Date**” has the meaning assigned to such term in Section 2.06(2).

“**Incremental Term Loans**” has the meaning assigned to such term in Section 2.18(1).

“**Incremental Yield**” has the meaning assigned to such term in Section 2.18(8).

“**Indebtedness**” means, with respect to any Person, without duplication:

- (1) all obligations of such Person for borrowed money;
- (2) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;
- (3) all obligations of such Person under conditional sale or title retention agreements relating to property or assets purchased by such Person;
- (4) all obligations of such Person issued or assumed as the deferred purchase price of property or services, to the extent the same would be required to be shown as a long-term liability on a balance sheet prepared in accordance with GAAP;
- (5) all Capital Lease Obligations of such Person;
- (6) all net payments that such Person would have to make in the event of an early termination, on the date Indebtedness of such Person is being determined, in respect of outstanding Hedge Agreements;
- (7) the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and bank guarantees;
- (8) the principal component of all obligations of such Person in respect of bankers’ acceptances;
- (9) all Guarantees by such Person of Indebtedness described in clauses (1) through (8) above; and

(10) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock);

provided that Indebtedness will not include:

- (a) trade payables, accrued expenses and intercompany liabilities arising in the ordinary course of business;
- (b) prepaid or deferred revenue arising in the ordinary course of business;
- (c) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset; or
- (d) earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP.

The Indebtedness of any Person will include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

“**Indemnified Taxes**” means (1) all Taxes other than Excluded Taxes, imposed on or with respect to any payment, made by or on account of any obligation of any Loan Party under any Loan Document; and (2) to the extent not otherwise described in clause (1), Other Taxes.

“**Indemnitee**” has the meaning assigned to such term in Section 10.05(2).

“**Intellectual Property Rights**” has the meaning assigned to such term in Section 3.20(1).

“**Intellectual Property Security Agreements**” has the meaning set forth in the Guaranty and Collateral Agreement.

“**Intercreditor Agreement**” means the Amended and Restated Intercreditor Agreement, dated as of the Closing Date, by and among the Administrative Agent, the Collateral Agent and Bank of America, N.A., as administrative agent and collateral agent under the ABL Credit Agreement, and acknowledged by the Loan Parties, as amended, restated, supplemented or otherwise modified from time to time.

“**Interest Coverage Ratio**” means, as of any date, the ratio of (1) the Consolidated EBITDA for the most recent period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis, to (2) the sum of (a) the Consolidated Interest Expense of the Borrower for such period, calculated on a Pro Forma Basis, and (b) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock of the Borrower or preferred stock of any of the Restricted Subsidiaries, in each case, made during such period.

“**Interest Election Request**” means a written request by the Borrower to convert or continue a Borrowing in accordance with Section 2.04.

“**Interest Payment Date**” means (1) with respect to any Eurocurrency Loan, the last day of the Interest Period applicable to the Borrowing of which such Term Loan is a part and, in the case of a Eurocurrency Borrowing with an Interest Period of more than three months’ duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months’ duration been applicable to such Borrowing; and (2) with respect to any ABR Loan, the last Business Day of each fiscal quarter of the Borrower commencing with the last Business Day of the first full fiscal quarter of the Borrower after the Closing Date.

“Interest Period” means, as to any Eurocurrency Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is one, two, three or six months thereafter, as the Borrower may elect, or the date any Eurocurrency Borrowing is converted to an ABR Borrowing in accordance with Section 2.04 or repaid or prepaid in accordance with Section 2.06, 2.07 or 2.08; *provided* that:

- (1) if any Interest Period would end on a day other than a Business Day, such Interest Period will be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period will end on the next preceding Business Day;
- (2) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) will end on the last Business Day of the calendar month at the end of such Interest Period;
- (3) no Interest Period will extend beyond the applicable Maturity Date. Interest will accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period; and
- (4) the initial Interest Period, commencing on the Closing Date, will end on September 30, 2016.

“Interpolated Screen Rate” means, at any day, with respect to any Eurocurrency Loan denominated in any currency for any Interest Period, a rate per annum which results from interpolating on a linear basis between (a) the applicable Screen Rate for the longest maturity for which a Screen Rate is available that is shorter than such Interest Period and (b) the applicable Screen Rate for the shortest maturity for which a Screen Rate is available that is longer than such Interest Period, in each case, as of approximately 11:00 a.m. (London time) on such day.

“Investment” has the meaning assigned to such term in Section 6.04.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P (or reasonably equivalent ratings of another internationally recognized rating agency).

“Investment Grade Securities” means:

- (1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents);
- (2) securities that have an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Borrower and its Restricted Subsidiaries;
- (3) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition; and
- (4) investments in any fund that invests at least 95.0% of its assets in investments of the type described in clauses (1) and (2) above which fund may also hold immaterial amounts of cash pending investment and/or distribution.

“Junior Financing” means (1) any Indebtedness permitted to be incurred hereunder that is contractually subordinated in right of payment to the Obligations or secured by Liens that are contractually subordinated to the Liens securing the Obligations (other than the ABL Obligations), (2) the New Senior Notes or (3) any Permitted Refinancing Indebtedness in respect of any of the foregoing.

“**Junior Lien Intercreditor Agreement**” means a “junior lien” intercreditor agreement substantially in the form attached hereto as Exhibit H (as the same may be modified in a manner satisfactory to the Administrative Agent), or, if requested by the providers of Indebtedness to be secured on a junior basis to the Term Loans, another lien subordination arrangement satisfactory to the Administrative Agent. Upon the request of the Borrower, the Administrative Agent and Collateral Agent will execute and deliver a Junior Lien Intercreditor Agreement with the Loan Parties and one or more Debt Representatives for Indebtedness permitted hereunder that is permitted to be secured on a junior basis to the Term Loans.

“**Latest Maturity Date**” means, as of any date of determination, the latest Maturity Date of the Term Facilities in effect on such date.

“**LCA Election**” has the meaning assigned to such term in Section 1.07(a).

“**Leased Material Real Property**” has the meaning assigned to such term in Section 3.15(2).

“**Lender**” means each Tranche B Term Loan Lender listed on Schedule 2.01 (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 10.04), as well as any Person that becomes a Lender hereunder pursuant to Section 10.04 and any Additional Lender.

“**Lender Default**” means:

- (1) the refusal (which has not been retracted) or failure of any Lender to make available its portion of any Borrowing;
- (2) any Lender has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations under the Term Facility or under other similar agreements in which it commits to extend credit; or
- (3) the admission by any Lender in writing that it is insolvent or such Lender becoming subject to a Lender-Related Distress Event.

“**Lender-Related Distress Event**” means, with respect to any Lender or any Person that directly or indirectly controls a Lender (each, a “**Distressed Person**”), as the case may be, a voluntary or involuntary case with respect to such Distressed Person under any debt relief law, or a custodian, conservator, receiver or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, or such Distressed Person or any Person that directly or indirectly controls such Distressed Person is subject to a forced liquidation, or such Distressed Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt; *provided* that a Lender-Related Distress Event will not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in any Lender or any Person that directly or indirectly controls such Lender by a Governmental Authority or an instrumentality thereof; *provided, further*, that the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator with respect to an Agent or Lender or any person that directly or indirectly controls such Agent or Lender under the Dutch Financial Supervision Act 2007 (as amended from time to time and including any successor legislation) shall not be a “Lender-Related Distress Event” with respect to such Agent or Lender or any person that directly or indirectly controls such Agent or Lender.

“**Lending Office**” means, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Term Loans.

“**LGP**” means Leonard Green & Partners, L.P. and any of its Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates but not including, however, any portfolio company of any of the foregoing.

“**LIBO Rate**” means with respect to any Eurocurrency Borrowing for any Interest Period, the London interbank offered rate as administered by the ICE Benchmark Administration Interest Settlement Rates (or by reference to the rates provided by any Person that takes over the administration of such rate if the ICE Benchmark Administration is no longer making a “LIBO Rate” rate available) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period (as set forth by the Bloomberg Information Service or any successor thereto or any other service selected by the Administrative Agent that has been nominated by the ICE Benchmark Administration (or any successor or substitute agency thereto) as an authorized information vendor for the purpose of displaying such rates) (the “**Screen Rate**”); *provided* that if such Screen Rate is not available at such time for any reason, the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, “LIBO Rate” shall be the interest rate per annum equal to the Interpolated Screen Rate; *further provided, however*, if the LIBO Rate is less than zero, then the LIBO Rate shall be zero.

“**Lien**” means, with respect to any asset (1) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset; or (2) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset; *provided* that in no event will an operating lease, any capital lease in respect of Real Property permitted hereunder, or an agreement to sell be deemed to constitute a Lien.

“**Limited Condition Acquisition**” means any acquisition, including by way of merger, by the Borrower or one or more Restricted Subsidiaries permitted pursuant to the Loan Documents whose consummation is not conditioned on the availability of, or on obtaining, third party financing, or a Permitted Change of Control.

“**Loan Documents**” means this Agreement, the Security Documents, the Intercreditor Agreement, any First Lien Intercreditor Agreement, any Junior Lien Intercreditor Agreement and any Note.

“**Loan Parties**” means Holdings, the Borrower and the Subsidiary Loan Parties.

“**Management Agreement**” means monitoring, management, fee or similar or related agreements providing for the payment (or accrual) of an annual monitoring, management or similar fee to the Sponsors or any Affiliate of Sponsors in an aggregate amount equal to or less than \$3.0 million per annum for any period commencing on or after the Closing Date (with prorated amounts payable for any partial year periods and any amounts not paid in any period beginning on the Closing Date accruing and payable upon request of the Sponsors in future periods).

“**Management Group**” means the group consisting of the directors, executive officers and other management personnel of Holdings, the Borrower or the Restricted Subsidiaries on the Closing Date.

“**Margin Stock**” has the meaning assigned to such term in Regulation U.

“**Material Adverse Effect**” means a material adverse effect on:

- (1) the business, financial condition or results of operations, in each case, of the Borrower and the Restricted Subsidiaries (taken as a whole);
- (2) the ability of the Borrower and the Guarantors (taken as a whole) to perform their payment obligations under the Loan Documents; or
- (3) the rights and remedies of the Administrative Agent and the Lenders (taken as a whole) under the Loan Documents.

“**Material Indebtedness**” means Indebtedness (other than the Term Loans) of the Borrower or any Subsidiary Loan Party in an aggregate outstanding principal amount exceeding \$25.0 million.

“**Material Subsidiary**” means any Subsidiary other than an Immaterial Subsidiary.

“**Maturity Date**” means, as the context may require:

- (1) with respect to all Term Loans (including all Tranche B Term Loans) existing on the Closing Date, August 16, 2023;
- (2) with respect to any Incremental Term Loans, the final maturity date specified therefor in the applicable Incremental Facility Amendment;
- (3) with respect to any Other Term Loans, the final maturity date specified therefor in the applicable Refinancing Amendment; and
- (4) with respect to any Extended Term Loans, the final maturity date specified therefor in the applicable Extension Amendment.

“**Maximum Rate**” has the meaning assigned to such term in Section 10.09.

“**MNPI**” means any material Nonpublic Information regarding Holdings and the Subsidiaries that has not been disclosed to the Lenders generally (other than Lenders who elect not to receive such information). For purposes of this definition “material Nonpublic Information” means Nonpublic Information that would reasonably be expected to be material to a decision by any Lender to assign or acquire any Term Loans or to enter into any of the transactions contemplated thereby.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Mortgage Policies**” has the meaning assigned to such term in Section 5.10(2)(c).

“**Mortgaged Properties**” means, all Real Property, as to which the Collateral Agent for the benefit of the Secured Parties shall be granted a Lien pursuant to the Mortgages.

“**Mortgages**” means each of the mortgages and deeds of trust made by any Loan Party, reasonably acceptable to the Administrative Agent, in favor of, or for the benefit of, the Collateral Agent for the benefit of the Secured Parties, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

“**Multiemployer Plan**” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which Holdings, the Borrower or any Restricted Subsidiary or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

“**Net Cash Proceeds**” means the aggregate cash proceeds (using the fair market value of any Cash Equivalents) received by the Borrower or any Restricted Subsidiary in respect of any Asset Sale (including any cash received in respect of or upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale and any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, and including any proceeds received as a result of unwinding any related Hedge Agreements in connection with such transaction but excluding the assumption by the acquiring Person of Indebtedness relating to the disposed assets or other consideration received in any other non-cash form), net of the direct cash costs relating to such Asset Sale and the sale or disposition of such Designated Non-Cash Consideration (including legal, accounting and investment banking fees, and brokerage and sales commissions), and any relocation expenses incurred as a result thereof, taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements related thereto), amounts required to be applied to the repayment of principal, premium (if any) and interest on Indebtedness required to be paid as a result of such transaction that is secured by a Permitted Lien that is prior or senior to the Lien securing the Obligations, any costs associated with unwinding any related Hedge Agreements in connection with such transaction and any deduction of appropriate amounts to be provided by the Borrower or any of the Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such

transaction and retained by the Borrower or any of the Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction; *provided* that such reserved amounts will be deemed to be Net Cash Proceeds to the extent and at the time of any reversal thereof (to the extent not applied to the satisfaction of any applicable liabilities in cash in a corresponding amount). For purposes of Section 2.08(1), no cash proceeds realized in connection with an Asset Sale will be deemed to be Net Cash Proceeds unless such Asset Sale involves aggregate consideration in excess of \$5.0 million.

“*New Senior Notes*” means \$390.0 million aggregate principal amount of floating rate senior notes due 2024, issued by the Borrower on the Closing Date.

“*New Senior Notes Documents*” means, collectively, the New Senior Notes Indenture and all other loan agreements, indentures, note purchase agreements, promissory notes, guarantees, intercreditor agreements, assignment and assumption agreements and other instruments and agreements evidencing the terms of the New Senior Notes.

“*New Senior Notes Indenture*” means that certain indenture, dated as of August 16, 2016, among the New Senior Notes Trustee, the Borrower and the guarantors party thereto.

“*New Senior Notes Trustee*” means U.S. Bank National Association, together with its permitted successors and assigns.

“*New Sponsor*” means any entity or group of entities with committed capital or assets under management in excess of \$1,000,000,000 or otherwise reasonably acceptable to the Required Lenders, in either case, together with any co-investors.

“*New York Courts*” has the meaning assigned to such term in Section 10.15(1).

“*No MNPI Representation*” means, with respect to any Person, a customary representation that such Person is not in possession of any MNPI.

“*Non-Consenting Lender*” has the meaning assigned to such term in Section 2.16(3).

“*Non-Debt Fund Affiliate*” means any Affiliated Lender other than a Debt Fund Affiliate.

“*Non-Debt Fund Affiliate Assignment and Acceptance*” has the meaning assigned to such term in Section 10.04(10)(b).

“*Non-Ratio Based Incremental Facility Cap*” has the meaning assigned to such term in Section 2.18(3). Unless the Borrower elects otherwise, each Incremental Facility and all Incremental Equivalent Term Debt shall be deemed incurred first under the Available Incremental Term Loan Facility Amount or clause (1)(y) of the definition of “*Incremental Equivalent Term Debt*,” respectively, to the extent permitted, with the balance incurred under the Non-Ratio Based Incremental Facility Cap.

“*Note*” has the meaning assigned to such term in Section 2.05(5).

“*Obligations*” means:

(1) all amounts owing to any Agent or any Lender pursuant to the terms of this Agreement or any other Loan Document, including all interest and expenses accrued or accruing (or that would, absent the commencement of an insolvency or liquidation proceeding, accrue) after the commencement by or against any Loan Party of any proceeding under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law naming such Loan Party as the debtor in such proceeding, in accordance with and at the rate specified in this Agreement, whether or not the claim for such interest or expense is allowed or allowable as a claim in such proceeding;

- (2) any Specified Hedge Obligations; and
- (3) any Cash Management Obligations;

provided that:

- (a) the Obligations of the Loan Parties under any Specified Hedge Agreement and Cash Management Obligations will be secured and Guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and Guaranteed;
- (b) any release of Collateral or Guarantors (as defined in the Collateral Agreement) effected in the manner permitted by this Agreement or any Security Document will not require the consent of any Cash Management Bank or Qualified Counterparty pursuant to any Loan Document; and
- (c) Obligations of any Guarantor shall not, in any event, include any Excluded Swap Obligation with respect to such Guarantor.

“**OFAC**” has the meaning assigned to such term in Section 3.19(3)(e).

“**Original Term Loan Installment Date**” has the meaning assigned to such term in Section 2.06(1).

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

“**Other First Lien Indebtedness**” has the meaning assigned to such term in Section 2.08(1)(c).

“**Other Taxes**” means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.16(2)).

“**Other Term Loan Installment Date**” has the meaning assigned to such term in Section 2.06(2).

“**Other Term Loans**” has the meaning assigned to such term in Section 2.19(1).

“**Owned Material Real Property**” has the meaning assigned to such term in Section 3.15(1).

“**Parent Entity**” means any direct or indirect parent of the Borrower.

“**Participant**” has the meaning assigned to such term in Section 10.04(4)(a).

“**Participant Register**” has the meaning assigned to such term in Section 10.04(4)(a).

“**Payment Office**” means the office of the Administrative Agent located at 309 West 49th Street, 5th Floor, New York, New York 10019, Attention: US Loan Support (Facsimile: (646) 587-1328; Telephone: (212) 667-1324), or such other office as the Administrative Agent may designate to the Borrower and the Lenders from time to time.

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA, or any successor thereto.

“**Perfection Certificate**” means the Perfection Certificate with respect to the Loan Parties in a form substantially similar to that delivered on the Closing Date.

“**Permitted Acquisition**” means any acquisition of all or substantially all the assets of, or a majority of the Equity Interests in, or merger, consolidation or amalgamation with, a Person or division or line of business of a Person (or any subsequent investment made in a Person, division or line of business previously acquired in a Permitted Acquisition) if (1) no Event of Default is continuing immediately prior to making such Investment or would result therefrom; and (2) immediately after giving effect thereto, with respect to acquisitions of entities that do not become Subsidiary Loan Parties, the aggregate fair market value of all Investments made in such entities since the Closing Date (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value), when taken together with the aggregate amount of payments made with respect to Investments pursuant to Section 6.04(6), will not exceed the greater of (a) \$25.0 million and (b) 6.25% of Consolidated Total Assets as of the date any such acquisition is made.

“**Permitted Amendment**” means any Incremental Facility Amendment, Refinancing Amendment or Extension Amendment.

“**Permitted Change of Control**” means any transaction or series of related transactions which otherwise may constitute a Change of Control in which a New Sponsor acquires, either directly or indirectly through one or more holding companies, Equity Interests representing 50% or more of the aggregate ordinary voting power in Holdings or conveying the right to nominate a majority of the board of directors of Holdings (whether directly or indirectly through the right to direct the vote of such Equity Interests) and the following additional conditions are met:

(a) the Borrower shall be in compliance, on a Pro Forma Basis after giving effect to such transactions or series of related transactions (including any Indebtedness assumed or permitted to exist or incurred, issued or otherwise obtained in connection therewith), with (x) a Total Net Leverage Ratio of not greater than 7.25:1.00 and (y) a Senior Secured First Lien Net Leverage Ratio of not greater than 4.90:1.00;

(b) the New Sponsor shall have made, or substantially concurrently therewith, shall make, cash equity contributions directly or indirectly to the New Sponsor’s acquisition vehicle (which shall be used to consummate a Permitted Change of Control) on or prior to the Permitted Change of Control Effective Date in an aggregate amount equal to, when combined with the fair market value of any Equity Interests of any of the management and other existing equity holders of Holdings (or any direct or indirect parent company of Holdings) and its Subsidiaries rolled over or invested in connection with such Permitted Change of Control (such cash equity contributed by the New Sponsor, taken together with the fair market value of any Equity Interests rolled over or invested in connection with the Permitted Change of Control, the “Permitted Change of Control Equity Capitalization”), (x) at least 30% of (y) the sum of Consolidated Total Net Debt and the Permitted Change of Control Equity Capitalization;

(c) (i) at least 15 Business Days prior to the Permitted Change of Control Effective Date, the Borrower shall have delivered notice to the Administrative Agent of such Permitted Change of Control and of the identity of the New Sponsor and (ii) not later than two (2) Business Days prior to the Permitted Change of Control Effective Date, the New Sponsor shall have provided all customary information about its acquisition vehicle that shall have been reasonably requested by the Administrative Agent in writing at least ten (10) Business Days prior to the Permitted Change of Control Effective Date and that the Administrative Agent reasonably determines is required by United States regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act (and, upon any request made by a Lender to the Administrative Agent, the Administrative Agent will provide the Lenders with all such information made available to it);

(d) on the Permitted Change of Control Effective Date, the Administrative Agent shall have received an officer's certificate from the Borrower stating that the conditions described in clauses (a) through (b) above and the definition of "New Sponsor" have been satisfied; and

(e) after giving effect to a Permitted Change of Control, New Sponsor shall have a majority of the voting power for the election of directors, managers or other governing board of the Borrower;

provided that for purposes of clauses (a) and (b) above if at the time of a Permitted Change of Control the most recent month-end financial statements available internally are monthly financial statements for a fiscal month ending during the period from (and including) the Borrower's fiscal month ending on or about November 30 to and including the Borrower's fiscal month ending on or about April 30 of any year (i) and any loans are outstanding under the ABL Credit Agreement as of the last day of such fiscal month included in such financial statements, then Unrestricted Cash at such date shall be deemed to be zero and (ii) if the amount of Indebtedness outstanding under the ABL Credit Agreement that is included in Consolidated Debt for purposes of clauses (a) and (b) above exceeds the amount of Indebtedness outstanding under the ABL Credit Agreement that is included in Consolidated Debt as at the end of the most recent fiscal year of the Borrower ending on or about September 30, then Consolidated Total Net Debt and Consolidated First Lien Net Debt for purposes of calculating the ratios and percentages in clauses (a) and (b) above shall exclude any such excess amount of Indebtedness under the ABL Credit Agreement to the extent a Responsible Officer delivers a certificate to the Administrative Agent stating that such Responsible Officer has determined that such excess amount is attributable to the ordinary course operations of the Borrower and its Restricted Subsidiaries since the last day of the Borrower's most recent fiscal year ending on or about September 30 and not to the consummation of such Permitted Change of Control or any Acquisition or similar Investment or to the making of any Restricted Payment.

For the avoidance of doubt and notwithstanding anything to the contrary herein, only one Permitted Change of Control shall be permitted to be consummated under this Agreement and any Permitted Change of Control must be consummated prior to the date that is 18 months after the Closing Date.

"Permitted Change of Control Costs" means all reasonable fees, costs and expenses incurred or payable by Holdings (or any direct or indirect parent of Holdings), the Borrower or any of its Restricted Subsidiaries in connection with a Permitted Change of Control.

"Permitted Change of Control Effective Date" means the date of consummation of a Permitted Change of Control; *provided* that there shall only be one Permitted Change of Control Effective Date.

"Permitted Debt" has the meaning assigned thereto in Section 6.01.

"Permitted Holders" means each of:

- (1) the Sponsors;
- (2) any member of the Management Group (or any controlled Affiliate thereof);
- (3) any other holder of a direct or indirect equity interest in Holdings that either (a) holds such interest as of the Closing Date and is disclosed to the Arranger prior to the Closing Date or (b) becomes a holder of such interest prior to the three-month anniversary of the Closing Date and is a limited partner of a Sponsor on the Closing Date; *provided* that the limited partners that become holders of equity interests pursuant to this clause (b) do not own in the aggregate more than 20% of the Voting Stock of Holdings as of such three-month anniversary;
- (4) any group (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of which Persons described in the foregoing clauses (1), (2) or (3) are members; *provided* that, without giving effect to the existence of such group or any other group, the Persons described in clauses (1), (2) and (3), collectively, Beneficially Own Voting Stock representing 50% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings (determined on a fully diluted basis but without giving effect to contingent voting rights not yet vested) then held by such group; and

-
- (5) any Permitted Parent.

“**Permitted Holdings Debt**” means unsecured Indebtedness of Holdings that:

- (1) is not subject to any Guarantee by the Borrower or any Restricted Subsidiary;
- (2) does not mature prior to the date that is ninety-one (91) days after the Latest Maturity Date;
- (3) no Event of Default has occurred and is continuing immediately after the issuance or incurrence thereof or would result therefrom;
- (4) has no scheduled amortization or payments of principal prior to the date that is ninety-one (91) days after the Latest Maturity Date (it being understood that such Indebtedness may have mandatory prepayment, repurchase or redemption provisions satisfying the requirements of clause (6) hereof);
- (5) does not require any payments in cash of interest or other amounts in respect of the principal thereof prior to the date that is ninety-one (91) days after the Latest Maturity Date; and
- (6) has mandatory prepayment, repurchase or redemption, covenant, default and remedy provisions customary for senior discount notes of an issuer that is the parent of a borrower under senior secured credit facilities, and in any event, with respect to covenant, default and remedy provisions, no more restrictive than those set forth in the New Senior Notes Indenture taken as a whole (other than provisions customary for senior discount notes of a holding company), in each case as determined in good faith by a Responsible Officer of the Borrower;

provided that clauses (4) and (5) will not restrict payments that are necessary to prevent such Indebtedness from being treated as an “applicable high yield discount obligation” within the meaning of Section 163(i)(1) of the Code; *provided, further* that the Borrower will deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof).

“**Permitted Investment**” has the meaning assigned to such term in Section 6.04.

“**Permitted Investor**” means:

- (1) each of the Sponsors;
- (2) each of their respective Affiliates and investment managers;
- (3) any fund or account managed or controlled by any of the Persons described in clause (1) or (2) of this definition;
- (4) any employee benefit plan of Holdings or any of its Subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan; and
- (5) investment vehicles of members of management of Holdings or the Borrower that invest in, acquire or trade commercial loans but excluding natural persons.

“**Permitted Liens**” has the meaning assigned to such term in Section 6.02.

“**Permitted Parent**” means (a) any Parent Entity that at the time it became a Parent Entity was a Permitted Holder pursuant to clauses (1), (2) and (3) of the definition thereof; *provided* that such Parent Entity was not formed in connection with, or in contemplation of, a transaction (other than the Transactions) that would otherwise constitute a Change in Control and (b) Holdings, so long as it is controlled by one or more Persons that are Permitted Holders pursuant to clause (1), (2), (3) or (4) of the definition thereof.

“**Permitted Refinancing Indebtedness**” means any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, “**Refinance**”) the Indebtedness being Refinanced (or previous refinancings thereof constituting Permitted Refinancing Indebtedness); *provided* that:

(1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (*plus* unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses); *provided*, that with respect to the ABL Obligations, the principal amount of any Permitted Refinancing Indebtedness in respect thereof shall be subject only to Section 6.01(2)(b);

(2) the Weighted Average Life to Maturity of such Permitted Refinancing Indebtedness is greater than or equal to the shorter of (a) the Weighted Average Life to Maturity of the Indebtedness being Refinanced and (b) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness being Refinanced that were due on or after the date that is one year following the Latest Maturity Date were instead due on the date that is one year following the Latest Maturity Date; *provided* that no Permitted Refinancing Indebtedness incurred in reliance on this subclause (b) will have any scheduled principal payments due prior to the Latest Maturity Date in excess of, or prior to, the scheduled principal payments due prior to such Latest Maturity Date for the Indebtedness being Refinanced;

(3) if the Indebtedness being Refinanced is subordinated in right of payment to any Obligations under this Agreement, such Permitted Refinancing Indebtedness is subordinated in right of payment to such Obligations on terms at least as favorable to the Lenders (as determined in good faith by a Responsible Officer of the Borrower) as those contained in the documentation governing the Indebtedness being Refinanced;

(4) no Permitted Refinancing Indebtedness may have different obligors, or greater Guarantees or security, than the Indebtedness being Refinanced; *provided* that, with respect to a Refinancing of the ABL Obligations, the Liens, if any, securing such Permitted Refinancing Indebtedness will be on terms not materially less favorable to the Lenders than those contained in the documentation governing the ABL Credit Agreement, as determined in good faith by a Responsible Officer of the Borrower;

(5) in the case of a Refinancing of Indebtedness that is secured on a *pari passu* basis with the Term Loans with Indebtedness that is secured on a *pari passu* basis with the Term Loans, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a First Lien Intercreditor Agreement and, if applicable, the Intercreditor Agreement;

(6) in the case of a Refinancing of Indebtedness that is secured on a *pari passu* basis with, or on a junior basis to, the Term Loans with Indebtedness that is secured on a junior basis, to the Term Loans, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a Junior Lien Intercreditor Agreement and, if applicable, the Intercreditor Agreement; and

(7) in the case of a Refinancing of the ABL Obligations, the Liens, if any, securing such Permitted Refinancing Indebtedness are subject to the Intercreditor Agreement or another intercreditor agreement that is substantially consistent with, and no less favorable to the Lenders in any material respect than, the Intercreditor Agreement as determined in good faith by a Responsible Officer of the Borrower and as certified by a Responsible Officer of the Borrower.

Permitted Refinancing Indebtedness may not be incurred to Refinance Indebtedness that is secured on a junior basis to the Term Loans with Indebtedness that is secured on a *pari passu* basis with the Term Loans.

Indebtedness constituting Permitted Refinancing Indebtedness will not cease to constitute Permitted Refinancing Indebtedness as a result of the subsequent extension of the Latest Maturity Date after the date of original incurrence thereof.

“**Person**” means any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, government, individual or family trust, Governmental Authority or other entity of whatever nature.

“**Plan**” means any “employee pension benefit plan” as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) that is (1) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA; and (2) either (a) sponsored or maintained (at the time of determination or at any time within the five years prior thereto) by Holdings or any of its Subsidiaries or any ERISA Affiliate or (b) in respect of which Holdings or any of its Subsidiaries or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“**Plan of Reorganization**” has the meaning assigned to such term in Section 9.01(5).

“**Platform**” has the meaning assigned to such term in Section 10.17(1).

“**Pledged Collateral**” means “*Pledged Collateral*” as defined in the Collateral Agreement.

“**Prime Rate**” means, at any time, the rate of interest per annum as set forth or otherwise identified from time to time by The Wall Street Journal as its prime rate. In the event that such rate does not appear in such copy of The Wall Street Journal, the Prime Rate shall be determined by reference to such other publicly available service or publication for displaying such rates as may be agreed upon by the Administrative Agent and the Borrower.

“**Pro Forma Basis**” or “**Pro Forma**” means, with respect to the calculation of Consolidated EBITDA, the Senior Secured First Lien Net Leverage Ratio, the Total Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio, or any other calculation under any applicable provision of the Loan Documents, as of any date, that (1) pro forma effect will be given to the Transactions, any Permitted Acquisition or Investment, any issuance, incurrence, assumption or permanent repayment of Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transaction and for which any such financial ratio or other calculation is being calculated), all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division or store, or any conversion of a Restricted Subsidiary to an Unrestricted Subsidiary or of an Unrestricted Subsidiary to a Restricted Subsidiary and restructuring, strategic and other cost savings initiatives, in each case that have occurred during the four consecutive fiscal quarter period of the Borrower being used to calculate such financial ratio (the “**Reference Period**”), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Restricted Subsidiary after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period, and (2) pro forma effect will be given to factually supportable and identifiable pro forma cost savings related to operational efficiencies, strategic initiatives or purchasing improvements and other synergies, in each case, reasonably expected by the Borrower and the Restricted Subsidiaries to be realized based upon actions reasonably expected to be taken within 18 months of the date of such calculation (without duplication of the amount of actual benefit realized during such period from such actions), which cost savings, improvements and synergies can be reasonably computed, as certified in writing by the chief financial officer of the Borrower; *provided* that any such pro forma adjustments in respect of such cost savings, improvements and synergies shall not exceed 20% of Consolidated EBITDA (before giving effect to all such adjustments) for any four-quarter period. For the avoidance of doubt, no pro forma adjustment will be made subsequent to the relevant measurement date for borrowings incurred or repayments made under the ABL Credit Agreement in the ordinary course of business and unrelated to any of the events described in this definition.

“**Projections**” means all projections (including financial estimates, financial models, forecasts and other forward-looking information) furnished to the Lenders or the Administrative Agent by or on behalf of Holdings or any of the Subsidiaries on or prior to the Closing Date.

“**Public Lender**” has the meaning assigned to such term in Section 10.17(2).

“**Purchasing Borrower Party**” means Holdings or any Subsidiary of Holdings that becomes an Assignee or Participant pursuant to Section 10.04(14).

“**Qualified Counterparty**” means any counterparty to any Specified Hedge Agreement that, at the time such Specified Hedge Agreement was entered into or on the Closing Date, was an Agent, an Arranger, a Lender or an Affiliate of the foregoing, whether or not such Person subsequently ceases to be an Agent, an Arranger, a Lender or an Affiliate of the foregoing.

“**Qualified Equity Interests**” means any Equity Interests other than Disqualified Stock.

“**Qualified IPO**” means an underwritten public offering (other than a public offering pursuant to a registration statement on Form S-4 or Form S-8) of the Equity Interests of any Parent Entity which generates cash proceeds of at least \$100.0 million.

“**Qualified Receivables Financing**” means any Receivables Financing of a Receivables Subsidiary that meets the following conditions:

- (1) the Board of Directors of the Borrower has determined in good faith that such Qualified Receivables Financing (including financing terms, covenants, termination events and other provisions) is, in the aggregate, economically fair and reasonable to the Borrower and the Restricted Subsidiaries;
- (2) all sales of accounts receivable and related assets by the Borrower or any Restricted Subsidiary to the Receivables Subsidiary are made at fair market value (as determined in good faith by a Responsible Officer of the Borrower); and
- (3) the financing terms, covenants, termination events and other provisions thereof will be market terms (as determined in good faith by a Responsible Officer of the Borrower) and may include Standard Securitization Undertakings.

The grant of a security interest in any accounts receivable of the Borrower or any Restricted Subsidiary (other than a Receivables Subsidiary or a customary backup security interest in accounts receivable conveyed to a Receivables Subsidiary) to secure any Indebtedness will not be deemed a Qualified Receivables Financing.

“**Quarterly Financial Statements**” has the meaning assigned to such term in Section 5.04(2).

“**Ratio Debt**” has the meaning assigned to such term in Section 6.01.

“**Real Property**” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by any Loan Party, together with, in each case, all easements, hereditaments and appurtenances relating thereto, and all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“**Receivables Facility**” means one or more receivables financing facilities, as amended, supplemented, modified, extended, renewed, restated, refunded, replaced or refinanced from time to time, the Indebtedness of which is non-recourse (except for standard representations, warranties, covenants and indemnities made in connection with such facilities) to the Borrower and the Restricted Subsidiaries pursuant to which the Borrower or any Restricted Subsidiary sells its accounts receivable to either (1) a Person that is not a Restricted Subsidiary; or (2) a Receivables Subsidiary that in turn sells its accounts receivable to a Person that is not a Restricted Subsidiary.

“Receivables Financing” means any transaction or series of transactions that may be entered into by the Borrower or any Restricted Subsidiary pursuant to which the Borrower or any Restricted Subsidiaries may sell, convey or otherwise transfer to:

- (1) a Receivables Subsidiary (in the case of a transfer by the Borrower or any Restricted Subsidiary that is not a Receivables Subsidiary); and
- (2) any other Person (in the case of a transfer by a Receivables Subsidiary), or may grant a security interest in, any accounts receivable (whether now existing or arising in the future) of the Borrower or any Restricted Subsidiary, and any assets related thereto including all collateral securing such accounts receivable, all contracts and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable and any Hedge Agreements entered into by the Borrower or any such Restricted Subsidiary in connection with such accounts receivable.

“Receivables Repurchase Obligation” means any obligation of a seller of receivables in a Qualified Receivables Financing to repurchase receivables arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

“Receivables Subsidiary” means a Wholly Owned Subsidiary of the Borrower (or another Person formed solely for the purposes of engaging in a Qualified Receivables Financing with the Borrower and to which the Borrower or any Restricted Subsidiary transfers accounts receivable and related assets) which engages in no activities other than in connection with the financing of accounts receivable of the Borrower and its Restricted Subsidiaries, all proceeds thereof and all rights (contractual or other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Borrower (as provided below) as a Receivables Subsidiary and:

- (1) no portion of the Indebtedness or any other obligations (contingent or otherwise):
 - (a) is guaranteed by the Borrower or any Restricted Subsidiary (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings);
 - (b) is recourse to or obligates the Borrower or any Restricted Subsidiary in any way other than pursuant to Standard Securitization Undertakings; or
 - (c) subjects any property or asset of the Borrower or any Restricted Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;
- (2) with which neither the Borrower nor any Restricted Subsidiary has any material contract, agreement, arrangement or understanding other than on terms which the Borrower reasonably believes to be no less favorable to the Borrower or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower; and
- (3) to which neither the Borrower nor any other Restricted Subsidiary has any obligation to maintain or preserve such entity’s financial condition or cause such entity to achieve certain levels of operating results.

Any such designation by the Board of Directors of the Borrower will be evidenced to the Administrative Agent by filing with the Administrative Agent a certified copy of the resolution of the Board of Directors of the Borrower giving effect to such designation and a certificate of a Responsible Officer of the Borrower certifying that such designation complied with the foregoing conditions.

“**Recipient**” means the Administrative Agent and any Lender, as applicable.

“**Refinance**” has the meaning assigned to such term in the definition of “*Permitted Refinancing Indebtedness*,” and the terms “**Refinanced**” will have a correlative meaning.

“**Refinancing**” has the meaning assigned to such term in the recitals to this Agreement.

“**Refinancing Amendment**” means an amendment to this Agreement (and, as necessary, each other Loan Document) executed by each of (1) the Borrower and Holdings; (2) the Administrative Agent; and (3) each Lender that agrees to provide any portion of the Other Term Loans in accordance with Section 2.19.

“**Register**” has the meaning assigned to such term in Section 10.04(2)(d).

“**Registered Equivalent Notes**” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees and collateral provisions) issued by the Borrower in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“**Regulation T**” means Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation U**” means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation X**” means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Reinvestment Deferred Amount**” means, with respect to any Reinvestment Event, the aggregate amount of Net Cash Proceeds received by the Borrower or a Restricted Subsidiary in connection therewith that are not applied to prepay the Term Loans as a result of the delivery of a Reinvestment Notice.

“**Reinvestment Event**” means any Asset Sale in respect of which the Borrower has delivered a Reinvestment Notice.

“**Reinvestment Notice**” means a written notice executed by a Responsible Officer stating that the Borrower or any Restricted Subsidiary intends and expects to use an amount of funds not to exceed the amount of Net Cash Proceeds of an Asset Sale to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets used or useful in the Borrower’s or a Restricted Subsidiary’s business.

“**Reinvestment Prepayment Amount**” means, with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto/less any amount expended by the Borrower or a Restricted Subsidiary prior to the relevant Reinvestment Prepayment Date to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets used or useful in the Borrower’s or a Restricted Subsidiary’s business.

“**Reinvestment Prepayment Date**” means, with respect to any Reinvestment Event, the date occurring one year after such Reinvestment Event or, if the Borrower or a Restricted Subsidiary has entered into a legally binding commitment within one year after such Reinvestment Event to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets used or useful in the Borrower’s or a Restricted Subsidiary’s business, the date occurring two years after such Reinvestment Event.

“**Related Parties**” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“Release” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating in, into, upon, onto or through the Environment.

“Remaining Present Value” means, as of any date with respect to any lease, the present value as of such date of the scheduled future lease payments with respect to such lease, determined with a discount rate equal to a market rate of interest for such lease reasonably determined at the time such lease was entered into.

“Reportable Event” means any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30 day notice period referred to in Section 4043(c) of ERISA has been waived, with respect to a Plan (other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code).

“Repricing Event” means (1) any prepayment of any Class of Term Loans with the proceeds of, or any conversion of such Term Loans into, any new or replacement tranche of debt financing bearing interest at yield that is less than the yield applicable to such Class of Term Loans and (2) any amendment to any Term Facility that, directly or indirectly, reduces the yield applicable to the Term Loans in such Term Facility (in each case, calculating such yield consistent with the methodology for calculating the “yield” of any Term Loans and any “Incremental Yield” pursuant to the terms of Section 2.18(8)); *provided* that no Repricing Event will be deemed to occur in connection with a Change in Control, Qualified IPO or Enterprise Transformative Event.

“Required Financial Statements” has the meaning assigned to such term in Section 5.04(2).

“Required Lender Consent Items” has the meaning assigned to such term in Section 10.04(12)(c).

“Required Lenders” means, at any time, Lenders having Term Loans outstanding and unused Commitments that, taken together, represent more than 50.0% of the sum of all Term Loans outstanding and Commitments at such time. The Term Loans and Commitments of any Defaulting Lender will be disregarded in determining Required Lenders; *provided* that subject to the Borrower’s right to replace Defaulting Lenders as set forth herein, Defaulting Lenders will be included in determining Required Lenders with respect to:

- (1) any amendment that would disproportionately affect the obligation of the Borrower to make payment of the Term Loans or Commitments of such Defaulting Lender as compared to other Lenders holding the same Class of Term Loans or Commitments;
- (2) any amendment relating to:
 - (a) increases in the Commitment of such Defaulting Lender;
 - (b) reductions of principal, interest, fees or premium applicable to the Class of Term Loans held by such Defaulting Lender or Commitments of such Defaulting Lender; and
 - (c) extensions of final maturity or the due date of any amortization, interest, fee or premium payment applicable to the Class of Term Loans held by such Defaulting Lender or Commitments of such Defaulting Lender; and
- (3) matters requiring the approval of each Lender under subclauses (v) and (vi) of Section 10.08(2).

“**Required Percentage**” means, with respect to any Excess Cash Flow Period, the percentage set forth in the table below based on Senior Secured First Lien Net Leverage Ratio determined as of the last day of such Excess Cash Flow Period:

Senior Secured First Lien Net Leverage Ratio	Required Percentage
Greater than 4.00 to 1.00	50.00%
Less than or equal to 4.00 to 1.00 but greater than 3.50 to 1.00	25.00%
Less than or equal to 3.50 to 1.00	0.00%

“**Responsible Officer**” means, with respect to any Loan Party, the chief executive officer, president, vice president, secretary, assistant secretary or any Financial Officer of such Loan Party or any other individual designated in writing to the Administrative Agent by an existing Responsible Officer of such Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party will be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of such Loan Party and such Responsible Officer will be conclusively presumed to have acted on behalf of such Loan Party.

“**Restricted Payments**” has the meaning assigned to such term in Section 6.06.

“**Restricted Subsidiary**” means any Subsidiary of a Person other than an Unrestricted Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Restricted Subsidiaries will mean Restricted Subsidiaries of the Borrower.

“**Retained Percentage**” means, with respect to any Excess Cash Flow Period, 100% minus the Required Percentage with respect to such Excess Cash Flow Period.

“**S&P**” means Standard & Poor’s Ratings Services or any successor entity thereto.

“**Sale and Lease-Back Transaction**” has the meaning assigned to such term in Section 6.03.

“**Screen Rate**” has the meaning assigned to such term in the definition of “LIBO Rate.”

“**SEC**” means the Securities and Exchange Commission or any successor thereto.

“**Secured Parties**” means the collective reference to the “*Secured Parties*” as defined in the Collateral Agreement.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Security Documents**” means the collective reference to the Collateral Agreement, the Mortgages, the Intellectual Property Security Agreements and each of the security agreements and other instruments and documents executed and delivered by any Loan Party pursuant thereto or pursuant to Section 5.10.

“**Senior Secured First Lien Net Leverage Ratio**” means, as of any date, the ratio of Consolidated First Lien Net Debt as of such date to Consolidated EBITDA for the most recent four fiscal quarter period for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis.

“**Specified Event of Default**” means any Event of Default under Section 8.01(2), 8.01(3), 8.01(8) or 8.01(9).

“**Specified Hedge Agreement**” means any Hedge Agreement entered into or assumed between or among the Borrower or any other Subsidiary and any Qualified Counterparty and designated by the Qualified Counterparty and the Borrower in writing to the Administrative Agent as a “Specified Hedge Agreement” under this Agreement (but only if such Hedge Agreement has not been designated as a “Specified Hedge Agreement” under the ABL Credit Agreement).

“**Specified Hedge Obligations**” means all amounts owing to any Qualified Counterparty under any Specified Hedge Agreement.

“**Specified Representations**” means the representations and warranties of each of the Borrower and the other Loan Parties set forth in the following sections of this Agreement:

- (1) Section 3.01(1) and (4) (but solely with respect to its organizational existence and status and organizational power and authority as to the execution, delivery and performance of this Agreement and the other Loan Documents);
- (2) Section 3.02(1) (but solely with respect to its authorization of this Agreement and the other Loan Documents);
- (3) Section 3.02(2)(a)(i) (but solely with respect to non-conflict of this Agreement and the other Loan Documents with its certificate or article of incorporation or other charter document);
- (4) Section 3.03 (but solely with respect to execution and delivery by it, and enforceability against it, of this Agreement and the other Loan Documents);
- (5) Section 3.08(2);
- (6) Section 3.09;
- (7) Section 3.14(1) (subject to Permitted Liens);
- (8) Section 3.16; and
- (9) Section 3.19.

“**Specified Transaction**” means any Investment (including any Limited Condition Acquisition), Permitted Change of Control, disposition, incurrence or repayment of Indebtedness, Restricted Payment, Subsidiary designation, Incremental Facility that by the terms of this Agreement requires such test to be calculated on a “Pro Forma Basis”; *provided* that any increase in the Commitments (including, for this purpose, any Commitment in respect of any Incremental Term Loan or Extended Term Loan) above the amount of Commitments in effect on the Closing Date, for purposes of this “Specified Transaction” definition, shall be deemed to be fully drawn; *provided, further*, that, at the Borrower’s election, any such Specified Transaction (other than a Restricted Payment) having an aggregate value of less than \$5,000,000 shall not be calculated on a “Pro Forma Basis.”

“**Sponsors**” means, any of CVC and LGP (and, following a Permitted Change of Control, the New Sponsor with respect to such Permitted Change of Control) and any of their respective Affiliates and funds or partnerships managed, advised or controlled by any of them or any of their respective Affiliates, but not including any operating portfolio company of any of the foregoing.

“**Standard Securitization Undertakings**” means representations, warranties, covenants, indemnities and Guarantees of performance entered into by the Borrower or any Subsidiary of the Borrower that a Responsible Officer of the Borrower has determined in good faith to be customary in a Receivables Financing including those relating to the servicing of the assets of a Receivables Subsidiary, it being understood that any Receivables Repurchase Obligation will be deemed to be a Standard Securitization Undertaking.

“**Statutory Reserves**” means, with respect to any currency, any reserve, liquid asset or similar requirements established by any Governmental Authority of the United States of America or of the jurisdiction of such currency or any jurisdiction in which Term Loans in such currency are made to which banks in such jurisdiction are subject for any category of deposits or liabilities customarily used to fund loans in such currency or by reference to which interest rates applicable to Term Loans in such currency are determined.

“**Subagent**” has the meaning assigned to such term in Section 9.02.

“**Subsidiary**” means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which (1) Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership, limited liability company or other entity are at the time owned by such Person; or (2) more than 50.0% of the Equity Interests are at the time owned by such Person. Unless otherwise indicated in this Agreement, all references to Subsidiaries will mean Subsidiaries of the Borrower.

“**Subsidiary Loan Parties**” means (1) each Wholly Owned Domestic Subsidiary of the Borrower on the Closing Date (other than any Excluded Subsidiary); and (2) each Wholly Owned Domestic Subsidiary (other than any Excluded Subsidiary) of the Borrower that becomes, or is required to become, a party to the Collateral Agreement after the Closing Date.

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

“**Taxes**” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding) or similar charges imposed by any Governmental Authority and any and all interest and penalties related thereto.

“**Term Facility**” means the facility and commitments utilized in making Term Loans hereunder. On the Closing Date, there is one Term Facility, the Tranche B Term Loan Facility. Following the establishment of any Incremental Term Loans (other than an increase to an existing Term Facility), Other Term Loans or Extended Term Loans, such Incremental Term Loans, Other Term Loans or Extended Term Loans will be considered a separate Term Facility hereunder.

“**Term Loan Installment Date**” means, as the context requires, an Original Term Loan Installment Date, an Incremental Term Loan Installment Date, an Other Term Loan Installment Date or an Extended Term Loan Installment Date.

“**Term Loans**” means the Tranche B Term Loans made to the Borrower on the Closing Date pursuant hereto, any Incremental Term Loans, any Other Term Loans and any Extended Term Loans, collectively (or if the context so requires, any of them individually).

“**Term Priority Collateral**” means “*Term Priority Collateral*” as defined in the Intercreditor Agreement.

“**Title Company**” has the meaning assigned to such term in Section 5.10(2)(c).

“**Title Policy**” has the meaning assigned to such term in Section 5.10(2)(c).

“**Total Net Leverage Ratio**” means, as of any date, the ratio of Consolidated Total Net Debt as of such date to Consolidated EBITDA for the most recent four fiscal quarter period for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis.

“**Total Secured Net Leverage Ratio**” means, as of any date, the ratio of Consolidated Secured Net Debt as of such date to Consolidated EBITDA for the most recent four fiscal quarter period for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis.

“**Tranche B Term Loan Commitments**” means with respect to each Lender, the commitment of such Lender to make Tranche B Term Loans as set forth on Schedule 2.01. On the Closing Date, the aggregate amount of Tranche B Term Loan Commitments is \$810.0 million.

“**Tranche B Term Loan Facility**” means the term loan facility consisting of Tranche B Term Loans made to the Borrower.

“**Tranche B Term Loan Lender**” means each financial institution listed on Schedule 2.01 (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 10.04), as well as any Person that becomes a Lender hereunder pursuant to Section 10.04 by assignment of any Tranche B Term Loans.

“**Tranche B Term Loans**” means the term loans made to the Borrower on the Closing Date pursuant to Section 2.01(1).

“**Transactions**” has the meaning assigned to such term in the recitals to this Agreement.

“**Type**” means, when used in respect of any Term Loan or Borrowing, the Rate by reference to which interest on such Term Loan or on the Term Loans comprising such Borrowing is determined. For purposes hereof, the term “Rate” means Adjusted LIBO Rate or ABR, as applicable.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“**Unrestricted Cash**” means, as of any date, all cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries as of such date that would not appear as “restricted” on the Required Financial Statements, determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“**Unrestricted Subsidiary**” means any Subsidiary of Holdings (other than the Borrower) designated by the Borrower as an Unrestricted Subsidiary hereunder by written notice to the Administrative Agent; *provided* that the Borrower will only be permitted to so designate a new Unrestricted Subsidiary after the Closing Date or subsequently re-designate any such Unrestricted Subsidiary as a Restricted Subsidiary (by written notice to the Administrative Agent) if:

- (1) no Event of Default is continuing; *provided*, that if such Subsidiary is being designated as an Unrestricted Subsidiary in connection with a Limited Condition Acquisition, (i) the date of determination of such condition shall be the LCA Test Date and (ii) on the date such Subsidiary is designated as an Unrestricted Subsidiary, no Specified Event of Default shall have occurred and be continuing or would exist immediately after such designation;
- (2) such designation or re-designation would not cause an Event of Default; *provided*, that if such Subsidiary is being designated as an Unrestricted Subsidiary in connection with a Limited Condition Acquisition, (i) the date of determination of such condition shall be the LCA Test Date and (ii) on the date such Subsidiary is designated as an Unrestricted Subsidiary, such designation or re-designation would not cause a Specified Event of Default; and
- (3) compliance with a minimum Interest Coverage Ratio of 2.0 to 1.0, determined on a Pro Forma Basis; *provided*, that if such Subsidiary is being designated as an Unrestricted Subsidiary in connection with a Limited Condition Acquisition, the date of determination of such condition shall be the LCA Test Date.

The designation of any Restricted Subsidiary as an Unrestricted Subsidiary will constitute an Investment for purposes of Section 6.04. The redesignation of any Unrestricted Subsidiary as a Restricted Subsidiary will be deemed to be an incurrence at the time of such designation of Indebtedness of such Unrestricted Subsidiary and the Liens on the assets of such Unrestricted Subsidiary, in each case outstanding on the date of such redesignation.

“**USA PATRIOT Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107 56 (signed into law October 26, 2001)).

“**U.S. Person**” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“**Voting Stock**” means, as of any date, the Capital Stock of any Person that is at the time entitled to vote (without regard to the occurrence of any contingency) in the election of the Board of Directors of such Person.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness as of any date, the number of years obtained by dividing (1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal (excluding nominal amortization), including payment at final maturity, in respect thereof by (b) the number of years (calculated to the nearest 1/12) that will elapse between such date and the making of such payment; by (2) the then outstanding principal amount of such Indebtedness.

“**Wholly Owned Domestic Subsidiary**” means, with respect to any Person, a Domestic Subsidiary of such Person that is a Wholly Owned Subsidiary. Unless otherwise indicated in this Agreement, all references to Wholly Owned Domestic Subsidiaries will mean Wholly Owned Domestic Subsidiaries of the Borrower.

“**Wholly Owned Subsidiary**” means, with respect to any Person, a subsidiary of such Person, all of the Equity Interests of which (other than directors’ qualifying shares or nominee or other similar shares required pursuant to applicable law) are owned by such Person or another Wholly Owned Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Wholly Owned Subsidiaries will mean Wholly Owned Subsidiaries of the Borrower.

“**Withdrawal Liability**” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“**Working Capital**” means, with respect to the Borrower and its Subsidiaries on a consolidated basis as of any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; *provided* that, for purposes of calculating Excess Cash Flow, increases or decreases in Working Capital will be calculated without regard to any changes in Current Assets or Current Liabilities as a result of (a) reclassification after the date hereof in accordance with GAAP of assets or liabilities, as applicable, between current and non-current or (b) the effects of purchase accounting.

“**Write-Down and Conversion Powers**” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.02. Terms Generally. The definitions set forth or referred to in Section 1.01 will apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine and neuter forms. Unless the context requires otherwise,

- (1) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation”;
- (2) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including”;
- (3) the word “will” will be construed to have the same meaning and effect as the word “shall”;

- (4) the word “incur” will be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” will have correlative meanings);
- (5) any reference to any Person will be construed to include such Person’s legal successors and permitted assigns; and
- (6) the words “asset” and “property” will be construed to have the same meaning and effect.

All references herein to Articles, Sections, Exhibits and Schedules will be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context otherwise requires. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document or organizational document of the Loan Parties means such document as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document). Any reference to any law will include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation means, unless otherwise specified, such law or regulation as amended, modified or supplemented from time to time. Whenever this Agreement refers to the “knowledge” of the Company or any Loan Party, such reference will be construed to mean the knowledge of the chief executive officer, president, chief financial officer, treasurer or controller of such Person.

SECTION 1.03. Accounting Terms: GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature will be construed in accordance with GAAP, as in effect from time to time; *provided* that, notwithstanding anything to the contrary herein, all accounting or financial terms used herein will be construed, and all financial computations pursuant hereto will be made, without giving effect to any election under Statement of Financial Accounting Standards Board Accounting Standards Codification 825 10 (or any other Statement of Financial Accounting Standards Board Accounting Standards Codification having a similar effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at “fair value,” as defined therein. In the event that any Accounting Change (as defined below) occurs and such change results in a change in the method of calculation of financial ratios, standards or terms in this Agreement, then upon the written request of the Borrower or the Administrative Agent (acting upon the request of the Required Lenders), the Borrower, the Administrative Agent and the Lenders will enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating the Borrower’s financial condition will be the same after such Accounting Change as if such Accounting Change had not occurred; *provided* that provisions of this Agreement in effect on the date of such Accounting Change will remain in effect until the effective date of such amendment. “*Accounting Change*” means (1) any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or (2) any change in the application of GAAP by Holdings or the Borrower.

SECTION 1.04. Effectuation of Transfers. Each of the representations and warranties of Holdings and the Borrower contained in this Agreement (and all corresponding definitions) is made after giving effect to the Transactions, unless the context otherwise requires.

SECTION 1.05. Currencies. Unless otherwise specifically set forth in this Agreement, monetary amounts are in Dollars. Notwithstanding anything to the contrary herein, no Default or Event of Default will arise as a result of any limitation or threshold set forth in Dollars being exceeded solely as a result of changes in currency exchange rates.

SECTION 1.06. Required Financial Statements. With respect to the determination of the Senior Secured First Lien Net Leverage Ratio, the Total Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio, or under any other applicable provision of the Loan Documents (including the definition of Immaterial Subsidiary) made on or prior to the date on which Required Financial Statements have been delivered for the first fiscal quarter ending after the Closing Date, such calculation will be determined for the period of four consecutive fiscal quarters most recently ended prior to the Closing Date, and calculated on a Pro Forma Basis. Notwithstanding anything to the contrary herein, for purposes of determining compliance with any test contained in this Agreement with respect to any period during which any Specified Transaction occurs, the Senior Secured First Lien Net Leverage Ratio, the Total Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio or under any other applicable provision of the Loan Documents (including the definition of Immaterial Subsidiary) shall be calculated with respect to such period and such Specified Transaction on a Pro Forma Basis.

SECTION 1.07. Certain Calculations and Tests

(a) Notwithstanding anything in this Agreement or any Loan Document to the contrary, when calculating any applicable ratio or determining other compliance with this Agreement (including the determination of compliance with any provision of this Agreement which requires that no Default or Event of Default has occurred, is continuing or would result therefrom) in connection with a Specified Transaction undertaken in connection with the consummation of a Limited Condition Acquisition, the date of determination of such ratio and determination of whether any Default or Event of Default has occurred, is continuing or would result therefrom or other applicable covenant shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Acquisition, an "**LCA Election**"), be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the "**LCA Test Date**") and if, after such ratios and other provisions are measured on a Pro Forma Basis after giving effect to such Limited Condition Acquisition and the other Specified Transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) as if they occurred at the beginning of the four consecutive fiscal quarter period being used to calculate such financial ratio ending prior to the LCA Test Date, the Borrower could have taken such action on the relevant LCA Test Date in compliance with such ratios and provisions, such provisions shall be deemed to have been complied with. For the avoidance of doubt, (x) if any of such ratios are exceeded as a result of fluctuations in such ratio (including due to fluctuations in Consolidated EBITDA of the Borrower) at or prior to the consummation of the relevant Limited Condition Acquisition, such ratios and other provisions will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the Limited Condition Acquisition is permitted hereunder and (y) such ratios and other provisions shall not be tested at the time of consummation of such Limited Condition Acquisition or related Specified Transactions. If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio or basket availability with respect to any other Specified Transaction on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be calculated on (1) a Pro Forma Basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated and (2) on a Pro Forma Basis but without giving effect to such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and use of proceeds thereof).

(b) Notwithstanding anything to the contrary herein, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement under any covenant that does not require compliance with a financial ratio or test (including, without limitation, pro forma compliance with any Senior Secured First Lien Net Leverage Ratio test, Total Secured Net Leverage Ratio, Total Net Leverage Ratio test and/or any Interest Coverage Ratio test) (any such amounts including the Non-Ratio Based Incremental Facilities Cap, the "**Fixed Amounts**") substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement under the same covenant as such Fixed Amount that requires compliance with any such financial ratio or test (any such amounts, the "**Incurrence Based Amounts**"), it is understood and agreed that the Fixed Amounts being substantially concurrently incurred (other than, in the case of any Fixed Amounts contained in Section 6.01 or Section 6.02, any refinancings of any Indebtedness that was previously incurred) and any substantially concurrent borrowings under the ABL Credit Agreement or any Permitted Re-financing Indebtedness in respect thereof (and any cash proceeds thereof) shall be disregarded in the calculation of the financial ratio or test applicable to the Incurrence Based Amounts in connection with such substantially concurrent incurrence, except that incurrences of Indebtedness and Liens constituting Fixed Amounts and any substantially concurrent borrowings under the ABL Credit Agreement or any Permitted Refinancing Indebtedness in respect thereof shall be taken into account for purposes of any Incurrence Based Amounts under any covenant other than Incurrence Based Amounts contained in Section 6.01 or Section 6.02.

ARTICLE II

The Credits

SECTION 2.01. Term Loans and Borrowings.

(1) Subject to the terms and conditions set forth herein, each Tranche B Term Loan Lender severally agrees to make to the Borrower Tranche B Term Loans denominated in Dollars equal to such Tranche B Term Loan Lender's Tranche B Term Loan Commitment on the Closing Date. The Tranche B Term Loans will be funded to the Borrower net of an upfront fee of 0.50% of the principal amount thereof which will be retained by each funding Tranche B Term Loan Lender for its own account.

The failure of any Lender to make any Term Loan required to be made by it will not relieve any other Lender of its obligations hereunder *provided* that the Commitments of the Lenders are several and no Lender will be responsible for any other Lender's failure to make Term Loans as required. Amounts paid or prepaid in respect of Term Loans may not be reborrowed.

(2) Subject to Sections 2.04(7) and 2.11, each Borrowing will be comprised entirely of ABR Loans or Eurocurrency Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any ABR Loan or Eurocurrency Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Term Loan; *provided* that any exercise of such option will not affect the obligation of the Borrower to repay such Term Loan in accordance with the terms of this Agreement, and such Lender will not be entitled to any amounts payable under Section 2.12 or 2.14 solely in respect of increased costs resulting from, and existing at the time of, such exercise.

(3) Notwithstanding any other provision of this Agreement, the Borrower will not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.02. Request for Borrowing. The Borrower will deliver to the Administrative Agent a Borrowing Request not later than: (a) in the case of an ABR Borrowing, 11:00 a.m., New York City time, one Business Day prior to the anticipated Closing Date (or such later time as the Administrative Agent may agree in its sole discretion) or (b) in the case of a Eurocurrency Borrowing, 11:00 a.m., New York City time, one Business Day prior to the anticipated Closing Date (or such later time as the Administrative Agent may agree in its sole discretion), requesting that the Lenders make Term Loans on the Closing Date. The Borrowing Request must specify:

- (1) the principal amount of Tranche B Term Loans to be borrowed;
- (2) the requested date of the Borrowing (which will be a Business Day);
- (3) the Type of Tranche B Term Loans to be borrowed;
- (4) in the case of a Eurocurrency Borrowing, the initial Interest Period to be applicable thereto, which will be a period contemplated by the definition of the term "Interest Period"; and
- (5) the location and number of the Borrower's account to which funds are to be disbursed.

If no election as to the Type of Borrowing is specified in the applicable Borrowing Request, then the Borrowing shall be an ABR Borrowing. If no Interest Period with respect to any Eurocurrency Borrowing is specified in the applicable Borrowing Request, then the Borrower will be deemed to have selected an Interest Period of one month's duration. Upon receipt of such Borrowing Request, the Administrative Agent will promptly notify each Lender thereof. The proceeds of the Term Loans requested under this Section 2.02 will be disbursed by the Administrative Agent in immediately available funds by wire transfer to such bank account or accounts as designated by the Borrower in the Borrowing Request.

SECTION 2.03. Funding of Borrowings.

(1) Each Lender will make each Tranche B Term Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 10:00 a.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. Upon receipt of all requested funds, the Administrative Agent will make such Term Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower as specified in the Borrowing Request (or as otherwise directed by the Borrower).

(2) Unless the Administrative Agent has received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (1) of this Section 2.03 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent, forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent at (a) in the case of such Lender, the greater of (i) the Federal Funds Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (b) in the case of the Borrower, the interest rate applicable to ABR Loans at such time. If such Lender pays such amount to the Administrative Agent then such amount will constitute such Lender's Term Loan included in such Borrowing.

SECTION 2.04. Interest Elections.

(1) Each Borrowing initially will be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Borrowing, will have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurocurrency Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.04. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion will be allocated ratably among the Lenders holding the Term Loans comprising such Borrowing, and the Term Loans comprising each such portion will be considered a separate Borrowing; *provided* that the Term Loans comprising any Borrowing will be in an aggregate principal amount that is an integral multiple of \$500,000 and not less than \$1,000,000; *provided, further*, that there shall not be more than ten Eurocurrency Borrowings outstanding hereunder at any time.

(2) To make an election pursuant to this Section 2.04 following the Closing Date, the Borrower will notify the Administrative Agent of such election in writing (a) in the case of an election to convert to or continue a Eurocurrency Borrowing, not later than 2:00 p.m., New York City time, three Business Days before the effective date of such election or (b) in the case of an election to convert to or continue an ABR Borrowing, not later than 2:00 p.m., New York City time, one Business Day prior to such election (*provided* that, to make an election to convert any Eurocurrency Borrowing to an ABR Borrowing prior to the end of the effective Interest Period of such Eurocurrency Borrowing, the Borrower must notify the Administrative Agent not later than 2:00 p.m., two Business Days before the effective date of such election).

(3) Each written Interest Election Request will be irrevocable and will be substantially in the form of Exhibit D and signed by the Borrower and will specify the following information:

(a) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (c) and (d) below will be specified for each resulting Borrowing);

(b) the effective date of the election made pursuant to such Interest Election Request, which will be a Business Day;

(c) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing; and

(d) if the resulting Borrowing is a Eurocurrency Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which will be a period contemplated by the definition of "Interest Period."

(4) If any such Interest Election Request requests a Eurocurrency Borrowing but does not specify an Interest Period, then the Borrower will be deemed to have selected a Eurocurrency Borrowing having an Interest Period of one month's duration.

(5) Promptly following receipt of an Interest Election Request, the Administrative Agent will advise each applicable Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(6) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing will be automatically converted into an ABR Borrowing.

(7) Any portion of a Borrowing maturing or required to be repaid in less than one month may not be converted into or continued as a Eurocurrency Borrowing.

(8) Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the written request (including a request through electronic means) of the Required Lenders, so notifies the Borrower, then, so long as such Event of Default is continuing, (a) no outstanding Borrowing may be converted to or continued as a Eurocurrency Borrowing and (b) unless repaid, each Eurocurrency Borrowing will be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.05. Promise to Pay; Evidence of Debt

(1) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan of such Lender as provided in Section 2.06.

(2) Each Lender will maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Term Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(3) The Administrative Agent will maintain accounts in which it will record (a) the amount of each Term Loan made hereunder, the Type thereof and the Interest Period (if any) applicable thereto, (b) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (c) any amount received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(4) The entries made in the accounts maintained pursuant to paragraph (2) or (3) of this Section 2.05 will be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein will not in any manner affect the obligation of the Borrower to repay the Term Loans in accordance with the terms of this Agreement. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(5) Any Lender may request that Term Loans made by it be evidenced by a promissory note (a "Note") substantially in the form of Exhibit I. In such event, the Borrower will prepare, execute and deliver to such Lender a Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent and reasonably acceptable to the Borrower. Thereafter, the

Term Loans evidenced by such Note and interest thereon will at all times (including after assignment pursuant to Section 10.04) be represented by one or more Notes in such form payable to the payee named therein (or, if requested by such payee, to such payee and its registered assigns).

SECTION 2.06. Repayment of Term Loans.

(1) The Borrower will repay to the Administrative Agent for the ratable account of the applicable Lenders with Tranche B Term Loans on the last Business Day of each fiscal quarter of the Borrower, commencing with the last Business Day of the fiscal quarter of the Borrower ending on or about December 31, 2016, an aggregate principal amount equal to 0.25% of the aggregate principal amount of the Tranche B Term Loans funded on the Closing Date, which payments will be reduced as a result of the application of prepayments of Tranche B Term Loans in accordance with the order of priority set forth in Section 2.07 or 2.08, as applicable (each such date being referred to as an “**Original Term Loan Installment Date**”);

(2) (a) In the event that any Incremental Term Loans are made, the Borrower will repay Borrowings consisting of Incremental Term Loans on the dates (each an “**Incremental Term Loan Installment Date**”) and in the amounts set forth in the applicable Incremental Facility Amendment, (b) in the event that any Other Term Loans are made, the Borrower will repay Borrowings consisting of Other Term Loans on the dates (each an “**Other Term Loan Installment Date**”) and in the amounts set forth in the applicable Refinancing Amendment and (c) in the event that any Extended Term Loans are made, the Borrower will repay Borrowings consisting of Extended Term Loans on the dates (each an “**Extended Term Loan Installment Date**”) and in the amounts set forth in the applicable Extension Amendment; and

(3) to the extent not previously paid, all outstanding Term Loans will be due and payable on the applicable Maturity Date;

together, in each case, with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment.

SECTION 2.07. Optional Prepayment of Term Loans. The Borrower may at any time and from time to time prepay the Tranche B Term Loans and/or any other Term Loans of any Class, in whole or in part, without premium or penalty (except as provided in Section 2.21 and subject to Section 2.13), in an aggregate principal amount, (1) in the case of Eurocurrency Loans, that is an integral multiple of \$1.0 million and not less than \$5.0 million, and (2) in the case of ABR Loans, that is an integral multiple of \$1.0 million and not less than \$5.0 million, or, in each case, if less, the amount outstanding. The Borrower will notify the Administrative Agent in writing of such election not later than 11:00 a.m., New York City time, (a) in the case of a Eurocurrency Borrowing, three Business Days before the anticipated date of such prepayment and (b) in the case of an ABR Borrowing, one Business Day before the anticipated date of such prepayment. Each such notice of prepayment will specify the prepayment date and the principal amount of each Borrowing (or portion thereof) to be prepaid and shall be substantially in the form of Exhibit J. All prepayments under this Section 2.07 will be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment. Any such notice may be revocable or conditioned on a refinancing of all or any portion of the Term Facility. Any optional prepayments of Tranche B Term Loans and/or other Term Loans of any Class pursuant to this Section 2.07 will be applied to the remaining scheduled amortization payments of such applicable Class of Term Loans as directed by the Borrower (or in the absence of such direction, in direct order of maturity, to the amortization payments of such applicable Class of Term Loans) and will be applied ratably to the Term Loans of such Class included in the prepaid Borrowing.

SECTION 2.08. Mandatory Prepayment of Term Loans.

(1) The Borrower will apply all Net Cash Proceeds received in an Asset Sale made pursuant to Section 6.05(2) (other than Net Cash Proceeds attributable to any ABL Priority Collateral Asset Sale) or any Sale and Lease-Back Transaction to prepay Term Loans within ten Business Days following receipt of such Net Cash Proceeds, unless the Borrower has delivered a Reinvestment Notice on or prior to such tenth Business Day; *provided that*:

(a) if any Event of Default has occurred and is continuing, on or prior to the tenth Business Day following receipt thereof, such Net Cash Proceeds will be deposited in an Asset Sale Proceeds Account;

(b) subject to the other provisions of this Section 2.08(1), on each Reinvestment Prepayment Date the Borrower will apply an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event to the prepayment of the Term Loans (together with accrued interest thereon); and

(c) if at the time that any such prepayment would be required, the Borrower is required to, or to offer to, repurchase, redeem, repay or prepay Indebtedness secured on a *pari passu* basis with the Term Loans (any such Indebtedness, "**Other First Lien Indebtedness**"), then the Borrower may apply such Net Cash Proceeds to redeem, repurchase, repay or prepay all Classes of Term Loans and Other First Lien Indebtedness on a *pro rata* basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other First Lien Indebtedness at such time);

provided, further, that the portion of such Net Cash Proceeds allocated to the Other First Lien Indebtedness will not exceed the amount of such Net Cash Proceeds required to be allocated to the Other First Lien Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Net Cash Proceeds will be allocated to the prepayment of the Term Loans (in accordance with the terms hereof) and to the repurchase or repayment of Other First Lien Indebtedness, and the amount of the prepayment of the Term Loans that would have otherwise been required pursuant to this clause (1) will be reduced accordingly; *provided, further*, that to the extent the holders of Other First Lien Indebtedness decline to have such Indebtedness repurchased, redeemed, repaid or prepaid with such Net Cash Proceeds, the declined amount of such Net Cash Proceeds will promptly (and in any event within ten Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof (to the extent such Net Cash Proceeds would otherwise have been required to be so applied if such Other First Lien Indebtedness was not then outstanding).

(2) Commencing with the fiscal year ending on or around September 30, 2017, not later than 110 days after the end of each Excess Cash Flow Period, the Borrower will calculate Excess Cash Flow for such Excess Cash Flow Period and will apply the following amount to the prepayment of Term Loans:

(a) the Required Percentage of such Excess Cash Flow; *minus*

(b) the amount of any voluntary prepayments during such Excess Cash Flow Period or on or prior to the 110th day after the end of such Excess Cash Flow Period of:

(i) Term Loans (including Incremental Term Loans, Other Term Loans and Extended Term Loans; *provided* that if any Incremental Term Loans, Other Term Loans or Extended Term Loans are optionally prepaid on a greater than *pro rata* basis with the Tranche B Term Loans, such excess optional prepayment shall not reduce the amount of the Required Percentage of Excess Cash Flow for such period that is required to be applied to prepay Tranche B Term Loans);

(ii) loans under the ABL Credit Agreement (to the extent accompanied by a corresponding reduction in the commitments);

(iii) Other First Lien Indebtedness (and, in the case of any revolving indebtedness, to the extent accompanied by a corresponding reduction in the commitments); or

(iv) Permitted Refinancing Indebtedness incurred to Refinance any of the foregoing Indebtedness (or Permitted Refinancing Indebtedness described in this clause (iv)), in each case that is secured on a *pari passu* basis with the Term Loans (and, in the case of any revolving indebtedness, to the extent accompanied by a corresponding reduction in the commitments);

in each case, to the extent not financed with the proceeds of the issuance or the incurrence of Indebtedness (other than proceeds of revolving loans), the sale or issuance of Equity Interests or Asset Sales; *provided* that any such voluntary prepayment that is made on or prior to the 110th day after the end of such Excess Cash Flow Period will not reduce Excess Cash Flow for the next succeeding Excess Cash Flow Period pursuant to this clause (b).

Not later than the date on which the Borrower is required to deliver financial statements with respect to the end of each Excess Cash Flow Period under Section 5.04(1), the Borrower will deliver to the Administrative Agent a certificate signed by a Financial Officer of the Borrower setting forth the amount, if any, of Excess Cash Flow for such fiscal year and the calculation thereof in reasonable detail.

(3) The Borrower will apply 100% of the net cash proceeds from the incurrence, issuance or sale by the Borrower or any Restricted Subsidiary of any Indebtedness that is not Excluded Indebtedness to the prepayment of Term Loans, on or prior to the date which is five Business Days after the receipt of such net cash proceeds.

(4) Notwithstanding anything in this Section 2.08 to the contrary, any Lender may elect, by written notice to the Administrative Agent at least two Business Days prior to the required prepayment date, to decline all or any portion of any mandatory prepayment of its Term Loans pursuant to this Section 2.08 (other than clause (3) of this Section 2.08), in which case the aggregate amount of the prepayment that would have been applied to prepay Term Loans but was so declined will be retained by the Borrower and applied for any permitted purpose hereunder. Such prepayments will be applied on a *pro rata* basis to the then outstanding Term Loans of all Classes being prepaid irrespective of whether such outstanding Term Loans are ABR Loans or Eurocurrency Loans; *provided* that if no Lenders exercise the right to waive a given mandatory prepayment of the Term Loans pursuant to this Section 2.08(4), then, with respect to such mandatory prepayment, the amount of such mandatory prepayment will be applied first to Term Loans that are ABR Loans to the full extent thereof before application to Term Loans that are Eurocurrency Loans in a manner that minimizes the amount of any payments required to be made by the Borrower pursuant to Section 2.13.

(5) The Borrower will deliver to the Administrative Agent, at the time of each prepayment required under this Section 2.08, (a) a certificate signed by a Financial Officer of the Borrower setting forth in reasonable detail the calculation of the amount of such prepayment and (b) to the extent practicable, at least three Business Days prior written notice of such prepayment. Each notice of prepayment shall specify the prepayment date, the Type of each Term Loan being prepaid, the principal amount of each Term Loan (or portion thereof) to be prepaid, and the Section, sub-section or clause of this Agreement pursuant to which such prepayment is being made. Prepayment of the Term Loans pursuant to this Section 2.08 will be made without premium or penalty, accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment, and applied as directed by the Borrower or, absent such direction, to reduce scheduled amortization payments of Term Loans under Section 2.06(1) in direct order of maturity; *provided* that any prepayment of Incremental Term Loans, Other Term Loans or Extended Term Loans will be applied in the order specified in the applicable Permitted Amendment. No payments under Section 2.13 will be required in connection with a prepayment of Term Loans pursuant to this Section 2.08. In the event of any prepayment of Term Loans pursuant to this Section 2.08 at a time when Term Loans of more than one Class remain outstanding, the aggregate amount of such prepayment will be allocated between each Class of Term Loans *pro rata* based on the aggregate principal amount of outstanding Term Loans of each such Class (except as otherwise provided in the applicable Permitted Amendment, in each case with respect to the applicable Class of Term Loans).

(6) Notwithstanding any provisions of this Section 2.08 to the contrary,

(a) to the extent that any or all of the Net Cash Proceeds or Excess Cash Flow giving rise to a prepayment event pursuant to this Section 2.08 is prohibited or delayed by (i) applicable local law (including laws related to financial assistance, corporate benefit, thin capitalization, capital maintenance, liquidity maintenance and similar legal principles, and in respect of restrictions on upstreaming of cash intra-group and the fiduciary and statutory duties of the Board of Directors of the applicable Restricted Subsidiaries) or (ii) material organizational document restrictions as a result of minority ownership, in each case from being repatriated to the United States, the portion of such Net Cash Proceeds or Excess Cash Flow so affected will not be required to be applied to prepay Term Loans at the times provided in this Section 2.08, but may

be retained by the Borrower or the applicable Subsidiary for so long, but only so long, as the applicable local law or restriction will not permit repatriation to the United States. Once such repatriation of any of such affected Net Cash Proceeds or Excess Cash Flow is permitted under the applicable local law or restriction, such repatriation will be effected promptly and such repatriated Net Cash Proceeds or Excess Cash Flow will be promptly applied (net of additional taxes payable or reserved against as a result thereof) to the prepayment of the Term Loans pursuant to this Section 2.08 to the extent provided herein; *provided* that the Borrower hereby agrees, and will cause any applicable Subsidiary, to promptly take all commercially reasonable actions required by applicable local law to permit any such repatriation; or

(b) to the extent that a Responsible Officer of the Borrower has reasonably determined in good faith that repatriation of any of or all the Net Cash Proceeds or Excess Cash Flow giving rise to a prepayment event pursuant to this Section 2.08 would have an adverse tax cost consequence, the Net Cash Proceeds or Excess Cash Flow so affected will not be required to be applied to prepay Term Loans at the times provided in this Section 2.08, but may be retained by the Borrower or the applicable Subsidiary without being repatriated; *provided* that, in the case of this subclause (b), on or before the date on which any Net Cash Proceeds so retained would otherwise have been required to be applied to reinvestments or prepayments pursuant to this Section 2.08 (or such Excess Cash Flow would have been so required if it were Net Cash Proceeds to be applied to a prepayment):

(i) the Borrower applies an amount equal to such Net Cash Proceeds or Excess Cash Flow to such reinvestments or prepayments as if such Net Cash Proceeds or Excess Cash Flow had been repatriated, less the amount of additional taxes that would have been payable or reserved against if such Net Cash Proceeds or Excess Cash Flow had been repatriated; or

(ii) such Net Cash Proceeds or Excess Cash Flow are applied towards the permanent extinguishment (including, in the case of a revolving facility, a permanent reduction of commitments only) of Indebtedness of any Subsidiary.

For purposes of this Section 2.08(6), references to “law” mean, with respect to any Person, (1) the common law and any federal, state, local, foreign, multinational or international statutes, laws, treaties, judicial decisions, standards, rules and regulations, guidances, guidelines, ordinances, rules, judgments, writs, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions (including administrative or judicial precedents or authorities), in each case whether now or hereafter in effect, and (2) the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

SECTION 2.09. Fees.

(1) The Borrower agrees to pay to the Administrative Agent, for its own account, the fees set forth in that certain Administrative Agency Fee Letter, dated as of August 16, 2016, by and between the Borrower and Administrative Agent, at the times and on the terms specified therein (the “*Administrative Agent Fees*”).

(2) The Administrative Agent Fees will be paid on the dates due and payable, in immediately available funds, to the Administrative Agent at the Payment Office for distribution, if and as appropriate, among the Lenders. Once paid, none of the Administrative Agent Fees will be refundable under any circumstances.

SECTION 2.10. Interest.

(1) The Term Loans comprising each ABR Borrowing will bear interest at the ABR plus the Applicable Margin.

(2) The Term Loans comprising each Eurocurrency Borrowing will bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(3) Following the occurrence and during the continuation of a Specified Event of Default, the Borrower will pay interest on overdue amounts hereunder at a rate per annum equal to (i) in the case of overdue principal of, or interest on, any Term Loan, 2.00% *plus* the rate otherwise applicable to such Term Loan as provided in the preceding paragraphs of this Section 2.10 or (ii) in the case of any other overdue amount, 2.00% *plus* the rate applicable to ABR Loans as provided in clause (1) of this Section 2.10.

(4) Accrued interest on each Term Loan will be payable in arrears (i) on each Interest Payment Date for such Term Loan and (ii) on the applicable Maturity Date; *provided* that (A) interest accrued pursuant to paragraph (3) of this Section 2.10 will be payable on demand, (B) in the event of any repayment or prepayment of any Term Loan, accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment or prepayment and (C) in the event of any conversion of any Eurocurrency Loan prior to the end of the current Interest Period therefor, accrued interest on such Term Loan will be payable on the effective date of such conversion.

(5) All interest hereunder will be computed on the basis of a year of 360 days, except that interest computed by reference to the ABR at times when the ABR is based on the prime rate, will be computed on the basis of a year of 365 days (or 366 days in a leap year), and, in each case, will be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable ABR, Adjusted LIBO Rate or LIBO Rate will be determined by the Administrative Agent, and such determination will be conclusive absent manifest error.

SECTION 2.11. Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurocurrency Borrowing:

- (1) the Administrative Agent determines (which determination will be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or
- (2) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Term Loans included in such Borrowing for such Interest Period;

then the Administrative Agent will give notice thereof to the Borrower and the applicable Lenders by telephone, facsimile transmission or e mail as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (a) any Interest Election Request that requests the conversion of any applicable Borrowing to, or continuation of any such Borrowing as, a Eurocurrency Borrowing will be ineffective and such Borrowing will be converted to or continued as on the last day of the Interest Period applicable thereto an ABR Borrowing and (b) if any Borrowing Request requests a Eurocurrency Borrowing, such Borrowing will be made as an ABR Borrowing.

SECTION 2.12. Increased Costs.

- (1) If any Change in Law:
 - (a) imposes, modifies or deems applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate);
 - (b) imposes on any Lender or the London interbank market any other condition (other than Taxes), costs or expense affecting this Agreement or Eurocurrency Loans made by such Lender; or
 - (c) subjects any Recipient to any Taxes (other than (i) Indemnified Taxes, (ii) Taxes described in clauses (2) through (4) of the definition of Excluded Taxes and (iii) Connection Income Taxes) with respect to its loans, loan principal, letters of credit, commitments or other obligations, or deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any such Term Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(2) If any Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Term Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(3) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as applicable, as specified in paragraph (1) or (2) of this Section 2.12 will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

(4) Promptly after any Lender has determined that it will make a request for increased compensation pursuant to this Section 2.12, such Lender will notify the Borrower thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.12 will not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower will not be required to compensate a Lender pursuant to this Section 2.12 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; *provided, further*, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above will be extended to include the period of retroactive effect thereof.

SECTION 2.13. Break Funding Payments. Except as otherwise set forth herein, the Borrower will compensate each Lender for the actual out-of-pocket loss, cost and expense (excluding loss of anticipated profits) attributable to the following events:

- (1) the payment of any principal of any Eurocurrency Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default);
- (2) the conversion of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto;
- (3) the failure to borrow, convert, continue or prepay any Eurocurrency Loan on the date specified in any notice delivered pursuant hereto; or
- (4) the assignment of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.16.

Such loss, cost or expense to any Lender will be deemed to be the amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Term Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Term Loan (but not including the Applicable Margin applicable thereto), for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue a Eurocurrency Loan, for the period that would have been the Interest Period for such Term Loan) over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in Dollars of a comparable amount and period from other banks in the London interbank market.

A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.13 will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

SECTION 2.14. Taxes.

(1) Any and all payments by or on account of any obligation of any Loan Party hereunder will be made free and clear of and without deduction for any Taxes, except as required by applicable law; *provided* that if any Taxes are required to be deducted by any applicable withholding agent under any applicable law from such payments (as determined in the good faith discretion of the Loan Party or the applicable withholding agent), then (a) the applicable withholding agent will make such deductions; (b) the applicable withholding agent will timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law, and (c) if such Tax is an Indemnified Tax, the sum payable by the Loan Party will be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.14) the Administrative Agent or any Lender, as applicable, receives an amount equal to the amount it would have received had no such deductions been made.

(2) In addition, the Loan Parties will pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(3) The Loan Parties will indemnify the Administrative Agent and each Lender, within ten days after written demand therefor, for the full amount of any Indemnified Taxes paid by the Administrative Agent or such Lender on or with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.14) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Loan Party by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, will be conclusive absent manifest error.

(4) As soon as practicable after any payment of Indemnified Taxes by a Loan Party to a Governmental Authority pursuant to this Section 2.14, such Loan Party will deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(5)

(a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document will deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, will deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.14(5)(b), 2.14(5)(c) and 2.14(6) below) will not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(b) Without limiting the effect of Section 2.14(5)(a) above, each Lender that is a U.S. Person will deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), original copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

(c) Without limiting the effect of Section 2.14(5)(a) above, each Foreign Lender will, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the Recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two original copies of whichever of the following is applicable:

- (i) duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any subsequent versions thereof or successors thereto), claiming eligibility for benefits of an income tax treaty to which the United States of America is a party;
- (ii) duly completed copies of Internal Revenue Service Form W-8ECI (or any subsequent versions thereof or successors thereto);
- (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (A) a certificate substantially in the form of the applicable Exhibit F to the effect that such Foreign Lender is not:

- (x) a "bank" within the meaning of Section 881(c)(3)(A) of the Code;
- (y) a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3) or 881(c)(3)(B) of the Code; or
- (z) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code; and

(B) duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any subsequent versions thereof or successors thereto);

(iv) duly completed copies of Internal Revenue Service Form W-8IMY, together with forms and certificates described in clauses (i) through (iii) above (and any additional Form W-8IMYs) as may be required; or

(v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

In addition, each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(6) If a payment made to a Recipient under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Recipient will deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Recipient has complied with such Recipient's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (6), "FATCA" will include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it will update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(7) Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation by such Lender to the Administrative Agent pursuant to Section 2.14(5) and 2.14(6).

(8) If the Administrative Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.14, it will pay over promptly an amount equal to such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.14 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay as soon as reasonably practicable the amount paid over to such Loan Party pursuant to this Section 2.14(8) (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 2.14(8) will not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems, in good faith, to be confidential) to the Loan Parties or any other Person.

(9) Each party's obligations under this Section 2.14 will survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(10) For purposes of this Section 2.14, the term "applicable law" includes FATCA.

SECTION 2.15. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(1) Unless otherwise specified, (a) the Borrower will make each payment required to be made by it hereunder (whether of principal, interest, fees or otherwise) prior to 2:00 p.m., New York City time, at the Payment Office, except that payments pursuant to Sections 2.12, 2.13, 2.14 and 10.05 will be made directly to the Persons entitled thereto; and (b) each such payment will be made, on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. The Administrative Agent will distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof and will make settlements with the Lenders with respect to other payments at the times and in the manner provided in this Agreement. Except as otherwise provided herein, if any payment hereunder is due on a day that is not a Business Day, the date for payment will be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon will be payable for the period of such extension. Any payment required to be made by the Administrative Agent hereunder will be deemed to have been made by the time required if the Administrative Agent, at or before such time, has taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(2) Except as otherwise provided in this Agreement, if (a) at any time insufficient funds are received by and available to the Administrative Agent from the Borrower to pay fully all amounts of principal, interest and fees then due from the Borrower hereunder or (b) at any time an Event of Default shall have occurred and be continuing and the Administrative Agent will receive proceeds of Term Priority Collateral in connection with the exercise of remedies, such funds will be applied in accordance with Section 5.02 of the Collateral Agreement (subject to the application of proceeds provisions contained in the Intercreditor Agreement).

(3) Except as otherwise provided in this Agreement, if any Lender, by exercising any right of set-off or counterclaim or otherwise, obtains payment in respect of any principal of or interest on any of its Term Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Term Loans than the proportion received by any other Lender, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the Term Loans of other Lenders to the extent necessary so that the benefit of all such payments will be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Term Loans; *provided* that (a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations will be rescinded and the purchase price restored to the extent of such recovery, without interest, and (b) the provisions of this paragraph (3) will not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender or a Disqualified Institution) or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Term Loans to any assignee or participant. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(4) Unless the Administrative Agent has received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(5) If any Lender fails to make any payment required to be made by it pursuant to Section 2.03(1) or 2.15(3), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under Section 2.03(1) or 2.15(3), as applicable, until all such unsatisfied obligations are fully paid.

SECTION 2.16. Mitigation Obligations; Replacement of Lenders.

(1) If any Lender requests compensation under Section 2.12, or if the Borrower is required to pay any Indemnified Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, then such Lender will use reasonable efforts to designate a different Lending Office for funding or booking its Term Loans hereunder or assign its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the reasonable judgment of such Lender, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 2.12 or 2.14, as applicable, in the future and (b) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(2) If any Lender requests compensation under Section 2.12 or is a Defaulting Lender, or if the Borrower is required to pay any Indemnified Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, then the Borrower may, at its sole expense, upon notice to such Lender and the Administrative Agent, either (a) prepay such Lender's outstanding Term Loans hereunder in full on a non-*pro rata* basis without premium or penalty (including with respect to the processing and recordation fee referred to in Section 10.04(2)(b)(ii)) or (b) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all its interests, rights and obligations under this Agreement to an assignee that will assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (i) in the case of clause (b) above, the Borrower has received the prior written consent of the Administrative Agent, which consent will not unreasonably be withheld, if a consent by the Administrative Agent would be required under Section 10.04 for an assignment of Term Loans to such assignee, (ii) such Lender has received payment of an amount equal to the outstanding principal of its Term Loans, accrued

interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.14, such assignment will result in a reduction in such compensation or payments thereafter. Nothing in this Section 2.16 will be deemed to prejudice any rights that the Borrower may have against any Lender that is a Defaulting Lender.

(3) If any Lender (such Lender, a “**Non-Consenting Lender**”) has failed to consent to a proposed amendment, waiver, discharge or termination that, pursuant to the terms of Section 10.08, requires the consent of such Lender and with respect to which the Required Lenders have granted their consent, then the Borrower will have the right (unless such Non-Consenting Lender grants such consent) at its sole expense, to either (a) prepay such Lender’s outstanding Term Loans hereunder in full on a non-*pro rata* basis without premium or penalty (including with respect to the processing and recordation fee referred to in Section 10.04(2)(b)(ii)) or (b) replace such Non-Consenting Lender by deeming such Non-Consenting Lender to have assigned its Term Loans and its Commitments hereunder to one or more assignees reasonably acceptable to the Administrative Agent if a consent by the Administrative Agent would be required under Section 10.04 for an assignment of Term Loans to such Assignee; *provided* that (i) all Obligations of the Borrower owing to such Non-Consenting Lender (including accrued Fees and any amounts due under Section 2.12, 2.13, 2.14 or 2.21) being removed or replaced will be paid in full to such Non-Consenting Lender concurrently with such removal or assignment and (ii) in the case of clause (b) above, the replacement Lender will purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof plus accrued and unpaid interest thereon. No action by or consent of the Non-Consenting Lender will be necessary in connection with such removal or assignment, in the case of clause (b) above, which shall be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment, the Borrower, the Administrative Agent, such Non-Consenting Lender and the replacement Lender will otherwise comply with Section 10.04; *provided* that if such Non-Consenting Lender does not comply with Section 10.04 within three Business Days after the Borrower’s request, compliance with Section 10.04 will not be required to effect such assignment.

SECTION 2.17. **Illegality.** If any Lender reasonably determines that any change in law has made it unlawful, or if any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any Eurocurrency Loans, then, upon notice thereof by such Lender to the Borrower through the Administrative Agent, any obligations of such Lender to make or continue Eurocurrency Loans or to convert ABR Borrowings to Eurocurrency Borrowings will be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower will upon demand from such Lender (with a copy to the Administrative Agent), either convert all Eurocurrency Borrowings of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Term Loans. Upon any such prepayment or conversion, the Borrower will also pay accrued interest on the amount so prepaid or converted.

SECTION 2.18. **Incremental Facilities.**

(1) **Notice.** At any time and from time to time, on one or more occasions, subject to the terms and conditions set forth herein, the Borrower may, by written notice to the Administrative Agent, increase the aggregate principal amount of any outstanding Class of Term Loans or add one or more additional Classes of term loans under the Loan Documents (the “**Incremental Term Loans**”; each such increase or tranche, an “**Incremental Facility**”).

(2) **Ranking.** Incremental Term Loans shall be secured on a pari passu basis with all other Term Loans.

(3) **Size.** The principal amount of Incremental Facilities incurred pursuant to the Non-Ratio Based Incremental Facility Cap and Incremental Equivalent Term Debt incurred in reliance on the Non-Ratio Based Incremental Facility Cap will not exceed, in the aggregate, an amount equal to \$170.0 million (the “**Non-Ratio Based Incremental Facility Cap**”); *provided* that the Borrower may incur additional Incremental Facilities without regard to the Non-Ratio Based Incremental Facility Cap so long as the Senior Secured First Lien Net Leverage Ratio (determined on the date on which the applicable Incremental Facilities is incurred (and after giving effect to such incurrence) and after giving effect to any acquisition or other transaction consummated in connection with the incurrence of such Incremental Facility) is equal to or less than 4.50 to 1.00 (collectively, the “**Available Incremental Term Loan Facility Amount**”).

Each tranche of Incremental Term Loans will be in an integral multiple of \$1.0 million and in an aggregate principal amount that is not less than \$15.0 million (or such lesser minimum amount approved by the Administrative Agent in its reasonable discretion); *provided* that such amount may be less than the applicable minimum amount or integral multiple amount if such amount represents all the remaining availability under the Available Incremental Term Loan Facility Amount or the Non-Ratio Based Incremental Facility Cap.

(4) Incremental Lenders. Incremental Term Loans may be provided by any existing Lender (it being understood that no existing Lender will have an obligation to provide Incremental Term Loans) or any Additional Lender; *provided* that the Administrative Agent shall have consented (such consent not to be unreasonably withheld, delayed or conditioned) to any Additional Lender's providing such Incremental Term Loans if such consent by the Administrative Agent would be required under Section 10.04 for an assignment of Term Loans to such Additional Lender.

(5) Incremental Facility Amendments. Each Incremental Facility will become effective pursuant to an amendment (each, an ***Incremental Facility Amendment***) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Lender or Additional Lender providing such Incremental Facility (the ***Incremental Lenders***) and the Administrative Agent. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Incremental Facility Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Facility Amendment, this Agreement and the other Loan Documents, as applicable, will be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Facility and the Incremental Term Loans evidenced thereby.

(6) Conditions. The availability of Incremental Term Loans will be subject solely to the following conditions:

(a) no Default or Event of Default shall have occurred and be continuing on the date such Incremental Term Loans are incurred or would exist immediately after giving effect thereto; *provided*, that if the Incremental Facility is being incurred in connection with a Limited Condition Acquisition, (i) the date of determination of such condition shall be the LCA Test Date and (ii) on the date such Incremental Facility is incurred (or commitments in respect thereof are provided), no Specified Event of Default shall have occurred and be continuing or would exist immediately after giving effect thereto;

(b) the representations and warranties in the Loan Documents will be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be accurate in all respects) immediately prior to, and immediately after giving effect to, the incurrence of such Incremental Term Loans; *provided*, that if the Incremental Facility is being incurred in connection with a Limited Condition Acquisition, (i) the date of determination of such condition shall be the LCA Test Date and (ii) on the date of incurrence of such Incremental Facility (or the date on which commitments in respect thereof are provided), the only representations and warranties that will be required to be true and correct in all material respects shall be the Specified Representations; and

(c) such other conditions (if any) as may be required by the Incremental Lenders providing such Incremental Term Loans, unless such other conditions are waived by such Incremental Lenders.

(7) Terms. Each notice delivered pursuant to this Section 2.18 will set forth the amount and proposed terms of the relevant Incremental Term Loans. The terms of each tranche of Incremental Term Loans will be as agreed between the Borrower and the Incremental Lenders providing such Incremental Term Loans; *provided* that:

(a) the final maturity date of such Incremental Term Loans will be no earlier than the Latest Maturity Date of the Term Loans;

(b) the Weighted Average Life to Maturity of such Incremental Term Loans will be no shorter than the longest remaining Weighted Average Life to Maturity of the Term Loans;

(c) such Incremental Term Loans may participate on *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any mandatory repayments or prepayments of the Term Loans; and

(d) subject to clauses (a) and (b) above, the amortization schedules applicable to such Incremental Term Loans will be as determined by the Borrower and the Incremental Lenders providing such Incremental Term Loans.

(8) Pricing.

(a) Subject to clause (b) below, (i) the interest rate, fees and original issue discount for any Incremental Term Loans will be as determined by a Responsible Officer of the Borrower and the Incremental Lenders providing such Incremental Term Loans;

(b) If the yield (as determined below) on any such Incremental Term Loans (such yield, the "**Incremental Yield**") incurred after the Closing Date exceeds the yield (as determined below) on the Tranche B Term Loans by more than 50 basis points, then the interest margins for the Tranche B Term Loans will automatically be increased to a level such that the yield on the Tranche B Term Loans will be 50 basis points below the Incremental Yield on such Incremental Term Loan. Any increase in yield on the Tranche B Term Loans required pursuant to this Section 2.18(8) and resulting from the application of an Adjusted LIBO Rate or ABR "floor" on any Incremental Term Loans will be effected solely through an increase in such "floor" (or an implementation thereof, as applicable) in respect of the Tranche B Term Loans. In determining whether the Incremental Yield on Incremental Term Loans exceeds the yield on the Tranche B Term Loans by more than 50 basis points, (A) such determination will take into account interest margins (and any coupon payable, if applicable), minimum Adjusted LIBO Rate, minimum ABR, upfront fees and original issue discount on the applicable Term Loans, with upfront fees and original issue discount being equated to interest margins or coupon based on an assumed four-year life to maturity, but will exclude any arrangement, syndication, structuring, commitment, placement, underwriting, or other fees payable in connection therewith that is not customarily shared among the applicable lenders or holders of such Indebtedness on a *pro rata* basis and (B) with respect to the Tranche B Term Loans, to the extent the Adjusted LIBO Rate on the closing date of the Incremental Facility is less than any LIBO Rate floor then applicable to the Tranche B Term Loans, the amount of such difference shall be deemed added to the applicable rate for such Tranche B Term Loans solely for the purposes of determining whether an increase in the interest margins for such Tranche B Term Loans shall be required.

SECTION 2.19. Other Term Loans.

(1) Other Term Loans. Credit Agreement Refinancing Indebtedness may, at the election of the Borrower, take the form of new Term Loans under an additional Term Facility hereunder ("**Other Term Loans**") pursuant to a Refinancing Amendment.

(2) Refinancing Amendments. The effectiveness of any Refinancing Amendment will be subject only to the satisfaction on the date thereof of such of the conditions set forth in Section 4.01 as may be requested by the providers of Other Term Loans. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement will be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Other Term Loans incurred pursuant thereto (including any amendments necessary to treat the Term Loans subject thereto as Other Term Loans).

(3) Required Consents. Any Refinancing Amendment may, without the consent of any Person other than the Administrative Agent, the Borrower and the Lenders or Additional Lenders providing Other Term Loans, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.19. This Section 2.19 supersedes any provisions in Section 10.08 to the contrary.

(4) Providers of Other Term Loans. Any Lender approached to provide all or a portion of Other Term Loans may elect or decline, in its sole discretion, to provide such Other Term Loans (it being understood that there is no obligation to approach any existing Lenders to provide Other Term Loans). The consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned) will be required in respect of any Person providing Other Term Loans if such consent would be required under Section 10.04 for an assignment of Term Loans to such Person.

SECTION 2.20. Extensions of Term Loans.

(1) Extension Offers. Pursuant to one or more offers (each, an “*Extension Offer*”) made from time to time by the Borrower to all Lenders of Term Loans with a like Maturity Date, the Borrower may, by written notice to the Administrative Agent from time to time, request an extension of the Maturity Date of Term Loans and otherwise modify the terms of Term Loans pursuant to the terms set forth in the relevant Extension Offer (each, an “*Extension*”). Each Extension Offer will specify the minimum amount of Term Loans with respect to which an Extension Offer may be accepted, which will be an integral multiple of \$1.0 million and an aggregate principal amount that is not less than \$50.0 million (or (a) if less, the aggregate principal amount of such Term Loans or (b) such lesser minimum amount as is approved by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed), and will be made on a *pro rata* basis to all Lenders of Term Loans of the applicable Class. If the aggregate outstanding principal amount of Term Loans (calculated on the face amount thereof) in respect of which Lenders have accepted an Extension Offer exceeds the maximum aggregate principal amount of Term Loans offered to be extended pursuant to an Extension Offer, then the Term Loans of such Lenders will be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer. No Extension Offer or Extension Amendment (defined as follows) shall be required to be subject to any “most favored nation” pricing provisions. Each Lender accepting an Extension Offer is referred to herein as an “*Extending Term Lender*,” and the Term Loans held by such Lender accepting an Extension Offer is referred to herein as “*Extended Term Loans*.”

(2) Extension Amendments. The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents (an “*Extension Amendment*”) with the Borrower as may be necessary in order to establish new Classes in respect of Term Loans extended pursuant to an Extension Offer and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new tranches. This Section 2.20 supersedes any provisions in Section 10.08 to the contrary. Except as otherwise set forth in an Extension Offer, there will be no conditions to the effectiveness of an Extension Amendment. Extensions will not constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

(3) Terms of Extension Offers and Extension Amendments. The terms of any Extended Term Loans will be set forth in an Extension Offer and as agreed between the Borrower and the Extending Term Lenders accepting such Extension Offer; *provided* that:

- (a) the final maturity date of such Extended Term Loans will be no earlier than the Latest Maturity Date of the Term Loans subject to such Extension Offer;
- (b) the Weighted Average Life to Maturity of such Extended Term Loans will be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans subject to such Extension Offer;
- (c) such Extended Term Loans may participate on *apro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any mandatory prepayments of Term Loans;
- (d) such Extended Term Loans shall not be secured by any assets or property that do not constitute Collateral;

(e) such Extended Term Loans are not guaranteed by any Subsidiary of the Borrower other than a Subsidiary Loan Party; and

(f) except as to pricing terms (interest rate, fees, funding discounts and prepayment premiums) and maturity, the terms and conditions of such Extended Term Loans are substantially identical to (including as to ranking and priority), or, taken as a whole, no more favorable to the lenders or holders providing such Indebtedness than, those applicable to the Term Loans subject to such Extension Offer, as determined in good faith by a Responsible Officer of the Borrower.

Any Extended Term Loans will constitute a separate Class of Term Loans from the Term Loans held by Lenders that did not accept the applicable Extension Offer.

(4) Required Consents. No consent of any Lender or any other Person will be required to effectuate any Extension, other than the consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or condition), the Borrower and the applicable Extending Term Lender. The transactions contemplated by this Section 2.20 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Offer) will not require the consent of any other Lender or any other Person, and the requirements of any provision of this Agreement (including Sections 2.08 and 2.15) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.20 will not apply to any of the transactions effected pursuant to this Section 2.20.

SECTION 2.21. Repricing Event. In the event that, prior to the six month anniversary of the Closing Date, the Borrower refinances or makes any prepayment of, or amends the terms of, any Class of Term Loans in connection with any Repricing Event (or causes any Class of Term Loans to be mandatorily assigned pursuant to the terms of Sections 2.16(3) or 10.04(7) hereof, in each case, in connection with a Repricing Event), the Borrower will pay to the Administrative Agent, for the ratable account of each applicable Lender, a payment of 1.00% of the aggregate principal amount of any such Term Loans so refinanced, prepaid or amended (or subject to mandatory assignment), as the case may be.

ARTICLE III

Representations and Warranties

With respect to any Borrowing made on the Closing Date (or after the Closing Date pursuant to Section 2.18, to the extent required by Section 2.18(6)), the Borrower, with respect to itself and each of the Restricted Subsidiaries, and Holdings, solely with respect to Sections 3.01, 3.02, 3.03, 3.04 and 3.19, will represent and warrant to each Agent and to each of the Lenders that:

SECTION 3.01. Organization; Powers. Each of Holdings, the Borrower and each Restricted Subsidiary:

- (1) is a partnership, limited liability company, corporation, or trust duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization (to the extent such status or an analogous concept applies to such an organization);
- (2) has all requisite power and authority to own its property and assets and to carry on its business as now conducted;
- (3) is qualified to do business in each jurisdiction where such qualification is required, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect; and
- (4) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated thereby to which it is a party and, in the case of the Borrower, to borrow and otherwise obtain credit hereunder.

SECTION 3.02. Authorization. The execution, delivery and performance by the Loan Parties of each of the Loan Documents to which it is a party, the Borrowings hereunder and the Transactions:

- (1) have been duly authorized by all corporate, stockholder, partnership, limited liability company or other applicable action required to be taken by the Loan Parties; and
- (2) will not:
 - (a) violate:
 - (i) any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents (including any partnership, limited liability company or operating agreement or by-laws) of any Loan Party;
 - (ii) any applicable order of any court or any rule, regulation or order of any Governmental Authority; or
 - (iii) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which any Loan Party is a party or by which any of them or any of their property is or may be bound;
 - (b) be in conflict with, result in a breach of, constitute (alone or with notice or lapse of time or both) a default under, or give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under, any such indenture, certificate of designation for preferred stock, agreement or other instrument; or
 - (c) result in the creation or imposition of any Lien upon any property or assets of any Loan Party, other than the Liens created by the Loan Documents and Permitted Liens;

except with respect to clauses (a) and (b) of this Section 3.02(2) as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.03. Enforceability. This Agreement has been duly executed and delivered by Holdings and the Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to:

- (1) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally;
- (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);
- (3) implied covenants of good faith and fair dealing; and
- (4) any foreign laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

SECTION 3.04. Governmental Approvals. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority or third party is or will be required in connection with the Transactions, the perfection or maintenance of the Liens created under the Security Documents or the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral, except for:

- (1) the filing of Uniform Commercial Code financing statements and equivalent filings in foreign jurisdictions;

-
- (2) filings with the United States Patent and Trademark Office and the United States Copyright Office and comparable offices in foreign jurisdictions and equivalent filings in foreign jurisdictions;
 - (3) filings which may be required under Environmental Laws;
 - (4) filings as may be required under the Exchange Act and applicable stock exchange rules in connection therewith;
 - (5) such as have been made or obtained and are in full force and effect;
 - (6) such actions, consents and approvals the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect; or
 - (7) filings or other actions listed on Schedule 3.04.

SECTION 3.05. Title to Properties; Possession Under Leases

(1) Each of the Borrower and the Subsidiary Loan Parties has valid fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all of its Real Properties and valid title to its personal property and assets, in each case, except for Permitted Liens or defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes, in each case, except where the failure to have such title, interest, easement or right would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens.

(2) Neither the Borrower nor any of the Restricted Subsidiaries has defaulted under any lease to which it is a party, except for such defaults as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each of the Borrower's and the Restricted Subsidiaries' leases is in full force and effect, except leases in respect of which the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.05, on the Closing Date the Borrower and each of the Restricted Subsidiaries enjoys peaceful and undisturbed possession under all such leases, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.06. Subsidiaries.

(1) Schedule 3.06 sets forth as of the Closing Date the name and jurisdiction of incorporation, formation or organization of Holdings, the Borrower and each Restricted Subsidiary and, as to each Restricted Subsidiary, the percentage of each class of Equity Interests owned by the Borrower or by any other Subsidiary of the Borrower.

(2) As of the Closing Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments of any nature relating to any Equity Interests owned or held by Holdings, the Borrower or any Restricted Subsidiary.

SECTION 3.07. Litigation; Compliance with Laws.

(1) There are no actions, suits or proceedings at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any Restricted Subsidiary or any business, property or rights of any such Person (but excluding any actions, suits or proceedings arising under or relating to any Environmental Laws, which are subject to Section 3.13), in each case, which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(2) To the knowledge of the Borrower, none of the Borrower, any Restricted Subsidiary or their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any law, rule or regulation (including any zoning, building, ordinance, code or approval, or any building permit, but excluding any Environmental Laws, which are subject to Section 3.13) or any restriction of record or agreement affecting any property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.08. Federal Reserve Regulations.

(1) None of Holdings, the Borrower or any Restricted Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

(2) No part of the proceeds of any Term Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund Indebtedness originally incurred for such purpose or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulations T, U or X.

SECTION 3.09. Investment Company Act. None of Holdings, the Borrower or any Guarantor is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.10. Use of Proceeds. The Borrower shall use the proceeds of the Term Loans made on the Closing Date to finance a portion of the Transactions.

SECTION 3.11. Tax Returns. Except as set forth on Schedule 3.11:

(1) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of Holdings, the Borrower and the Restricted Subsidiaries has filed or caused to be filed all federal, state, local and non-U.S. Tax returns required to have been filed by it; and

(2) Each of Holdings, the Borrower and the Restricted Subsidiaries has timely paid or caused to be timely paid (a) all Taxes shown to be due and payable by it (taking into account any applicable extension) on the returns referred to in clause (1) of this Section 3.11 and (b) all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all Taxes due) with respect to all periods or portions thereof ending on or before the Closing Date, which Taxes, if not paid or adequately provided for, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, in each case except Taxes or assessments that are being contested in good faith by appropriate proceedings and for which Holdings, the Borrower or any Restricted Subsidiary (as the case may be) has set aside on its books adequate reserves in accordance with GAAP.

SECTION 3.12. No Material Misstatements.

(1) All written factual information and written factual data (other than the Projections, estimates and information of a general economic or industry specific nature) concerning Holdings, the Borrower or any Restricted Subsidiary that has been made available to the Administrative Agent or the Lenders, directly or indirectly, by or on behalf of Holdings, the Borrower or any Restricted Subsidiary in connection with the Transactions, when taken as a whole and after giving effect to all supplements and updates provided thereto, is correct in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made.

(2) The Projections that have been made available to the Administrative Agent or the Lenders by or on behalf of the Borrower in connection with the Transactions, when taken as a whole, have been prepared in good faith based upon assumptions that are believed by the Borrower to be reasonable at the time made and at the time delivered to the Administrative Agent or the Lenders, it being understood by the Administrative Agent and the Lenders that:

- (a) the Projections are merely a prediction as to future events and are not to be viewed as facts;
- (b) the Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of Holdings, the Borrower, the Company and/or the Sponsors;
- (c) no assurance can be given that any particular Projections will be realized; and
- (d) actual results may differ and such differences may be material.

SECTION 3.13. Environmental Matters. Except as set forth on Schedule 3.13 or as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

- (1) the Borrower and each of the Restricted Subsidiaries are in compliance with all Environmental Laws (including having obtained and complied with all permits, licenses and other approvals required under any Environmental Law for the operation of its business);
- (2) neither the Borrower nor any Restricted Subsidiary has received notice of or is subject to any pending, or to the Borrower's knowledge, threatened action, suit or proceeding alleging a violation of, or liability under, any Environmental Law that remains outstanding or unresolved;
- (3) to the Borrower's knowledge, no Hazardous Material is located at, on or under any property currently or formerly owned, operated or leased by the Borrower or any Restricted Subsidiary in violation of Environmental Laws and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by the Borrower or any Restricted Subsidiary and transported to or Released at any location which, in each case, described in this clause (3), would reasonably be expected to result in liability to the Borrower or any Restricted Subsidiaries; and
- (4) there are no agreements in which the Borrower or any Restricted Subsidiary has expressly assumed or undertaken responsibility for any known or reasonably anticipated liability or obligation of any other Person arising under or relating to Environmental Laws or Hazardous Materials.

SECTION 3.14. Security Documents.

(1) The Collateral Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) legal and valid Liens on the Collateral described therein; and when financing statements in appropriate form are filed in the offices specified on Schedule III to the Collateral Agreement, a short form grant of security interest in intellectual property (in substantially the form of Exhibit B to the Collateral Agreement (for trademarks), Exhibit C to the Collateral Agreement (for patents) or Exhibit D to the Collateral Agreement (for copyrights)) is properly filed in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, and the Pledged Collateral described in the Collateral Agreement is delivered to the Collateral Agent, the Liens on the Collateral granted pursuant to the Collateral Agreement will constitute fully perfected Liens on all right, title and interest of the grantors in such Collateral in which (and to the extent) a security interest can be perfected under Article 9 of the Uniform Commercial Code by such filings, in each case prior to and superior in right of the Lien of any other Person (except for Permitted Liens).

(2) When financing statements in appropriate form are filed in the offices specified on Schedule III to the Collateral Agreement and the Collateral Agreement or a summary thereof or a short form grant of security interest in intellectual property (in substantially the form of Exhibit B to the Collateral Agreement (for trademarks),

Exhibit C to the Collateral Agreement (for patents) or Exhibit D to the Collateral Agreement (for copyrights)) is properly filed in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, the Liens on the Collateral granted pursuant to the Collateral Agreement shall constitute fully perfected Liens on all right, title and interest of the Loan Parties thereunder in the domestic intellectual property, in each case prior and superior in right to the Lien of any other Person (except for Permitted Liens) (it being understood that subsequent recordings in the United States Patent and Trademark Office or the United States Copyright Office may be necessary to perfect a Lien on registered trademarks and patents, trademark and patent applications and registered copyrights acquired by the grantors after the Closing Date).

(3) Notwithstanding anything herein (including this Section 3.14) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty as to the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign law.

SECTION 3.15. Location of Real Property and Leased Premises.

(1) Schedule 3.15(1) correctly identifies, in all material respects, as of the Closing Date, all material Real Property owned in fee by the Loan Parties ("**Owned Material Real Property**"). As of the Closing Date, the Loan Parties own in fee all the Real Property set forth as being owned by them on Schedule 3.15(1).

(2) Schedule 3.15(2) lists correctly in all material respects, as of the Closing Date, all material Real Property leased by any Loan Party ("**Leased Material Real Property**") and the addresses thereof. As of the Closing Date, the Loan Parties have in all material respects valid leases in all material Real Property set forth as being leased by them on Schedule 3.15(2).

SECTION 3.16. Solvency. On the Closing Date, after giving effect to the consummation of the Transactions, including the making of the Term Loans hereunder, and after giving effect to the application of the proceeds of the Term Loans:

(1) the fair value of the assets of the Borrower and its Subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities (subordinated, contingent or otherwise);

(2) the present fair saleable value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities (subordinated, contingent or otherwise) as such debts and other liabilities become absolute and matured;

(3) the Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities (subordinated, contingent or otherwise) as such liabilities become absolute and matured; and

(4) the Borrower and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

For purposes of this Section 3.16, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

SECTION 3.17. No Material Adverse Effect. Since October 3, 2015, there has been no event that has had, or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

SECTION 3.18. Insurance. Schedule 3.18 sets forth a true, complete and correct description of all material insurance maintained by or on behalf of the Borrower or any Restricted Subsidiary as of the Closing Date. As of such date, such insurance is in full force and effect.

SECTION 3.19. USA PATRIOT Act; FCPA; OFAC; Anti-Terrorism

(1) To the extent applicable, each of Holdings, the Borrower and their respective Subsidiaries is in compliance, in all material respects, with the USA PATRIOT Act.

(2) No part of the proceeds of the Term Loans will be used by Holdings, the Borrower or any of their respective Subsidiaries, directly or, to the knowledge of Holdings, the Borrower or any of their respective Subsidiaries, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977 ("**FCPA**").

(3) None of Holdings, the Borrower or any of their respective Subsidiaries is any of the following:

(a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the "**Executive Order**");

(b) a Person owned or Controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any laws with respect to terrorism or money laundering;

(d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(e) a Person that is named as a "specially designated national and blocked Person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control ("**OFAC**") at its official website or any replacement website or other replacement official publication of such list and none of the proceeds of the Term Loans will be, directly or, to the knowledge of Holdings, the Borrower or any of their respective Subsidiaries, indirectly, offered, lent, contributed or otherwise made available to any Restricted Subsidiary, joint venture partner or other Person for the purpose of financing the activities of any Person currently the subject of sanctions administered by OFAC.

SECTION 3.20. Intellectual Property; Licenses, Etc. Except as set forth on Schedule 3.20:

(1) except as would not reasonably be expected to have a Material Adverse Effect, the Borrower and each Restricted Subsidiary owns, or possesses the right to use, all of the patents, patent rights, trademarks, service marks, trade names, copyrights or mask works, domain names, trade secrets and other intellectual property rights (collectively, "**Intellectual Property Rights**") that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person;

(2) except as would not reasonably be expected to have a Material Adverse Effect, neither the Borrower nor any of the Restricted Subsidiaries nor any Intellectual Property Rights, product, process, method, substance, part or other material now employed, sold or offered by the Borrower or the Restricted Subsidiaries is infringing upon, misappropriating or otherwise violating Intellectual Property Rights of any Person; and

(3) no claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened.

SECTION 3.21. Employee Benefit Plans. The Borrower and each of its ERISA Affiliates are in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, would reasonably be expected to have a Material Adverse Effect.

Except as would not reasonably be expected to have a Material Adverse Effect, the present value of all accumulated benefit obligations under all Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plans, in the aggregate.

SECTION 3.22. Regulation H. No Mortgage encumbers improved Real Property which is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (except any Mortgaged Properties as to which such flood insurance as required by Regulation H has been obtained and is in full force and effect as required by this Agreement).

ARTICLE IV

Conditions of Lending

SECTION 4.01. Conditions Precedent. The agreement of each Lender to make Term Loans on the Closing Date is subject solely to the satisfaction or waiver by the Administrative Agent, prior to or concurrently with the making of the Term Loans on the Closing Date, of the following conditions precedent:

- (1) Loan Documents. The Administrative Agent shall have received this Agreement, the Collateral Agreement, the Intercreditor Agreement and each other Loan Document, in each case, dated as of the Closing Date, duly executed and delivered by a Responsible Officer of each of the Loan Parties party thereto.
- (2) Borrowing Request. On or prior to the Closing Date, the Administrative Agent shall have received a Borrowing Request.
- (3) [Reserved]
- (4) [Reserved]
- (5) Fees. All fees and expenses required to be paid to the Administrative Agent and the Arranger on or prior to the Closing Date shall have been paid.
- (6) Solvency Certificate. The Administrative Agent shall have received a solvency certificate substantially in the form attached hereto as Exhibit B.
- (7) Closing Date Certificates. The Administrative Agent shall have received a certificate of a Responsible Officer of the Loan Parties dated the Closing Date and certifying:
 - (a) that attached thereto is a true and complete copy of the charter or other similar organizational document of such Loan Party, and each amendment thereto, certified (as of a date reasonably near the Closing Date) as being a true and correct copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which such Loan Party is organized;
 - (b) that attached thereto is a true and complete copy of a certificate of the Secretary of State or other applicable Governmental Authority of the jurisdiction in which such Loan Party is organized, dated reasonably near the Closing Date, listing the charter or other similar organizational document of such Person and each amendment thereto on file in such office and, if available, certifying that (i) such amendments are the only amendments to such Person's charter on file in such office, (ii) such Person has paid all franchise taxes to the date of such certificate and (iii) such Person is duly organized and in good standing under the laws of such jurisdiction;

(c) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which it is a party or any other document delivered in connection herewith on the Closing Date and certifying that such resolutions have not been modified, rescinded or amended and are in full force and effect; and

(d) as to the incumbency and specimen signature of each Responsible Officer executing the Loan Documents specified in Section 4.01(1) (together with a certificate of another officer as to the incumbency and specimen signature of the Responsible Officer executing the certificate pursuant to this Section 4.01(7)).

(8) Legal Opinions. The Administrative Agent shall have received a customary legal opinion of Gibson, Dunn & Crutcher LLP, special New York and Texas counsel to the Loan Parties and from local counsel to the Loan Parties in Georgia, Illinois and Virginia.

(9) Pledged Equity Interests; Pledged Notes. Except as otherwise agreed by the Administrative Agent, the Administrative Agent shall have received the certificates representing the Equity Interests (if such Equity Interests are certificated) of each Subsidiary Loan Party, in each case to the extent such Equity Interests are included in the Collateral and required to be pledged pursuant to the Collateral Agreement, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof.

(10) Lien Searches. The Administrative Agent shall have received a completed Perfection Certificate dated as of the Closing Date and signed by a Responsible Officer of the Borrower, together with, if requested by the Administrative Agent at least 21 days prior to the Closing Date, the results of a search of Uniform Commercial Code filings made with respect to the Loan Parties (for purposes of this clause (10), giving effect to the Transactions) in the applicable jurisdiction of organization of each Loan Party and copies of the financing statements (or similar documents) disclosed by such search.

(11) Know Your Customer and Other Required Information. All documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, as has been reasonably requested in writing by the Administrative Agent at least ten calendar days prior to the Closing Date, will be provided not later than the date that is three Business Days prior to the Closing Date.

(12) Representations and Warranties: Absence of Default. All representations and warranties contained in Article III of this Agreement shall be true and correct in all material respects on the Closing Date, except to the extent such representation or warranty specifically refers to an earlier date, in which case it shall be true and correct in all material respects as of such earlier date (in each case, any representation or warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct in all respects) and no Default shall have occurred immediately after giving effect to the Transactions to occur on the Closing Date.

There are no conditions, implied or otherwise, to the making of Term Loans on the Closing Date other than as set forth in the preceding clauses (1) through (12) and upon satisfaction or waiver by the Administrative Agent of such conditions the Tranche B Term Loans will be made by the Lenders.

ARTICLE V

Affirmative Covenants

The Borrower covenants and agrees with each Lender that so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations (other than Obligations in respect of (i) Specified Hedge Agreements and Cash Management Obligations that are not then due and payable and (ii) contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted)

have been paid in full, unless the Required Lenders otherwise consent in writing, the Borrower will, and will cause its Restricted Subsidiaries, to, and will cause Holdings (solely with respect to Sections 5.01, 5.03, 5.06, 5.07 and 5.10), to:

SECTION 5.01. Existence; Businesses and Properties.

(1) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except:

- (a) in the case of a Restricted Subsidiary, where the failure to do so would not reasonably be expected to have a Material Adverse Effect; or
- (b) in connection with a transaction permitted under Section 6.05.

(2) (a) Do or cause to be done all things necessary to lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, Intellectual Property Rights, licenses and rights with respect thereto necessary to the normal conduct of its business and (b) at all times maintain and preserve all property necessary to the normal conduct of its business and keep such property in good repair, working order and condition (ordinary wear and tear excepted) and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith, if any, may be properly conducted at all times, in each case, except:

- (i) as expressly permitted by this Agreement;
- (ii) such as may expire, be abandoned or lapse in the ordinary course of business; or
- (iii) where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.02. Insurance.

(1) Maintain, with insurance companies reasonably believed to be financially sound and reputable, insurance in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations, and cause the Collateral Agent to be listed as a co-loss payee on property and casualty policies and as an additional insured on liability policies. The Borrower will furnish to the Administrative Agent or Collateral Agent, upon request, information in reasonable detail as to the insurance so maintained. Notwithstanding the foregoing, it is understood and agreed that no Loan Party will be required to maintain flood insurance other than with respect to any Owned Material Real Property required to be so insured pursuant to the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1968, and the regulations promulgated thereunder, because such Owned Material Real Property is located in an area which has been identified by the Secretary of Housing and Urban Development as a "special flood hazard area."

(2) Use commercially reasonable efforts to: (a) if insurance is procured from insurance companies, obtain certificates and endorsements reasonably acceptable to the Administrative Agent with respect to property and casualty insurance; (b) cause each insurance policy referred to in this Section 5.02 and procured from an insurance company to provide that it shall not be cancelled, modified or not renewed (x) by reason of nonpayment of premium except upon not less than 10 days' prior written notice thereof by the insurer to the Administrative Agent (giving the Administrative Agent the right to cure defaults in the payment of premiums) or (y) for any other reason except upon not less than 30 days' prior written notice thereof by the insurer to the Administrative Agent; and (c) deliver to the Administrative Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Administrative Agent, including an insurance binder) together with evidence reasonably satisfactory to the Administrative Agent of payment of the premium therefor.

SECTION 5.03. Taxes. Pay and discharge promptly when due all material Taxes imposed upon it or its income or profits or in respect of its property, before the same becomes delinquent or in default; *provided* that such payment and discharge will not be required with respect to any Tax if (1) the validity or amount thereof is being contested in good faith by appropriate proceedings and (2) Holdings, the Borrower or any affected Restricted Subsidiary, as applicable, has set aside on its books reserves in accordance with GAAP with respect thereto.

SECTION 5.04. Financial Statements, Reports, etc. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders):

(1) within 105 days following the end of each fiscal year ended after the Closing Date (i), a consolidated balance sheet and related statements of operations, cash flows and owners' equity showing the financial position of the Borrower and the Restricted Subsidiaries as of the close of such fiscal year and the consolidated results of its operations during such fiscal year and, in each case, starting with the following fiscal year, setting forth in comparative form the corresponding figures for the prior fiscal year, which consolidated balance sheet and related statements of operations, cash flows and owners' equity will be audited by independent public accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Administrative Agent, and accompanied by an opinion of such accountants (which opinion shall not be subject to any "going concern" statement, explanatory note or like qualification or exception (other than a "going concern" statement, explanatory note or like qualification or exception resulting solely from an upcoming maturity date occurring within one year from the time such opinion is delivered or anticipated (but not actual) covenant non-compliance)) to the effect that such consolidated financial statements fairly present, in all material respects, the financial position and results of operations of the Borrower and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP (the applicable financial statements delivered pursuant to this clause (1) being the "*Annual Financial Statements*") and (ii) a management's discussion and analysis of financial condition and results of operations, discussing and analyzing the results of operations of the Borrower for the period covered by such Annual Financial Statements;

(2) within 60 days following the end of each of the first three fiscal quarters of each fiscal year, (i) a consolidated balance sheet and related statements of operations and cash flows showing the financial position of the Borrower and the Restricted Subsidiaries as of the close of such fiscal quarter and the consolidated results of its operations during such fiscal quarter and, in each case, the then-elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, which consolidated balance sheet and related statements of operations and cash flows will be certified by a Responsible Officer of the Borrower on behalf of the Borrower as fairly presenting, in all material respects, the financial position and results of operations of the Borrower and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes, and (ii) a management's discussion and analysis of financial condition and results of operations, discussing and analyzing the results of operations of the Borrower for such fiscal quarter (the applicable financial statements delivered pursuant to this clause (2) being the "*Quarterly Financial Statements*" and, together with the Annual Financial Statements, the "*Required Financial Statements*");

(3) concurrently with any delivery of Required Financial Statements, a certificate of a Financial Officer of the Company:

(a) certifying that no Default or Event of Default has occurred and is continuing or, if a Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto;

(b) setting forth the calculation and uses of the Available Amount for the fiscal period then ended if the Borrower has used the Available Amount for any purpose during such fiscal period;

(c) certifying a list of all Immaterial Subsidiaries, that each Subsidiary set forth on such list individually qualifies as an Immaterial Subsidiary and that all such Subsidiaries in the aggregate do not exceed the limitation set forth in clause (ii) of the definition of the term "Immaterial Subsidiary";

(d) setting forth, in reasonable detail, the calculation of the Senior Secured First Lien Net Leverage Ratio for the most recent period of four consecutive fiscal quarters as of the close of such fiscal year or such fiscal quarter, as applicable; and

(e) certifying a list of all Unrestricted Subsidiaries at such time and that each Subsidiary set forth on such list qualifies as an Unrestricted Subsidiary;

(4) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by the Administrative Agent, other materials publicly filed by Holdings, the Borrower or any Restricted Subsidiary with the SEC or, after an initial public offering, distributed to its stockholders generally, as applicable;

(5) within 105 days following the end of each full fiscal year ended after the Closing Date, a consolidated annual budget for such fiscal year in the form customarily prepared by the Borrower (the "**Budget**"), which Budget will in each case be accompanied by the statement of a Financial Officer of the Borrower on behalf of the Borrower to the effect that the Budget is based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof;

(6) upon the reasonable request of the Collateral Agent, concurrently with the delivery of the Annual Financial Statements, an updated Perfection Certificate (or, to the extent such request relates to specified information contained in the Perfection Certificate, such information) reflecting all changes since the date of the information most recently received pursuant to this paragraph (6) or Section 5.10;

(7) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of Holdings, the Borrower or any Restricted Subsidiary, in each case, as the Administrative Agent may reasonably request (for itself or on behalf of any Lender); and

(8) promptly upon request by the Administrative Agent (so long as the following are obtainable using commercially reasonable measures), copies of any documents described in Section 101(k)(1) of ERISA that the Borrower or any of its ERISA Affiliates may request with respect to any Multiemployer Plan; *provided* that if the Borrower or any of its ERISA Affiliates has not requested such documents from the administrator or sponsor of the applicable Multiemployer Plan, the Borrower or the applicable ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof.

Anything to the contrary notwithstanding, the obligations in clauses (1) and (2) of this Section 5.04 may be satisfied with respect to financial information of the Borrower and the Restricted Subsidiaries by furnishing (1) the applicable financial statements of Holdings (or any other Parent Entity) or (2) the Borrower's or Holdings' (or any such other Parent Entity's), as applicable, Form 10 K or 10 Q, as applicable, filed with the SEC; *provided* that with respect to each of the foregoing clauses (1) and (2) (a) to the extent such information relates to Holdings (or a Parent Entity), such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings (or such Parent Entity), on the one hand, and the information relating to the Borrower and the Restricted Subsidiaries on a standalone basis, on the other hand, and (b) to the extent such information is in lieu of information required to be provided under Section 5.04(1), such materials are accompanied by a report and opinion of independent public accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Administrative Agent, and accompanied by an opinion of such accountants (which opinion shall not be subject to any "going concern" statement, explanatory note or like qualification or exception (other than a "going concern" statement, explanatory note or like qualification or exception resulting solely from an upcoming maturity date occurring within one year from the time such opinion is delivered or anticipated (but not actual) covenant non-compliance)) (it being understood and agreed that if, in compliance with this paragraph, (x) the Borrower provides audited financial statements of Holdings (or any other Parent Entity) and related report and opinion of accountants with respect thereto in lieu of information required to be provided under Section 5.04(1), no such audited financial information, opinion or report shall be required with respect to the Borrower,

(y) the Borrower provides unaudited financial statements of Holdings (or any other Parent Entity) in lieu of information required to be provided under Section 5.04(2), no such unaudited financial information shall be required with respect to the Borrower and (z) the Borrower provides a Budget of Holdings and accompanying statement (or any other Parent Entity) in lieu of information required to be provided under Section 5.04(5), no such Budget shall be required with respect to the Borrower; *provided* that for the avoidance of doubt, with respect to the foregoing clauses (x), (y) and (z) (i) to the extent such information relates to Holdings (or a Parent Entity), such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings (or such Parent Entity), on the one hand, and the information relating to the Borrower and the Restricted Subsidiaries on a standalone basis, on the other hand, and (ii) to the extent such information is in lieu of information required to be provided under Section 5.04(1), such materials are accompanied by a report and opinion of independent public accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Administrative Agent, and accompanied by an opinion of such accountants (which opinion shall not be subject to any “going concern” statement, explanatory note or like qualification or exception (other than a “going concern” statement, explanatory note or like qualification or exception resulting solely from an upcoming maturity date occurring within one year from the time such opinion is delivered or anticipated (but not actual) covenant non-compliance)). The obligations in clauses (1) and (2) of this Section 5.04 may be satisfied by delivery of financial information of the Borrower and its Subsidiaries so long as such financial statements include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, of the financial condition and results of operations of the Borrower and the Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Borrower.

Documents required to be delivered pursuant to this Section 5.04 may be delivered electronically in accordance with Section 10.01(5).

SECTION 5.05. Litigation and Other Notices. Furnish to the Administrative Agent (which will promptly thereafter furnish to the Lenders) written notice of the following promptly after any Responsible Officer of the Borrower obtains actual knowledge thereof:

- (1) any Default or Event of Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;
- (2) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against Holdings or any of the Restricted Subsidiaries as to which an adverse determination is reasonably probable and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect; and
- (3) the occurrence of any ERISA Event that, together with all other ERISA Events that have occurred, would reasonably be expected to have a Material Adverse Effect.

SECTION 5.06. Compliance with Laws. Comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including ERISA, FCPA, OFAC and the PATRIOT Act), except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; *provided* that this Section 5.06 will not apply to Environmental Laws, which are the subject of Section 5.09, or laws related to Taxes, which are the subject of Section 5.03.

SECTION 5.07. Maintaining Records; Access to Properties and Inspections. Permit any Persons designated by the Administrative Agent to visit and inspect the financial records and the properties of the Borrower or any Restricted Subsidiary at reasonable times, upon reasonable prior notice to the Borrower, and as often as reasonably requested, to make extracts from and copies of such financial records, and permit any Persons designated by the Administrative Agent, upon reasonable prior notice to the Borrower to discuss the affairs, finances and condition of Holdings, the Borrower or any Restricted Subsidiary with the officers thereof and independent accountants therefor (subject to such accountant’s policies and procedures); *provided* that the Administrative Agent may not exercise such rights more often than two times during any calendar year unless an Event of Default is continuing and only one such time will be at the Borrower’s expense; and *provided, further*, that when an Event of Default is continuing, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice.

Notwithstanding anything to the contrary in this Agreement (including Sections 5.04(7), 5.05, 5.07 and 5.12) or any other Loan Document, none of the Loan Parties or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter with any competitor to the Borrower or any of its Subsidiaries or that (1) constitutes non-financial trade secrets or non-financial proprietary information, (2) in respect of which disclosure is prohibited by law or any binding agreement, (3) is subject to attorney-client or similar privilege or constitutes attorney work product or (4) creates an unreasonably excessive expense or burden on the Borrower or any of its Subsidiaries.

SECTION 5.08. Use of Proceeds. Use the proceeds of the Term Loans made on the Closing Date to finance, in part, the Transactions.

SECTION 5.09. Compliance with Environmental Laws. Comply, and make reasonable efforts to cause all lessees and other Persons occupying its fee-owned Real Properties to comply, with all Environmental Laws applicable to its operations and properties, and obtain and renew all material authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws, except, in each case, to the extent the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.10. Further Assurances; Additional Security.

(1) If (a) a Restricted Subsidiary (other than an Excluded Subsidiary) of the Borrower is formed or acquired after the Closing Date or (b) an Excluded Subsidiary ceases to constitute an Excluded Subsidiary (but remains a Restricted Subsidiary), within five Business Days after the date such Restricted Subsidiary is formed or acquired or such Excluded Subsidiary ceases to constitute an Excluded Subsidiary, as applicable, notify the Collateral Agent thereof and, within 20 Business Days after the date such Restricted Subsidiary is formed or acquired or such Subsidiary ceases to constitute an Excluded Subsidiary (or such longer period as the Administrative Agent may agree in its sole discretion), the Borrower will or will cause such Restricted Subsidiary to:

(i) deliver a joinder to the Collateral Agreement, substantially in the form specified therein, duly executed on behalf of such Restricted Subsidiary;

(ii) to the extent required by and subject to the exceptions set forth in the Collateral Agreement, pledge the outstanding Equity Interests (other than Excluded Equity Interests) owned by such Restricted Subsidiary, and cause each Loan Party owning any Equity Interests issued by such Restricted Subsidiary to pledge such outstanding Equity Interests (other than Excluded Equity Interests), and deliver all certificates (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof);

(iii) to the extent required by and subject to the exceptions set forth in this Section 5.10 or the Security Documents, deliver to the Collateral Agent (or a designated bailee thereof) Uniform Commercial Code financing statements with respect to such Restricted Subsidiary and such other documents reasonably requested by the Collateral Agent to create the Liens intended to be created under the Security Documents and perfect such Liens to the extent required by the Security Documents; and

(iv) except as otherwise contemplated by this Section 5.10 or any Security Document, obtain all consents and approvals required to be obtained by it in connection with (A) the execution and delivery of all Security Documents (or supplements thereto) to which it is a party and the granting by it of the Liens thereunder and (B) the performance of its obligations thereunder.

(2) If any Loan Party (a) acquires fee simple title in Real Property after the Closing Date or (b) enters a joinder pursuant to Section 5.10(1)(i) hereof and owns fee simple title in Real Property, then, in each case, within 60 days (or such longer period as the Administrative Agent may agree in its sole discretion) after such acquisition or entry of a joinder (as applicable):

(a) notify the Collateral Agent thereof of such acquired or owned Real Property (as applicable);

(b) cause any such acquired or owned Real Property (as applicable) that has a fair market value (as determined in good faith by a Responsible Officer of the Borrower) of \$3.0 million or more to be subjected to a Mortgage securing the Obligations unless such Real Property shall be subject to a Sale and Lease-Back Transaction permitted by Section 6.03 hereunder or is already mortgaged to a third party to the extent permitted by Section 6.02;

(c) (A) obtain fully paid American Land Title Association Lender's Extended Coverage title insurance policies in form and substance reasonably satisfactory to Collateral Agent, with endorsements (including zoning endorsements where available) and in an amount not less than 125% of the fair market value of each Mortgaged Property that is owned in fee insuring the fee simple title to each of the fee owned Mortgaged Properties vested in the applicable Loan Party and insuring the Collateral Agent that the relevant Mortgage creates a valid and enforceable first priority Lien on the Mortgaged Property encumbered thereby, each of which title policy ("**Title Policy**") (1) shall include all endorsements reasonably requested by the Collateral Agent and available in the related jurisdiction and (2) shall provide for affirmative insurance and such reinsurance as the Collateral Agent may reasonably request, all of the foregoing in form and substance reasonably satisfactory to the Collateral Agent; (B) evidence reasonably satisfactory to the Collateral Agent that the applicable Loan Party has (1) delivered to the title company (the "**Title Company**") all certificates and affidavits reasonably required by the Title Company in connection with the issuance of the applicable Title Policy and (2) paid to the Title Company or to the appropriate Governmental Authorities all expenses and premiums of the Title Company and all other sums required in connection with the issuance of the Title Policies and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgages in the applicable real property records; and (C) a title report issued by the Title Company with respect thereto, together with copies of all recorded documents listed as exceptions to title or otherwise referred to therein, each in form and substance reasonably satisfactory to the Collateral Agent. (the "**Mortgage Policies**");

(d) obtain (i) American Land Title Association/American Congress on Surveying and Mapping surveys, dated no more than 30 days before the date of their delivery to the Collateral Agent, certified to the Collateral Agent and the issuer of the Mortgage Policies in a manner reasonably satisfactory to the Collateral Agent or (ii) previously obtained ALTA surveys and affidavits of "no-change" with respect to each such survey, such surveys and affidavits to be sufficient to issue Title Policies to the Administrative Agent providing all reasonably required survey coverage and survey endorsements;

(e) deliver to the Collateral Agent: (A) a completed Flood Certificate with respect to each Mortgaged Property, which Flood Certificate shall (1) be addressed to the Collateral Agent, (2) be completed by a company which has guaranteed the accuracy of the information contained therein, and (3) otherwise comply with the Flood Program; (B) evidence describing whether the community in which each Mortgaged Property is located participates in the Flood Program; (C) if any Flood Certificate states that a Mortgaged Property is located in a Flood Zone, the Borrower's written acknowledgement of receipt of written notification from the Collateral Agent (1) as to the existence of each such Mortgaged Property, and (2) as to whether the community in which each such Mortgaged Property is located is participating in the Flood Program; and (D) if any Mortgaged Property is located in a Flood Zone and is located in a community that participates in the Flood Program, evidence that the applicable Loan Party has obtained a policy of flood insurance that is in compliance with all applicable regulations of the Board of Governors;

(f) provide evidence of insurance (including all insurance required to comply with applicable flood insurance laws) naming the Collateral Agent as loss payee and additional insured with such responsible and reputable insurance companies or associations, and in such amounts and covering such risks, as are reasonably satisfactory to the Collateral Agent, including the insurance required by the terms of any mortgage or deed of trust;

(g) for each Mortgage delivered pursuant to clause (b), obtain customary mortgage or deed of trust enforceability opinions of local counsel for the Loan Parties in the states in which such acquired Real Properties owned in fee simple are located; and

(h) take, or cause the applicable Loan Party to take, such actions as shall be necessary or reasonably requested by the Collateral Agent to perfect such Liens, in each case, at the expense of the Loan Parties, subject to paragraph (5) of this Section 5.10.

(3) Furnish to the Collateral Agent five Business Days prior written notice of any change in any Loan Party's:

(a) corporate or organization name;

(b) organizational structure;

(c) location (determined as provided in UCC Section 9-307); or

(d) organizational identification number (or equivalent) or, solely if required for perfecting a security interest in the applicable jurisdiction, Federal Taxpayer Identification Number.

The Borrower will not effect or permit any such change unless all filings have been made, or will be made within any statutory period, under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest, for the benefit of the applicable Secured Parties, in all Collateral held by such Loan Party.

(4) Execute any and all other documents, financing statements, agreements and instruments, and take all such other actions (including the filing and recording of financing statements and other documents), not described in the preceding clauses (1) through (3) and that may be required under any applicable law, or that the Collateral Agent may reasonably request, to satisfy the requirements set forth in this Section 5.10 and in the Security Documents with respect to the creation and perfection of the Liens on the Collateral in favor of the Collateral Agent, for the benefit of the Secured Parties, contemplated herein and in the Security Documents and to cause such requirement to be and remain satisfied, all at the expense of the Borrower, and provide to the Collateral Agent, from time to time upon reasonable request, evidence as to the perfection and priority of the Liens created by the Security Documents.

(5) Notwithstanding anything to the contrary,

(a) the other provisions of this Section 5.10 need not be satisfied with respect to any Excluded Assets or Excluded Equity Interests or any exclusions and carve-outs from the perfection requirements set forth in the Collateral Agreement;

(b) neither the Borrower nor the other Loan Parties will be required to grant a security interest in any asset or perfect a security interest in any Collateral to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by a Responsible Officer of the Borrower and the Administrative Agent; and

(c) no actions will be required outside of the United States in order to create or perfect any security interest in any assets located outside of the United States and no foreign law security or pledge agreements, foreign law mortgages or deeds or foreign intellectual property filings or searches will be required.

SECTION 5.11. Credit Ratings. Use commercially reasonable efforts to maintain at all times (a) a credit rating by each of S&P and Moody's in respect of the Term Facility and (b) a public corporate rating by S&P and a public corporate family rating by Moody's for the Borrower, in each case with no requirement to maintain any specific minimum rating.

SECTION 5.12. Preparation of Environmental Reports. At any time during the continuance of an Event of Default, provide to the Lenders within 60 days after reasonable request from the Administrative Agent or the Required Lenders, at the expense of the Borrower, an environmental site assessment report for any of its Real Properties described in such request, prepared by an environmental consulting firm reasonably acceptable to the Administrative Agent, indicating the presence or absence of Hazardous Materials at such property and the estimated cost of any compliance, including, if applicable, the estimated costs of legally required removal or remedial actions in connection with any such Hazardous Materials on such Real Property; without limiting the generality of the foregoing, if the Administrative Agent reasonably determines at any time following 30 days after its initial request that a material risk exists that any such report will not be provided within the time referred to above, the Administrative Agent may retain an environmental consulting firm to prepare such report at the expense of the Borrower, and Holdings hereby grants and agrees to cause any Subsidiary that maintains an interest in any Real Property described in such request to grant at the time of such request to the Administrative Agent, the Lenders, such firm and any agents or representatives thereof an irrevocable non-exclusive license, after reasonable advance notice subject to the reasonable rights of tenants or any limitation contained in applicable leases, to enter onto their respective properties to undertake such an assessment. Any such assessment shall be conducted during normal business hours and in a manner reasonably designed to mitigate any material interference with the ongoing operations of the Loan Party's business. The Loan Parties may require that, prior to entry onto the Real Property, any such engineer or consultant shall present evidence of reasonable and customary insurance coverage, including general liability and professional liability policies. Unless there exists a reasonable belief that there has been a material Release of Hazardous Materials at the Real Property any such assessment shall be limited to a visual inspection of the property and shall not include the taking of any samples of soil, groundwater, surface water, building materials or other environmental media.

SECTION 5.13. Post-Closing Matters. Deliver to Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, the items described on Schedule 5.13 hereof on or before the dates specified with respect to such items on Schedule 5.13 (or, in each case, such later date as may be agreed to by Administrative Agent in its sole discretion or, with respect to matters relating primarily to the ABL Priority Collateral, in the sole discretion of the administrative agent under the ABL Credit Agreement). All representations and warranties contained in this Agreement and the other Loan Documents will be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described on Schedule 5.13 within the time periods specified thereon, rather than as elsewhere provided in the Loan Documents).

ARTICLE VI

Negative Covenants

The Borrower covenants and agrees with each Lender that, so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations (other than Obligations in respect of (i) Specified Hedge Agreements and Cash Management Obligations that are not then due and payable and (ii) contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full, unless the Required Lenders otherwise consent in writing, it will not and will not permit any of its Restricted Subsidiaries to:

SECTION 6.01. Indebtedness. Issue, incur or assume any Indebtedness; *provided* that the Borrower and the Restricted Subsidiaries may issue, incur or assume Indebtedness so long as immediately after giving effect to the issuance, incurrence or assumption of such Indebtedness, the Interest Coverage Ratio is 2.00 to 1.00 or greater ("*Ratio Debt*"); and *provided, further*, that the aggregate principal amount of Ratio Debt incurred by Restricted Subsidiaries that are not Guarantors, when aggregated with the amount of Permitted Refinancing Indebtedness incurred by Restricted Subsidiaries that are not Guarantors in respect of Ratio Debt, may not exceed \$25.0 million at any time outstanding.

The foregoing limitation will not apply to (collectively, "*Permitted Debt*"):

- (1) (a) Indebtedness created under the Loan Documents (including Incremental Term Loans, Other Term Loans and Extended Term Loans); (b) Incremental Equivalent Term Debt and (c) Credit Agreement Refinancing Indebtedness;
- (2) (a) Indebtedness incurred pursuant to the ABL Credit Agreement and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof) up to an aggregate outstanding principal amount as of any date and (b) any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (2) (and any successive Permitted Refinancing Indebtedness in respect thereof), not to exceed, in the case of all Indebtedness incurred pursuant to this clause (2), \$200.0 million;
- (3) the New Senior Notes issued on the Closing Date and any Registered Equivalent Notes with respect thereto and, in each case, any capitalized interest added thereto;
- (4) Indebtedness existing on the Closing Date (other than Indebtedness described in clause (1), (2) or (3) above) after giving effect to the Refinancing and, with respect to Indebtedness exceeding \$5,000,000 in the aggregate, set forth on Schedule 6.01;
- (5) Capital Lease Obligations, Indebtedness with respect to mortgage financings and purchase money Indebtedness to finance all or any part of the purchase, lease, construction, installation, repair or improvement of property (real or personal), plant or equipment or other fixed or capital assets and Indebtedness arising from the conversion of the obligations of the Borrower or any Restricted Subsidiary under or pursuant to any "synthetic lease" transactions to on-balance sheet Indebtedness of the Borrower or such Restricted Subsidiary, in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (5) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) \$35.0 million and (b) 9.00% of Consolidated Total Assets as of the date any such Indebtedness is incurred; *provided* that such Indebtedness is incurred within 270 days after the purchase, lease, construction, installation, repair or improvement of the property that is the subject of such Indebtedness;
- (6) Indebtedness owed to (including obligations in respect of letters of credit or bank Guarantees or similar instruments for the benefit of) any Person providing workers' compensation, health, disability or other employee benefits (whether to current or former employees) or property, casualty or liability insurance or self-insurance in respect of such items, or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance; *provided* that upon the incurrence of any Indebtedness with respect to reimbursement obligations regarding workers' compensation claims, such obligations are reimbursed not later than 45 days following such incurrence;
- (7) Indebtedness arising from agreements of the Borrower or any Restricted Subsidiary providing for indemnification, earn-outs, adjustment of purchase or acquisition price or similar obligations, in each case, incurred or assumed in connection with the Transactions, any Permitted Acquisition or the disposition of any business, assets or Restricted Subsidiaries not prohibited by this Agreement, other than Guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiaries for the purpose of financing any such Permitted Acquisition;
- (8) intercompany Indebtedness between or among the Borrower and the Restricted Subsidiaries; *provided* that the aggregate outstanding principal amount of such Indebtedness that is owing by any Restricted Subsidiary that is not a Guarantor to a Loan Party may not exceed the amount, as of the date such Indebtedness is incurred, permitted pursuant to Sections 6.04(5) and (6);
- (9) Indebtedness pursuant to Hedge Agreements;

(10) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion Guarantees and similar obligations, in each case, *provided* in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(11) Guarantees of Indebtedness of the Borrower or the Restricted Subsidiaries permitted to be incurred under this Agreement to the extent such Guarantees are not prohibited by the provisions of Section 6.04 (without giving effect to Section 6.04(20));

(12) (a) Indebtedness incurred or assumed in connection with a Permitted Acquisition and Indebtedness of any Person that becomes a Restricted Subsidiary if such Indebtedness was not created in anticipation or contemplation of such Permitted Acquisition or such Person becoming a Restricted Subsidiary and (b) Indebtedness incurred or assumed in anticipation or contemplation of a Permitted Acquisition; *provided* that, in each case of the foregoing subclauses (a) and (b):

(i) no Event of Default is continuing immediately before such Permitted Acquisition or would result therefrom;

(ii) immediately after giving effect to such Permitted Acquisition, on a Pro Forma Basis, either (A) the Borrower would be permitted to incur at least \$1 of Ratio Debt or (B) the Interest Coverage Ratio would increase;

(iii) the aggregate principal amount of any such Indebtedness incurred pursuant to clause (12)(b) by Restricted Subsidiaries that are not Guarantors, together with any Permitted Refinancing Indebtedness incurred by Restricted Subsidiaries that are not Guarantors to Refinance any Indebtedness originally incurred pursuant to clause (12)(b) (and any successive Permitted Refinancing Indebtedness), may not exceed \$25.0 million at any one time outstanding as of the date such Indebtedness is incurred;

(13) Indebtedness incurred in connection with a Sale and Lease-Back Transactions permitted by Section 6.03, together with any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (13);

(14) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness (other than credit or purchase cards) is extinguished within 10 Business Days after notification received by the Borrower of its incurrence;

(15) Indebtedness supported by a letter of credit under the ABL Credit Agreement (or any Permitted Refinancing Indebtedness in respect thereof), in a principal amount not in excess of the stated amount of such letter of credit;

(16) Indebtedness in an aggregate outstanding principal amount not to exceed an amount equal to 100% of the net proceeds received by the Borrower from the issuance or sale of its Equity Interests or as a contribution to its capital after the Closing Date, other than (a) proceeds from the issuance or sale of the Borrower's Disqualified Stock, (b) Excluded Contributions, (c) [reserved] and (d) any such proceeds that are used prior to the date of incurrence to (i) make an Investment under Section 6.04(3), a Restricted Payment under Section 6.06(15) or a payment in respect of Junior Financing under Section 6.09(2)(a), in each case utilizing the Available Amount or (ii) make a Restricted Payment under Section 6.06(1) or Section 6.06(2)(b) (any such Indebtedness, "**Contribution Indebtedness**"), to the extent such contribution is designated by the Borrower as specified equity contributions for the incurrence of Contribution Indebtedness;

(17) Indebtedness consisting of (a) the financing of insurance premiums or (b) take or pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(18) Indebtedness incurred by a Receivables Subsidiary in a Qualified Receivables Financing that is not recourse to the Borrower or any Restricted Subsidiary other than a Receivables Subsidiary (except for Standard Securitization Undertakings);

(19) Cash Management Obligations and other Indebtedness in respect of Cash Management Services entered into in the ordinary course of business;

(20) Indebtedness issued to future, current or former officers, directors, managers, and employees, consultants and independent contractors of the Borrower or any Restricted Subsidiary or any direct or indirect parent thereof, their respective estates, heirs, family members, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of any Parent Entity permitted by Section 6.06;

(21) Indebtedness incurred on behalf of, or representing Guarantees of Indebtedness of, joint ventures *provided* that the aggregate outstanding principal amount of such Indebtedness, together with any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (21) (and any successive Permitted Refinancing Indebtedness) may not exceed the greater of (a) \$15.0 million and (b) 3.75% of Consolidated Total Assets as of the date any such Indebtedness is incurred;

(22) Indebtedness of Foreign Subsidiaries in an aggregate outstanding principal amount, together with any Permitted Refinancing Indebtedness incurred by Foreign Subsidiaries to Refinance any In- debtedness originally incurred pursuant to this clause (22) (and any successive Permitted Refinancing Indebtedness), not to not exceed the greater of (a) \$25.0 million and (b) 6.25% of Consolidated Total Assets as of the date any such Indebtedness is incurred;

(23) unsecured Indebtedness in respect of short-term obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services so long as such obligations are incurred in the ordinary course of business and not in connection with the borrowing of money;

(24) Indebtedness representing deferred compensation or other similar arrangements incurred by the Borrower or any Restricted Subsidiary (a) in the ordinary course of business or (b) in connection with a Permitted Change of Control or any Permitted Investment;

(25) any Permitted Refinancing Indebtedness incurred to Refinance Ratio Debt, Incremental Equivalent Term Debt, Credit Agreement Refinancing Indebtedness or Indebtedness incurred under clauses (3), (4), (5), (12), (16), (21), (22), this clause (25) or clause (28) of this Section 6.01;

(26) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(27) Indebtedness incurred by the Borrower or any Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange, warehouse receipts or similar facilities or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business;

(28) additional Indebtedness in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (28) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) \$40.0 million and (b) 10.25% of Consolidated Total Assets as of the date any such Indebtedness is incurred; and

(29) guaranties in the ordinary course of business consistent with past practice of the obligations of suppliers, customers, franchisees and licensees of the Borrower and its subsidiaries; and

(30) unsecured Indebtedness of the Borrower owing to the Equity Investors, so long as such Indebtedness is (1) subordinated in right of payment to the Loans on terms reasonably satisfactory to the Administrative Agent and (2) neither due nor payable (nor is any interest thereon payable) in each case until at least ninety-one (91) days after the Maturity Date and *provided* that the documentation with respect thereto contains no mandatory prepayments and no operative or financial covenants.

For purposes of determining compliance with this Section 6.01, in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories of Permitted Debt or is entitled to be incurred as Ratio Debt, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such item of Indebtedness (or any portion thereof) in any manner that complies with this covenant; *provided* that all Indebtedness outstanding under the Loan Documents and the ABL Credit Agreement will be deemed to have been incurred in reliance on the exception in clauses (1) and (2), respectively, of the definition of "Permitted Debt" and shall not be permitted to be reclassified pursuant to this paragraph. All unsecured Permitted Debt originally incurred under clause (5), (21), (22) or (28) of the definition of Permitted Debt will be automatically reclassified as Ratio Debt on the first date on which such Indebtedness would have been permitted to be incurred as Ratio Debt. Accrual of interest, the accretion of accreted value, amortization of original issue discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms (including pay-in-kind interest on the New Senior Notes), and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, will not be deemed to be an incurrence of Indebtedness for purposes of this Section 6.01. Guarantees of, or obligations in respect of letters of credit relating to Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such Guarantee or letter of credit, as the case may be, was in compliance with this Section 6.01.

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to Refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses in connection therewith).

SECTION 6.02. **Liens.** Create, incur, assume or permit to exist any Lien that secures obligations under any Indebtedness on any property or assets at the time owned by it, except the following (collectively, "**Permitted Liens**"):

- (1) Liens securing Indebtedness incurred in accordance with Sections 6.01(1) or 6.01(2); *provided* that, in the case of Indebtedness incurred in accordance with Section 6.01(2), the applicable Liens are subject to the Intercreditor Agreement or other intercreditor agreement(s) substantially consistent with and no less favorable to the Lenders in any material respect than the Intercreditor Agreement as determined in good faith by a Responsible Officer of the Borrower;
- (2) Liens securing Indebtedness existing on the Closing Date and, to the extent securing Indebtedness exceeding \$5,000,000 in the aggregate, set forth on Schedule 6.02; *provided* that such Liens only secure the obligations that they secure on the Closing Date (and any Permitted Refinancing Indebtedness in respect of such obligations permitted by Section 6.01) and do not apply to any other property or assets of the Borrower or any Restricted Subsidiary other than replacements, additions, accessions and improvements thereto;
- (3) Liens securing Indebtedness incurred in accordance with Section 6.01(5); *provided* that such Liens only extend to the assets financed with such Indebtedness (and any replacements, additions, accessions and improvements thereto);

-
- (4) Liens on accounts receivable and related assets of the type specified in the definition of Qualified Receivables Financing securing Indebtedness incurred in accordance with Section 6.01(18);
- (5) Liens on assets or Equity Interests of Foreign Subsidiaries securing Indebtedness incurred in accordance with Section 6.01(22);
- (6) Liens securing Permitted Refinancing Indebtedness incurred in accordance with Section 6.01(25); *provided* that the Liens securing such Permitted Refinancing Indebtedness are limited to all or part of the same property that secured (or, under the written arrangements under which the original Lien arose, could secure) the original Lien (plus any replacements, additions, accessions and improvements thereto);
- (7) (a) Liens on property or Equity Interests of a Person at the time such Person becomes a Restricted Subsidiary if such Liens were not created in connection with, or in contemplation of, such other Person becoming a Restricted Subsidiary and (b) Liens on property at the time the Borrower or a Restricted Subsidiary acquired such property, including any acquisition by means of a merger or consolidation with or into the Borrower or any of the Restricted Subsidiaries, if such Liens were not created in connection with, or in contemplation of, such acquisition;
- (8) Liens on property or assets of any Restricted Subsidiary that is not a Guarantor securing obligations of Restricted Subsidiaries that are not Guarantors;
- (9) Liens for Taxes, assessments or other governmental charges or levies not yet delinquent or that are being contested in compliance with Section 5.03;
- (10) Liens disclosed by the title insurance policies delivered on or subsequent to the Closing Date and any replacement, extension or renewal of any such Liens (so long as the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;
- (11) Liens securing judgments that do not constitute an Event of Default under Section 8.01(10) and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and in respect of which Holdings, the Borrower or any affected Restricted Subsidiary has set aside on its books reserves in accordance with GAAP with respect thereto;
- (12) Liens imposed by law, including landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens arising in the ordinary course of business securing obligations that are not overdue by more than 30 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Borrower or a Restricted Subsidiary has set aside on its books reserves in accordance with GAAP;
- (13) (a) pledges and deposits and other Liens made in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers' compensation, unemployment insurance and other similar laws or regulations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (b) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Restricted Subsidiary;
- (14) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof) incurred by the Borrower or any Restricted Subsidiary in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(15) survey exceptions and such matters as an accurate survey would disclose, easements, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, rights of way covenants, conditions, restrictions and declarations on or with respect to the use of Real Property, servicing agreements, development agreements, site plan agreements and other similar encumbrances incurred in the ordinary course of business and title defects or irregularities that are of a minor nature and that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Borrower or any Restricted Subsidiary;

(16) any interest or title of a lessor or sublessor under any leases or subleases entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business;

(17) Liens that are contractual rights of set-off (a) relating to pooled deposit or sweep accounts of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Restricted Subsidiary or (b) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business;

(18) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;

(19) leases or subleases, licenses or sublicenses (including with respect to intellectual property and software) granted to others in the ordinary course of business that do not interfere in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole;

(20) Liens solely on any cash earnest money deposits made by the Borrower or any Restricted Subsidiary in connection with any letter of intent or other agreement in respect of any Permitted Investment;

(21) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(22) Liens arising from precautionary Uniform Commercial Code financing statements;

(23) Liens on Equity Interests of any joint venture (a) securing obligations of such joint venture or (b) pursuant to the relevant joint venture agreement or arrangement;

(24) 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;

(25) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition thereof;

(26) Liens securing insurance premium financing arrangements;

(27) Liens on vehicles or equipment of the Borrower or any of the Restricted Subsidiaries granted in the ordinary course of business;

(28) Liens on cash and Cash Equivalents used to defease or to satisfy and discharge Indebtedness; *provided* that such defeasance or satisfaction and discharge is not prohibited by this Agreement;

(29) Liens:

(a) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection;

(b) attaching to pooling, commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business; or

(c) in favor of banking or other financial institutions or entities, or electronic payment service providers, arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking or finance industry;

(30) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit entered into in the ordinary course of business issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(31) Liens that rank *pari passu* with the Liens securing the Obligations if the Senior Secured First Lien Net Leverage Ratio as of the date on which such Liens are first created is less than or equal to 4.50 to 1.00; *provided* (x) that a Debt Representative acting on behalf of the holders of such Indebtedness will become party to or otherwise subject to the provisions of the Intercreditor Agreement and a First Lien Intercreditor Agreement and (y) such Liens shall not secure Indebtedness in the form of term loans;

(32) Liens that rank junior to the Liens securing Obligations, if the Total Secured Net Leverage Ratio as of the date on which such Liens are first created is less than or equal to 7.25 to 1.00; *provided* that a Debt Representative acting on behalf of the holders of such Indebtedness will become party to or otherwise subject to the provisions of the Intercreditor Agreement and a Junior Lien Intercreditor Agreement;

(33) Liens securing additional obligations in an aggregate outstanding principal amount not to exceed the greater of (a) \$35.0 million and (b) 9.00% of Consolidated Total Assets as of the date such Liens are first created;

(34) Liens securing (a) Specified Hedge Obligations and Cash Management Obligations, which amounts are secured under the Loan Documents, and (b) amounts owing to any Qualified Counterparty (as defined in the ABL Credit Agreement) under any Specified Swap Agreement (as defined in the ABL Credit Agreement) and obligations in respect of Cash Management Services (as defined in the ABL Credit Agreement), which amounts are secured under the ABL Loan Documents; *provided* that, in each case, the applicable Liens are subject to the Intercreditor Agreement or other intercreditor agreement(s) substantially consistent with and no less favorable to the Lenders in any material respect than the Intercreditor Agreement as determined in good faith by a Responsible Officer of the Borrower;

(35) Liens securing Indebtedness incurred in accordance with Section 6.01(13) solely encumbering the assets that are subject of such Indebtedness;

(36) Liens in favor of a trustee in an indenture to the extent such Liens secure only customary compensation and reimbursement obligations of such trustee under such indenture; and

(37) assignments to landlords or mortgagees of insurance or condemnation proceeds.

For purposes of this Section 6.02, Indebtedness will not be considered incurred under a subsection or clause of Section 6.01 if it is later reclassified as outstanding under another subsection or clause of Section 6.01 (in which event, and at which time, same will be deemed incurred under the subsection or clause to which reclassified).

SECTION 6.03. Sale and Lease-Back Transactions. Enter into any arrangement, directly or indirectly, with any Person whereby it sells or transfers any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a "**Sale and Lease-Back Transaction**"), except the following:

(1) Sale and Lease-Back Transactions with respect to property owned (a) by the Borrower or any of its Domestic Subsidiaries that is acquired after the Closing Date so long as such Sale and Lease- Back Transaction is consummated within 270 days of the acquisition of such property or (b) by any Foreign Subsidiary of the Borrower regardless of when such property was acquired; and

(2) Sale and Lease-Back Transactions with respect to any property owned by the Borrower or any Restricted Subsidiary, if at the time the lease in connection therewith is entered into, and after giving effect to the entering into of such lease, the Remaining Present Value of such lease would not exceed \$50.0 million, *provided*, that in each case, the Net Cash Proceeds thereof are applied in accordance with Section 2.08(1).

SECTION 6.04. Investments, Loans and Advances. Purchase, hold or acquire (including pursuant to any merger, consolidation or amalgamation with a Person that is not a Wholly Owned Subsidiary immediately prior to such merger, consolidation or amalgamation) any Equity Interests, evidences of Indebtedness or other securities of, make or permit to exist any loans or advances to or Guarantees of the obligations of, or make or permit to exist any investment or any other interest in (each, a "**Investment**"), any other Person, except the following (collectively, "**Permitted Investments**"):

(1) the Transactions;

(2) loans and advances to officers, directors, employees or consultants of any Parent Entity, the Borrower or any Restricted Subsidiary not to exceed \$5.0 million in an aggregate principal amount at any time outstanding (calculated without regard to write-downs or write-offs thereof after the date made);

(3) Investments in an amount not to exceed the Available Amount as of the date such Investments are made; *provided* that no Event of Default has occurred and is continuing immediately prior to making such Investment or would result therefrom;

(4) Permitted Acquisitions and pre-existing Investments held by Persons acquired in Permitted Acquisitions or acquired in connection with Permitted Acquisitions and not created in contemplation thereof;

(5) intercompany Investments among the Borrower and the Restricted Subsidiaries (including intercompany Indebtedness); *provided* that the sum of (a) the aggregate fair market value of all such Investments (other than intercompany Indebtedness and Guarantees of Indebtedness) made since the Closing Date (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value) by the Borrower and the Guarantors in Restricted Subsidiaries that are not Guarantors; (b) the aggregate principal amount of Indebtedness owing to the Borrower and the Guarantors by Restricted Subsidiaries that are not Guarantors at any time outstanding; and (c) the aggregate principal amount of Indebtedness of Restricted Subsidiaries that are not Guarantors that is Guaranteed by the Borrower and the Guarantors at any time outstanding, together with any Investments made in Restricted Subsidiaries that are not Guarantors pursuant to Section 6.04(31), may not exceed the greater of (i) \$15.0 million and (ii) 3.75% of Consolidated Total Assets as of the date any such Investment is made, *plus* an amount equal to any returns of capital or sale proceeds actually received in respect of any such Investments (which such amount shall not exceed the amount of such Investment (as determined above) at the time such Investment was made);

(6) Investments in Foreign Subsidiaries; *provided* that the sum of (a) the aggregate fair market value of all such Investments (other than intercompany Indebtedness and Guarantees of Indebtedness) made by the Borrower and the Restricted Subsidiaries since the Closing Date (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value); (b) the aggregate principal amount of Indebtedness of Foreign Subsidiaries owing to the Borrower and the other Restricted Subsidiaries at any time outstanding; and (c) the aggregate principal amount of Indebtedness of Foreign Subsidiaries that is Guaranteed by the Borrower and the other Restricted Subsidiaries at any time outstanding, when taken together with the aggregate amount of payments made with respect to entities that do not become Guarantors pursuant to clause (2) of the definition of Permitted Acquisitions, may not exceed the greater of (i) \$25.0 million and (ii) 6.25% of Consolidated Total Assets as of the date any such Investment is made, plus an amount equal to any returns of capital or sale proceeds actually received in respect of any such Investments (which such amount shall not exceed the amount of such Investment (as determined above) at the time such Investment was made);

(7) Cash Equivalents and, to the extent not made for speculative purposes, Investment Grade Securities or Investments that were Cash Equivalents or Investment Grade Securities when made;

(8) Investments arising out of the receipt by the Borrower or any of the Restricted Subsidiaries of non-cash consideration in connection with any sale of assets permitted under Section 6.05;

(9) accounts receivable, security deposits and prepayments and other credits granted or made in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and others, including in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, such account debtors and others, in each case in the ordinary course of business;

(10) Investments acquired as a result of a foreclosure by the Borrower or any Restricted Subsidiary with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(11) Hedge Agreements;

(12) Investments existing on, or contractually committed as of, the Closing Date and set forth on Schedule 6.04 and any replacements, refinancings, refunds, extensions, renewals or reinvestments thereof, so long as the aggregate amount of all Investments pursuant to this clause (12) is not increased at any time above the amount of such Investments existing or committed on the Closing Date (other than pursuant to an increase as required by the terms of any such Investment as in existence on the Closing Date);

(13) Investments resulting from pledges and deposits that are Permitted Liens;

(14) intercompany loans among Foreign Subsidiaries and Guarantees by Foreign Subsidiaries permitted by Section 6.01(22);

(15) acquisitions of obligations of one or more officers or other employees of any Parent Entity, Borrower or any Subsidiary of the Borrower in connection with such officer's or employee's acquisition of Equity Interests of any Parent Entity, so long as no cash is actually advanced by the Borrower or any Restricted Subsidiary to such officers or employees in connection with the acquisition of any such obligations;

(16) Guarantees of operating leases (for the avoidance of doubt, excluding Capital Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case, entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business;

(17) Investments to the extent that payment for such Investments is made with Equity Interests of any Parent Entity;

(18) Investments consisting of the redemption, purchase, repurchase or retirement of any Equity Interests permitted under Section 6.06;

-
- (19) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers;
- (20) Guarantees of Indebtedness permitted under Section 6.01;
- (21) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Borrower or any Restricted Subsidiary;
- (22) Investments, including loans and advances, to any Parent Entity so long as Borrower or any Restricted Subsidiary would otherwise be permitted to make a Restricted Payment in such amount; *provided* that the amount of any such Investment will be deemed to be a Restricted Payment under the appropriate clause of Section 6.06 for all purposes of this Agreement;
- (23) Investments consisting of the leasing or licensing of intellectual property in the ordinary course of business or the contribution of intellectual property pursuant to joint marketing arrangements with other Persons;
- (24) purchases or acquisitions of inventory, supplies, materials and equipment or purchases or acquisitions of contract rights or intellectual property in each case in the ordinary course of business;
- (25) Investments in assets useful in the business of the Borrower or any Restricted Subsidiary made with (or in an amount equal to) any Reinvestment Deferred Amount or Below Threshold Asset Sale Proceeds; *provided* that if the underlying Asset Sale was with respect to assets of the Borrower or a Subsidiary Loan Party, then such Investment shall be consummated by the Borrower or a Subsidiary Loan Party;
- (26) any Investment in a Receivables Subsidiary or any Investment by a Receivables Subsidiary in any other Person, in each case in connection with a Qualified Receivables Financing, including Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Receivables Financing or any related Indebtedness;
- (27) intercompany current liabilities owed to Unrestricted Subsidiaries or joint ventures incurred in the ordinary course of business in connection with the cash management operations of the Borrower and its Subsidiaries;
- (28) Investments that are made with Excluded Contributions;
- (29) additional Investments; *provided* that the aggregate fair market value of such Investments made since the Closing Date that remain outstanding (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value), when taken together with the aggregate amount of payments made with respect to Junior Financings pursuant to Section 6.09(2)(c) and Restricted Payments pursuant to Section 6.06(17), does not exceed the greater of (a) \$40.0 million and (b) 10.25% of Consolidated Total Assets as of the date any such Investment is made, in each case, *plus* any returns of capital actually received by the Borrower or any of the Restricted Subsidiary in respect of such Investments;
- (30) Investments by the Borrower in the Captive Insurance Company; *provided* that the aggregate amount of such Investments by the Borrower in the Captive Insurance Company may not exceed an initial amount of \$15.0 million plus an additional \$5.0 million per fiscal year following the fiscal year in which such initial investment was made;
- (31) Investments in Indebtedness of the Borrower or any of its Restricted Subsidiaries; *provided* that an Investment in Junior Financing will be treated as a repayment thereof for purposes of compliance with the covenant described in Section 6.09(2) and such Investment will be permitted only to the extent a repayment of such Junior Financing would be permitted at the time of such Investment and *provided*,

further, that any Investments in Indebtedness of any Restricted Subsidiary that is not a Guarantor, taken together with intercompany investments made pursuant to Section 6.04(5), may not exceed the greater of (i) \$15.0 million and (ii) 3.75% of Consolidated Total Assets as of the date any such Investment is made, plus an amount equal to any returns of capital or sale proceeds actually received in respect of any such Investments (which such amount shall not exceed the amount of such Investment (as determined therein) at the time such Investment was made); and

(32) any Investment, if (a) no Event of Default is continuing immediately prior to making such Investment or would result therefrom and (b) the Total Net Leverage Ratio, on a Pro Forma Basis, is less than or equal to 4.50 to 1.00.

SECTION 6.05. Mergers, Consolidations, Sales of Assets and Acquisitions. Merge into, or consolidate or amalgamate with, any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer or otherwise dispose of (in one transaction or in a series of transactions) all or any part of its assets, or issue, sell, transfer or otherwise dispose of any Equity Interests of any Restricted Subsidiary, or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other Person or any division, unit or business of any other Person, except that this Section 6.05 will not prohibit:

(1) if at the time thereof and immediately after giving effect thereto no Event of Default has occurred and is continuing or would result therefrom:

(a) the merger, consolidation or amalgamation of any Restricted Subsidiary into (or with) the Borrower in a transaction in which the Borrower is the survivor;

(b) the merger, consolidation or amalgamation of any Restricted Subsidiary into or with any Subsidiary Loan Party in a transaction in which the surviving or resulting entity is a Subsidiary Loan Party;

and, in the case of each of the foregoing clauses (a) and (b), no Person other than the Borrower or a Subsidiary Loan Party receives any consideration;

(c) the merger, consolidation or amalgamation of any Restricted Subsidiary that is not a Loan Party into or with any other Restricted Subsidiary that is not a Loan Party;

(d) any transfer of inventory among the Borrower and its Restricted Subsidiaries or between Restricted Subsidiaries and any other transfer of property or assets among the Borrower and its Restricted Subsidiaries or between Restricted Subsidiaries, in each case, in the ordinary course of business;

(e) the liquidation or dissolution or change in form of entity of any Restricted Subsidiary of the Borrower if a Responsible Officer of the Borrower determines in good faith that such liquidation, dissolution or change in form is in the best interests of the Borrower and is not materially disadvantageous to the Lenders;

(f) the merger, consolidation or amalgamation of any Restricted Subsidiary with or into any other Person in order to effect a Permitted Investment so long as the continuing or surviving Person will be a Subsidiary Loan Party if the merging, consolidating or amalgamating Subsidiary was a Subsidiary Loan Party and which, together with each of its Subsidiaries, shall have complied with the requirements of Section 5.10; or

(g) a merger or consolidation of the Borrower into a newly formed entity organized under the laws of the United States of America, any state thereof or the District of Columbia in connection with a Permitted Change of Control; *provided* that either the Borrower shall be the surviving Person in such transaction or the Person surviving such transaction shall expressly assume, pursuant to an instrument reasonably satisfactory to the Administrative Agent, all liabilities and obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is party;

(2) any sale, transfer or other disposition if:

- (a) the Net Cash Proceeds therefrom are to be applied in accordance with Section 2.08(1);
- (b) at least 75% of the consideration therefor is in the form of cash and Cash Equivalents; and
- (c) such sale, transfer or disposition is made for fair market value (as determined by a Responsible Officer of the Borrower in good faith);

provided that each of the following items will be deemed to be cash for purposes of this Section 6.05(2):

- (i) any liabilities of the Borrower or the Restricted Subsidiaries (as shown on the most recent Required Financial Statements or in the notes thereto), other than liabilities that are by their terms subordinated in right of payment to the Obligations, that are assumed by the transferee with respect to the applicable disposition and for which the Borrower and the Restricted Subsidiaries have been validly released by all applicable creditors in writing;
 - (ii) any securities received by the Borrower or any Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of the applicable disposition; and
 - (iii) any Designated Non-Cash Consideration received in respect of such disposition; *provided* that the aggregate fair market value of all such Designated Non-Cash Consideration, as determined by a Responsible Officer of the Borrower in good faith, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (iii) that is then outstanding, does not exceed the greater of (A) \$40.0 million and (B) 10.25% of Consolidated Total Assets as of the date any such Designated Non-Cash Consideration is received, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value;
- (3) (a) the purchase and sale of inventory in the ordinary course of business, (b) the acquisition or lease (pursuant to an operating lease) of any other asset in the ordinary course of business, (c) the sale of surplus, obsolete, damaged or worn out equipment or other property in the ordinary course of business or (d) the disposition of Cash Equivalents (or Investments that were Cash Equivalents when made);
- (4) Sale and Lease-Back Transactions permitted by Section 6.03;
 - (5) Investments permitted by Section 6.04, (including any Permitted Acquisition or merger, consolidation or amalgamation in order to effect a Permitted Acquisition), *provided*, that, following any such merger, consolidation or amalgamation involving the Borrower, the Borrower is the surviving corporation;
 - (6) Permitted Liens; and
 - (7) Restricted Payments permitted by Section 6.06;

(8) the sale or discount of overdue or defaulted receivables in the ordinary course of business and not as part of an accounts receivables financing transaction;

(9) leases, licenses, or subleases or sublicenses of any real or personal property in the ordinary course of business;

(10) sales, leases or other dispositions of inventory of the Borrower or any Restricted Subsidiary determined by the management of the Borrower to be no longer useful or necessary in the operation of the business of the Borrower or such Restricted Subsidiary;

(11) acquisitions and purchases made with Below Threshold Asset Sale Proceeds;

(12) to the extent allowable under Section 1031 of the Code (or comparable or successor provision), any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Borrower or any Restricted Subsidiary that is not in contravention of Section 6.08; *provided* that to the extent the property being transferred constitutes Term Priority Collateral, such replacement property will constitute Term Priority Collateral;

(13) any sale, transfer or other disposition, in a single transaction or a series of related transactions, of any asset or assets having a fair market value, as determined by a Responsible Officer of the Borrower in good faith, of not more than \$5.0 million.

To the extent any Collateral is disposed of in a transaction expressly permitted by this Section 6.05 to any Person other than Holdings, the Borrower or any Guarantor, such Collateral will be free and clear of the Liens created by the Loan Documents, and the Administrative Agent will take, and each Lender hereby authorizes the Administrative Agent to take, any actions reasonably requested by the Borrower in order to evidence the foregoing, in each case, in accordance with Section 10.18.

SECTION 6.06. Restricted Payments. Declare or pay any dividend or make any other distribution (by reduction of capital or otherwise), directly or indirectly, whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests (other than dividends and distributions on Equity Interests payable solely by the issuance of additional Equity Interests (other than Disqualified Stock) of the Person paying such dividends or distributions) or directly or indirectly redeem, purchase, retire or otherwise acquire for value any of its Equity Interests or set aside any amount for any such purpose (other than through the issuance of additional Equity Interests (other than Disqualified Stock) of the Person redeeming, purchasing, retiring or acquiring such shares) (the foregoing, "**Restricted Payments**") other than:

(1) the making of any Restricted Payment in exchange for, or out of or with the net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary of the Borrower) of, Equity Interests of the Borrower (other than Disqualified Stock) or from the substantially concurrent contribution of common equity capital to the Borrower, other than (a) Excluded Contributions, (b) [reserved] and (c) any such proceeds that are used prior to the date of determination to (i) make an Investment under Section 6.04(3), a Restricted Payment under Section 6.06(15) or a payment in respect of Junior Financing under Section 6.09(2)(a), in each case utilizing the Available Amount, (ii) make a Restricted Payment under Section 6.06(2)(b) or (iii) incur Contribution Indebtedness;

(2) Restricted Payments to any Parent Entity the proceeds of which are used to purchase, retire, redeem or otherwise acquire, or to any Parent Entity for the purpose of paying to any other Parent Entity to purchase, retire, redeem or otherwise acquire, the Equity Interests of such Parent Entity (including related stock appreciation rights or similar securities) held directly or indirectly by then present or former directors, consultants, officers, employees, managers or independent contractors of Holdings, the Borrower or any of the Restricted Subsidiaries or any Parent Entity or their estates, heirs, family members, spouses or former spouses (including for all purposes of this clause (2), Equity Interests held by any entity whose Equity Interests are held by any such future, present or former employee, officer, director, manager, consultant or independent contractor or their estates, heirs, family members, spouses or former spouses) pursuant

to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement or any stock subscription or shareholder or similar agreement; *provided* that the aggregate amount of such purchases or redemptions may not exceed:

(a) \$15.0 million in any fiscal year (with any unused amounts in any fiscal year being carried over to the next three succeeding fiscal years); plus

(b) the amount of net cash proceeds contributed to the Borrower that were received by any Parent Entity since the Closing Date from sales of Equity Interests of any Parent Entity to directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Borrower or any Restricted Subsidiary in connection with permitted employee compensation and incentive arrangements, other than (a) Excluded Contributions, (b) [reserved] and (c) any such proceeds that are used prior to the date of determination to (1) make an Investment under Section 6.04(3), a Restricted Payment under Section 6.06(15) or a payment in respect of Junior Financing under Section 6.09(2)(a), in each case utilizing the Available Amount, (2) make a Restricted Payment under Section 6.06(1) or (3) incur Contribution Indebtedness; plus

(c) the amount of net proceeds of any key man life insurance policies received during such fiscal year; plus

(d) the amount of any bona fide cash bonuses otherwise payable to directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Borrower or any Restricted Subsidiary that are foregone in return for the receipt of Equity Interests, the fair market value of which is equal to or less than the amount of such cash bonuses, which, if not used in any year, may be carried forward to any subsequent fiscal year;

and *provided, further*, that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Borrower or any Restricted Subsidiary in connection with a repurchase of Equity Interests of any Parent Entity will not be deemed to constitute a Restricted Payment;

(3) Restricted Payments to consummate the Transactions;

(4) at any time after the consummation of a Qualified IPO, Restricted Payments in an amount equal to 6.0% per annum of the net cash proceeds received from any public sale of the Equity Interests of the Borrower or any Parent Entity that are contributed to the Borrower in cash;

(5) Restricted Payments in the form of cash distributions to any Parent Entity that files, or to any Parent Entity for the purpose of paying to any other Parent Entity that files, a consolidated, combined or unitary U.S. federal, state or local income tax return that includes the Borrower and the Subsidiaries (or the taxable income thereof), or to any Parent Entity that is a partner or a sole owner of the Borrower in the event the Borrower is treated as a partnership or a “disregarded entity” for U.S. federal income tax purposes, to pay U.S. federal, state or local income taxes, in each case, in an amount not to exceed the amount that the Borrower and its relevant Subsidiaries would have been required to pay in respect of the applicable U.S. federal or state or local income taxes had Borrower been the parent of a consolidated group only including the Borrower and its subsidiaries included in the applicable consolidated, combined or unitary return; *provided, however*, that any distributions pursuant to the foregoing in respect of any tax liability attributed to taxable income of any Unrestricted Subsidiary shall be permitted only to the extent that cash distributions were made by such Unrestricted Subsidiary to the Borrower or any of its Restricted Subsidiary for such purpose;

(6) Restricted Payments to permit any Parent Entity to:

(a) pay operating, overhead, legal, accounting and other professional fees and expenses (including directors’ fees and expenses and administrative, legal, accounting, filings and similar expenses), in each case to the extent related to its separate existence as a holding company or to its ownership of the Borrower and the Restricted Subsidiaries;

(b) pay fees and expenses related to any public offering or private placement of debt or equity securities of, or incurrence of any Indebtedness by, any Parent Entity or any Permitted Investment, whether or not consummated;

-
- (c) pay franchise taxes and other similar taxes and expenses, in each case, in connection with the maintenance of its legal existence;
- (d) make payments under transactions permitted under Section 6.07 (other than Section 6.07(8)) or Article VII, in each case to the extent such payments are due at the time of such Restricted Payment; or
- (e) pay customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers, employees, directors, managers, consultants or independent contractors of any Parent Entity to the extent related to its ownership of the Borrower and the Restricted Subsidiaries;
- (7) non-cash repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;
- (8) Restricted Payments to allow any Parent Entity to make, or to any Parent Entity for the purpose of paying to any other Parent Entity to make, payments in cash, in lieu of the issuance of fractional shares, upon the exercise of warrants or upon the conversion or exchange of Equity Interests of any such Person, in connection with any merger, consolidation, amalgamation or other business combination, or in connection with any dividend, distribution or split of Equity Interests;
- (9) so long as no Event of Default is continuing, Restricted Payments to any Parent Entity for the purpose of paying (a) monitoring, consulting, management, transaction, advisory, termination or similar fees payable to any Sponsor or any Affiliate of Sponsor in accordance with the Management Agreement in an amount not to exceed amounts payable pursuant to the Management Agreement (it being understood that any amounts that are not paid due to the existence of an Event of Default shall accrue and may be paid when the applicable Event of Default ceases to exist or is otherwise waived) and (b) indemnities, reimbursements and reasonable and documented out-of-pocket fees and expenses of any Sponsor or any Affiliate of Sponsor;
- (10) Restricted Payments to the Borrower or any Restricted Subsidiary (or, in the case of non-Wholly Owned Subsidiaries, to the Borrower and to each other owner of Equity Interests of such Restricted Subsidiary on a *pro rata* basis (or more favorable basis from the perspective of the Borrower or such Restricted Subsidiary) based on their relative ownership interests so long as any repurchase of its Equity Interests from a Person that is not the Borrower or a Restricted Subsidiary is permitted under Section 6.04);
- (11) Restricted Payments to any Parent Entity to finance, or to any Parent Entity for the purpose of paying to any other Parent Entity to finance, any Permitted Investment; *provided* that (a) such Restricted Payment is made substantially concurrently with the closing of such Investment and (b) promptly following the closing thereof, such Parent Entity causes (i) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or any Restricted Subsidiary of the Borrower or (ii) the merger, consolidation or amalgamation (to the extent permitted by Section 6.05) of the Person formed or acquired into the Borrower or any Restricted Subsidiary of the Borrower in order to consummate such Permitted Investment, in each case, in accordance with the requirements of Section 5.10;
- (12) the payment of any dividend or distribution or consummation of any redemption within 60 days after the date of declaration thereof or the giving of a redemption notice related thereto, if at the date of declaration or notice such payment would have complied with the provisions of this Agreement;

-
- (13) Restricted Payments as part of a Permitted Change of Control;
 - (14) the distribution, as a dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Borrower or any Restricted Subsidiary by, one or more Unrestricted Subsidiaries (other than Unrestricted Subsidiaries the primary assets of which are cash or Cash Equivalents);
 - (15) any Restricted Payment in an amount not to exceed the Available Amount on the date such Restricted Payment is made if (a) no Event of Default is continuing immediately prior to making such Restricted Payment or would result therefrom and (b) the Interest Coverage Ratio would be at least 2.00 to 1.00 after giving effect thereto;
 - (16) any Restricted Payment, if (a) no Event of Default is continuing immediately prior to making such Restricted Payment or would result therefrom and (b) the Total Net Leverage Ratio, on a Pro Forma Basis, is less than or equal to 4.50 to 1.00; or
 - (17) additional Restricted Payments in an aggregate amount, when taken together with the aggregate amount of payments made with respect to Junior Financings pursuant to Section 6.09(2)(c) and Investments made pursuant to Section 6.04(29) that remain outstanding, not to exceed \$20.0 million.

SECTION 6.07. Transactions with Affiliates. Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates in a transaction involving aggregate consideration in excess of \$5.0 million, unless such transaction is (i) otherwise permitted (or required) under this Agreement or (ii) upon terms no less favorable to the Borrower and the Restricted Subsidiaries, as applicable, than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate, except that this Section 6.07 will not prohibit:

- (1) transactions between or among (a) the Borrower and the Restricted Subsidiaries or (b) the Borrower and any Person that becomes a Restricted Subsidiary as a result of such transaction (including by way of a merger, consolidation or amalgamation in which a Loan Party is the surviving entity);
- (2) so long as no Event of Default is continuing, payment of management, monitoring, consulting, transaction, oversight, advisory and similar fees and payment of all expenses and indemnification claims, in each case, in accordance with the Management Agreement (it being understood that any amounts that are not paid due to the existence of an Event of Default will accrue and may be paid when the applicable Event of Default ceases to exist or is otherwise waived);
- (3) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, equity purchase agreements, stock options and stock ownership plans approved by the Board of Directors of the Borrower or any Parent Entity in good faith;
- (4) loans or advances to employees or consultants of any Parent Entity, the Borrower or any Restricted Subsidiary in accordance with Section 6.04(2);
- (5) the payment of fees, reasonable out-of-pocket costs and indemnities to directors, officers, consultants and employees of any Parent Entity, the Borrower or any of the Restricted Subsidiaries in the ordinary course of business (limited, in the case of any Parent Entity, to the portion of such fees and expenses that are allocable to the Borrower and the Restricted Subsidiaries (which shall be 100% for so long as such Parent Entity owns no assets other than the Equity Interests in the Borrower and assets incidental to the ownership of the Borrower and its Restricted Subsidiaries));
- (6) a Permitted Change of Control and the payment of Permitted Change of Control Costs and other transactions, agreements and arrangements in existence on the Closing Date and set forth on Schedule 6.07 or any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect as determined in good faith by a Responsible Officer of the Borrower;

-
- (7) (a) any employment agreements entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business, (b) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers or directors and (c) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transactions pursuant thereto;
- (8) Restricted Payments permitted under Section 6.06, including payments to any Parent Entity;
- (9) any purchase by any Parent Entity of the Equity Interests of the Borrower and the purchase by the Borrower of Equity Interests in any Restricted Subsidiary;
- (10) payments to the Sponsors for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by the majority of the Board of Directors of the Borrower, or a majority of the Disinterested Directors of the Borrower, in good faith;
- (11) transactions with Restricted Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the ordinary course of business;
- (12) any transaction in respect of which the Borrower delivers to the Administrative Agent (for delivery to the Lenders) a letter addressed to the Board of Directors of Holdings or the Borrower from an accounting, appraisal or investment banking firm, in each case, of nationally recognized standing that is (a) in the good faith determination of the Borrower qualified to render such letter and (b) reasonably satisfactory to the Administrative Agent, which letter states that such transaction is on terms that are no less favorable to the Borrower or the Restricted Subsidiaries, as applicable, than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate;
- (13) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business;
- (14) the issuance, sale or transfer of Equity Interests of the Borrower to any Parent Entity and capital contributions by any Parent Entity to the Borrower (and payment of reasonable out-of-pocket expenses incurred by the Sponsors in connection therewith);
- (15) the issuance of Equity Interests to the management of Holdings, the Borrower or any of the Restricted Subsidiaries in connection with a Permitted Change of Control;
- (16) payments by Holdings, the Borrower or any of the Restricted Subsidiaries pursuant to tax sharing agreements among Holdings, the Borrower and any of the Restricted Subsidiaries;
- (17) payments or loans (or cancellation of loans) to employees or consultants that are:
- (a) approved by a majority of the Disinterested Directors of Holdings or the Borrower in good faith;
 - (b) made in compliance with applicable law; and
 - (c) otherwise permitted under this Agreement;
- (18) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case, in the ordinary course of business and otherwise in compliance with the terms of this Agreement, that are fair to the Borrower and the Restricted Subsidiaries;

(19) transactions between or among the Borrower and the Restricted Subsidiaries and any Person, a director of which is also a director of the Borrower or any Parent Entity, so long as (a) such director abstains from voting as a director of the Borrower or such Parent Entity, as the case may be, on any matter involving such other Person and (b) such Person is not an Affiliate of the Borrower for any reason other than such director's acting in such capacity;

(20) transactions pursuant to, and complying with, the provisions of Section 6.01, Section 6.04 or Section 6.05(1);

(21) the existence of, or the performance by any Loan Party of its obligations under the terms of, any customary registration rights agreement to which a Loan Party or any Parent Entity is a party or becomes a party in the future; and

(22) intercompany transactions undertaken in good faith (as certified by a Responsible Officer of the Borrower) for the purpose of improving the consolidated tax efficiency of Holdings and the Restricted Subsidiaries and not for the purpose of circumventing any covenant set forth herein.

SECTION 6.08. Business of the Borrower and its Subsidiaries. Notwithstanding any other provisions hereof, engage at any time in any business or business activity other than any business or business activity conducted by the Borrower and the Restricted Subsidiaries on the Closing Date (after giving effect to the Transactions) and any similar, corollary, related, ancillary, incidental or complementary business or business activities or a reasonable extension, development or expansion thereof or ancillary thereto.

SECTION 6.09. Limitation on Payments and Modifications of Indebtedness; Modifications of Certificate of Incorporation, By Laws and Certain Other Agreements; etc.

(1) amend or modify in any manner materially adverse to the Lenders the articles or certificate of incorporation (or similar document), by-laws, limited liability company operating agreement, partnership agreement or other organizational documents of the Borrower or any Restricted Subsidiary;

(2) make any cash payment or other distribution in cash in respect of, or amend or modify, or permit the amendment or modification of, any provision of, any Junior Financing, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposits, on account of the purchase, redemption, retirement, acquisition, cancellation or termination in respect of any Junior Financing; except in the case of this clause (2):

(a) payments in respect of Junior Financings in an amount not to exceed the Available Amount on the date the payments are made if (i) no Event of Default is continuing immediately prior to making such Restricted Payment or would result therefrom and (ii) the Interest Coverage Ratio would be at least 2.00 to 1.00 on Pro Forma Basis after giving effect thereto;

(b) payments in respect of Junior Financings so long as (i) immediately after giving effect to such payment, the Borrower's Total Net Leverage Ratio is 4.50 to 1.00 or less and (ii) no Event of Default is continuing immediately prior to making such Restricted Payment or would result therefrom;

(c) additional payments in respect of Junior Financings, when taken together with the aggregate amount of payments made with respect to Investments pursuant to Section 6.04(29) and Restricted Payments pursuant to Section 6.06(17), in an amount not to exceed the greater of (i) \$20.0 million and (ii) 5.00% of Consolidated Total Assets as of the date such payment is made;

(d) (i) the conversion or exchange of any Junior Financing into or for Equity Interests of any Parent Entity or other Junior Financing and (ii) any payment that is intended to prevent any Junior Financing from being treated as an "applicable high yield discount obligation" within the meaning of Section 163(i)(1) of the Code;

(e) the incurrence of Permitted Refinancing Indebtedness in respect thereof;

(f) (i) payments of regularly scheduled principal and interest; (ii) mandatory offers to repay, repurchase or redeem (including in connection with the Net Cash Proceeds of Asset Sales); (iii) mandatory prepayments of principal, premium and interest; and (iv) payments of fees, expenses and indemnification obligations, in each case, with respect to such Junior Financing; and

(g) payments or distributions in respect of all or any portion of such Junior Financing with the proceeds contributed directly or indirectly to the Borrower by any Parent Entity from the issuance, sale or exchange by any Parent Entity of Equity Interests made within 18 months prior thereto; or

(3) permit any Material Subsidiary to enter into any agreement or instrument that by its terms restricts (a) with respect to any such Material Subsidiary that is not a Guarantor, Restricted Payments from such Material Subsidiary to the Borrower or any other Loan Party that is a direct or indirect parent of such Material Subsidiary or (b) with respect to any such Material Subsidiary that is a Guarantor, the granting of Liens by such Material Subsidiary pursuant to the Security Documents; except in the case of this clause (3):

(a) restrictions imposed by applicable law;

(b) contractual encumbrances or restrictions:

(i) under the ABL Loan Documents;

(ii) under the New Senior Notes Documents; or

(iii) under any agreement relating to Ratio Debt, Indebtedness incurred pursuant to Section 6.01(1), (2), (3), (4), (5), (7), (12), (16), (21), (22), (25) or (28), Indebtedness that is secured on a *pari passu* basis with Indebtedness under the Loan Documents or Indebtedness under the ABL Credit Agreement, or any Permitted Refinancing Indebtedness in respect thereof, that does not materially expand the scope of any such encumbrance or restriction;

(c) any restriction on a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Equity Interests or assets of a Restricted Subsidiary pending the closing of such sale or disposition;

(d) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;

(e) any restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

(f) customary provisions contained in leases or licenses of intellectual property and other similar agreements entered into in the ordinary course of business;

(g) customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(h) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(i) customary restrictions and conditions contained in any agreement relating to the sale, transfer or other disposition of any asset permitted under Section 6.05 pending the consummation of such sale, transfer or other disposition;

(j) customary restrictions and conditions contained in the document relating to any Lien, so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 6.09;

(k) customary net worth provisions contained in Real Property leases entered into by Restricted Subsidiaries, so long as a Responsible Officer of the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower and the other Restricted Subsidiaries to meet their ongoing obligations;

(l) any agreement in effect at the time any Person becomes a Restricted Subsidiary, so long as such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary;

(m) restrictions in agreements representing Indebtedness permitted under Section 6.01 of a Restricted Subsidiary that is not a Subsidiary Loan Party;

(n) customary restrictions on leases, subleases, licenses or Equity Interests or asset sale agreements otherwise permitted hereby as long as such restrictions relate to the Equity Interests and assets subject thereto;

(o) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; or

(p) any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (o) above, so long as such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, not materially more restrictive with respect to such Lien, dividend and other payment restrictions, taken as a whole, than those contained in the Lien, dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

ARTICLE VII

Holdings Covenant

SECTION 7.01. Holdings Covenant. Holdings will not, so long as this Agreement is in effect and until all Obligations (other than Obligations in respect of (i) Specified Hedge Agreements and Cash Management Obligations that are not then due and payable and (ii) contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full, unless the Required Lenders otherwise consent in writing, conduct, transact or otherwise engage in any active trade or business or operations other than through the Borrower and its Subsidiaries.

The foregoing will not prohibit Holdings from taking actions related to the following (and activities incidental thereto):

- (1) its ownership of the Equity Interests of the Borrower;
- (2) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance);
- (3) the performance of its obligations with respect to the ABL Credit Agreement, the Term Facility, the New Senior Notes and other Indebtedness permitted by this Agreement;
- (4) any offering of its common stock or any other issuance of its Equity Interests;

-
- (5) the making of Restricted Payments; *provided* that Holdings will not be permitted to make Restricted Payments using the cash from the Borrower or any Subsidiary unless such cash has been dividended or otherwise distributed to Holdings as a permitted Restricted Payment pursuant to the terms of Section 6.06;
 - (6) the incurrence of Permitted Holdings Debt;
 - (7) making contributions to the capital or acquiring Equity Interests of its Subsidiaries;
 - (8) guaranteeing the obligations of the Borrower and its Subsidiaries;
 - (9) participating in tax, accounting and other administrative matters as a member or parent of the consolidated group;
 - (10) holding any cash or property (including cash and property received in connection with Restricted Payments made by the Borrower, but excluding the Equity Interests of any Person other than the Borrower);
 - (11) providing indemnification to officers and directors;
 - (12) the making of Investments consisting of Cash Equivalents or, to the extent not made for speculative purposes, Investment Grade Securities;
 - (13) the consummation of the Transactions on the Closing Date and any Permitted Change of Control; and
 - (14) activities incidental to the businesses or activities described above.

ARTICLE VIII

Events of Default

SECTION 8.01. Events of Default. In case of the happening of any of the following events (each, an *'Event of Default'*):

- (1) any representation or warranty made by Holdings, the Borrower or any other Loan Party herein or in any other Loan Document or any certificate or document required to be delivered pursuant hereto or thereto proves to have been false or misleading in any material respect when so made;
- (2) default is made in the payment of any principal of any Term Loan when and as the same becomes due and payable, whether at the due date thereof, at a date fixed for prepayment thereof, by acceleration thereof or otherwise;
- (3) default is made in the payment of any interest on any Term Loan or in the payment of any Fee or any other amount due under any Loan Document (other than an amount referred to in clause (2) of this Section 8.01), when and as the same becomes due and payable, and such default continues unremedied for a period of five Business Days;
- (4) default is made in the due observance or performance by Holdings, the Borrower or any Restricted Subsidiary of any covenant, condition or agreement contained in Section 5.01(1), 5.05(1) or 5.08 or in Article VI or Article VII (in each case solely to the extent applicable to such Person);
- (5) default is made in the due observance or performance by Holdings, the Borrower or any Restricted Subsidiary of any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (2), (3) and (4) of this Section 8.01), in each case solely to the extent applicable to such Person, and such default continues unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Borrower;

(6) (a) any event or condition occurs that (i) results in any Material Indebtedness becoming due prior to its scheduled maturity or (ii) enables or permits (with all applicable grace periods having expired) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity or (b) the Borrower or any Restricted Subsidiary fails to pay the principal of any Material Indebtedness at the stated final maturity thereof; *provided* that this clause (6) will not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; *provided, further*, that such event or condition is unremedied and is not waived or cured by the holders of such Indebtedness prior to any acceleration of the Term Loans pursuant to this Section 8.01; *provided, further*, that the failure to observe or perform a covenant under the ABL Credit Agreement (or any Permitted Refinancing Indebtedness in respect thereof) shall not in and of itself constitute an Event of Default hereunder until the date on which the lenders under the ABL Credit Agreement (or any Permitted Refinancing Indebtedness in respect thereof) shall have accelerated payment of the ABL Obligations (or any Permitted Refinancing Indebtedness in respect thereof) and terminated the commitments with respect thereto or foreclosed upon the collateral securing the ABL Obligations (or any Permitted Refinancing Indebtedness in respect thereof);

(7) a Change in Control occurs;

(8) an involuntary proceeding is commenced or an involuntary petition is filed in a court of competent jurisdiction seeking:

(a) relief in respect of Holdings, the Borrower or any of the Material Subsidiaries, or of a substantial part of the property or assets of Holdings, the Borrower or any Material Subsidiary, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law;

(b) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, the Borrower or any of the Material Subsidiaries or for a substantial part of the property or assets of Holdings, the Borrower or any Restricted Subsidiary; or

(c) the winding up or liquidation of Holdings, the Borrower or any Material Subsidiary (except, in the case of any Material Subsidiary, in a transaction permitted by Section 6.05) and such proceeding or petition continues undismissed for 60 days or an order or decree approving or ordering any of the foregoing is entered;

(9) Holdings, the Borrower or any Material Subsidiary:

(a) voluntarily commences any proceeding or files any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law;

(b) consents to the institution of, or fails to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (8) of this Section 8.01;

(c) applies for or consents to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, the Borrower or any of the Material Subsidiaries or for a substantial part of the property or assets of Holdings, the Borrower or any Material Subsidiary;

- (d) files an answer admitting the material allegations of a petition filed against it in any such proceeding;
- (e) makes a general assignment for the benefit of creditors; or
- (f) becomes unable or admits in writing its inability or fails generally to pay its debts as they become due;

(10) the Borrower or any Restricted Subsidiary fails to pay one or more final judgments aggregating in excess of \$25.0 million (to the extent not covered by insurance), which judgments are not discharged or effectively waived or stayed for a period of 45 consecutive days, or any action is legally taken by a judgment creditor to levy upon assets or properties of the Borrower or any other Subsidiary Loan Party to enforce any such judgment;

(11) (a) a trustee is appointed by a United States district court to administer any Plan or (b) an ERISA Event or ERISA Events occurs with respect to any Plan or Multiemployer Plan, and, in each case, with respect to clauses (a) and (b) above, such event or condition, together with all other such events or conditions, if any, is reasonably expected to have a Material Adverse Effect; or

(12) (a) any material provision of any Loan Document ceases to be, or is asserted in writing by Holdings, the Borrower or any Restricted Subsidiary not to be, for any reason, a legal, valid and binding obligation of any party thereto, (b) any security interest purported to be created by any Security Document and to extend to assets that are not immaterial to Holdings, the Borrower and the Restricted Subsidiaries on a consolidated basis ceases to be, or is asserted in writing by the Borrower or any other Loan Party not to be, a valid and perfected security interest in the securities, assets or properties covered thereby, except to the extent that any such loss of validity, perfection or priority results from the limitations of foreign laws, rules and regulations as they apply to pledges of Equity Interests in Foreign Subsidiaries or the application thereof, or from the failure of the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under a Security Document or to file Uniform Commercial Code continuation statements and except to the extent that such loss is covered by a lender's title insurance policy and the Collateral Agent is reasonably satisfied with the credit of such insurer or (c) the Guarantees pursuant to the Security Documents by any Loan Party of any of the Obligations cease to be in full force and effect (other than in accordance with the terms thereof) or are asserted in writing by Holdings, the Borrower or any other Subsidiary Loan Party not to be in effect or not to be legal, valid and binding obligations, except in the cases of clauses (a) and (b), in connection with an Asset Sale permitted by this Agreement;

then, (i) upon the occurrence of any such Event of Default (other than an Event of Default with respect to the Borrower described in clause (8) or (9) of this Section 8.01), and at any time thereafter during the continuance of such Event of Default, the Administrative Agent, at the request of the Required Lenders, will, by notice to the Borrower, take any or all of the following actions, at the same or different times: (A) declare the Term Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Term Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, will become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; and (B) exercise all rights and remedies granted to it under any Loan Document and all of its rights under any other applicable law or in equity, and (ii) in any event with respect to the Borrower described in clause (8) or (9) of this Section 8.01, the principal of the Term Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, will automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding.

ARTICLE IX

The Agents

SECTION 9.01. Appointment.

(1) Each Lender (in its capacities as a Lender and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) hereby irrevocably designates and appoints the Administrative Agent as agent of such Lender under this Agreement and the other Loan Documents, as applicable, including as the Collateral Agent for such Lender and the other applicable Secured Parties under the applicable Security Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacities, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than the United States, each of the Lenders hereby grants to the Administrative Agent any required powers of attorney to execute any Security Document governed by the laws of such jurisdiction on such Lender's behalf. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent.

(2) To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.01(2). The agreements in this Section 9.01(2) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations. For the avoidance of doubt, no Borrower shall have liability for the actions of the Administrative Agent pursuant to the immediately preceding sentence.

(3) In furtherance of the foregoing, each Lender (in its capacities as a Lender and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) hereby appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on the Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In connection therewith, the Administrative Agent (and any Subagents appointed by the Administrative Agent pursuant to Section 9.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights or remedies thereunder at the direction of the Administrative Agent) shall be entitled to the benefits of this Article IX (including Section 9.07) as though the Administrative Agent (and any such Subagents) were an "Agent" under the Loan Documents, as if set forth in full herein with respect thereto.

(4) Each Lender (in its capacities as a Lender and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) irrevocably authorizes the Administrative Agent, at its option and in its discretion:

- (a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document:
 - (i) upon termination of the Commitments, the payment in full of all Obligations (other than Obligations in respect of (i) Specified Hedge Agreements and Cash Management Obligations that are not then due and payable and (ii) contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted);
 - (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document; or
 - (iii) if approved, authorized or ratified in writing in accordance with Section 10.08 hereof;
- (b) to release any Loan Party from its obligations under the Loan Documents if such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted hereunder; and
- (c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(3) (and to the extent required by the terms thereof as of the Closing Date).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release its interest in particular types or items of property, or to release any Loan Party from its obligations under the Loan Documents.

(5) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, (a) the Administrative Agent (irrespective of whether the principal of any Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise (i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of any or all of the Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agents and any Subagents allowed in such judicial proceeding and (ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and (b) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under the Loan Documents. Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition (each, a "**Plan of Reorganization**") affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

(6) The Lenders and each other holder of an Obligation under a Loan Document shall act collectively through the Administrative Agent and, without limiting the delegation of authority to the Administrative Agent set forth herein, the Required Lenders shall direct the Administrative Agent with respect to the exercise of rights and remedies hereunder and under other Loan Documents (including with respect to alleging the existence or occurrence of, and exercising rights and remedies as a result of, any Default or Event of Default in each case that could be waived with the consent of the Required Lenders), and such rights and remedies shall not be exercised other than through the Administrative Agent; *provided* that the foregoing shall not preclude any Lender from exercising any right of set-off in accordance with the provisions of Section 10.06 or from exercising rights and remedies (other than the enforcement of Collateral) with respect to any payment default after the occurrence of the Maturity Date with respect to any Term Loans made by it.

SECTION 9.02. Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement and the other Loan Documents (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof)) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative

Agent shall not be responsible for the negligence or misconduct of the agents or attorneys-in-fact selected by it with reasonable care. The Administrative Agent may also from time to time, when the Administrative Agent deems it to be necessary or desirable, appoint one or more trustees, co-trustees, collateral co-agents, collateral subagents or attorneys-in-fact (each, a "**Subagent**") with respect to all or any part of the Collateral; *provided* that no such Subagent shall be authorized to take any action with respect to any Collateral unless and except to the extent expressly authorized in writing by the Administrative Agent. Should any instrument in writing from the Borrower or any other Loan Party be required by any Subagent so appointed by the Administrative Agent to more fully or certainly vest in and confirm to such Subagent such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent. If any Subagent, or successor thereto, shall die, become incapable of acting, resign or be removed, all rights, powers, privileges and duties of such Subagent, to the extent permitted by law, shall automatically vest in and be exercised by the Administrative Agent until the appointment of a new Subagent. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent, attorney-in-fact or Subagent that it selects in accordance with the foregoing provisions of this Section 9.02 in the absence of the Administrative Agent's gross negligence or willful misconduct.

SECTION 9.03. Exculpatory Provisions. None of the Administrative Agent, its Affiliates or any of their respective officers, directors, employees, agents or attorneys-in-fact shall be (1) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (2) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (1) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, and (2) the Administrative Agent shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into:

- (1) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document;
- (2) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith;
- (3) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default;
- (4) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents;
- (5) the value or the sufficiency of any Collateral; or
- (6) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

SECTION 9.04. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) or conversation believed in good faith by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed in good faith by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to any Borrowing that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to such Borrowing. The Administrative Agent may consult with legal counsel (including counsel to Holdings or the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all or other Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement, all or other Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Term Loans.

SECTION 9.05. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received written notice from a Lender, Holdings or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all or other Lenders); *provided* that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

SECTION 9.06. Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that none of the Agents, the Arranger or any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of a Loan Party or any Affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Agents and Arranger that it has, independently and without reliance upon the Administrative Agent or Arranger, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates and made its own decision to make its Term Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent or Arranger, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any Affiliate of a Loan Party that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

SECTION 9.07. Indemnification. The Lenders agree to indemnify each Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), in the amount of its *pro rata* share (based on its aggregate outstanding Term Loans determined at the time such indemnity is sought or, if indemnification is sought after the date upon which the Term Loans shall have been paid in full, ratably in accordance with its *pro rata* share or the outstanding Term Loans immediately prior to the repayment or retirement in full of the Term Loans), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Term Loans) be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under or in connection with any of the foregoing; *provided* that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from the Administrative Agent's gross negligence or willful misconduct. The failure of any Lender to reimburse the Administrative Agent promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the Administrative Agent as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Administrative Agent for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Administrative Agent for such other Lender's ratable share of such amount. The agreements in this Section 9.07 shall survive the payment of the Term Loans and all other amounts payable hereunder.

SECTION 9.08. Agent in Its Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from, and generally engage in any kind of business with any Loan Party as though the Administrative Agent were not the Administrative Agent. With respect to its Term Loans made or renewed by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not the Administrative Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

SECTION 9.09. Successor Agent. The Administrative Agent may resign as Administrative Agent upon ten days' notice to the Lenders and the Borrower. If the Administrative Agent resigns as the Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall (unless a Specified Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the reference to the resigning Administrative Agent means such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Term Loans. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 10 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. If no successor agent has accepted appointment as Administrative Agent by the date that is ten days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation will nevertheless thereupon become effective, and the Required Lenders will thereafter perform all the duties of such Administrative Agent hereunder and/or under any other Loan Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent, which shall (unless a Specified Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed). After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Section 9.09 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

SECTION 9.10. Arranger. The Arranger will not have any duties, responsibilities or liabilities hereunder in its capacity as such.

ARTICLE X

Miscellaneous

SECTION 10.01. Notices; Communications.

(1) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.01(2)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or e mail, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, in each case, as follows:

(a) if to any Loan Party or the Administrative Agent, to the address, facsimile number, e mail address or telephone number specified for such Person on Schedule 10.01; and

(b) if to any other Lender, to the address, facsimile number, e mail address or telephone number specified in its Administrative Questionnaire.

(2) Notices and other communications to the Lenders may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(3) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by facsimile shall be deemed to have been given when sent and confirmation of transmission received (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 10.01(2) shall be effective as provided in such Section 10.01(2).

(4) Any party hereto may change its address, facsimile number or e mail address for notices and other communications hereunder by notice to the other parties hereto.

(5) Documents required to be delivered pursuant to Section 5.04 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically (including as set forth in Section 10.17) and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.01 or (b) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that the Borrower shall notify the Administrative Agent (by facsimile or e mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents; *provided, further*, that, upon reasonable request by the Administrative Agent, the Borrower shall also provide a hard copy to the Administrative Agent of any such document; *provided, further*, that any documents posted for which a link is provided after normal business hours for the recipient shall be deemed to have been given at the opening of business on the next Business Day for such recipient. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

SECTION 10.02. Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties herein, in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document will be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Term Loans and the execution and delivery of the Loan Documents, regardless of any investigation made by such Persons or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Term Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid and so long as the Commitments have not been terminated. Without prejudice to the survival of any other agreements contained herein, indemnification and reimbursement obligations contained herein (including pursuant to Sections 2.12, 2.14 and 10.05) shall survive the payment in full of the principal and interest hereunder and the termination of the Commitments or this Agreement.

SECTION 10.03. Binding Effect. This Agreement shall become effective when it has been executed by Holdings, the Borrower and the Administrative Agent and when the Administrative Agent has received copies hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of Holdings, the Borrower, the other Loan Parties, each Agent, each Lender and their respective permitted successors and assigns.

SECTION 10.04. Successors and Assigns.

(1) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (a) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void), and (b) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 10.04 (and any attempted assignment, transfer or delegation in contravention with this Section 10.04 shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (3) of this Section 10.04) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement or the other Loan Documents.

(2) (a) Subject to the conditions set forth in paragraph (2)(b) of this Section 10.04 (and, with respect to an assignment to Holdings, the Borrower, any Subsidiary or any of their respective Affiliates, subject to the limitations set forth in Section 10.04(10) or 10.04(14), as applicable), any Lender may assign to one or more assignees (other than a natural person, a Defaulting Lender or a Disqualified Institution) (each such non-excluded Person, an “*Assignee*”) all or a portion of its rights and obligations under this Agreement (including all or a portion of the Term Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) of:

(i) the Borrower; *provided* that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if a Specified Event of Default has occurred and is continuing, any other Person; *provided, further*, that such consent shall be deemed to have been given if the Borrower has not responded within ten Business Days after delivery of a written request therefor by the Administrative Agent; *provided, further*, that no consent of the Borrower shall be required for any assignment by the Arranger (or any Affiliate thereof) pursuant to the initial syndication of the Term Loans; and

(ii) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

(b) Assignments shall be subject to the following additional conditions:

(i) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender’s Term Loans, the amount of the Term Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall

not be less than \$1.0 million, unless each of the Borrower and the Administrative Agent otherwise consent; *provided* that (1) no such consent of the Borrower shall be required if a Specified Event of Default has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds (with simultaneous assignments to or by two or more Approved Funds being treated as one assignment for purposes of meeting the minimum assignment amount requirement), if any;

(ii) the assignee or assigning Lender to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent);

(iii) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required to be delivered pursuant to Section 2.14; and

(iv) the assignor shall deliver to the Administrative Agent any Note issued to it with respect to the assigned Term Loan.

For the purposes of this Section 10.04, "**Approved Fund**" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(c) Subject to acceptance and recording thereof pursuant to paragraph (2)(e) of this Section 10.04, from and after the effective date specified in each Assignment and Acceptance, the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.12, 2.13, 2.14 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such Assignment and Acceptance). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (4) of this Section 10.04 to the extent such participation would be permitted by such Section 10.04(4).

(d) The Administrative Agent, acting for this purpose as the Administrative Agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the principal amount (and stated interest with respect thereto) of the Term Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender (solely with respect to such Lender's Term Loans) at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee's completed Administrative Questionnaire (unless the Assignee shall already be a Lender hereunder), all applicable tax forms, any Note outstanding with respect to the assigned Term Loan, the processing and recordation fee referred to in paragraph (2)(b)(ii) of this Section 10.04 and any written consent to such assignment required by paragraph (2) of this Section 10.04, the Administrative Agent promptly shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (2)(e).

(3) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows:

(a) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim;

(b) except as set forth in clause (a) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of Holdings, the Borrower or any Restricted Subsidiary or the performance or observance by Holdings, the Borrower or any Restricted Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto;

(c) the Assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance;

(d) the Assignee confirms that it has received a copy of this Agreement, together with copies of the most recent Required Financial Statements delivered pursuant to Section 5.04, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance;

(e) the Assignee will independently and without reliance upon the Administrative Agent or the Collateral Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement;

(f) the Assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent by the terms of this Agreement, together with such powers as are reasonably incidental thereto; and

(g) the Assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(4) (a) Any Lender may, without the consent of the Administrative Agent or, subject to Section 10.04(8), the Borrower, sell participations to one or more banks or other entities (a "*Participant*") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of the Term Loans owing to it); *provided* that

(i) such Lender's obligations under this Agreement shall remain unchanged;

(ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and

(iii) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

(iv) Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; *provided* that (A) such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender

directly affected thereby pursuant to Section 10.04(1)(a) or clauses (i), (ii), (iii), (iv), (v) or (vi) of the first proviso to Section 10.08(2) and (2) directly affects such Participant and (B) no other agreement with respect to amendment, modification or waiver may exist between such Lender and such Participant. Subject to clause (4)(b) of this Section 10.04, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.14 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (2) of this Section 10.04, *provided* that such Participant agrees to be subject to the provisions of Sections 2.16(2) as if it were an assignee pursuant to paragraph (2) of this Section 10.04. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.16(2) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.06 as though it were a Lender; *provided* that such Participant shall be subject to Section 2.15(3) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Term Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103 1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(b) A Participant shall not be entitled to receive any greater payment under Section 2.12, 2.13 or 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent the entitlement to a greater payment results from a Change in Law occurring after the sale of the participation to such Participant.

(5) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank and in the case of any Lender that is an Approved Fund, any pledge or assignment to any holders of obligations owed, or securities issued, by such Lender, including to any trustee for, or any other representative of, such holders, and this Section 10.04 shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(6) The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (5) of this Section 10.04.

(7) If the Borrower wishes to replace the Term Loans with ones having different terms, it shall have the option, with the consent of the Administrative Agent and subject to at least three Business Days' advance notice to the Lenders, instead of prepaying the Term Loans to be replaced, to (a) require the Lenders to assign such Term Loans to the Administrative Agent or its designees and (b) amend the terms thereof in accordance with Section 10.08 (with such replacement, if applicable, being deemed to have been made pursuant to Section 10.08(4)). Pursuant to any such assignment, all Term Loans to be replaced shall be purchased at par (allocated among the Lenders in the same manner as would be required if such Term Loans were being optionally prepaid, and for the avoidance of doubt, subject to Section 2.21), accompanied by payment of any accrued interest and fees thereon and any amounts owing pursuant to Section 10.05(2). By receiving such purchase price, the Lenders shall automatically be deemed to have assigned the Term Loans pursuant to the terms of the form of Assignment and Acceptance attached hereto as Exhibit A, and accordingly no other action by such Lenders shall be required in connection therewith. The provisions of this paragraph (7) are intended to facilitate the maintenance of the perfection and priority of existing security interests in the Collateral during any such replacement.

(8) (a) No assignment or participation shall be made to any Person that was a Disqualified Institution as of the date (the "**Trade Date**") on which the assigning Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any Assignee that becomes a Disqualified Institution after the applicable Trade Date, (x) such Assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Acceptance with respect to such Assignee will not by itself result in such Assignee no longer being considered a Disqualified Institution. Any assignment in violation of this clause (8)(a) shall not be void, but the other provisions of this clause (8) shall apply.

(b) If any assignment or participation is made to any Disqualified Institution without the Borrower's prior written consent in violation of clause (a) above, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) [reserved.], (B) in the case of outstanding Term Loans held by Disqualified Institutions, purchase or prepay such Term Loan by paying the lowest of (x) the principal amount thereof, (y) the amount that such Disqualified Institution paid to acquire such Term Loans and (z) the market price of such Term Loans (as reasonably determined by the Borrower), in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (C) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 10.04), all of its interest, rights and obligations under this Agreement to one or more Assignees at the lowest of (x) the principal amount thereof, (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations and (z) the market price of such Term Loans (as reasonably determined by the Borrower), in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(c) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any Plan of Reorganization, each Disqualified Institution party hereto hereby agrees (1) not to vote on such Plan of Reorganization, (2) if such Disqualified Institution does vote on such Plan of Reorganization notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be "designated" pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other debtor relief laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan of Reorganization in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other debtor relief laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(d) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to provide the list of Disqualified Institutions to each Lender requesting the same; *provided* that the Lenders shall not be restricted from participating their obligations in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of the Term Loans owing to it) to Disqualified Institutions if the Borrower has not posted the list of Disqualified Institutions to the Platform.

(9) Notwithstanding anything to the contrary contained herein, no Non-Debt Fund Affiliate shall have any right to:

(a) attend (including by telephone) any meeting or discussions (or portion thereof) among the Administrative Agent or any Lender to which representatives of Holdings or the Borrower are not then present;

(b) receive any information or material prepared by the Administrative Agent or any Lender or any communication by or among Administrative Agent and one or more Lenders, except to the extent such information or materials have been made available to the Borrower or its representatives (and in any case, other than the right to receive notices of prepayments and other administrative notices in respect of its Term Loans required to be delivered to Lenders pursuant to this Agreement); or

(c) make or bring (or participate in, other than as a passive participant in or recipient of its *pro rata* benefits of) any claim, in its capacity as a Lender, against Administrative Agent or any other Lender with respect to any duties or obligations or alleged duties or obligations of such Agent or any other such Lender under the Loan Documents in the absence, with respect to any such Person, of the gross negligence, bad faith (including a material breach of obligations under the Loan Documents) or willful misconduct by such Person and its Related Parties (as determined by a court of competent jurisdiction by final and non-appealable judgment).

(10) Notwithstanding anything to the contrary contained herein, any Lender may assign all or any portion of its Term Loans hereunder to any Person who, after giving effect to such assignment, would be an Affiliated Lender; *provided* that:

(a) such assignment shall be made pursuant to (i) an open market purchase (including, for the avoidance of doubt, any purchase made during the initial syndication of the Term Loans) on a non-*pro rata* basis or (ii) a Dutch Auction open to all Lenders of the applicable Class on *apro rata* basis;

(b) in the case of an assignment to a Non-Debt Fund Affiliate, the assigning Lender and such Non-Debt Fund Affiliate purchasing such Lender's Term Loans shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit E (a "***Non-Debt Fund Affiliate Assignment and Acceptance***") in lieu of an Assignment and Acceptance;

(c) in the case of an assignment to a Non-Debt Fund Affiliate, at the time of such assignment and after giving effect to such assignment, Non-Debt Fund Affiliates shall not, in the aggregate, hold Term Loans (and participating interests in Term Loans) with an aggregate principal amount in excess of 30.0% of the principal amount of all Term Loans (including, for the avoidance of doubt, any Incremental Term Loans, Other Term Loans or Extended Term Loans, if any) then outstanding;

(d) in the case of an assignment to a Non-Debt Fund Affiliate, each Non-Debt Fund Affiliate shall at each of the time of its execution of a written trade confirmation in respect of, and at the time of consummation of, such assignment, either (i) make a No MNPI Representation or (ii) if it is not able to make the No MNPI Representation, inform the assignor and the assignor will deliver to such Non-Debt Fund Affiliate customary written assurance that it is a sophisticated investors and is willing to proceed with the assignment; and

(e) in the case of an assignment to a Non-Debt Fund Affiliate, if such Non-Debt Fund Affiliate subsequently assigns the Term Loans acquired by it in accordance with this Section 10.04(10), such Non-Debt Fund Affiliate shall at the time of such assignment of such Term Loans held by it, either (i) affirm the No MNPI Representation or (ii) if it is not able to affirm the No MNPI Representation, inform the assignee and the assignee will deliver to such Non-Debt Fund Affiliate customary written assurance that it is a sophisticated investors and is willing to proceed with the assignment.

(11) To the extent not previously disclosed to the Administrative Agent, the Borrower shall, upon reasonable request of the Administrative Agent (but not more frequently than once per calendar quarter), report to the Administrative Agent the amount and Class of Term Loans held by Non-Debt Fund Affiliates and the identity of such holders. Notwithstanding the foregoing, any Affiliated Lender shall be permitted to contribute any Term Loan so assigned to such Affiliated Lender pursuant to this Section 10.04(11) to Holdings or any of the Restricted Subsidiaries for purposes of cancellation, which contribution may be made, subject to Section 6.07, in exchange for Equity Interests (other than Disqualified Stock) of any Parent Entity or Indebtedness of the Borrower to the extent such Indebtedness is permitted to be incurred pursuant to Section 6.01 at such time; *provided* that any Term Loans so contributed shall be automatically and permanently canceled upon the effectiveness of such contribution and will thereafter no longer be outstanding for any purpose hereunder.

(12) Notwithstanding anything in Section 10.04 or the definition of "Required Lenders" to the contrary, for purposes of determining whether the Required Lenders, all affected Lenders or all Lenders have:

- (a) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom;
- (b) otherwise acted on any matter related to any Loan Document; or
- (c) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document (collectively, "**Required Lender Consent Items**");

(i) a Non-Debt Fund Affiliate shall be deemed to have voted its interest as a Lender in the same proportion as the allocation of voting with respect to such matter by Lenders who are not Non-Debt Fund Affiliates, unless such Required Lender Consent Item requires the consent of each Lender or each affected Lender or the result of such Required Lender Consent Item would reasonably be expected to deprive such Non-Debt Fund Affiliate of its *pro rata* share (compared to Lenders which are not Non-Debt Fund Affiliates) of any payments to which such Non-Debt Fund Affiliate is entitled under the Loan Documents without such Non-Debt Fund Affiliate providing its consent or such Non-Debt Fund Affiliate is otherwise adversely affected thereby compared to Lenders which are not Non-Debt Fund Affiliates (in which case for purposes of such vote such Non-Debt Fund Affiliate shall have the same voting rights as other Lenders which are not Non-Debt Fund Affiliates); and

(ii) Term Loans held by Debt Fund Affiliates may not account for more than 49.9% of the Term Loans of consenting Lenders included in determining whether the Required Lenders have consented to any action pursuant to Section 10.04.

(13) Additionally, the Loan Parties and each Non-Debt Fund Affiliate hereby agree that, and each Non-Debt Fund Affiliate Assignment and Acceptance by a Non-Debt Fund Affiliate shall provide a confirmation that, if a case under Title 11 of the United States Code is commenced against any Loan Party, such Loan Party shall seek (and each Non-Debt Fund Affiliate shall consent) to provide that the vote of any Non-Debt Fund Affiliate (in its capacity as a Lender) with respect to any plan of reorganization of such Loan Party shall not be counted except that such Non-Debt Fund Affiliate's vote (in its capacity as a Lender) may be counted to the extent any such plan of reorganization proposes to treat the Obligations or claims held by such Non-Debt Fund Affiliate in a manner that is less favorable to such Non-Debt Fund Affiliate than the proposed treatment of the Term Loans or claims held by Lenders that are not Affiliates of the Borrower.

(14) Notwithstanding anything to the contrary contained in this Agreement, any Lender may assign all or a portion of its Term Loans to any Purchasing Borrower Party; *provided that*:

(a) the assigning Lender and the Purchasing Borrower Party purchasing such Lender's Term Loans, as applicable, shall execute and deliver to the Administrative Agent a Non-Debt Fund Affiliate Assignment and Acceptance in lieu of an Assignment and Acceptance;

(b) such assignment shall be made pursuant to (i) an open market purchase on a non-pro rata basis or (ii) a Dutch Auction open to all Lenders of the applicable Class on a *pro rata* basis;

(c) any Term Loans assigned to any Purchasing Borrower Party shall be automatically and permanently cancelled upon the effectiveness of such assignment and will thereafter no longer be outstanding for any purpose hereunder;

-
- (d) at the time of and immediately after giving effect to any such purchase, no Event of Default shall exist;
 - (e) the applicable Purchasing Borrower Party shall at each of the time of its execution of a written trade confirmation in respect of, and at the time of consummation of, such assignment, either (i) make a No MNPI Representation or (ii) if it is not able to make the No MNPI Representation, inform the assignor and the assignor will deliver to such Non-Debt Fund Affiliate customary written assurance that it is a sophisticated investors and is willing to proceed with the assignment;
 - (f) the aggregate outstanding principal amount of the Term Loans of the applicable Class shall be deemed reduced by the full par value of the aggregate principal amount of the Term Loans purchased pursuant to this Section 10.04(14) and each principal repayment installment with respect to the Term Loans of such Class shall be reduced *pro rata* by the aggregate principal amount of Term Loans purchased; and
 - (g) no proceeds from revolving loans under the ABL Credit Agreement shall be used to fund any such purchases.

SECTION 10.05. Expenses; Indemnity.

(1) If the Transactions are consummated and the Closing Date occurs, the Borrower agrees to pay all reasonable, documented and invoiced out-of-pocket expenses incurred by the Administrative Agent and the Arranger in connection with the preparation of this Agreement and the other Loan Documents, or by the Administrative Agent (and, in the case of enforcement of this Agreement, each Lender) in connection with the syndication of the Term Facility, preparation, execution and delivery, amendment, modification, waiver or enforcement of this Agreement (including expenses incurred in connection with due diligence (including third party expenses) and initial and ongoing Collateral examination to the extent incurred with the reasonable prior approval of the Borrower or provided for in this Agreement) or in connection with the administration of this Agreement and any amendments, modifications or waivers of the provisions hereof or thereof, including the reasonable, documented and invoiced fees, charges and disbursements of a single counsel for the Administrative Agent and the Arranger, one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and, in the case of any actual or perceived conflict of interest, one additional firm of counsel for the Administrative Agent and the Arranger and, in the case of enforcement of this Agreement, the Lenders.

(2) The Borrower agrees to indemnify the Administrative Agent, the Arranger, each Lender, each of their respective Affiliates and each of their respective directors, officers, employees, agents, advisors, controlling Persons, equityholders, partners, members and other representatives and each of their respective successors and permitted assigns (each such Person being called an "*Indemnitee*") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and reasonable, documented and invoiced out-of-pocket fees and expenses (limited to reasonable and documented legal fees of a single firm of counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest, where the Indemnitee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of an additional counsel for each group of affected Indemnitees similarly situated, taken as a whole)), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of:

- (a) the execution or delivery of this Agreement or any other Loan Document, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the Transactions and the other transactions contemplated hereby;
- (b) the use of the proceeds of the Term Loans; or

(c) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by Holdings, the Borrower or any of their Restricted Subsidiaries or Affiliates or creditors;

provided that no Indemnitee will be indemnified for any loss, claim, damage, liability, cost or expense to the extent it (i) has been determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (A) the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties or (B) a material breach of the obligations of such Indemnitee under the Loan Documents or (ii) relates to any proceeding between or among Indemnitees other than (A) claims against Administrative Agent or Arranger or their respective Affiliates, in each case, in their capacity or in fulfilling their role as the agent or arranger, syndication agent or documentation agent or any other similar role under the Term Facility (excluding their role as a Lender) to the extent such Persons are otherwise entitled to receive indemnification under this paragraph (2) or (B) claims arising out of any act or omission on the part of Holdings, the Borrower or their Affiliates.

(3) Subject to and without limiting the generality of the foregoing sentence, the Borrower agrees to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses claims, damages, liabilities and related expenses, including reasonable, documented and invoiced fees, charges and disbursements of one firm of counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel in multiple jurisdictions) for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest, an additional counsel for all Indemnitees taken as a whole) and reasonable, documented and invoiced consultant fees, in each case, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of any claim related in any way to Environmental Laws and the Borrower or any of the Restricted Subsidiaries, or any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on or from any property for which the Borrower or any Restricted Subsidiaries would reasonably be expected to be held liable under Environmental Laws; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties.

(4) Any indemnification or payments required by the Loan Parties under this Section 10.05 shall not apply with respect to (a) Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim or (b) Taxes that are duplicative of any indemnification or payments required by the Loan Parties under Section 2.14.

(5) To the fullest extent permitted by applicable law, Holdings and the Borrower shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Term Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(6) The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement. All amounts due under this Section 10.05 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

SECTION 10.06. Right of Set-off. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Lender to or for the credit or the account of Holdings or any Subsidiary Loan Party against any of and all the Obligations of Holdings or any Subsidiary Loan Party now or hereafter existing under this Agreement or any other Loan Document held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although the Obligations may

be unmaturred. The rights of each Lender under this Section 10.06 are in addition to other rights and remedies (including other rights of set-off) that such Lender may be exercised only at the direction of the Administrative Agent or the Required Lenders.

SECTION 10.07. Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN THE OTHER LOAN DOCUMENTS) AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 10.08. Waivers: Amendment.

(1) No failure or delay of the Administrative Agent or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by Holdings, the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (2) of this Section 10.08, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on Holdings, the Borrower or any other Loan Party in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances.

(2) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except

(a) as provided in Sections 2.18, 2.19 and 2.20;

(b) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrower and the Required Lenders; and

(c) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto and the Administrative Agent and consented to by the Required Lenders;

provided, however, that except as provided in Section 2.18, 2.19 and 2.20, no such agreement shall:

(i) decrease, forgive, waive or excuse the principal amount of, or any interest on, or extend the final maturity of, or decrease the rate of interest on, any Term Loan beyond the Maturity Date, without the prior written consent of each Lender directly affected thereby;

(ii) increase or extend the Commitment of any Lender or decrease, forgive, waive or excuse the fees of any Agent without the prior written consent of such Lender or Agent (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default shall not constitute an increase of the Commitments of any Lender);

(iii) extend or waive any Term Loan Installment Date or reduce the amount due on any Term Loan Installment Date or extend any date on which payment of principal or interest on any Term Loan or any Fee is due, without the prior written consent of each Lender adversely affected thereby;

(iv) amend the provisions of Section 2.15(2) or (3) of this Agreement, Section 5.02 of the Collateral Agreement, Section 4.3 of the Intercreditor Agreement or any analogous provision of any other Loan Document, in a manner that would by its terms alter the *pro rata* sharing of payments required thereby, without the prior written consent of each Lender adversely affected thereby;

(v) amend or modify the provisions of this Section 10.08 or the definition of the term "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender (it being understood that, with the consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Term Loans are included on the Closing Date); or

(vi) release a material portion of the Collateral (or subordinate the Liens in favor of the Administrative Agent on a material portion of the Collateral including by altering the definition of "Term Priority Collateral" in the Intercreditor Agreement), unless pursuant to a transaction permitted by this Agreement, or release any of Holdings, the Borrower or any of the other Subsidiary Loan Parties from their respective Guarantees under the Collateral Agreement, unless, in the case of a Subsidiary Loan Party (other than the Borrower), all or substantially all the Equity Interests of such Subsidiary Loan Party is sold or otherwise disposed of in a transaction permitted by this Agreement, without the prior written consent of each Lender;

provided that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent acting as such at the effective date of such agreement, as applicable. Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 10.08 and any consent by any Lender pursuant to this Section 10.08 shall bind any assignee of such Lender.

(3) Without the consent of the Administrative Agent or any Lender, the Loan Parties and the Administrative Agent may (in their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment, modification or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law.

(4) This Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, Holdings and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the accrued interest and fees in respect thereof and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

(5) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Borrower may enter into Incremental Facility Amendments in accordance with Section 2.18, Refinancing Amendments in accordance with Section 2.19, Extension Amendments in accordance with Section 2.20 and Refinancing Amendments, and such Incremental Facility Amendments, Extension Amendments and Refinancing Amendments shall be effective to amend the terms of this Agreement and the other applicable Loan Documents, in each case, without any further action or consent of any other party to any Loan Document.

(6) Notwithstanding the foregoing, any amendment or waiver that by its terms affects the rights or duties of Lenders holding Term Loans or Commitments of a particular Class (but not the rights or duties of Lenders holding Term Loans or Commitments of any other Class) will require only the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto if such Class of Lenders were the only Class of Lenders.

(7) Notwithstanding the foregoing, technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent to the extent necessary to integrate any Incremental Facilities on substantially the same basis as the Term Loans, as applicable.

Notwithstanding the foregoing, the Administrative Agent, with the consent of the Borrower, may amend, modify or supplement any Loan Document without the consent of any Lender or the Required Lenders in order to correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error or other manifest error in any Loan Document, and such amendment, modification or supplement shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days following receipt of notice thereof.

SECTION 10.09. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the “*Charges*”), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender, shall exceed the maximum lawful rate (the “*Maximum Rate*”) that may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable to such Lender, shall be limited to the Maximum Rate; *provided* that such excess amount shall be paid to such Lender on subsequent payment dates to the extent not exceeding the legal limitation. In no event will the total interest received by any Lender exceed the amount which it could lawfully have received and any such excess amount received by any Lender will be applied to reduce the principal balance of the Term Loans or to other amounts (other than interest) payable hereunder to such Lender, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining will be paid to the Borrower.

SECTION 10.10. Entire Agreement. This Agreement, the other Loan Documents and the agreements regarding certain Fees referred to herein constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 10.11. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11.

SECTION 10.12. Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 10.13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract, and shall become effective as provided in Section 10.03. Delivery of an executed counterpart to this Agreement by facsimile or other electronic transmission (e.g., “pdf” or “tiff”) shall be as effective as delivery of a manually signed original.

SECTION 10.14. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 10.15. Jurisdiction; Consent to Service of Process.

(1) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York County, Borough of Manhattan and any appellate court from any thereof (collectively, "**New York Courts**"), in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State court or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or any of the other Loan Documents in the courts of any jurisdiction, except that each of the Loan Parties agrees that (a) it will not bring any such action or proceeding in any court other than New York Courts (it being acknowledged and agreed by the parties hereto that any other forum would be inconvenient and inappropriate in view of the fact that more of the Lenders who would be affected by any such action or proceeding have contacts with the State of New York than any other jurisdiction), and (b) in any such action or proceeding brought against any Loan Party in any other court, it will not assert any cross-claim, counterclaim or setoff, or seek any other affirmative relief, except to the extent that the failure to assert the same will preclude such Loan Party from asserting or seeking the same in the New York Courts.

(2) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 10.16. Confidentiality. Each of the Lenders and each of the Agents agrees (and agrees to cause each of its Affiliates) to use all information provided to it by or on behalf of Holdings, the Borrower or its Restricted Subsidiaries under the Loan Documents or otherwise in connection with the Transactions solely for the purposes of the transactions contemplated by this Agreement and the other Loan Documents and shall not publish, disclose or otherwise divulge such information, other than information that:

- (1) has become generally available to the public other than as a result of a disclosure by such party;
- (2) has been independently developed by such Lender or the Administrative Agent without violating this Section 10.16; or
- (3) was available to such Lender or the Administrative Agent from a third party having, to such Person's knowledge, no obligations of confidentiality to Holdings, the Borrower or any other Loan Party);
- (4) and shall not reveal the same other than to its directors, trustees, officers, employees and advisors with a need to know or to any Person that approves or administers the Term Loans on behalf of such Lender or any numbering, administration or settlement service providers (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16), except:
 - (a) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, the National Association of Insurance Commissioners or of any securities exchange on which securities of the disclosing party or any Affiliate of the disclosing party are listed or traded, in which case such Person agrees, to the extent practicable and not prohibited by applicable law, to inform the Borrower promptly thereof prior to disclosure;

(b) as part of normal reporting or review procedures to, or examinations by, Governmental Authorities or any bank accountants or bank regulatory authority exercising examination or regulatory authority, in which case (except with respect to any audit or examination conducted by any such bank accountant or bank regulatory authority) such Person agrees, to the extent practicable and not prohibited by applicable law, to inform the Borrower promptly thereof prior to disclosure;

(c) to its parent companies, Affiliates or auditors (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16);

(d) in order to enforce its rights under any Loan Document in a legal proceeding;

(e) to any pledgee or assignee under Section 10.04(5) or any other prospective or actual Assignee of, or prospective or actual Participant in, any of its rights under this Agreement (so long as such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16); and

(f) to any direct or indirect contractual counterparty in Hedge Agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 10.16).

(g) Notwithstanding the foregoing, no such information (other than the fact that such Disqualified Institution is a Disqualified Institution) shall be disclosed to a Disqualified Institution that constitutes a Disqualified Institution at the time of such disclosure without the Borrower's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned).

SECTION 10.17. Platform; Borrower Materials. The Borrower hereby acknowledges that (1) the Administrative Agent or the Arranger will make available to the Lenders materials or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**"), and (2) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "**Public Lender**"). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that

(a) all the Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "**PUBLIC**" shall appear prominently on the first page thereof;

(b) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arranger and the Lenders to treat the Borrower Materials as either publicly available information or not material information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws;

(c) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and

(d) the Administrative Agent and the Arranger shall be entitled to treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

Notwithstanding the foregoing, the following Borrower Materials shall be deemed to be marked "PUBLIC" unless the Borrower notifies the Administrative Agent that any such document contains MNPI: (1) the Loan Documents, (2) any notification of changes in the terms of the Term Loans, (3) any notification of the identity of Disqualified Institutions and (4) all information delivered pursuant to clauses (1), (2) and (3) of Section 5.04.

SECTION 10.18. Release of Liens and Guarantees. In the event that any Loan Party conveys, sells, leases, assigns, transfers or otherwise disposes of all or any portion of any of the Equity Interests or assets of any Loan Party (other than Equity Interests of the Borrower) to a Person that is not (and is not required to become) a Loan Party in a transaction not prohibited by the Loan Documents, at the request of the Borrower, any Liens created by any Loan Document in respect of such Equity Interests or assets shall be automatically released and the Administrative Agent shall promptly (and the Lenders hereby authorize the Administrative Agent to) take such action and execute any such documents as may be reasonably requested by Holdings or the Borrower and at the Borrower's expense in connection with such release of any Liens created by any Loan Document in respect of such Equity Interests or assets, and, in the case of a disposition of the Equity Interests of any Subsidiary Loan Party (other than the Borrower) in a transaction permitted by the Loan Documents (including through merger, consolidation, amalgamation or otherwise) and as a result of which such Subsidiary Loan Party would cease to be a Restricted Subsidiary, such Subsidiary Loan Party's obligations under the Collateral Agreement shall be automatically terminated and the Administrative Agent shall promptly (and the Lenders hereby authorize the Administrative Agent to) and at the Borrower's expense take such action and execute any such documents as may be reasonably requested by Holdings or the Borrower to terminate such Subsidiary Loan Party's obligations under the Collateral Agreement. In addition, the Administrative Agent agrees to take such actions as are reasonably requested by Holdings or the Borrower and at the Borrower's expense to terminate the Liens and security interests created by the Loan Documents when all the Obligations (other than Obligations in respect of (i) Specified Hedge Agreements and Cash Management Obligations that are not then due and payable and (ii) contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) are paid in full and the Commitments are terminated.

SECTION 10.19. USA PATRIOT Act Notice. Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act.

SECTION 10.20. Security Documents and Intercreditor Agreements.

(a) The parties hereto acknowledge and agree that any provision of any Loan Document to the contrary notwithstanding, prior to the discharge in full of all ABL Claims, the Loan Parties shall not be required to act or refrain from acting under any Security Document with respect to the ABL Priority Collateral in any manner that would result in a "Default" or "Event of Default" (as defined in any ABL Loan Document) under the terms and provisions of the ABL Loan Documents. Each Lender hereunder:

- (1) consents to the subordination of Liens provided for in the Intercreditor Agreement;
- (2) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement; and
- (3) authorizes and instructs the Administrative Agent to enter into the Intercreditor Agreement as on behalf of such Lender.

The foregoing provisions are intended as an inducement to the lenders under the ABL Credit Agreement to extend credit and such lenders are intended third party beneficiaries of such provisions and the provisions of the Intercreditor Agreement.

(b) The parties hereto authorize the Administrative Agent to enter into any First Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement each in the form attached hereto or in such other form as may be satisfactory to the Administrative Agent. The Administrative Agent may from time to time enter into a modification of the Intercreditor Agreement, any First Lien Intercreditor Agreement or any Junior Lien Intercreditor Agreement, as the case may be, so long as the Administrative Agent reasonably determines that such modification is consistent with the terms of this Agreement.

SECTION 10.21. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of Holdings and the Borrower acknowledge and agree that: (1) (a) the arranging and other services regarding this Agreement provided by the Agents and the Arranger are arm's-length commercial transactions between Holdings and the Borrower, on the one hand, and the Agents and the Arranger, on the other hand; (b) the Borrower and Holdings have consulted their own legal, accounting, regulatory and tax advisors to the extent they deemed appropriate; and (c) the Borrower and Holdings are capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (2) (a) each Agent and each Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, Holdings or any other Person and (b) none of the Agents or Arranger has any obligation to the Borrower, Holdings or any of their Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (3) the Agents, the Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, Holdings and their respective Affiliates, and none of the Agents or any Arranger has any obligation to disclose any of such interests to the Borrower, Holdings or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and Holdings hereby waives and releases any claims that it may have against the Agents and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.22. Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Term Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

SECTION 10.23. Acknowledgement and Consent to Bail-In of EEA Financial Institutions Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (1) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and
- (2) the effects of any Bail-in Action on any such liability, including, if applicable:
 - (a) a reduction in full or in part or cancellation of any such liability;
 - (b) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - (c) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

LESLIE'S POOLMART, INC., as the Borrower

By: /s/ Steven L. Ortega
Name: Steven L. Ortega
Title: President and Chief Operating Officer

LESLIE'S HOLDINGS, INC., as Holdings

By: /s/ Steven L. Ortega
Name: Steven L. Ortega
Title: President and Chief Operating Officer

[Signature Page to Term Loan Credit Agreement – Leslie's]

NOMURA CORPORATE FUNDING AMERICAS,
LLC, as Administrative Agent, Collateral Agent and
Lender

By: /s/ Lee Olive

Name: Lee Olive

Title: Managing Director

[Signature Page to Term Loan Credit Agreement—Leslie's]

BROAD STREET SENIOR CREDIT
PARTNERS OFFSHORE, L.P., as a Lender

By: Goldman, Sachs & Co., as Investment Manager /
Collateral Servicer and Duly Authorized Agent

By: /s/ William Y. Eng
Name: William Y. Eng
Title: Attorney-in-Fact

BROAD STREET LONDON PARTNERS #1,
L.P., as a Lender

By: Goldman, Sachs & Co., as Investment Manager /
Collateral Servicer and Duly Authorized Agent

By: /s/ William Y. Eng
Name: William Y. Eng
Title: Attorney-in-Fact

BROAD STREET LONDON PARTNERS #2,
L.P., as a Lender

By: Goldman, Sachs & Co., as Investment Manager /
Collateral Servicer and Duly Authorized Agent

By: /s/ William Y. Eng
Name: William Y. Eng
Title: Attorney-in-Fact

[Signature Page to Term Loan Credit Agreement]

BROAD STREET LOAN PARTNERS 2013
ONSHORE, L.P., as a Lender

By: Goldman, Sachs & Co., as Attorney-in-Fact

By: /s/ William Y. Eng
Name: William Y. Eng
Title: Attorney-in-Fact

BROAD STREET LOAN PARTNERS 2013,
L.P., as a Lender

By: Goldman, Sachs & Co., as Collateral Servicer and Duly
Authorized Agent

By: /s/ William Y. Eng
Name: William Y. Eng
Title: Attorney-in-Fact

BROAD STREET LOAN PARTNERS 2013
EUROPE, L.P., as a Lender

By: Goldman, Sachs & Co., Duly Authorized

By: /s/ William Y. Eng
Name: William Y. Eng
Title: Attorney-in-Fact

BROAD STREET SENIOR CREDIT
PARTNERS L.P., as a Lender

By: Goldman, Sachs & Co., as Attorney-in-Fact

By: /s/ William Y. Eng
Name: William Y. Eng
Title: Attorney-in-Fact

[Signature Page to Term Loan Credit Agreement]

Execution Version

AMENDMENT NO. 3, dated as of February 27, 2018 (this "Amendment"), to the Term Loan Credit Agreement, dated as of August 16, 2016, as amended by Incremental Amendment No. 1, dated as of January 26, 2017 and Amendment No. 2 dated as of February 16, 2017 (the "Credit Agreement"), by and among LESLIE'S POOLMART, INC., a Delaware corporation ("Borrower"), LESLIE'S HOLDINGS, INC., a Delaware corporation ("Holdings"), the LENDERS party thereto from time to time and NOMURA CORPORATE FUNDING AMERICAS, LLC, as administrative agent (the "Administrative Agent"). Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Credit Agreement as amended by this Amendment.

WHEREAS, the Borrower wishes to replace all Tranche B-1 Term Loans with new Tranche B-2 Term Loans and to make certain other amendments to the Credit Agreement;

WHEREAS, the Required Lenders have agreed to the amendments contemplated above;

WHEREAS, Nomura Corporate Funding Americas, LLC (in such capacity, the "Additional Tranche B-2 Term Loan Lender") has agreed to provide the Additional Tranche B-2 Term Loan Commitment; and

WHEREAS, each Lender with outstanding Tranche B-1 Term Loans that has executed a signature page to this Amendment has, to the extent set forth on such signature page, agreed to convert all of such Tranche B-1 Term Loans to Tranche B-2 Term Loans (or such lesser amount as may be notified to such Lender by the Administrative Agent prior to the Amendment No. 3 Effective Date);

NOW, THEREFORE, in consideration of the promises and mutual agreements herein contained, the Borrower, the Guarantors, the Lenders party hereto and the Administrative Agent hereby agree as follows:

SECTION 1. Amendment of the Credit Agreement and Exhibits. The Credit Agreement is, effective as of the Amendment No. 3 Effective Date, hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Exhibit A hereto.

SECTION 2. Effectiveness. This Amendment shall become effective on the date (such date and time of effectiveness, the "Amendment No. 3 Effective Date") that each of the conditions precedent set forth below shall have been satisfied:

(a) The Administrative Agent shall have received executed counterparts hereof from each of the Loan Parties, Lenders constituting the Required Lenders and the Additional Tranche B-2 Term Loan Lender;

(b) On the Amendment No. 3 Effective Date, the Administrative Agent shall have received the legal opinion of Kirkland & Ellis LLP, counsel to the Loan Parties, which opinion shall be in form and substance reasonably satisfactory to the Administrative Agent.

(c) The Administrative Agent shall have received a completed Borrowing Request for the Tranche B-2 Term Loans and a notice of prepayment of the Tranche B-1 Term Loans (other than Converted Tranche B-1 Term Loans);

(d) The Administrative Agent shall have received a solvency certificate signed by the Chief Financial Officer of the Borrower certifying as to the solvency of the Borrower and its Subsidiaries, on a consolidated basis, on the Amendment No. 3 Effective Date (with the substance of such certificate to be substantially consistent with Exhibit B to the Credit Agreement *mutatis mutandis*); and

(e) The Borrower shall have paid, or concurrently herewith shall pay to the Administrative Agent for the benefit of the Administrative Agent and the Amendment No. 3 Arranger such fees as have separately been agreed by the Amendment No. 3 Arranger and Bubble Merger Sub, Inc. and, to the extent invoiced, the reasonable documented out-of-pocket expenses of the Administrative Agent and the Amendment No. 3 Arranger in connection with this Amendment.

SECTION 3. Representations and Warranties. In order to induce the Lenders and the Administrative Agent to enter into this Amendment, the Borrower represents and warrants to each of the Lenders and the Administrative Agent that, after giving effect to this Amendment, and both before and after giving effect to the transactions contemplated by this Amendment:

(a) no Default or Event of Default has occurred and is continuing; and

(b) each of the representations and warranties made by each of the Loan Parties in or pursuant to the Loan Documents is true and correct in all material respects on and as of the date hereof as if made on the date hereof (or, if any such representation or warranty is expressly stated to have been made as of a specific date, in all material respects as of such specific date) and in each case without duplication of any materiality qualifier therein.

SECTION 4. Reference to and Effect on the Loan Documents. On and after the Amendment No. 3 Effective Date, each reference in the Credit Agreement to “this Agreement,” “hereunder,” “hereof” or words of like import referring to the Credit Agreement, and each reference in the Notes and each of the other Loan Documents to “the Credit Agreement,” “thereunder,” “thereof” or words of like import referring to the Credit Agreement, shall mean and be a reference to the Credit Agreement, as amended by this Amendment. The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or any Agent under any of the Loan Documents, nor constitute a waiver of any provision of any of the Loan Documents. Each of the Loan Parties hereby consents to the Amendment and reaffirms its obligations under the Loan Documents to which it is party after giving effect to the Amendment. This Amendment shall not constitute a novation of the Credit Agreement or any other Loan Document.

SECTION 5. Applicable Law; Waiver of Jury Trial

(A) THIS AMENDMENT SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK.

(B) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AMENDMENT AND FOR ANY COUNTERCLAIM HEREIN.

SECTION 6. Headings. The Section headings used herein are for convenience of reference only, are not part of this Amendment and are not to affect the construction of, or to be taken into consideration in interpreting, this Amendment.

SECTION 7. Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all of which when taken together shall constitute a single instrument. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or any other electronic transmission shall be effective as delivery of an original executed counterpart hereof.

[Signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the day and year first written above.

LESLIE'S POOLMART, INC.,
as Borrower

By: /s/ Steven M. Weddell
Name: Steven M. Weddell
Title: Chief Financial Officer

LESLIE'S HOLDINGS, INC.,
as Holdings

By: /s/ Steven M. Weddell
Name: Steven M. Weddell
Title: Chief Financial Officer

LPM MANUFACTURING, INC.
LPM SERVICE, INC.
BLACKWOOD & SIMMONS, INC.
SANDY'S POOL SUPPLY, INC.
IN THE SWIM HOLDING CORP.
ITS HOLDING I CORPORATION
CORTZ, INC.
POOL PARTS, INC.
SPP HOLDING CORPORATION
HOT TUB WORKS, LLC
POOLCENTER.COM, INC.
WAREHOUSE POOLS, INC.
RAM CHEMICAL & SUPPLY, INC.
WAREHOUSE POOL SUPPLY, INC.
WAREHOUSE POOL SERVICE &
CONSTRUCTION, INC.,
as Guarantors

By: /s/ Steven M. Weddell
Name: Steven M. Weddell
Title: Chief Financial Officer

[Amendment No. 3 to Leslie's Poolmart, Inc. Term Loan Credit Agreement]

NOMURA CORPORATE FUNDING
AMERICAS, LLC, as Administrative Agent and as
a Lender

By: /s/ Lee Olive

Name: Lee Olive

Title: Managing Director

[Amendment No. 3 to Leslie's Poolmart, Inc. Term Loan Credit Agreement]

~~857,975,000~~

TERM LOAN CREDIT AGREEMENT,

dated as of August 16, 2016,
as amended by Incremental Amendment No. 1 on January 26, 2017, ~~and~~ as amended by Amendment No. 2 on
February 16, ~~2017~~ 2017, and as amended by Amendment No. 3 on February 27, 2018

among

LESLIE'S HOLDINGS, INC.,
as Holdings,

LESLIE'S POOLMART, INC.,
as the Borrower,

THE LENDERS PARTY HERETO,

and

NOMURA CORPORATE FUNDING AMERICAS, LLC,
as Administrative Agent and Collateral Agent,

NOMURA SECURITIES INTERNATIONAL, INC.,
as Sole Bookrunner and Arranger, Amendment No. 1 Arranger, Amendment No. 2 Arranger and Amendment No. ~~2~~3
Arranger

TABLE OF CONTENTS

Page

ARTICLE I

DEFINITIONS

SECTION 1.01.	Defined Terms	1
SECTION 1.02.	Terms Generally	48 <u>49</u>
SECTION 1.03.	Accounting Terms; GAAP	49 <u>50</u>
SECTION 1.04.	Effectuation of Transfers	49 <u>50</u>
SECTION 1.05.	Currencies	49 <u>50</u>
SECTION 1.06.	Required Financial Statements	50
SECTION 1.07.	Certain Calculations and Tests	50 <u>51</u>

ARTICLE II

THE CREDITS

SECTION 2.01.	Term Loans and Borrowings	51 <u>52</u>
SECTION 2.02.	Request for Borrowing	52 <u>53</u>
SECTION 2.03.	Funding of Borrowings	52 <u>53</u>
SECTION 2.04.	Interest Elections	53 <u>54</u>
SECTION 2.05.	Promise to Pay; Evidence of Debt	54 <u>55</u>
SECTION 2.06.	Repayment of Term Loans	54 <u>55</u>
SECTION 2.07.	Optional Prepayment of Term Loans	55 <u>56</u>
SECTION 2.08.	Mandatory Prepayment of Term Loans	55 <u>56</u>
SECTION 2.09.	Fees	58 <u>59</u>
SECTION 2.10.	Interest	58 <u>59</u>
SECTION 2.11.	Alternate Rate of Interest	60
SECTION 2.12.	Increased Costs	59 <u>60</u>
SECTION 2.13.	Break Funding Payments	60 <u>61</u>
SECTION 2.14.	Taxes	60 <u>62</u>
SECTION 2.15.	Payments Generally; Pro Rata Treatment; Sharing of Set-offs	63 <u>64</u>
SECTION 2.16.	Mitigation Obligations; Replacement of Lenders	64 <u>65</u>
SECTION 2.17.	Illegality	65 <u>66</u>
SECTION 2.18.	Incremental Facilities	65 <u>67</u>
SECTION 2.19.	Other Term Loans	67 <u>69</u>
SECTION 2.20.	Extensions of Term Loans	68 <u>69</u>
SECTION 2.21.	Repricing Event	69 <u>70</u>

ARTICLE III

REPRESENTATIONS AND WARRANTIES

SECTION 3.01.	Organization; Powers	69 <u>71</u>
SECTION 3.02.	Authorization	69 <u>71</u>
SECTION 3.03.	Enforceability	70 <u>72</u>
SECTION 3.04.	Governmental Approvals	70 <u>72</u>
SECTION 3.05.	Title to Properties; Possession Under Leases	71 <u>72</u>
SECTION 3.06.	Subsidiaries	71 <u>73</u>
SECTION 3.07.	Litigation; Compliance with Laws	71 <u>73</u>
SECTION 3.08.	Federal Reserve Regulations	72 <u>73</u>
SECTION 3.09.	Investment Company Act	72 <u>73</u>

	<u>Page</u>
SECTION 3.10. Use of Proceeds	72 <u>73</u>
SECTION 3.11. Tax Returns	72 <u>74</u>
SECTION 3.12. No Material Misstatements	72 <u>74</u>
SECTION 3.13. Environmental Matters	73 <u>74</u>
SECTION 3.14. Security Documents	73 <u>75</u>
SECTION 3.15. Location of Real Property and Leased Premises	74 <u>75</u>
SECTION 3.16. Solvency	74 <u>76</u>
SECTION 3.17. No Material Adverse Effect	74 <u>76</u>
SECTION 3.18. Insurance	74 <u>76</u>
SECTION 3.19. USA PATRIOT Act; FCPA; OFAC; Anti-Terrorism	74 <u>76</u>
SECTION 3.20. Intellectual Property; Licenses, Etc.	75 <u>77</u>
SECTION 3.21. Employee Benefit Plans	75 <u>77</u>
SECTION 3.22. Regulation H	75 <u>77</u>
ARTICLE IV	
CONDITIONS OF LENDING	
SECTION 4.01. Conditions Precedent	76 <u>77</u>
ARTICLE V	
AFFIRMATIVE COVENANTS	
SECTION 5.01. Existence; Businesses and Properties	77 <u>79</u>
SECTION 5.02. Insurance	78 <u>80</u>
SECTION 5.03. Taxes	78 <u>80</u>
SECTION 5.04. Financial Statements, Reports, etc.	79 <u>80</u>
SECTION 5.05. Litigation and Other Notices	81 <u>83</u>
SECTION 5.06. Compliance with Laws	81 <u>83</u>
SECTION 5.07. Maintaining Records; Access to Properties and Inspections	81 <u>83</u>
SECTION 5.08. Use of Proceeds	82 <u>83</u>
SECTION 5.09. Compliance with Environmental Laws	82 <u>83</u>
SECTION 5.10. Further Assurances; Additional Security	82 <u>84</u>
SECTION 5.11. Credit Ratings	84 <u>86</u>
SECTION 5.12. Preparation of Environmental Reports	84 <u>86</u>
SECTION 5.13. Post-Closing Matters	85 <u>87</u>
ARTICLE VI	
NEGATIVE COVENANTS	
SECTION 6.01. Indebtedness	85 <u>87</u>
SECTION 6.02. Liens	89 <u>91</u>
SECTION 6.03. Sale and Lease-Back Transactions	92 <u>94</u>
SECTION 6.04. Investments, Loans and Advances	93 <u>95</u>
SECTION 6.05. Mergers, Consolidations, Sales of Assets and Acquisitions	96 <u>98</u>
SECTION 6.06. Restricted Payments	98 <u>100</u>
SECTION 6.07. Transactions with Affiliates	101 <u>103</u>
SECTION 6.08. Business of the Borrower and its Subsidiaries	103 <u>105</u>
SECTION 6.09. Limitation on Payments and Modifications of Indebtedness; Modifications of Certificate of Incorporation, By Laws and Certain Other Agreements; etc.	103 <u>105</u>

		ARTICLE VII	
		HOLDINGS COVENANT	
SECTION 7.01.	Holdings Covenant		105 <u>107</u>
		ARTICLE VIII	
		EVENTS OF DEFAULT	
SECTION 8.01.	Events of Default		106 <u>108</u>
		ARTICLE IX	
		THE AGENTS	
SECTION 9.01.	Appointment		109 <u>111</u>
SECTION 9.02.	Delegation of Duties		110 <u>113</u>
SECTION 9.03.	Exculpatory Provisions		111 <u>113</u>
SECTION 9.04.	Reliance by Administrative Agent		112 <u>114</u>
SECTION 9.05.	Notice of Default		112 <u>114</u>
SECTION 9.06.	Non-Reliance on Agents and Other Lenders		112 <u>114</u>
SECTION 9.07.	Indemnification		113 <u>115</u>
SECTION 9.08.	Agent in Its Individual Capacity		113 <u>115</u>
SECTION 9.09.	Successor Agent		113 <u>115</u>
SECTION 9.10.	Arranger		113 <u>115</u>
<u>SECTION 9.11.</u>	<u>Certain ERISA Matters</u>		<u>116</u>
		ARTICLE X	
		MISCELLANEOUS	
SECTION 10.01.	Notices; Communications		114 <u>117</u>
SECTION 10.02.	Survival of Agreement		114 <u>118</u>
SECTION 10.03.	Binding Effect		115 <u>118</u>
SECTION 10.04.	Successors and Assigns		115 <u>118</u>
SECTION 10.05.	Expenses; Indemnity		122 <u>125</u>
SECTION 10.06.	Right of Set-off		123 <u>127</u>
SECTION 10.07.	Applicable Law		124 <u>127</u>
SECTION 10.08.	Waivers; Amendment		124 <u>127</u>
SECTION 10.09.	Interest Rate Limitation		126 <u>129</u>
SECTION 10.10.	Entire Agreement		126 <u>130</u>
SECTION 10.11.	WAIVER OF JURY TRIAL		126 <u>130</u>
SECTION 10.12.	Severability		126 <u>130</u>
SECTION 10.13.	Counterparts		126 <u>130</u>
SECTION 10.14.	Headings		127 <u>130</u>
SECTION 10.15.	Jurisdiction; Consent to Service of Process		127 <u>130</u>
SECTION 10.16.	Confidentiality		127 <u>131</u>
SECTION 10.17.	Platform; Borrower Materials		128 <u>132</u>
SECTION 10.18.	Release of Liens and Guarantees		129 <u>132</u>
SECTION 10.19.	USA PATRIOT Act Notice		129 <u>133</u>
SECTION 10.20.	Security Documents and Intercreditor Agreements		129 <u>133</u>
SECTION 10.21.	No Advisory or Fiduciary Responsibility		130 <u>133</u>
SECTION 10.22.	Cashless Settlement		130 <u>134</u>
SECTION 10.23.	Acknowledgement and Consent to Bail-In of EEA Financial Institutions		130 <u>134</u>

Exhibits and Schedules

Exhibit A	Form of Assignment and Acceptance
Exhibit B	Form of Solvency Certificate
Exhibit C	Form of Borrowing Request
Exhibit D	Form of Interest Election Request
Exhibit E	Form of Non-Debt Fund Affiliate Assignment and Acceptance
Exhibit F	U.S. Tax Compliance Certificate
Exhibit G	Form of First Lien Intercreditor Agreement
Exhibit H	Form of Junior Lien Intercreditor Agreement
Exhibit I	Form of Term Note
Exhibit J	Form of Notice of Prepayment
Schedule 2.01	Commitments
Schedule 3.04	Governmental Approvals
Schedule 3.05	Possession under Leases
Schedule 3.06	Subsidiaries
Schedule 3.11	Taxes
Schedule 3.13	Environmental Matters
Schedule 3.15(1)	Owned Material Real Property
Schedule 3.15(2)	Leased Material Real Property
Schedule 3.18	Insurance
Schedule 3.20	Intellectual Property
Schedule 5.13	Post-Closing Matters
Schedule 6.01	Indebtedness
Schedule 6.02	Liens
Schedule 6.04	Investments
Schedule 6.07	Transactions with Affiliates
Schedule 10.01	Notice Information

TERM LOAN CREDIT AGREEMENT, dated as of August 16, 2016, as amended by Incremental Amendment No. 1, dated as of January 26, 2017, and Amendment No. 2, dated as of February 16, ~~2017~~ 2017, and Amendment No. 3, dated as of February 27, 2018 (as further amended, amended and restated, supplemented or otherwise modified from time to time, this “*Agreement*”), among Leslie’s Poolmart, Inc., a Delaware corporation (the “*Borrower*”), Leslie’s Holdings, Inc., a Delaware corporation (“*Holdings*”), the Lenders party hereto from time to time and Nomura Corporate Funding Americas, LLC, as administrative agent (in such capacity, and as further defined in Section 1.01, the “*Administrative Agent*”) and as collateral agent (in such capacity, and as further defined in Section 1.01, the “*Collateral Agent*”).

RECITALS

(1) The Borrower is party to that certain Credit Agreement (the “*Existing Term Loan Agreement*”), dated as of October 16, 2012, by and among, Holdings, the Borrower, Bank of America, N.A., as administrative agent, and the lenders party thereto under which it has previously borrowed senior secured term loans.

(2) On the Closing Date, the Borrower, Holdings and the subsidiaries of the Borrower party thereto will enter into the ABL Credit Agreement (as defined herein).

(3) On the Closing Date, the Borrower will obtain the Tranche B Term Loans (as defined herein) in an aggregate principal amount of \$810.0 million.

(4) On the Closing Date, the Borrower will issue the New Senior Notes (as defined herein) in the aggregate principal amount of \$390.0 million.

(5) On the Closing Date, the Borrower and Holdings will use a portion of the proceeds of the Tranche B Term Loans and the New Senior Notes to repay all indebtedness outstanding under the Existing Term Loan Agreement and redeem the Holdco Senior Notes (as defined in the Existing Term Loan Agreement) and the Senior Notes (as defined in the Existing Term Loan Agreement) (the “*Refinancing*”).

(6) On or about the Closing Date, the Borrower and Holdings will make a distribution to the equity holders of up to \$226,602,805.

(7) All fees and expenses in connection with the forgoing will be paid.

The transactions described above are collectively referred to herein as the “*Transactions*.”

AGREEMENT

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“*ABL Claims*” means claims of the ABL Secured Parties (as defined in the Intercreditor Agreement) in respect of ABL Obligations (as defined in the Intercreditor Agreement).

“*ABL Credit Agreement*” means that certain credit agreement, dated as of October 16, 2012 and amended on the Closing Date, by and among the Borrower, the lenders party thereto, Bank of America, N.A., as administrative agent, and the other parties thereto.

“**ABL Loan Documents**” means the ABL Credit Agreement and the other “*Loan Documents*” as defined in the ABL Credit Agreement, as each such document may be amended, restated, supplemented or otherwise modified.

“**ABL Obligations**” means the “*Obligations*” as defined in the ABL Credit Agreement.

“**ABL Priority Collateral**” means the “*ABL Priority Collateral*” as defined in the Intercreditor Agreement.

“**ABL Priority Collateral Asset Sale**” means any Asset Sale to the extent, and only to the extent, consisting of the disposition of ABL Priority Collateral.

“**ABR**” means, for any day, a fluctuating rate per annum equal to the highest of:

- (1) the Federal Funds Rate *plus* 1/2 of 1.00%;
- (2) the Prime Rate; and
- (3) the Adjusted LIBO Rate for a one month Interest Period commencing on such date (or, if such day is not a Business Day, the preceding Business Day) *plus* 1.00%.

Any change in the ABR due to a change in the Federal Funds Rate, the “prime rate” or the LIBO Rate will be effective on the effective date of such change in the Federal Funds Rate, the “prime rate” or the LIBO Rate, as the case may be.

“**ABR Borrowing**” means a Borrowing comprised of ABR Loans.

“**ABR Loan**” means any Term Loan bearing interest at a rate determined by reference to the ABR.

“**Acquisition Agreement**” has the meaning assigned to such term in Amendment No. 1.

“**Additional Lender**” means the banks, financial institutions and other institutional lenders and investors (other than natural persons) that become Lenders in connection with an Incremental Term Loan or Other Term Loan; *provided* that no Disqualified Institution may be an Additional Lender.

“**Additional Tranche B-1 Term Loan Commitment**” means the obligation of the Additional Tranche B-1 Term Loan Lender to make a Tranche B-1 Term Loan on the Amendment No. 2 Effective Date in an aggregate principal amount equal to the excess of \$857,975,000 over the aggregate principal amount of Converted Tranche B Term Loans.

“**Additional Tranche B-1 Term Loan Lender**” means the Lender identified as such in Amendment No. 2.

“**Additional Tranche B-2 Term Loan Commitment**” means the obligation of the Additional Tranche B-2 Term Loan Lender to make a Tranche B-2 Term Loan on the Amendment No. 3 Effective Date in an aggregate principal amount equal to the excess of \$834,116,671.17 over the aggregate principal amount of Converted Tranche B-1 Term Loans.

“**Additional Tranche B-2 Term Loan Lender**” means the Lender identified as such in Amendment No. 3.

“**Adjusted LIBO Rate**” means, with respect to any Eurocurrency Borrowing for any Interest Period, an interest rate per annum equal to ~~the greater~~ of ~~(1)~~ the LIBO Rate in effect for such Interest Period ~~divided by one minus~~ the Statutory Reserves applicable to such Eurocurrency Borrowing, if any, ~~and~~ ~~(2)~~ ~~solely in respect of Tranche B-1 Term Loans, 1.00%.~~

“**Administrative Agent**” means Nomura Corporate Funding Americas, LLC, in its capacity as administrative agent for itself and the Lenders hereunder, and any duly appointed successor in such capacity.

“*Administrative Agent Fees*” has the meaning assigned to such term in Section 2.09(1).

“*Administrative Questionnaire*” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

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

“*Affiliated Lender*” means each Sponsor, the New Sponsor (from and after a Permitted Change of Control) and each of their respective Affiliates, other than (1) Holdings or any of its Subsidiaries (including the Borrower) and (2) any natural person.

“*Agents*” means the Administrative Agent and the Collateral Agent, in their respective capacities as such.

“*Agreement*” has the meaning assigned to such term in the introductory paragraph hereof.

“*Amendment No. 1*” means that certain Incremental Amendment No. 1, dated as of January 26, 2017, to this Agreement.

“*Amendment No. 1 Arranger*” means Nomura Securities International, Inc., as sole lead arranger and sole bookrunner for Amendment No. 1.

“*Amendment No. 1 Acquisition*” means the merger of Bubble Merger Sub, Inc. with and into Holdings pursuant to the Acquisition Agreement.

“*Amendment No. 1 Effective Date*” means the date on which all conditions precedent set forth in Section 3(b) of Amendment No. 1 are satisfied.

“*Amendment No. 1 Incremental Facility*” means the amount of each Amendment No. 1 Incremental Lender’s commitment on the Amendment No. 1 Effective Date in respect of Amendment No. 1 Incremental Term Loans as set forth on Schedule I of Amendment No. 1. The amount of the Amendment No. 1 Incremental Facility is \$50,000,000.

“*Amendment No. 1 Incremental Lender*” means the Person identified on Schedule I to Amendment No. 1.

“*Amendment No. 1 Incremental Term Loans*” means the Incremental Term Loans funded on the Amendment No. 1 Effective Date.

“*Amendment No. 1 Transactions*” means the establishment of the Amendment No. 1 Incremental Facility, the distribution of the net proceeds of the Amendment No. 1 Incremental Facility to or as directed by Holdings to pay a portion of the consideration in the Amendment No. 1 Acquisition, the consummation of the Amendment No. 1 Acquisition and the payment of related fees and expenses in connection therewith.

“*Amendment No. 2*” means that certain Amendment No. 2, dated as of February 16, 2017, to this Agreement.

“*Amendment No. 2 Arranger*” means Nomura Securities International, Inc., as sole lead arranger and bookrunner for Amendment No. 2.

“*Amendment No. 2 Consenting Lender*” means each Lender that has returned an executed counterpart to Amendment No. 2 to the Administrative Agent prior to the Amendment No. 2 Effective Date.

“*Amendment No. 2 Effective Date*” has the meaning assigned to such term in Amendment No. 2.

“Amendment No. 3” means that certain Amendment No. 3, dated as of February 27, 2018, to this Agreement.

“Amendment No. 3 Arranger” means Nomura Securities International, Inc., as sole lead arranger and bookrunner for Amendment No. 3.

“Amendment No. 3 Consenting Lender” means each Lender that has returned an executed counterpart to Amendment No. 3 to the Administrative Agent prior to the Amendment No. 3 Effective Date.

“Amendment No. 3 Effective Date” has the meaning assigned to such term in Amendment No. 3.

“Annual Financial Statements” has the meaning assigned to such term in Section 5.04(1).

“Applicable Margin” means:

(1) with respect to the Tranche B-~~2~~ Term Loans made or converted on the Amendment No. ~~2~~ Effective Date, (a) for ABR Loans, ~~2.75~~ 2.50% and (b) for Eurocurrency Loans, ~~3.75~~ 3.50%;

(2) with respect to any Incremental Term Loans, the “Applicable Margin” set forth in the Incremental Facility Amendment establishing the terms thereof;

(3) with respect to any Other Term Loans, the “Applicable Margin” set forth in the Refinancing Amendment establishing the terms thereof; and

(4) with respect to any Extended Term Loans, the “Applicable Margin” set forth in the Extension Amendment establishing the terms thereof.

“Approved Fund” has the meaning assigned to such term in Section 10.04(2).

“Arranger” means Nomura Securities International, Inc. (including in its capacity as Amendment No. 1 Arranger ~~and~~ Amendment No. 2 Arranger and Amendment No. 3 Arranger).

“Asset Sale” means any loss, damage, destruction or condemnation of, or any sale, transfer or other disposition (including any Sale and Lease-Back Transaction) to any Person of any asset or assets of the Borrower or any Restricted Subsidiary.

“Asset Sale Proceeds Account” means one or more deposit accounts or securities accounts (as such terms are defined in the Uniform Commercial Code) containing only the Net Cash Proceeds of Asset Sales or any Below Threshold Asset Sale Proceeds, any investments thereof in Cash Equivalents and the proceeds thereof, pending the application of such Net Cash Proceeds in accordance with Section 2.08(1), which accounts have been pledged to the Collateral Agent, for the benefit of the Secured Parties, on a first-priority basis pursuant to documentation in form and substance reasonably satisfactory to the Collateral Agent.

“Assignee” has the meaning assigned to such term in Section 10.04(2).

“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an Assignee, and accepted by the Administrative Agent and the Borrower (if required by Section 10.04), substantially in the form of Exhibit A or such other form that is approved by the Administrative Agent.

“Available Amount” means, as of any date, an amount, not less than zero, determined on a cumulative basis, equal to the sum, without duplication, of:

(1) \$25.0 million; *plus*

(2) the Cumulative Retained Excess Cash Flow Amount as of such date (measured annually); *plus*

(3) the cumulative amount of cash proceeds and the fair market value of property (other than cash) received by the Borrower or any Parent Entity in connection with the sale or issuance of Equity Interests of the Borrower or any Parent Entity after the Closing Date and on or prior to such date (including upon exercise of warrants or options or in connection with a Permitted Acquisition or other Permitted Investment) which, with respect to proceeds or property received in connection with the sale or issuance of Equity Interests of a Parent Entity, have been contributed to the capital of the Borrower or exchanged for Equity Interest of the Borrower, other than the proceeds of Disqualified Stock, Excluded Contributions, any net cash proceeds that are used prior to such date for Restricted Payments under Section 6.06(1) or Section 6.06(2)(b), and equity used to incur Contribution Indebtedness; *plus*

(4) 100% of the aggregate amount of cash contributions to the capital of the Borrower and the fair market value of property other than cash contributed to the capital of the Borrower after the Closing Date, other than the proceeds of Disqualified Stock, Excluded Contributions, any net cash proceeds that are used prior to such date for Restricted Payments under Section 6.06(1) or Section 6.06(2)(b), and equity used to incur Contribution Indebtedness; *plus*

(5) 100% of the aggregate principal amount of any Indebtedness (including the liquidation preference or maximum fixed repurchase price, as the case may be, of any Disqualified Stock) of the Borrower or any Restricted Subsidiary issued after the Closing Date (other than Indebtedness (including Disqualified Stock) issued to Holdings, the Borrower or a Restricted Subsidiary), which has been converted into or exchanged for Equity Interests (other than Disqualified Stocks) of the Borrower or any Parent Entity; *plus*

(6) 100% of the aggregate amount of cash (and the fair market value of property other than cash) received by the Borrower or any Restricted Subsidiary after the Closing Date from (a) the sale (other than to Holdings, the Borrower or any Restricted Subsidiary) of the Equity Interests of any Unrestricted Subsidiary or (b) any dividend or other distribution (including any payment on intercompany Indebtedness) by any such Unrestricted Subsidiary; *plus*

(7) in the event any Unrestricted Subsidiary becomes a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, Holdings, the Borrower or any Restricted Subsidiary, the lesser of (a) the fair market value of the Investments of the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary at the time such Unrestricted Subsidiary becomes a Restricted Subsidiary or at the time of such merger, consolidation, amalgamation, transfer or liquidation (or of the assets transferred or conveyed, as applicable) and (b) the fair market value of the original Investments by the Borrower and the Restricted Subsidiaries in such Unrestricted Subsidiary, in each case, (i) as determined by a Responsible Officer of the Borrower in good faith and (ii) to the extent the Investment in such Unrestricted Subsidiary was made using the Available Amount; *plus*

(8) any mandatory prepayment declined by a Lender; *minus*

(9) the use of such Available Amount since the Closing Date.

Notwithstanding the foregoing, upon the occurrence of the Permitted Change of Control Effective Date, (A) the Available Amount shall be automatically reduced (or if applicable, increased) to \$25.0 million and (B) each reference to "Closing Date" in this definition shall be deemed a reference to "Permitted Change of Control Effective Date."

"**Available Incremental Term Loan Facility Amount**" has the meaning assigned to such term in Section 2.18(3).

“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“**Bail-In Legislation**” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“**Below Threshold Asset Sale Proceeds**” means the cash proceeds of Asset Sales involving aggregate consideration of \$5.0 million or less.

“**Beneficial Owner**” has the meaning given to that term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” will not be deemed to have beneficial ownership of any securities that such “person” has the right to acquire or vote only upon the happening of any future event or contingency (including the passage of time) that has not yet occurred. The terms “**Beneficially Owns**,” “**Beneficially Owned**” and “**Beneficial Ownership**” have a corresponding meaning.

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

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

“**Board of Directors**” means, as to any Person, the board of directors, board of managers or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers or other governing body of such entity, and the term “**directors**” means members of the Board of Directors.

“**Borrower**” has the meaning assigned to such term in the recitals to this Agreement.

“**Borrower Materials**” has the meaning assigned to such term in Section 10.17(1).

“**Borrowing**” means a group of Term Loans of a single Type made on a single date under a single Term Facility and, in the case of Eurocurrency Loans, as to which a single Interest Period is in effect.

“**Borrowing Request**” means a request by the Borrower in accordance with the terms of Section 2.02 and substantially in the form of Exhibit C.

“**Budget**” has the meaning assigned to such term in Section 5.04(5).

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close; *provided* that when used in connection with a Eurocurrency Loan, the term “Business Day” also excludes any day on which banks are not open for dealings in deposits in the London interbank market.

“**Capital Expenditures**” means, for any period, the aggregate of all expenditures incurred by the Borrower and the Restricted Subsidiaries during such period that, in accordance with GAAP, are or should be included in “additions to property, plant or equipment” or similar items reflected in the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries for such period; *provided* that Capital Expenditures will not include:

(1) expenditures to the extent they are made with (a) Equity Interests of any Parent Entity or (b) proceeds of the issuance of Equity Interests of, or a cash capital contribution to, the Borrower after the Closing Date;

(2) expenditures with proceeds of insurance settlements, condemnation awards and other settlements in respect of lost, destroyed, damaged or condemned assets, equipment or other property to the extent such expenditures are made to replace or repair such lost, destroyed, damaged or condemned assets, equipment or other property or otherwise to acquire, maintain, develop, construct, improve, upgrade or repair assets or properties useful in the business of the Borrower and its Subsidiaries;

(3) interest capitalized during such period;

(4) expenditures that are accounted for as capital expenditures of such Person and that actually are paid for by a third party (excluding the Borrower and any Restricted Subsidiary) and for which none of the Borrower or any Restricted Subsidiary has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other Person (whether before, during or after such period) (it being understood that notwithstanding the foregoing, landlord financed improvements to leased real properties shall be excluded from "Capital Expenditures" pursuant to this clause (4));

(5) the book value of any asset owned by the Borrower or any Restricted Subsidiary prior to or during such period to the extent that such book value is included as a Capital Expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period; *provided* that any expenditure necessary in order to permit such asset to be reused will be included as a Capital Expenditure during the period that such expenditure is actually made;

(6) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (a) used or surplus equipment traded in at the time of such purchase or (b) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business;

(7) Investments in respect of a Permitted Acquisition;

(8) [reserved]; or

(9) the purchase of property, plant, equipment or other capital assets to the extent purchased with the proceeds of Asset Sales that are not applied to prepay Term Loans pursuant to Section 2.08.

"**Capital Lease Obligations**" means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for purposes hereof, the amount of such obligations at any time will be the capitalized amount thereof at such time determined in accordance with GAAP.

"**Capital Stock**" means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“Captive Insurance Company” means a Wholly Owned Subsidiary of the Borrower created solely for providing self-insurance for the Borrower and its Subsidiaries and engaging in no other activities other than activities ancillary thereto and necessary for the maintenance of corporate existence.

“Cash Equivalents” means:

- (1) Dollars, Canadian dollars, Japanese yen, pounds sterling, euros or the national currency of any participating member of the European Union or, in the case of any Foreign Subsidiary, any local currencies held by it from time to time in the ordinary course of business and not for speculation;
- (2) direct obligations of the United States of America or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America or any member of the European Union or any agency thereof, in each case, with maturities not exceeding two years;
- (3) time deposits, eurodollar time deposits, certificates of deposit and money market deposits, in each case, with maturities not exceeding one year from the date of acquisition thereof, and overnight bank deposits, in each case, with any commercial bank having capital, surplus and undivided profits of not less than \$250.0 million;
- (4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above and clause (6) below entered into with a bank meeting the qualifications described in clause (3) above;
- (5) commercial paper or variable or fixed rate notes maturing not more than one year after the date of acquisition issued by a corporation rated at least “P-1” by Moody’s or “A 1” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
- (6) securities with maturities of two years or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, having one of the two highest rating categories obtainable from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
- (7) Indebtedness issued by Persons (other than the Sponsors) with a rating of at least “A 2” by Moody’s or “A” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case, with maturities not exceeding one year from the date of acquisition, and marketable short-term money market and similar securities having a rating of at least “P-2” or “A-2” from either Moody’s or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
- (8) Investments in money market funds with average maturities of 12 months or less from the date of acquisition that are rated “Aaa3” by Moody’s and “AAA” by S&P (or reasonably equivalent ratings of another internationally recognized rating agency);
- (9) instruments equivalent to those referred to in clauses (1) through (8) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above customarily utilized in the countries where any such Restricted Subsidiary is located or in which such Investment is made; and
- (10) shares of mutual funds whose investment guidelines restrict 95% of such funds’ investments to those satisfying the provisions of clauses (1) through (9) above.

“Cash Management Bank” means any provider of Cash Management Services that, at the time such Cash Management Obligations were entered into or, if entered into prior to the Closing Date, on the Closing Date, was the Administrative Agent, a Lender or an Affiliate of the foregoing, whether or not such Person subsequently ceases to be the Administrative Agent, a Lender or an Affiliate of the foregoing.

“**Cash Management Obligations**” means obligations owed by any Loan Party to any Cash Management Bank in respect of or in connection with Cash Management Services and designated by the Cash Management Bank and the Borrower in writing to the Administrative Agent as “Cash Management Obligations” under this Agreement (but only if such obligations have not been designated as “Cash Management Obligations” under the ABL Credit Agreement).

“**Cash Management Services**” means any treasury, depository, pooling, netting, overdraft, stored value card, purchase card (including so called “procurement card” or “P-card”), debit card, credit card, cash management, supply chain finance services (including, without limitation, trade payable services and supplier accounts receivables purchases) and similar services and any automated clearing house transfer of funds.

“**Change in Law**” means:

- (1) the adoption of any treaty, law, rule or regulation after the Closing Date;
- (2) any change in treaty, law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date; or
- (3) compliance by any Lender (or, for purposes of Section 2.12(2), by any Lending Office of such Lender or by such Lender’s holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority, made or issued after the Closing Date; *provided* that, notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives promulgated thereunder or issued in connection therewith and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, in each case will be deemed to be a “Change in Law,” regardless of the date enacted, adopted, promulgated or issued.

A “**Change of Control**” will be deemed to occur if:

- (1) at any time,
 - (a) Holdings ceases to Beneficially Own, directly or indirectly, 100% of the issued and outstanding Equity Interests of the Borrower; or
 - (b) a “change of control” (or comparable event) occurs under the ABL Credit Agreement (other than as a result of a Permitted Change of Control) or the New Senior Notes Indenture or the documentation governing any Permitted Refinancing Indebtedness in respect of any of the foregoing, in each case, if any Indebtedness is outstanding under such agreement; or
 - (c) a majority of the seats (other than vacant seats) on the Board of Directors of Holdings shall at any time be occupied by persons who were not (A) nominated by or whose nomination was not approved by the Board of Directors of Holdings or a Permitted Holder, (B) appointed by directors so nominated or approved or (C) appointed by a Permitted Holder;
- (2) at any time prior to the consummation of a Qualified IPO, the Permitted Holders, taken together, cease to Beneficially Own, directly or indirectly, Voting Stock representing 50% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings (determined on a fully diluted basis but without giving effect to contingent voting rights not yet vested); or
- (3) at any time after the consummation of a Qualified IPO, any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act, but excluding any employee benefit plan of such Person and its subsidiaries and any Person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than the Permitted Holders, acquires Beneficial

Ownership of Voting Stock of a Parent Entity representing (a) more than 35% of the aggregate ordinary voting power for the election of directors represented by the issued and outstanding Equity Interests of such Parent Entity (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested) and (b) more than the percentage of the aggregate ordinary voting power for the election of directors that is at the time Beneficially Owned, directly or indirectly, by the Permitted Holders, taken together (determined on a fully diluted basis but without giving effect to contingent voting rights that have not yet vested);

provided that the occurrence of a Permitted Change of Control shall not be deemed to be a Change of Control.

“**Charges**” has the meaning assigned to such term in Section 10.09.

“**Class**” means, with respect to a Term Facility, (a) when used with respect to Lenders, the Lenders under such Term Facility, and (b) when used with respect to Term Loans or Borrowings, Term Loans or Borrowings under such Term Facility. As of the Amendment No. 23 Effective Date, there is one Term Facility and one Class of Term Loans, the Tranche B-12 Term Loans.

“**Closing Date**” means August 16, 2016.

“**Code**” means the Internal Revenue Code of 1986, as amended (unless as specifically provided otherwise).

“**Collateral**” means the “*Collateral*” as defined in the Collateral Agreement and also includes all other property that is subject to any Lien in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to any Security Document.

“**Collateral Agent**” means Nomura Corporate Funding Americas, LLC, in its capacity as Collateral Agent for itself and the other Secured Parties, and any duly appointed successor in that capacity.

“**Collateral Agreement**” means the Term Loan Guarantee and Collateral Agreement dated as of the Closing Date, among the Loan Parties and the Collateral Agent, as amended, supplemented or otherwise modified from time to time.

“**Commitments**” means the Tranche B Term Loan Commitments, the Additional Tranche B-1 Term Loan Commitments and the Additional Tranche B-12 Term Loan Commitments.

“**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.

“**Company**” has the meaning assigned to such term in the recitals hereto.

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

“**Consolidated Debt**” means, as of any date, the aggregate outstanding principal amount (without duplication) of all Indebtedness (other than letters of credit or bank guarantees, to the extent undrawn) consisting of Capital Lease Obligations, Indebtedness for borrowed money, and Disqualified Stock of the Borrower and the Restricted Subsidiaries and all Guarantees of the foregoing, determined on a consolidated basis in accordance with GAAP, based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“*Consolidated EBITDA*” means, for any period, the Consolidated Net Income of the Borrower for such period:

- (1) *increased*, in each case to the extent deducted in calculating such Consolidated Net Income (and without duplication), by:
- (a) provision for taxes based on income, profits or capital, including state, franchise, excise and similar taxes and foreign withholding taxes paid or accrued, including any penalties and interest relating to any tax examinations, and state taxes in lieu of business fees (including business license fees) and payroll tax credits, income tax credits and similar tax credits, and including an amount equal to the amount of tax distributions actually made to the holders of Equity Interests of the Borrower or any Parent Entity in respect of such period (in each case, to the extent attributable to the operations of the Borrower and its Subsidiaries), which will be included as though such amounts had been paid as income taxes directly by the Borrower; *plus*
 - (b) Consolidated Interest Expense; *plus*
 - (c) cash dividend payments (excluding items eliminated in consolidation) on any series of preferred stock or Disqualified Stock of the Borrower or any Restricted Subsidiary; *plus*
 - (d) all depreciation and amortization charges and expenses; *plus*
 - (e) all
 - (i) losses, charges and expenses relating to the Transactions;
 - (ii) transaction fees, costs and expenses incurred in connection with the consummation of any transaction that is out of the ordinary course of business (or any transaction proposed but not consummated) permitted under this Agreement, including equity issuances, investments, acquisitions, dispositions, recapitalizations, mergers, option buyouts and the incurrence, modification or repayment of Indebtedness permitted to be incurred under this Agreement (including any Permitted Refinancing Indebtedness in respect thereof) or any amendments, waivers or other modifications under the agreements relating to such Indebtedness or similar transactions, and any Permitted Change of Control Costs; and
 - (iii) without duplication of any of the foregoing, non-operating or non-recurring professional fees, costs and expenses for such period; *plus*
 - (f) any expense or deduction attributable to minority Equity Interests of third parties in any Restricted Subsidiary that is not a Wholly Owned Subsidiary of the Borrower; *plus*
 - (g) the amount of management, monitoring, consulting, transaction and advisory fees (including termination fees) and related indemnities, charges and expenses paid or accrued to or on behalf of any Parent Entity or any of the Permitted Holders, in each case, to the extent permitted by Section 6.07; *plus*
 - (h) earn-out obligations incurred in connection with any Permitted Acquisition or other Investment; *plus*
 - (i) all charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of Equity Interests held by officers or employees of the Borrower and all losses, charges and expenses related to payments made to holders of options or other derivative Equity Interests in the common equity of the Borrower or any Parent Entity in connection with, or as a result of, any distribution being made to equityholders of such Person or any of its direct or indirect parents, which payments are being made to compensate such option holders as though they were equityholders at the time of, and entitled to share in, such distribution; *plus*

(j) all non-cash losses, charges and expenses, including any write-offs or write-downs; *provided* that if any such non-cash charge represents an accrual or reserve for potential cash items in any future four-fiscal quarter period (i) the Borrower may determine not to add back such non-cash charge in the period for which Consolidated EBITDA is being calculated and (ii) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof in such future four-fiscal quarter period will be subtracted from Consolidated EBITDA for such future four-fiscal quarter period; *plus*

(k) all costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities that were not already excluded in calculating such Consolidated Net Income; *and*

(2) *decreased*, without duplication and to the extent increasing such Consolidated Net Income for such period, by non-cash gains (excluding any non-cash gains that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that were deducted (and not added back) in the calculation of Consolidated EBITDA for any prior period ending after the Closing Date).

To the extent items excluded in the calculation of Consolidated Net Income have been excluded on an after-tax basis, these same items shall be excluded on a pre-tax basis for purposes of the calculation of Consolidated EBITDA.

“**Consolidated First Lien Net Debt**” means, as of any date, all Consolidated Debt as of such date that is secured by a Lien on the Term Priority Collateral that is *pari passu* with the Lien securing the Obligations or that is secured by a Lien on the ABL Priority Collateral that is senior to or *pari passu* with the Lien securing the Obligations, minus all Unrestricted Cash as of such date, in each case, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis; *provided* that for purposes of calculating the amount of Consolidated First Lien Net Debt with respect to any Indebtedness being incurred in reliance on compliance with any financial ratio-based incurrence test, Unrestricted Cash will not include any proceeds received from such Indebtedness. For the avoidance of doubt, Indebtedness in respect of the ABL Credit Agreement will constitute Consolidated First Lien Net Debt.

“**Consolidated Interest Expense**” means, with respect to any Person for any period, the sum, without duplication, of:

(1) the aggregate interest expense of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP, to the extent such expense was deducted in computing Consolidated Net Income (including pay-in-kind interest payments, amortization of original issue discount, the interest component of Capital Lease Obligations and net payments and receipts (if any) pursuant to Hedge Agreements relating to interest rates (other than in connection with the early termination thereof) but excluding any non-cash interest expense attributable to the movement in the mark-to-market valuation of hedging obligations, all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees, and all discounts, commissions, fees and other charges associated with any Receivables Facility); *plus*

(2) consolidated capitalized interest of the referent Person and its Restricted Subsidiaries for such period, whether paid or accrued *plus*

(3) any amounts paid or payable in respect of interest on Indebtedness the proceeds of which have been contributed to the referent Person and that has been Guaranteed by the referent Person; *less*

(4) interest income of the referent Person and its Restricted Subsidiaries for such period.

For purposes of this definition, interest on Capital Lease Obligations will be deemed to accrue at the interest rate reasonably determined by a Responsible Officer of the Borrower to be the rate of interest implicit in such Capital Lease Obligations in accordance with GAAP.

“*Consolidated Net Income*” means, with respect to any Person for any period, the aggregate of the net income (or loss) of such Person and its Restricted Subsidiaries for such period, calculated on a consolidated basis in accordance with GAAP (adjusted to reflect any charge, tax or expense incurred or accrued by Holdings or any Parent Entity during such period attributable to the operations of the Borrower and its Subsidiaries as though such charge, tax or expense had been incurred by the Borrower, to the extent that the Borrower has made or would be entitled under the Loan Documents to make any Restricted Payment or other payment to or for the account of Holdings in respect thereof) and before any deduction for preferred stock dividends; *provided that*:

(1) all net after-tax extraordinary, nonrecurring or unusual gains, losses, income, expenses and charges, and in any event including all restructuring, severance, relocation, retention, consolidation, integration or other similar charges and expenses, contract termination costs, litigation costs, excess pension charges, system establishment charges, start-up or closure or transition costs, expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of fixed assets for alternative uses, fees, expenses or charges relating to curtailments or modifications to pension and post-retirement employee benefit plans in connection with a Permitted Change of Control or otherwise, expenses associated with strategic initiatives, facilities shutdown and opening costs, and any fees, expenses, charges or change in control payments related to a Permitted Change of Control or otherwise (including any transition-related expenses incurred before, on or after the Closing Date), will be excluded;

(2) all net after-tax income, loss, expense or charge from abandoned, closed or discontinued operations and any net after-tax gain or loss on the disposal of abandoned, closed or discontinued operations will be excluded;

(3) all net after-tax gain, loss, expense or charge attributable to business dispositions and asset dispositions other than in the ordinary course of business (as determined in good faith by a Responsible Officer of the Borrower) will be excluded;

(4) all net after-tax income, loss, expense or charge attributable to the early extinguishment or cancellation of Indebtedness, Hedge Agreements or other derivative instruments will be excluded;

(5) all non-cash gain, loss, expense or charge attributable to the movement in the mark-to-market valuation of Hedge Agreements or other derivative instruments will be excluded;

(6) (a) the net income for such period of any Person that is not a Restricted Subsidiary of the referent Person, or that is accounted for by the equity method of accounting, will be included only to the extent of the amount of dividends or distributions or other payments that are paid in cash (or converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period; and (b) the net income for such period will include any ordinary course dividends, distributions or other payments in cash received from any such Person during such period in excess of the amounts included in clause (a) hereof;

(7) the cumulative effect of a change in accounting principles during such period will be excluded;

(8) the effects of purchase accounting, fair value accounting or recapitalization accounting adjustments (including the effects of such adjustments pushed down to the referent Person and its Restricted Subsidiaries) resulting from the application of purchase accounting, fair value accounting or recapitalization accounting in relation to a Permitted Change of Control or any acquisition consummated before or after the Closing Date, and the amortization, write-down or write-off of any amounts thereof, net of taxes, will be excluded;

(9) all non-cash impairment charges and asset write-ups, write-downs and write-offs will be excluded;

(10) all non-cash expenses realized in connection with or resulting from stock option plans, employee benefit plans or agreements or post-employment benefit plans or agreements, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other similar rights will be excluded;

(11) any costs or expenses incurred in connection with the payment of dividend equivalent rights to option holders pursuant to any management equity plan, stock option plan or any other management or employee benefit plan or agreement or post-employment benefit plan or agreement will be excluded;

(12) accruals and reserves for liabilities or expenses that are established or adjusted as a result of a Permitted Change of Control within 18 months after the Permitted Change of Control Effective Date will be excluded;

(13) all amortization and write-offs of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees, will be excluded;

(14) any currency translation gains and losses related to changes in currency exchange rates (including remeasurements of Indebtedness and any net loss or gain resulting from Hedge Agreements for currency exchange risk), will be excluded;

(15) (a) the non-cash portion of "straight-line" rent expense will be excluded and (b) the cash portion of "straight-line" rent expense that exceeds the amount expensed in respect of such rent expense will be included;

(16) expenses and lost profits with respect to liability or casualty events or business interruption will be disregarded to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer, but only to the extent that such amount (a) has not been denied by the applicable carrier in writing and (b) is in fact reimbursed within 365 days of the date on which such liability was discovered or such casualty event or business interruption occurred (with a deduction for any amounts so added back that are not reimbursed within such 365-day period); *provided* that any proceeds of such reimbursement when received will be excluded from the calculation of Consolidated Net Income to the extent the expense or lost profit reimbursed was previously disregarded pursuant to this clause (16);

(17) losses, charges and expenses that are covered by indemnification or other reimbursement provisions in connection with any asset disposition will be excluded to the extent actually reimbursed, or, so long as such Person has made a determination that a reasonable basis exists for indemnification or reimbursement, but only to the extent that such amount is in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so indemnified or reimbursed within such 365 days);

(18) (a) cash costs and expenses in connection with pre-opening and opening of stores, distribution centers and other facilities for any four-quarter period, and all non-cash pre-opening costs and expenses, will be excluded, and (b) all income, loss, charges and expenses associated with stores, distribution centers and other facilities closed in any period, or scheduled for closure within 12 months of the date on which Consolidated Net Income is being calculated, will be excluded;

(19) non-cash charges for deferred tax asset valuation allowances will be excluded; and

(20) solely for the purpose of determining the amount available for Restricted Payments under Section 6.06(15), the net income (or loss) for such period of any Restricted Subsidiary (other than a Guarantor) will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation

applicable to that Restricted Subsidiary or its stockholders, unless such restriction with respect to the payment of dividends or similar distributions has been legally waived; *provided* that Consolidated Net Income of such Person will be increased by the amount of dividends or other distributions or other payments actually paid in cash (or to the extent converted into cash) to such Person or any of its Restricted Subsidiaries in respect of such period, to the extent not already included therein.

“**Consolidated Secured Net Debt**” means, as of any date, all Consolidated Debt as of such date that is secured by a Lien on the Collateral, minus all Unrestricted Cash as of such date, in each case, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis; *provided* that for purposes of calculating the amount of Consolidated Secured Net Debt with respect to any Indebtedness being incurred in reliance on compliance with any financial ratio-based incurrence test, Unrestricted Cash will not include any proceeds received from such Indebtedness.

“**Consolidated Total Assets**” means, as of any date, the total assets of the Borrower and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“**Consolidated Total Net Debt**” means, as of any date, the Consolidated Debt as of such date minus all Unrestricted Cash as of such date, in each case, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis; *provided* that for purposes of calculating the Consolidated Total Net Debt with respect to any Indebtedness being incurred in reliance on compliance with any financial ratio-based incurrence test, Unrestricted Cash will not include any proceeds received from such Indebtedness.

“**continuing**” means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

“**Contribution Indebtedness**” has the meaning assigned to such term in Section 6.01(16).

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

“**Converted Tranche B Term Loan**” means, as to any Amendment No. 2 Consenting Lender that has indicated on its counterpart to Amendment No. 2 that it is requesting to convert its Tranche B Term Loan to a Tranche B-1 Term Loan, the entire aggregate principal amount of such Amendment No. 2 Consenting Lender’s Tranche B Term Loan outstanding on the Amendment No. 2 Effective Date (or, if less, the amount notified to such Lender by the Administrative Agent prior to the Amendment No. 2 Effective Date).

“**Converted Tranche B-1 Term Loan**” means, as to any Amendment No. 3 Consenting Lender that has indicated on its counterpart to Amendment No. 3 that it is requesting to convert its Tranche B-1 Term Loan to a Tranche B-2 Term Loan, the entire aggregate principal amount of such Amendment No. 3 Consenting Lender’s Tranche B-1 Term Loan outstanding on the Amendment No. 3 Effective Date (or, if less, the amount notified to such Lender by the Administrative Agent prior to the Amendment No. 3 Effective Date).

“**Credit Agreement Refinancing Indebtedness**” means secured or unsecured Indebtedness of the Borrower in the form of one or more series of term loans or notes; *provided* that:

(1) such Indebtedness is incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) in exchange for, or to extend, renew, replace or refinance, in whole or part (and such exchange, extension, renewal, replacement or refinancing occurs substantially concurrently with such incurrence or obtainment), Indebtedness (“**Refinanced Debt**”) that is either Term Loans or other Credit Agreement Refinancing Indebtedness;

(2) such Indebtedness is in an original aggregate principal amount not greater than the principal amount of the Refinanced Debt *plus* the amount of unpaid accrued or capitalized interest and premiums thereon (including tender premiums), underwriting discounts, defeasance costs, fees, commissions and expenses);

(3) the Weighted Average Life to Maturity of such Indebtedness is equal to or longer than the remaining Weighted Average Life to Maturity of the Refinanced Debt, and the final maturity date of such Credit Agreement Refinancing Indebtedness may not be earlier than the Latest Maturity Date;

(4) such Indebtedness may participate on a *pro rata* basis or on a less than *pro rata* basis (but not on a greater than *pro rata* basis) in any mandatory prepayments hereunder; *provided* that in no event shall such Indebtedness be permitted to be mandatorily prepaid prior to the repayment in full of all Term Facilities, unless accompanied by a ratable prepayment of each Term Facility hereunder;

(5) such Indebtedness is not secured by any assets or property of Holdings, the Borrower or any Restricted Subsidiary that does not constitute Collateral;

(6) such Indebtedness is not guaranteed by any Subsidiary of the Borrower other than a Subsidiary Loan Party;

(7) if such Indebtedness is secured:

(a) the security agreements relating to such Indebtedness are substantially similar to or the same as the Security Documents (as determined in good faith by a Responsible Officer of the Borrower);

(b) if such Indebtedness is secured on a *pari passu* basis with the Term Loans, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a First Lien Intercreditor Agreement and, if applicable, the Intercreditor Agreement;

(c) if such Indebtedness is secured on a junior basis to the Term Loans, a Debt Representative, acting on behalf of the holders of such Indebtedness, has become party to or is otherwise subject to the provisions of a Junior Lien Intercreditor Agreement and, if applicable, the Intercreditor Agreement;

(8) the terms and conditions of such Indebtedness are substantially identical to, or, taken as a whole, no more favorable to the lenders or holders providing such Indebtedness than, those applicable to such Refinanced Debt as determined in good faith by a Responsible Officer of the Borrower; *provided* that the Borrower will promptly deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof); *provided* that this clause (8) will not apply to:

(a) terms addressed in the preceding clauses (1) through (7);

(b) (i) interest rate, fees, funding discounts and other pricing terms; (ii) redemption, prepayment or other premiums; (iii) optional prepayment terms; and (iv) redemption terms;

(c) subordination terms; and

(d) covenants or other provisions applicable only to periods after the Latest Maturity Date at the time of incurrence of such Indebtedness. Credit Agreement Refinancing Indebtedness will include any Registered Equivalent Notes issued in exchange therefor.

“**Cumulative Retained Excess Cash Flow Amount**” means, as of any date, an amount, not less than zero in the aggregate, determined on a cumulative basis, equal to the Retained Percentage of Excess Cash Flow for all Excess Cash Flow Periods ending after the Closing Date and prior to such date.

“**Current Assets**” means, as of any date, all assets (other than Cash Equivalents or other cash equivalents) that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries as “current assets” (other than amounts related to current or deferred Taxes based on income or profits), determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“**Current Liabilities**” means, as of any date, all liabilities that would, in accordance with GAAP, be classified on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries as “current liabilities,” other than:

- (1) the current portion of any Indebtedness;
- (2) accruals of Consolidated Interest Expense (excluding Consolidated Interest Expense that is due and unpaid);
- (3) accruals for current or deferred Taxes based on income or profits;
- (4) accruals, if any, of transaction costs resulting from the Transactions; and
- (5) accruals of any costs or expenses related to (a) severance or termination of employees prior to the Closing Date or (b) bonuses, pension and other post-retirement benefit obligations;

in each case, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“**CVC**” means any funds or limited partnerships managed or advised by Affiliates of CVC Capital Partners Limited or their respective direct or indirect Subsidiaries or any investors in such funds or limited partnerships (but excluding, in each case, (i) any portfolio companies in which such funds or limited partnerships hold an investment and (ii) any funds or entities managed or advised by CVC Credit Partners Group Holding Foundation and each of its direct or indirect Subsidiaries and any funds or entities managed or advised by them from time to time) who are investors in such funds or limited partnerships as of the Closing Date, investing directly or indirectly in Holdings.

“**Debt Fund Affiliate**” means:

- (1) any Affiliate, division or internal group of a Permitted Investor that has the principal purpose of investing in, acquiring or trading commercial loans, bonds or similar extensions of credit in the ordinary course; and
- (2) any investment fund or account of a Permitted Investor managed by third parties (including by way of a managed account, a fund or an index fund in which a Permitted Investor has invested) or a division or internal group within a Permitted Investor that is not organized or used primarily for the purpose of making equity investments, in each case, with respect to which a Sponsor does not, directly or indirectly, possess the power to direct or cause the direction of the investment policies of such entity.

“**Debt Representative**” means, with respect to any Indebtedness that is secured on *apari passu* basis with, or on a junior basis to, the Term Loans, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“**Default**” means any event or condition which, but for the giving of notice, lapse of time or both, would constitute an Event of Default.

“**Defaulting Lender**” means any Lender whose acts or failure to act, whether directly or indirectly, constitutes a Lender Default.

“**Designated Non-Cash Consideration**” means the fair market value of non-cash consideration received by the Borrower or any Restricted Subsidiary in connection with an Asset Sale that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-Cash Consideration.

“**Disinterested Director**” means, with respect to any Person and transaction, a member of the Board of Directors of such Person who does not have any material direct or indirect financial interest in or with respect to such transaction.

“**Disqualified Institution**” means:

(1) (a) any Person that is a competitor of the Borrower and identified by the Borrower in writing to the Arranger and the Administrative Agent on or prior to the Closing Date;

(b) any Person that is a competitor of the Borrower and identified by the Borrower in good faith in writing to the Administrative Agent from time to time after the Closing Date; and

(c) together with any Affiliates of such competitors described in the foregoing clauses (a) and (b) that are reasonably identifiable as such (other than any such Affiliate that is a bank, financial institution or fund (other than a Person described in clause (2) below) that regularly invest in commercial loans or similar extensions of credit in the ordinary course of business and for which no personnel involved with the relevant competitor or person referred to in clause (2) below make investment decisions); or

(2) certain banks, financial institutions, other institutional lenders and investors and other entities that are identified by the Borrower in writing to the Arranger and the Administrative Agent on or prior to the Closing Date.

Notwithstanding anything in the Loan Documents to the contrary, the Administrative Agent shall not be responsible (or have any liability) for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions thereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (1) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Institution or (2) have any liability with respect to or arising out of any assignment or participation of Term Loans or commitments, or disclosure of confidential information, to any Disqualified Institution. The list of Disqualified Institutions shall be available to Lenders upon request but shall not otherwise be posted to the Lenders.

“**Disqualified Stock**” means, with respect to any Person, any Equity Interests of such Person that, by their terms (or by the terms of any security or other Equity Interests into which they are convertible or for which they are redeemable or exchangeable at the option of the holder thereof), or upon the happening of any event or condition:

(1) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale are subject to the prior repayment in full of the Term Loans and all other Obligations that are accrued and payable and the termination of the Commitments);

- (2) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part;
- (3) provide for the scheduled payments of dividends in cash; or
- (4) either mandatorily or at the option of the holders thereof, are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Stock,

in each case, prior to the date that is 91 days after the earlier of (x) the Latest Maturity Date; and (y) the date on which the Term Loans and all other Obligations (other than Obligations in respect of (i) Specified Hedge Agreements and Cash Management Obligations that are not then due and payable and (ii) contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) are repaid in full and the Commitments are terminated; *provided* that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; *provided, further*, that if such Equity Interests are issued to any employee or to any plan for the benefit of employees of Holdings or its Subsidiaries or by any such plan to such employees, such Equity Interests will not constitute Disqualified Stock solely because they may be required to be repurchased by Holdings or any of its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; and *provided, further*, that any class of Equity Interests of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Equity Interests that is not Disqualified Stock will not be deemed to be Disqualified Stock.

“**Distressed Person**” has the meaning assigned to such term in the definition of “Lender-Related Distress Event.”

“**Dollars**” or “**\$**” means lawful money of the United States of America.

“**Domestic Subsidiary**” means any Subsidiary of the Borrower that is organized under the laws of the United States, any state thereof or the District of Columbia, and “**Domestic Subsidiaries**” means any two or more of them. Unless otherwise indicated in this Agreement, all references to Domestic Subsidiaries will mean Domestic Subsidiaries of the Borrower.

“**Dutch Auction**” means an auction of Term Loans conducted:

- (1) pursuant to Section 10.04(10) to allow an Affiliated Lender to acquire Term Loans at a discount to par value and on *pro rata* basis; or
- (2) pursuant to Section 10.04(14) to allow a Purchasing Borrower Party to prepay Term Loans at a discount to par value and on *pro rata* basis,

in each case, in accordance with the applicable Dutch Auction Procedures.

“**Dutch Auction Procedures**” means, with respect to a purchase of Term Loans in a Dutch Auction, Dutch auction procedures as reasonably agreed upon by the applicable Affiliated Lender or Purchasing Borrower Party, as the case may be, and the Administrative Agent.

“**EEA Financial Institution**” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent;

“**EEA Member Country**” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“**EEA Resolution Authority**” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“**Enterprise Transformative Event**” means any merger, acquisition or Investment, in any such case by the Borrower, any Restricted Subsidiary, Holdings or any of the direct or indirect parent companies of Holdings (other than the Sponsors) that results in Consolidated EBITDA for the most recent four fiscal quarter period for which financial statements have been delivered increasing by more than 25% on a Pro Forma Basis for such event.

“**Environment**” means ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, and natural resources such as flora and fauna.

“**Environmental Laws**” means all applicable laws (including common law), statutes, rules, regulations, codes, ordinances, orders, binding agreements and final, binding decrees or judgments, in each case, promulgated or entered into by or with any Governmental Authority, relating in any way to the Environment, preservation or reclamation of natural resources, the generation, management, Release or threatened Release of, or exposure to, any Hazardous Material or to occupational health and safety matters (to the extent relating to the Environment or exposure to Hazardous Materials).

“**Equity Interests**” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time, and any final regulations promulgated and the rulings issued thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with Holdings or any of its Subsidiaries, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“**ERISA Event**” means:

- (1) a Reportable Event, or the requirements of Section 4043(b) of ERISA apply, with respect to a Plan;
- (2) a withdrawal by Holdings or any of its Subsidiaries or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations by Holdings or any of its Subsidiaries or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate that is treated as a termination under Section 4062(e) of ERISA;
- (3) a complete or partial withdrawal by Holdings or any of its Subsidiaries or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate from a Multiemployer Plan, receipt of written notification by Holdings or any of its Subsidiaries or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate concerning the imposition of Withdrawal Liability or written notification that a Multiemployer Plan is, or is expected to be, insolvent within the meaning of Title IV of ERISA or endangered or in critical status within the meaning of Section 305 of ERISA;
- (4) the provision by a Plan administrator or the PBGC of notice of intent to terminate a Plan, to appoint a trustee to administer a Plan, the treatment of a Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA or the commencement of proceedings by the PBGC to terminate a Plan or Multiemployer Plan;
- (5) the incurrence by Holdings or any of its Subsidiaries or, to the knowledge of Holdings or the Borrower, any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan, other than for the payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA;

- (6) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Plan;
- (7) the imposition of a lien under Section 303(k) of ERISA with respect to any Plan; and
- (8) a determination that any Plan is in “at risk” status (within the meaning of Section 303 of ERISA).

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“**Eurocurrency Borrowing**” means a Borrowing comprised of Eurocurrency Loans.

“**Eurocurrency Loan**” means any Term Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“**Event of Default**” has the meaning assigned to such term in Section 8.01.

“**Excess Cash Flow**” means, for any Excess Cash Flow Period, the Consolidated Net Income of the Borrower for such period, *minus*, without duplication:

(1) repayments, prepayments and other cash payments made with respect to the principal of any Indebtedness or the principal component of any Capital Lease Obligations of the Borrower or any Restricted Subsidiary during such period (excluding voluntary and mandatory prepayments of Term Loans, voluntary prepayments of Indebtedness described in Section 2.08(2)(b) and prepayments of other revolving Indebtedness (except to the extent accompanied by a corresponding reduction in commitments), but including all premium, make-whole or penalty payments paid in cash (to the extent such payments were not already deducted in calculating Consolidated Net Income and are not otherwise prohibited under this Agreement)); *provided* that a mandatory prepayment of Indebtedness will only be deducted pursuant to this clause (1) to the extent not already deducted in the computation of Net Cash Proceeds of Asset Sales; *minus*

(2) (a) cash payments made by the Borrower or any Restricted Subsidiary during such period in respect of Capital Expenditures, Permitted Acquisitions, Investments and Restricted Payments (excluding Restricted Payments made pursuant to Sections 6.06(15), (16), or (17), Investments in Cash Equivalents and other items (including Investments and Restricted Payments) that are eliminated in consolidation) and (b) cash payments that the Borrower or any Restricted Subsidiary is required to make in respect of Capital Expenditures, Permitted Acquisitions and Investments within 365 days after the end of such period pursuant to binding obligations entered into prior to or during such period; *provided* that amounts described in this clause (b) will not reduce Excess Cash Flow in subsequent periods and, to the extent not so paid, will increase Excess Cash Flow in the subsequent period; *minus*

(3) cash payments made by the Borrower or any Restricted Subsidiary during such period in respect of (a) long-term liabilities other than Indebtedness or (b) items for which an accrual or reserve was established in a prior period; *minus*

(4) (a) cash payments made by the Borrower or any Restricted Subsidiary during such period in respect of Taxes (including distributions to any Parent Entity in respect of Taxes), to the extent such payments exceed the amount of tax expense deducted in calculating such Consolidated Net Income, and (b) cash payments that the Borrower or any Restricted Subsidiary will be required to make in respect of Taxes (including distributions to any Parent Entity in respect of Taxes) within 180 days after the end of such period; *provided* that amounts described in this clause (b) will not reduce Excess Cash Flow in subsequent periods; *minus*

(5) all cash payments and other cash expenditures made by the Borrower or any Restricted Subsidiary during such period (a) with respect to items that were excluded in the calculation of such Consolidated Net Income pursuant to clauses (1) through (19) of the definition of Consolidated Net Income or (b) that were not expensed during such period in accordance with GAAP; *minus*

(6) all non-cash credits included in calculating such Consolidated Net Income (including insured or indemnified losses referred to in clauses (16) and (17) of Consolidated Net Income to the extent not reimbursed in cash during such period); *minus*

(7) an amount equal to the sum of (a) the increase in the Working Capital of the Borrower during such period, if any *plus* (b) the increase in long-term accounts receivable of the Borrower and the Restricted Subsidiaries, if any (other than any such increases contemplated by clauses (a) and (b) of this clause (7) that are directly attributable to acquisitions of a Person or business unit by the Borrower and the Restricted Subsidiaries during such period); *plus*

(8) all non-cash charges, losses and expenses of the Borrower or any Restricted Subsidiary that were deducted in calculating such Consolidated Net Income; *plus*

(9) all cash payments received by the Borrower or any Restricted Subsidiary during such period pursuant to Hedge Agreements that were not treated as revenue or net income under GAAP; *plus*

(10) an amount equal to the sum of (a) the decrease in Working Capital of the Borrower during such period, if any *plus* (b) the decrease in long-term accounts receivable of the Borrower and the Restricted Subsidiaries, if any; *plus*

(11) all amounts referred to in clauses (1), (2) and (3) above to the extent funded with the proceeds of the issuance or the incurrence of Indebtedness (other than proceeds of revolving loans), the sale or issuance of Equity Interests or any loss, damage, destruction or condemnation of, or any sale, transfer or other disposition to any Person of, any assets.

“**Excess Cash Flow Period**” means each fiscal year of the Borrower.

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

“**Excluded Assets**” means “*Excluded Assets*” as defined in the Collateral Agreement.

“**Excluded Contributions**” means, as of any date, the aggregate amount of the net cash proceeds and Cash Equivalents, together with the aggregate fair market value (determined in good faith by a Responsible Officer of the Borrower) of other assets that are used or useful in a business permitted under Section 6.08, received by the Borrower after the Closing Date from:

- (1) contributions to its common equity capital; or
- (2) the sale of Capital Stock of the Borrower;

in each case, designated as Excluded Contributions pursuant to a certificate of a Responsible Officer of the Borrower on the date such contribution is made or such Capital Stock is sold, less the aggregate amount of Investments made pursuant to Section 6.04(29) in each case prior to such date; *provided* that the proceeds of Disqualified Stock and any net cash proceeds that are used prior to such date (A) to make Restricted Payments under Section 6.06(1) or Section 6.06(2)(b), (B) to make an Investment under Section 6.04(3), a Restricted Payment under Section 6.06(15) or a payment in respect of Junior Financing under Section 6.09(2)(a), in each case utilizing the Available Amount or (C) for Contribution Indebtedness, will not be treated as Excluded Contributions.

“**Excluded Equity Interests**” means “*Excluded Equity Interests*” as defined in the Collateral Agreement.

“Excluded Indebtedness” means all Indebtedness not incurred in violation of Section 6.01.

“Excluded Subsidiary” means any Subsidiary (if and to the extent such Subsidiary is not a borrower or guarantor under the ABL Credit Agreement) that is an:

- (1) Immaterial Subsidiary;
- (2) Subsidiary that is not a Wholly Owned Subsidiary of the Borrower;
- (3) Unrestricted Subsidiary;
- (4) Foreign Subsidiary;
- (5) Domestic Subsidiary of a Foreign Subsidiary;
- (6) Subsidiary substantially all the assets of which are Equity Interests and, if any, indebtedness in one or more Foreign Subsidiaries;
- (7) Subsidiary if acting as a Guarantor, or its Guarantee, would, and only so long as it would, (a) be prohibited by law or regulation or by any contractual obligation existing on the (but not incurred in anticipation of) Closing Date or on the date such subsidiary is acquired or organized (as long as, in the case of an acquisition of a subsidiary, such prohibition did not arise as part of such acquisition) or (b) require a governmental or third-party consent, approval, license or authorization (unless such consent, approval, license or authorization has been received); and
- (8) any Subsidiary that is a Captive Insurance Company, not-for-profit Subsidiary or Subsidiary which is a special purpose entity for securitization transaction (including any Receivables Subsidiary) or like special purposes;

in each case, unless the Borrower determines in its sole discretion, upon notice to the Administrative Agent, that any of the foregoing Persons (other than an Unrestricted Subsidiary or Subsidiary that is not a Wholly Owned Subsidiary of the Borrower) should not be an Excluded Subsidiary until the date on which the Borrower has informed the Administrative Agent that it elects to have such Person be an Excluded Subsidiary; *provided* that the Guarantee and the security interest provided by such Person is full and unconditional and fully enforceable in the jurisdiction of organization of such Person.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor 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 Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“Excluded Taxes” means, with respect to any Recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder:

- (1) Taxes imposed on or measured by its net income (however denominated) or franchise Taxes imposed in lieu of net income Taxes, and branch profits Taxes, in each case, (a) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (b) that are Other Connection Taxes;

(2) any U.S. federal withholding Tax imposed on amounts payable hereunder to or for the account of a Recipient under any law applicable at the time such Recipient becomes a party to this Agreement (or in the case of a Lender, under any law applicable at the time such Lender changes its Lending Office), except to the extent that the Recipient's assignor (if any), at the time of assignment (or such Lender immediately before it changed its Lending Office), was entitled to receive additional amounts from the Loan Party with respect to any withholding Tax pursuant to Section 2.14(1) or Section 2.14(3);

(3) Taxes that are attributable to such Lender's or Administrative Agent's failure to comply with Section 2.14(5) or Section 2.14(6); and

(4) any U.S. federal withholding Taxes imposed under FATCA.

"**Executive Order**" has the meaning assigned to such term in Section 3.19(3)(a).

"**Existing Term Loan Agreement**" has the meaning assigned to such term in the recitals hereto.

"**Extended Term Loan Installment Date**" has the meaning assigned to such term in Section 2.06(2).

"**Extended Term Loans**" has the meaning assigned to such term in Section 2.20(1).

"**Extending Term Lender**" has the meaning assigned to such term in Section 2.20(1).

"**Extension**" has the meaning assigned to such term in Section 2.20(1).

"**Extension Amendment**" has the meaning assigned to such term in Section 2.20(2).

"**Extension Offer**" has the meaning assigned to such term in Section 2.20(1).

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

"**FCPA**" has the meaning assigned to such term in Section 3.19(2).

"**Federal Funds Rate**" means, for any day, the rate calculated by the Federal Reserve Board of New York based on such day's federal funds transactions by depository institutions, as determined in such manner as the Federal Reserve Board of New York shall set forth on its public website from time to time, and published on the next succeeding Business Day by the Federal Reserve Board of New York as the federal funds rate, or, if such rate is not so published for any Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1.00%) of the quotations for such day for such transactions received by the Administrative Agent from three U.S. banks of recognized standing selected by it.

"**Fees**" means the Administrative Agent Fees and all other fees payable to a Lender, the Administrative Agent, or any Arranger, in each case, with respect to Term Loans.

"**Financial Officer**" means, with respect to any Person, the chief financial officer, president, principal accounting officer, director of financial services, treasurer, assistant treasurer or controller of such Person.

"**First Lien Intercreditor Agreement**" means a "*pari passu*" intercreditor agreement substantially in the form attached hereto as Exhibit G (as the same may be modified in a manner satisfactory to the Administrative Agent). Upon the request of the Borrower, the Administrative Agent and Collateral Agent will execute and deliver a First Lien Intercreditor Agreement with the Loan Parties and one or more Debt Representatives for Indebtedness permitted hereunder that is permitted to be secured on a *pari passu* basis with the Term Loans.

“**Fixed Amounts**” has the meaning assigned to such term in Section 1.07(b).

“**Flood Certificate**” means a “Standard Flood Hazard Determination Form” of the Federal Emergency Management Agency and any successor Governmental Authority performing a similar function.

“**Flood Program**” means the National Flood Insurance Program created by the U.S. Congress pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Flood Insurance Reform Act of 2004, in each case as amended from time to time, and any successor statutes.

“**Flood Zone**” means areas having special flood hazards as described in the National Flood Insurance Act of 1968, as amended from time to time, and any successor statute.

“**Foreign Lender**” means any Lender that is organized under the laws of a jurisdiction other than the United States of America. For purposes of this definition, the United States of America, each state thereof and the District of Columbia will be deemed to constitute a single jurisdiction.

“**Foreign Subsidiary**” means any Subsidiary that is not a Domestic Subsidiary.

“**GAAP**” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession (but excluding the policies, rules and regulations of the SEC applicable only to public companies).

Notwithstanding anything to the contrary above or in the definition of Capital Lease Obligations or Capital Expenditures, in the event of a change under GAAP (or the application thereof) requiring any leases to be capitalized that are not required to be capitalized as of the Closing Date, only those leases that would result or would have resulted in Capital Lease Obligations or Capital Expenditures on the Closing Date (assuming for purposes hereof that they were in existence on the Closing Date) will be considered capital leases and all calculations under this Agreement will be made in accordance therewith.

“**Governmental Authority**” means any federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory or legislative body.

“**Guarantee**” of or by any Person (the “**guarantor**”) means:

(1) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect:

(a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take or pay or otherwise) or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness or other obligations;

(b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof;

(c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation;

(d) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part); or

(e) as an account party in respect of any letter of credit, bank guarantee or other letter of credit guaranty issued to support such Indebtedness or other obligation; or

(2) any Lien on any assets of the guarantor securing any Indebtedness (or any existing right, contingent or otherwise, of the holder of Indebtedness to be secured by such a Lien) of any other Person, whether or not such Indebtedness or other obligation is assumed by the guarantor;

provided, that the term “Guarantee” will not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted by this Agreement (other than such obligations with respect to Indebtedness).

The amount of any Guarantee will be deemed to be an amount equal to the stated or determinable amount of the Indebtedness in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

“**Guarantor**” means (1) Holdings; (2) each Subsidiary Loan Party; and (3) each Parent Entity or Restricted Subsidiary (other than any Restricted Subsidiary that is not a Wholly Owned Subsidiary) that the Borrower may elect in its sole discretion, from time to time, upon written notice to the Administrative Agent, to cause to Guarantee the Obligations until such date that the Borrower has informed the Administrative Agent that it elects not to have such Person Guarantee the Obligations; *provided* that, in the case of this clause (3), the Guarantee and the security interest provided by such Person is full and unconditional and fully enforceable in the jurisdiction of organization of such Person.

“**Hazardous Materials**” means all pollutants, contaminants, wastes, chemicals, materials, substances and constituents, including explosive or radioactive substances or petroleum or petroleum byproducts or distillates, friable asbestos or friable asbestos-containing materials, polychlorinated biphenyls or radon gas, in each case, that are regulated or would reasonably be expected to give rise to liability under any Environmental Law.

“**Hedge Agreement**” means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, not entered into for speculative purposes; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Holdings or any of its Subsidiaries will be a Hedge Agreement.

“**Holdings**” has the meaning assigned to such term in the introductory paragraph hereof.

“**Immaterial Subsidiary**” means, as of any date, any Subsidiary that (i) did not, as of the last day of the most recent fiscal quarter of the Borrower for which Required Financial Statements have been delivered (or were required to be delivered), have assets with a value in excess of 2.50% of the Consolidated Total Assets or revenues representing in excess of 2.50% of total revenues of the Borrower and the Restricted Subsidiaries for the period of four consecutive fiscal quarters for which Required Financial Statements have been delivered (or were required to be delivered), calculated on a consolidated basis in accordance with GAAP; and (ii) taken together with all Immaterial Subsidiaries as of the last day of the most recent fiscal quarter of the Borrower for which Required Financial Statements have been delivered (or were required to be delivered), did not have assets with a value in excess of 5.00% of Consolidated Total Assets or revenues representing in excess of 5.00% of total revenues of the Borrower and the Restricted Subsidiaries on a consolidated basis for such four-quarter period.

“Incremental Equivalent Term Debt” means secured or unsecured Indebtedness of the Borrower in the form of term loans or notes; *provided* that:

(1) either (x) the aggregate outstanding principal amount of such Indebtedness incurred, when taken together with the aggregate principal amount of Incremental Term Loans incurred in reliance on the Non-Ratio Based Incremental Facility Cap, does not exceed the Non-Ratio Based Incremental Facility Cap or (y) (I) with respect to any such Indebtedness secured on a *pari passu* basis with the Term Loans, the Senior Secured First Lien Net Leverage Ratio (determined on the date on which the Incremental Equivalent Term Debt is incurred (and after giving effect to such incurrence) and after giving effect to any acquisition or other transaction consummated in connection with the incurrence of such Incremental Equivalent Term Debt) is equal to or less than 4.50 to 1.00, (II) with respect to any such Indebtedness to be secured on a junior basis to the Term Loans, the Total Secured Net Leverage Ratio (determined on the date on which the Incremental Equivalent Term Debt is incurred (and after giving effect to such incurrence) and after giving effect to any acquisition or other transaction consummated in connection with the incurrence of such Incremental Equivalent Term Debt) is equal to or less than 7.25 to 1.00 and (III) with respect to any such Indebtedness that is unsecured, the Total Net Leverage Ratio (determined on the date on which the applicable Incremental Equivalent Term Debt is incurred (and after giving effect to such incurrence) and after giving effect to any acquisition or other transaction consummated in connection with the incurrence of such Incremental Equivalent Term Debt) is equal to or less than 7.25 to 1.00; *provided*, for the avoidance of doubt, that amounts under clause (x) and clause (y) may be incurred in the same transaction and that amounts under clause (y) may be utilized prior to amounts under clause (x);

(2) the final maturity date of such Incremental Equivalent Term Debt may not be earlier than the Latest Maturity Date of the Term Loans (and in the case of any junior secured or unsecured Incremental Equivalent Term Debt, the final maturity date may not be earlier than the date that is 91 days after the Latest Maturity Date of the Term Loans);

(3) the Weighted Average Life to Maturity of such Incremental Equivalent Term Debt may be no shorter than the longest remaining Weighted Average Life to Maturity of the Term Loans;

(4) if such Indebtedness is secured on a *pari passu* basis with the Term Loans, such Indebtedness consist of notes and a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a First Lien Intercreditor Agreement and, if applicable, the Intercreditor Agreement; and

(5) if such Indebtedness is secured on a junior basis to the Term Loans, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a Junior Lien Intercreditor Agreement.

Incremental Equivalent Term Debt will include any Registered Equivalent Notes issued in exchange therefor.

“Incremental Facility” has the meaning assigned to such term in Section 2.18(1).

“Incremental Facility Amendment” has the meaning assigned to such term in Section 2.18(5).

“Incremental Lenders” has the meaning assigned to such term in Section 2.18(5).

“Incremental Term Loan Installment Date” has the meaning assigned to such term in Section 2.06(2).

“Incremental Term Loans” has the meaning assigned to such term in Section 2.18(1).

“**Incremental Yield**” has the meaning assigned to such term in Section 2.18(8).

“**Indebtedness**” means, with respect to any Person, without duplication:

- (1) all obligations of such Person for borrowed money;
- (2) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments;
- (3) all obligations of such Person under conditional sale or title retention agreements relating to property or assets purchased by such Person;
- (4) all obligations of such Person issued or assumed as the deferred purchase price of property or services, to the extent the same would be required to be shown as a long-term liability on a balance sheet prepared in accordance with GAAP;
- (5) all Capital Lease Obligations of such Person;
- (6) all net payments that such Person would have to make in the event of an early termination, on the date Indebtedness of such Person is being determined, in respect of outstanding Hedge Agreements;
- (7) the principal component of all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and bank guarantees;
- (8) the principal component of all obligations of such Person in respect of bankers’ acceptances;
- (9) all Guarantees by such Person of Indebtedness described in clauses (1) through (8) above; and
- (10) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock);

provided that Indebtedness will not include:

- (a) trade payables, accrued expenses and intercompany liabilities arising in the ordinary course of business;
- (b) prepaid or deferred revenue arising in the ordinary course of business;
- (c) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase prices of an asset to satisfy unperformed obligations of the seller of such asset; or
- (d) earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP.

The Indebtedness of any Person will include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

“**Indemnified Taxes**” means (1) all Taxes other than Excluded Taxes, imposed on or with respect to any payment, made by or on account of any obligation of any Loan Party under any Loan Document; and (2) to the extent not otherwise described in clause (1), Other Taxes.

“*Indemnitee*” has the meaning assigned to such term in Section 10.05(2).

“*Intellectual Property Rights*” has the meaning assigned to such term in Section 3.20(1).

“*Intellectual Property Security Agreements*” has the meaning set forth in the Guaranty and Collateral Agreement.

“*Intercreditor Agreement*” means the Amended and Restated Intercreditor Agreement, dated as of the Closing Date, by and among the Administrative Agent, the Collateral Agent and Bank of America, N.A., as administrative agent and collateral agent under the ABL Credit Agreement, and acknowledged by the Loan Parties, as amended, restated, supplemented or otherwise modified from time to time.

“*Interest Coverage Ratio*” means, as of any date, the ratio of (1) the Consolidated EBITDA for the most recent period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis, to (2) the sum of (a) the Consolidated Interest Expense of the Borrower for such period, calculated on a Pro Forma Basis, and (b) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock of the Borrower or preferred stock of any of the Restricted Subsidiaries, in each case, made during such period.

“*Interest Election Request*” means a written request by the Borrower to convert or continue a Borrowing in accordance with Section 2.04.

“*Interest Payment Date*” means (1) with respect to any Eurocurrency Loan, the last day of the Interest Period applicable to the Borrowing of which such Term Loan is a part and, in the case of a Eurocurrency Borrowing with an Interest Period of more than three months’ duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months’ duration been applicable to such Borrowing; (2) with respect to any ABR Loan, the last Business Day of each fiscal quarter of the Borrower commencing with the last Business Day of the first full fiscal quarter of the Borrower after the Closing Date; ~~and~~ (3) with respect to all Tranche B Term Loans (including Converted Tranche B Term Loans), the Amendment No. 2 Effective Date; and (4) with respect to all Tranche B-1 Term Loans (including Converted Tranche B-1 Term Loans), the Amendment No. 3 Effective Date.

“*Interest Period*” means, as to any Eurocurrency Borrowing, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is one, two, three or six months thereafter, as the Borrower may elect, or the date any Eurocurrency Borrowing is converted to an ABR Borrowing in accordance with Section 2.04 or repaid or prepaid in accordance with Section 2.06, 2.07 or 2.08; *provided that*:

(1) if any Interest Period would end on a day other than a Business Day, such Interest Period will be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period will end on the next preceding Business Day;

(2) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) will end on the last Business Day of the calendar month at the end of such Interest Period;

(3) no Interest Period will extend beyond the applicable Maturity Date. Interest will accrue from and including the first day of an Interest Period but excluding the last day of such Interest Period; and

(4) the initial Interest Period, commencing on the Closing Date, will end on September 30, 2016.

“Interpolated Screen Rate” means, at any day, with respect to any Eurocurrency Loan denominated in any currency for any Interest Period, a rate per annum which results from interpolating on a linear basis between (a) the applicable Screen Rate for the longest maturity for which a Screen Rate is available that is shorter than such Interest Period and (b) the applicable Screen Rate for the shortest maturity for which a Screen Rate is available that is longer than such Interest Period, in each case, as of approximately 11:00 a.m. (London time) on such day.

“Investment” has the meaning assigned to such term in Section 6.04.

“Investment Grade Rating” means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s and BBB- (or the equivalent) by S&P (or reasonably equivalent ratings of another internationally recognized rating agency).

“Investment Grade Securities” means:

- (1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents);
- (2) securities that have an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Borrower and its Restricted Subsidiaries;
- (3) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition; and
- (4) investments in any fund that invests at least 95.0% of its assets in investments of the type described in clauses (1) and (2) above which fund may also hold immaterial amounts of cash pending investment and/or distribution.

“Junior Financing” means (1) any Indebtedness permitted to be incurred hereunder that is contractually subordinated in right of payment to the Obligations or secured by Liens that are contractually subordinated to the Liens securing the Obligations (other than the ABL Obligations), (2) the New Senior Notes or (3) any Permitted Refinancing Indebtedness in respect of any of the foregoing.

“Junior Lien Intercreditor Agreement” means a “junior lien” intercreditor agreement substantially in the form attached hereto as Exhibit H (as the same may be modified in a manner satisfactory to the Administrative Agent), or, if requested by the providers of Indebtedness to be secured on a junior basis to the Term Loans, another lien subordination arrangement satisfactory to the Administrative Agent. Upon the request of the Borrower, the Administrative Agent and Collateral Agent will execute and deliver a Junior Lien Intercreditor Agreement with the Loan Parties and one or more Debt Representatives for Indebtedness permitted hereunder that is permitted to be secured on a junior basis to the Term Loans.

“Latest Maturity Date” means, as of any date of determination, the latest Maturity Date of the Term Facilities in effect on such date.

“LCA Election” has the meaning assigned to such term in Section 1.07(a).

“Leased Material Real Property” has the meaning assigned to such term in Section 3.15(2).

“Lender” means each Tranche B Term Loan Lender listed on Schedule 2.01 (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 10.04) ~~and~~ each Tranche B-1 Term Loan Lender and each Tranche B-2 Term Loan Lender, as well as any Person that becomes a Lender hereunder pursuant to Section 10.04 and any Additional Lender.

“Lender Default” means:

- (1) the refusal (which has not been retracted) or failure of any Lender to make available its portion of any Borrowing;

(2) any Lender has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations under the Term Facility or under other similar agreements in which it commits to extend credit; or

(3) the admission by any Lender in writing that it is insolvent or such Lender becoming subject to a Lender-Related Distress Event.

“**Lender-Related Distress Event**” means, with respect to any Lender or any Person that directly or indirectly controls a Lender (each, a “**Distressed Person**”), as the case may be, a voluntary or involuntary case with respect to such Distressed Person under any debt relief law, or a custodian, conservator, receiver or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, or such Distressed Person or any Person that directly or indirectly controls such Distressed Person is subject to a forced liquidation, or such Distressed Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt; *provided* that a Lender-Related Distress Event will not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in any Lender or any Person that directly or indirectly controls such Lender by a Governmental Authority or an instrumentality thereof; *provided, further*, that the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator with respect to an Agent or Lender or any person that directly or indirectly controls such Agent or Lender under the Dutch Financial Supervision Act 2007 (as amended from time to time and including any successor legislation) shall not be a “Lender-Related Distress Event” with respect to such Agent or Lender or any person that directly or indirectly controls such Agent or Lender.

“**Lending Office**” means, as to any Lender, the applicable branch, office or Affiliate of such Lender designated by such Lender to make Term Loans.

“**LGP**” means Leonard Green & Partners, L.P. and any of its Affiliates and funds or partnerships managed or advised by any of them or any of their respective Affiliates but not including, however, any portfolio company of any of the foregoing.

“**LIBO Rate**” means with respect to any Eurocurrency Borrowing for any Interest Period, the London interbank offered rate as administered by the ICE Benchmark Administration Interest Settlement Rates (or by reference to the rates provided by any Person that takes over the administration of such rate if the ICE Benchmark Administration is no longer making a “LIBO Rate” rate available) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period (as set forth by the Bloomberg Information Service or any successor thereto or any other service selected by the Administrative Agent that has been nominated by the ICE Benchmark Administration (or any successor or substitute agency thereto) as an authorized information vendor for the purpose of displaying such rates) (the “**Screen Rate**”); *provided* that if such Screen Rate is not available at such time for any reason, the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition, “LIBO Rate” shall be the interest rate per annum equal to the Interpolated Screen Rate; *further provided, however*, if the LIBO Rate is less than zero, then the LIBO Rate shall be zero.

“**LIBOR Successor Rate**” has the meaning assigned to such term in Section 2.11(b).

“**Lien**” means, with respect to any asset (1) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset; or (2) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset; *provided* that in no event will an operating lease, any capital lease in respect of Real Property permitted hereunder, or an agreement to sell be deemed to constitute a Lien.

“**Limited Condition Acquisition**” means any acquisition, including by way of merger, by the Borrower or one or more Restricted Subsidiaries permitted pursuant to the Loan Documents whose consummation is not conditioned on the availability of, or on obtaining, third party financing, or a Permitted Change of Control.

“**Loan Documents**” means this Agreement, Amendment No. 1, Amendment No. 2, [Amendment No. 3](#), the Security Documents, the Intercreditor Agreement, any First Lien Intercreditor Agreement, any Junior Lien Intercreditor Agreement and any Note.

“**Loan Parties**” means Holdings, the Borrower and the Subsidiary Loan Parties.

“**Management Agreement**” means monitoring, management, fee or similar or related agreements providing for the payment (or accrual) of an annual monitoring, management or similar fee to the Sponsors or any Affiliate of Sponsors in an aggregate amount equal to or less than \$3.0 million per annum for any period commencing on or after the Closing Date (with prorated amounts payable for any partial year periods and any amounts not paid in any period beginning on the Closing Date accruing and payable upon request of the Sponsors in future periods).

“**Management Group**” means the group consisting of the directors, executive officers and other management personnel of Holdings, the Borrower or the Restricted Subsidiaries on the Closing Date.

“**Margin Stock**” has the meaning assigned to such term in Regulation U.

“**Material Adverse Effect**” means a material adverse effect on:

- (1) the business, financial condition or results of operations, in each case, of the Borrower and the Restricted Subsidiaries (taken as a whole);
- (2) the ability of the Borrower and the Guarantors (taken as a whole) to perform their payment obligations under the Loan Documents; or
- (3) the rights and remedies of the Administrative Agent and the Lenders (taken as a whole) under the Loan Documents.

“**Material Indebtedness**” means Indebtedness (other than the Term Loans) of the Borrower or any Subsidiary Loan Party in an aggregate outstanding principal amount exceeding \$25.0 million.

“**Material Subsidiary**” means any Subsidiary other than an Immaterial Subsidiary.

“**Maturity Date**” means, as the context may require:

- (1) with respect to all Term Loans (including all Tranche B ~~1~~² Term Loans) existing on the Amendment No. ~~2~~³ Effective Date, August 16, 2023;
- (2) with respect to any Incremental Term Loans, the final maturity date specified therefor in the applicable Incremental Facility Amendment;
- (3) with respect to any Other Term Loans, the final maturity date specified therefor in the applicable Refinancing Amendment; and
- (4) with respect to any Extended Term Loans, the final maturity date specified therefor in the applicable Extension Amendment.

“**Maximum Rate**” has the meaning assigned to such term in Section 10.09.

“**MNPI**” means any material Nonpublic Information regarding Holdings and the Subsidiaries that has not been disclosed to the Lenders generally (other than Lenders who elect not to receive such information). For purposes of this definition “material Nonpublic Information” means Nonpublic Information that would reasonably be expected to be material to a decision by any Lender to assign or acquire any Term Loans or to enter into any of the transactions contemplated thereby.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Mortgage Policies**” has the meaning assigned to such term in Section 5.10(2)(c).

“**Mortgaged Properties**” means, all Real Property, as to which the Collateral Agent for the benefit of the Secured Parties shall be granted a Lien pursuant to the Mortgages.

“**Mortgages**” means each of the mortgages and deeds of trust made by any Loan Party, reasonably acceptable to the Administrative Agent, in favor of, or for the benefit of, the Collateral Agent for the benefit of the Secured Parties, as the same may be amended, supplemented, replaced or otherwise modified from time to time.

“**Multiemployer Plan**” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which Holdings, the Borrower or any Restricted Subsidiary or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

“**Net Cash Proceeds**” means the aggregate cash proceeds (using the fair market value of any Cash Equivalents) received by the Borrower or any Restricted Subsidiary in respect of any Asset Sale (including any cash received in respect of or upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale and any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, and including any proceeds received as a result of unwinding any related Hedge Agreements in connection with such transaction but excluding the assumption by the acquiring Person of Indebtedness relating to the disposed assets or other consideration received in any other non-cash form), net of the direct cash costs relating to such Asset Sale and the sale or disposition of such Designated Non-Cash Consideration (including legal, accounting and investment banking fees, and brokerage and sales commissions), and any relocation expenses incurred as a result thereof, taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements related thereto), amounts required to be applied to the repayment of principal, premium (if any) and interest on Indebtedness required to be paid as a result of such transaction that is secured by a Permitted Lien that is prior or senior to the Lien securing the Obligations, any costs associated with unwinding any related Hedge Agreements in connection with such transaction and any deduction of appropriate amounts to be provided by the Borrower or any of the Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Borrower or any of the Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction; *provided* that such reserved amounts will be deemed to be Net Cash Proceeds to the extent and at the time of any reversal thereof (to the extent not applied to the satisfaction of any applicable liabilities in cash in a corresponding amount). For purposes of Section 2.08(1), no cash proceeds realized in connection with an Asset Sale will be deemed to be Net Cash Proceeds unless such Asset Sale involves aggregate consideration in excess of \$5.0 million.

“**New Senior Notes**” means \$390.0 million aggregate principal amount of floating rate senior notes due 2024, issued by the Borrower on the Closing Date.

“**New Senior Notes Documents**” means, collectively, the New Senior Notes Indenture and all other loan agreements, indentures, note purchase agreements, promissory notes, guarantees, intercreditor agreements, assignment and assumption agreements and other instruments and agreements evidencing the terms of the New Senior Notes.

“**New Senior Notes Indenture**” means that certain indenture, dated as of August 16, 2016, among the New Senior Notes Trustee, the Borrower and the guarantors party thereto.

“*New Senior Notes Trustee*” means U.S. Bank National Association, together with its permitted successors and assigns.

“*New Sponsor*” means any entity or group of entities with committed capital or assets under management in excess of \$1,000,000,000 or otherwise reasonably acceptable to the Required Lenders, in either case, together with any co-investors.

“*New York Courts*” has the meaning assigned to such term in Section 10.15(1).

“*No MNPI Representation*” means, with respect to any Person, a customary representation that such Person is not in possession of any MNPI.

“*Non-Consenting Lender*” has the meaning assigned to such term in Section 2.16(3).

“*Non-Debt Fund Affiliate*” means any Affiliated Lender other than a Debt Fund Affiliate.

“*Non-Debt Fund Affiliate Assignment and Acceptance*” has the meaning assigned to such term in Section 10.04(10)(b).

“*Non-Ratio Based Incremental Facility Cap*” has the meaning assigned to such term in Section 2.18(3). Unless the Borrower elects otherwise, each Incremental Facility and all Incremental Equivalent Term Debt shall be deemed incurred first under the Available Incremental Term Loan Facility Amount or clause (1)(y) of the definition of “*Incremental Equivalent Term Debt*,” respectively, to the extent permitted, with the balance incurred under the Non-Ratio Based Incremental Facility Cap.

“*Note*” has the meaning assigned to such term in Section 2.05(5).

“*Obligations*” means:

(1) all amounts owing to any Agent or any Lender pursuant to the terms of this Agreement or any other Loan Document, including all interest and expenses accrued or accruing (or that would, absent the commencement of an insolvency or liquidation proceeding, accrue) after the commencement by or against any Loan Party of any proceeding under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law naming such Loan Party as the debtor in such proceeding, in accordance with and at the rate specified in this Agreement, whether or not the claim for such interest or expense is allowed or allowable as a claim in such proceeding;

(2) any Specified Hedge Obligations; and

(3) any Cash Management Obligations;

provided that:

(a) the Obligations of the Loan Parties under any Specified Hedge Agreement and Cash Management Obligations will be secured and Guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and Guaranteed;

(b) any release of Collateral or Guarantors (as defined in the Collateral Agreement) effected in the manner permitted by this Agreement or any Security Document will not require the consent of any Cash Management Bank or Qualified Counterparty pursuant to any Loan Document; and

(c) Obligations of any Guarantor shall not, in any event, include any Excluded Swap Obligation with respect to such Guarantor.

“**OFAC**” has the meaning assigned to such term in Section 3.19(3)(e).

“**Original Term Loan Installment Date**” has the meaning assigned to such term in Section 2.06(1).

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

“**Other First Lien Indebtedness**” has the meaning assigned to such term in Section 2.08(1)(c).

“**Other Taxes**” means any and all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.16(2)).

“**Other Term Loan Installment Date**” has the meaning assigned to such term in Section 2.06(2).

“**Other Term Loans**” has the meaning assigned to such term in Section 2.19(1).

“**Owned Material Real Property**” has the meaning assigned to such term in Section 3.15(1).

“**Parent Entity**” means any direct or indirect parent of the Borrower.

“**Participant**” has the meaning assigned to such term in Section 10.04(4)(a).

“**Participant Register**” has the meaning assigned to such term in Section 10.04(4)(a).

“**Payment Office**” means the office of the Administrative Agent located at 309 West 49th Street, 5th Floor, New York, New York 10019, Attention: US Loan Support (Facsimile: (646) 587-1328; Telephone: (212) 667-1324), or such other office as the Administrative Agent may designate to the Borrower and the Lenders from time to time.

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA, or any successor thereto.

“**Perfection Certificate**” means the Perfection Certificate with respect to the Loan Parties in a form substantially similar to that delivered on the Closing Date.

“**Permitted Acquisition**” means any acquisition of all or substantially all the assets of, or a majority of the Equity Interests in, or merger, consolidation or amalgamation with, a Person or division or line of business of a Person (or any subsequent investment made in a Person, division or line of business previously acquired in a Permitted Acquisition) if (1) no Event of Default is continuing immediately prior to making such Investment or would result therefrom; and (2) immediately after giving effect thereto, with respect to acquisitions of entities that do not become Subsidiary Loan Parties, the aggregate fair market value of all Investments made in such entities since the Closing Date (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value), when taken together with the aggregate amount of payments made with respect to Investments pursuant to Section 6.04(6), will not exceed the greater of (a) \$25.0 million and (b) 6.25% of Consolidated Total Assets as of the date any such acquisition is made.

“**Permitted Amendment**” means any Incremental Facility Amendment, Refinancing Amendment or Extension Amendment.

“Permitted Change of Control” means any transaction or series of related transactions which otherwise may constitute a Change of Control in which a New Sponsor acquires, either directly or indirectly through one or more holding companies, Equity Interests representing 50% or more of the aggregate ordinary voting power in Holdings or conveying the right to nominate a majority of the board of directors of Holdings (whether directly or indirectly through the right to direct the vote of such Equity Interests) and the following additional conditions are met:

(a) the Borrower shall be in compliance, on a Pro Forma Basis after giving effect to such transactions or series of related transactions (including any Indebtedness assumed or permitted to exist or incurred, issued or otherwise obtained in connection therewith), with (x) a Total Net Leverage Ratio of not greater than 7.25:1.00 and (y) a Senior Secured First Lien Net Leverage Ratio of not greater than 4.90:1.00;

(b) the New Sponsor shall have made, or substantially concurrently therewith, shall make, cash equity contributions directly or indirectly to the New Sponsor’s acquisition vehicle (which shall be used to consummate a Permitted Change of Control) on or prior to the Permitted Change of Control Effective Date in an aggregate amount equal to, when combined with the fair market value of any Equity Interests of any of the management and other existing equity holders of Holdings (or any direct or indirect parent company of Holdings) and its Subsidiaries rolled over or invested in connection with such Permitted Change of Control (such cash equity contributed by the New Sponsor, taken together with the fair market value of any Equity Interests rolled over or invested in connection with the Permitted Change of Control, the “Permitted Change of Control Equity Capitalization”), (x) at least 30% of (y) the sum of Consolidated Total Net Debt and the Permitted Change of Control Equity Capitalization;

(c) (i) at least 15 Business Days prior to the Permitted Change of Control Effective Date, the Borrower shall have delivered notice to the Administrative Agent of such Permitted Change of Control and of the identity of the New Sponsor and (ii) not later than two (2) Business Days prior to the Permitted Change of Control Effective Date, the New Sponsor shall have provided all customary information about its acquisition vehicle that shall have been reasonably requested by the Administrative Agent in writing at least ten (10) Business Days prior to the Permitted Change of Control Effective Date and that the Administrative Agent reasonably determines is required by United States regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act (and, upon any request made by a Lender to the Administrative Agent, the Administrative Agent will provide the Lenders with all such information made available to it);

(d) on the Permitted Change of Control Effective Date, the Administrative Agent shall have received an officer’s certificate from the Borrower stating that the conditions described in clauses (a) through (b) above and the definition of “New Sponsor” have been satisfied; and

(e) after giving effect to a Permitted Change of Control, New Sponsor shall have a majority of the voting power for the election of directors, managers or other governing board of the Borrower;

provided that for purposes of clauses (a) and (b) above if at the time of a Permitted Change of Control the most recent month-end financial statements available internally are monthly financial statements for a fiscal month ending during the period from (and including) the Borrower’s fiscal month ending on or about November 30 to and including the Borrower’s fiscal month ending on or about April 30 of any year (i) and any loans are outstanding under the ABL Credit Agreement as of the last day of such fiscal month included in such financial statements, then Unrestricted Cash at such date shall be deemed to be zero and (ii) if the amount of Indebtedness outstanding under the ABL Credit Agreement that is included in Consolidated Debt for purposes of clauses (a) and (b) above exceeds the amount of Indebtedness outstanding under the ABL Credit Agreement that is included in Consolidated Debt as at the end of the most recent fiscal year of the Borrower ending on or about September 30, then Consolidated Total Net Debt and Consolidated First Lien Net Debt for purposes of calculating the ratios and percentages in clauses (a) and (b) above shall exclude any such excess amount of Indebtedness under the ABL Credit Agreement to the extent a Responsible Officer delivers a certificate to the Administrative Agent stating that such Responsible Officer has determined that such excess amount is attributable to the ordinary course operations of the Borrower and its Restricted Subsidiaries since the last day of the Borrower’s most recent fiscal year ending on or about September 30 and not to the consummation of such Permitted Change of Control or any Acquisition or similar Investment or to the making of any Restricted Payment.

For the avoidance of doubt and notwithstanding anything to the contrary herein, only one Permitted Change of Control shall be permitted to be consummated under this Agreement and any Permitted Change of Control must be consummated prior to the date that is 18 months after the Closing Date.

“**Permitted Change of Control Costs**” means all reasonable fees, costs and expenses incurred or payable by Holdings (or any direct or indirect parent of Holdings), the Borrower or any of its Restricted Subsidiaries in connection with a Permitted Change of Control.

“**Permitted Change of Control Effective Date**” means the date of consummation of a Permitted Change of Control; *provided* that there shall only be one Permitted Change of Control Effective Date.

“**Permitted Debt**” has the meaning assigned thereto in Section 6.01.

“**Permitted Holders**” means each of:

- (1) the Sponsors;
- (2) any member of the Management Group (or any controlled Affiliate thereof);
- (3) any other holder of a direct or indirect equity interest in Holdings that either (a) holds such interest as of the Closing Date and is disclosed to the Arranger prior to the Closing Date or (b) becomes a holder of such interest prior to the three-month anniversary of the Closing Date and is a limited partner of a Sponsor on the Closing Date; *provided* that the limited partners that become holders of equity interests pursuant to this clause (b) do not own in the aggregate more than 20% of the Voting Stock of Holdings as of such three-month anniversary;
- (4) any group (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of which Persons described in the foregoing clauses (1), (2) or (3) are members; *provided* that, without giving effect to the existence of such group or any other group, the Persons described in clauses (1), (2) and (3), collectively, Beneficially Own Voting Stock representing 50% or more of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings (determined on a fully diluted basis but without giving effect to contingent voting rights not yet vested) then held by such group; and
- (5) any Permitted Parent.

“**Permitted Holdings Debt**” means unsecured Indebtedness of Holdings that:

- (1) is not subject to any Guarantee by the Borrower or any Restricted Subsidiary;
- (2) does not mature prior to the date that is ninety-one (91) days after the Latest Maturity Date;
- (3) no Event of Default has occurred and is continuing immediately after the issuance or incurrence thereof or would result therefrom;
- (4) has no scheduled amortization or payments of principal prior to the date that is ninety-one (91) days after the Latest Maturity Date (it being understood that such Indebtedness may have mandatory prepayment, repurchase or redemption provisions satisfying the requirements of clause (6) hereof);
- (5) does not require any payments in cash of interest or other amounts in respect of the principal thereof prior to the date that is ninety-one (91) days after the Latest Maturity Date; and

(6) has mandatory prepayment, repurchase or redemption, covenant, default and remedy provisions customary for senior discount notes of an issuer that is the parent of a borrower under senior secured credit facilities, and in any event, with respect to covenant, default and remedy provisions, no more restrictive than those set forth in the New Senior Notes Indenture taken as a whole (other than provisions customary for senior discount notes of a holding company), in each case as determined in good faith by a Responsible Officer of the Borrower;

provided that clauses (4) and (5) will not restrict payments that are necessary to prevent such Indebtedness from being treated as an “applicable high yield discount obligation” within the meaning of Section 163(i)(1) of the Code; *provided, further* that the Borrower will deliver to the Administrative Agent final copies of the definitive credit documentation relating to such Indebtedness (unless the Borrower is bound by a confidentiality obligation with respect thereto, in which case the Borrower will deliver a reasonably detailed description of the material terms and conditions of such Indebtedness in lieu thereof).

“**Permitted Investment**” has the meaning assigned to such term in Section 6.04.

“**Permitted Investor**” means:

- (1) each of the Sponsors;
- (2) each of their respective Affiliates and investment managers;
- (3) any fund or account managed or controlled by any of the Persons described in clause (1) or (2) of this definition;
- (4) any employee benefit plan of Holdings or any of its Subsidiaries and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan; and
- (5) investment vehicles of members of management of Holdings or the Borrower that invest in, acquire or trade commercial loans but excluding natural persons.

“**Permitted Liens**” has the meaning assigned to such term in Section 6.02.

“**Permitted Parent**” means (a) any Parent Entity that at the time it became a Parent Entity was a Permitted Holder pursuant to clauses (1), (2) and (3) of the definition thereof; *provided* that such Parent Entity was not formed in connection with, or in contemplation of, a transaction (other than the Transactions) that would otherwise constitute a Change in Control and (b) Holdings, so long as it is controlled by one or more Persons that are Permitted Holders pursuant to clause (1), (2), (3) or (4) of the definition thereof.

“**Permitted Refinancing Indebtedness**” means any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, “**Refinance**”) the Indebtedness being Refinanced (or previous refinancings thereof constituting Permitted Refinancing Indebtedness); *provided* that:

- (1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (*plus* unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses); *provided*, that with respect to the ABL Obligations, the principal amount of any Permitted Refinancing Indebtedness in respect thereof shall be subject only to Section 6.01(2)(b);
- (2) the Weighted Average Life to Maturity of such Permitted Refinancing Indebtedness is greater than or equal to the shorter of (a) the Weighted Average Life to Maturity of the Indebtedness being Refinanced and (b) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness being Refinanced that were due on or after the date that is one year following the Latest

Maturity Date were instead due on the date that is one year following the Latest Maturity Date; *provided* that no Permitted Refinancing Indebtedness incurred in reliance on this subclause (b) will have any scheduled principal payments due prior to the Latest Maturity Date in excess of, or prior to, the scheduled principal payments due prior to such Latest Maturity Date for the Indebtedness being Refinanced;

(3) if the Indebtedness being Refinanced is subordinated in right of payment to any Obligations under this Agreement, such Permitted Refinancing Indebtedness is subordinated in right of payment to such Obligations on terms at least as favorable to the Lenders (as determined in good faith by a Responsible Officer of the Borrower) as those contained in the documentation governing the Indebtedness being Refinanced;

(4) no Permitted Refinancing Indebtedness may have different obligors, or greater Guarantees or security, than the Indebtedness being Refinanced; *provided* that, with respect to a Refinancing of the ABL Obligations, the Liens, if any, securing such Permitted Refinancing Indebtedness will be on terms not materially less favorable to the Lenders than those contained in the documentation governing the ABL Credit Agreement, as determined in good faith by a Responsible Officer of the Borrower;

(5) in the case of a Refinancing of Indebtedness that is secured on *apari passu* basis with the Term Loans with Indebtedness that is secured on a *pari passu* basis with the Term Loans, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a First Lien Intercreditor Agreement and, if applicable, the Intercreditor Agreement;

(6) in the case of a Refinancing of Indebtedness that is secured on *apari passu* basis with, or on a junior basis to, the Term Loans with Indebtedness that is secured on a junior basis, to the Term Loans, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to or is otherwise subject to the provisions of a Junior Lien Intercreditor Agreement and, if applicable, the Intercreditor Agreement; and

(7) in the case of a Refinancing of the ABL Obligations, the Liens, if any, securing such Permitted Refinancing Indebtedness are subject to the Intercreditor Agreement or another intercreditor agreement that is substantially consistent with, and no less favorable to the Lenders in any material respect than, the Intercreditor Agreement as determined in good faith by a Responsible Officer of the Borrower and as certified by a Responsible Officer of the Borrower.

Permitted Refinancing Indebtedness may not be incurred to Refinance Indebtedness that is secured on a junior basis to the Term Loans with Indebtedness that is secured on a *pari passu* basis with the Term Loans.

Indebtedness constituting Permitted Refinancing Indebtedness will not cease to constitute Permitted Refinancing Indebtedness as a result of the subsequent extension of the Latest Maturity Date after the date of original incurrence thereof.

“**Person**” means any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, government, individual or family trust, Governmental Authority or other entity of whatever nature.

“**Plan**” means any “employee pension benefit plan” as defined in Section 3(2) of ERISA (other than a Multiemployer Plan) that is (1) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA; and (2) either (a) sponsored or maintained (at the time of determination or at any time within the five years prior thereto) by Holdings or any of its Subsidiaries or any ERISA Affiliate or (b) in respect of which Holdings or any of its Subsidiaries or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“**Plan of Reorganization**” has the meaning assigned to such term in Section 9.01(5).

“**Platform**” has the meaning assigned to such term in Section 10.17(1).

“**Pledged Collateral**” means “*Pledged Collateral*” as defined in the Collateral Agreement.

“**Prime Rate**” means, at any time, the rate of interest per annum as set forth or otherwise identified from time to time by The Wall Street Journal as its prime rate. In the event that such rate does not appear in such copy of The Wall Street Journal, the Prime Rate shall be determined by reference to such other publicly available service or publication for displaying such rates as may be agreed upon by the Administrative Agent and the Borrower.

“**Pro Forma Basis**” or “**Pro Forma**” means, with respect to the calculation of Consolidated EBITDA, the Senior Secured First Lien Net Leverage Ratio, the Total Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio, or any other calculation under any applicable provision of the Loan Documents, as of any date, that (1) pro forma effect will be given to the Transactions, any Permitted Acquisition or Investment, any issuance, incurrence, assumption or permanent repayment of Indebtedness (including Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transaction and for which any such financial ratio or other calculation is being calculated), all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division or store, or any conversion of a Restricted Subsidiary to an Unrestricted Subsidiary or of an Unrestricted Subsidiary to a Restricted Subsidiary and restructuring, strategic and other cost savings initiatives, in each case that have occurred during the four consecutive fiscal quarter period of the Borrower being used to calculate such financial ratio (the “**Reference Period**”), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Restricted Subsidiary after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period, and (2) pro forma effect will be given to factually supportable and identifiable pro forma cost savings related to operational efficiencies, strategic initiatives or purchasing improvements and other synergies, in each case, reasonably expected by the Borrower and the Restricted Subsidiaries to be realized based upon actions reasonably expected to be taken within 18 months of the date of such calculation (without duplication of the amount of actual benefit realized during such period from such actions), which cost savings, improvements and synergies can be reasonably computed, as certified in writing by the chief financial officer of the Borrower; *provided* that any such pro forma adjustments in respect of such cost savings, improvements and synergies shall not exceed 20% of Consolidated EBITDA (before giving effect to all such adjustments) for any four-quarter period. For the avoidance of doubt, no pro forma adjustment will be made subsequent to the relevant measurement date for borrowings incurred or repayments made under the ABL Credit Agreement in the ordinary course of business and unrelated to any of the events described in this definition.

“**Projections**” means all projections (including financial estimates, financial models, forecasts and other forward-looking information) furnished to the Lenders or the Administrative Agent by or on behalf of Holdings or any of the Subsidiaries on or prior to the Closing Date.

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

“**Public Lender**” has the meaning assigned to such term in Section 10.17(2).

“**Purchasing Borrower Party**” means Holdings or any Subsidiary of Holdings that becomes an Assignee or Participant pursuant to Section 10.04(14).

“**Qualified Counterparty**” means any counterparty to any Specified Hedge Agreement that, at the time such Specified Hedge Agreement was entered into or on the Closing Date, was an Agent, an Arranger, a Lender or an Affiliate of the foregoing, whether or not such Person subsequently ceases to be an Agent, an Arranger, a Lender or an Affiliate of the foregoing.

“**Qualified Equity Interests**” means any Equity Interests other than Disqualified Stock.

“**Qualified IPO**” means an underwritten public offering (other than a public offering pursuant to a registration statement on Form S-4 or Form S 8) of the Equity Interests of any Parent Entity which generates cash proceeds of at least \$100.0 million.

“**Qualified Receivables Financing**” means any Receivables Financing of a Receivables Subsidiary that meets the following conditions:

(1) the Board of Directors of the Borrower has determined in good faith that such Qualified Receivables Financing (including financing terms, covenants, termination events and other provisions) is, in the aggregate, economically fair and reasonable to the Borrower and the Restricted Subsidiaries;

(2) all sales of accounts receivable and related assets by the Borrower or any Restricted Subsidiary to the Receivables Subsidiary are made at fair market value (as determined in good faith by a Responsible Officer of the Borrower); and

(3) the financing terms, covenants, termination events and other provisions thereof will be market terms (as determined in good faith by a Responsible Officer of the Borrower) and may include Standard Securitization Undertakings.

The grant of a security interest in any accounts receivable of the Borrower or any Restricted Subsidiary (other than a Receivables Subsidiary or a customary backup security interest in accounts receivable conveyed to a Receivables Subsidiary) to secure any Indebtedness will not be deemed a Qualified Receivables Financing.

“**Quarterly Financial Statements**” has the meaning assigned to such term in Section 5.04(2).

“**Ratio Debt**” has the meaning assigned to such term in Section 6.01.

“**Real Property**” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee or leased by any Loan Party, together with, in each case, all easements, hereditaments and appurtenances relating thereto, and all improvements and appurtenant fixtures incidental to the ownership or lease thereof.

“**Receivables Facility**” means one or more receivables financing facilities, as amended, supplemented, modified, extended, renewed, restated, refunded, replaced or refinanced from time to time, the Indebtedness of which is non-recourse (except for standard representations, warranties, covenants and indemnities made in connection with such facilities) to the Borrower and the Restricted Subsidiaries pursuant to which the Borrower or any Restricted Subsidiary sells its accounts receivable to either (1) a Person that is not a Restricted Subsidiary; or (2) a Receivables Subsidiary that in turn sells its accounts receivable to a Person that is not a Restricted Subsidiary.

“**Receivables Financing**” means any transaction or series of transactions that may be entered into by the Borrower or any Restricted Subsidiary pursuant to which the Borrower or any Restricted Subsidiaries may sell, convey or otherwise transfer to:

(1) a Receivables Subsidiary (in the case of a transfer by the Borrower or any Restricted Subsidiary that is not a Receivables Subsidiary); and

(2) any other Person (in the case of a transfer by a Receivables Subsidiary), or may grant a security interest in, any accounts receivable (whether now existing or arising in the future) of the Borrower or any Restricted Subsidiary, and any assets related thereto including all collateral securing such accounts receivable, all contracts and all guarantees or other obligations in respect of such accounts receivable, proceeds of such accounts receivable and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable and any Hedge Agreements entered into by the Borrower or any such Restricted Subsidiary in connection with such accounts receivable.

“**Receivables Repurchase Obligation**” means any obligation of a seller of receivables in a Qualified Receivables Financing to repurchase receivables arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

“**Receivables Subsidiary**” means a Wholly Owned Subsidiary of the Borrower (or another Person formed solely for the purposes of engaging in a Qualified Receivables Financing with the Borrower and to which the Borrower or any Restricted Subsidiary transfers accounts receivable and related assets) which engages in no activities other than in connection with the financing of accounts receivable of the Borrower and its Restricted Subsidiaries, all proceeds thereof and all rights (contractual or other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Borrower (as provided below) as a Receivables Subsidiary and:

(1) no portion of the Indebtedness or any other obligations (contingent or otherwise):

(a) is guaranteed by the Borrower or any Restricted Subsidiary (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings);

(b) is recourse to or obligates the Borrower or any Restricted Subsidiary in any way other than pursuant to Standard Securitization Undertakings; or

(c) subjects any property or asset of the Borrower or any Restricted Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;

(2) with which neither the Borrower nor any Restricted Subsidiary has any material contract, agreement, arrangement or understanding other than on terms which the Borrower reasonably believes to be no less favorable to the Borrower or such Restricted Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower; and

(3) to which neither the Borrower nor any other Restricted Subsidiary has any obligation to maintain or preserve such entity’s financial condition or cause such entity to achieve certain levels of operating results.

Any such designation by the Board of Directors of the Borrower will be evidenced to the Administrative Agent by filing with the Administrative Agent a certified copy of the resolution of the Board of Directors of the Borrower giving effect to such designation and a certificate of a Responsible Officer of the Borrower certifying that such designation complied with the foregoing conditions.

“**Recipient**” means the Administrative Agent and any Lender, as applicable.

“**Refinance**” has the meaning assigned to such term in the definition of “*Permitted Refinancing Indebtedness*,” and the terms “**Refinanced**” will have a correlative meaning.

“**Refinancing**” has the meaning assigned to such term in the recitals to this Agreement.

“**Refinancing Amendment**” means an amendment to this Agreement (and, as necessary, each other Loan Document) executed by each of (1) the Borrower and Holdings; (2) the Administrative Agent; and (3) each Lender that agrees to provide any portion of the Other Term Loans in accordance with Section 2.19.

“**Register**” has the meaning assigned to such term in Section 10.04(2)(d).

“**Registered Equivalent Notes**” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees and collateral provisions) issued by the Borrower in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“**Regulation T**” means Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation U**” means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Regulation X**” means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“**Reinvestment Deferred Amount**” means, with respect to any Reinvestment Event, the aggregate amount of Net Cash Proceeds received by the Borrower or a Restricted Subsidiary in connection therewith that are not applied to prepay the Term Loans as a result of the delivery of a Reinvestment Notice.

“**Reinvestment Event**” means any Asset Sale in respect of which the Borrower has delivered a Reinvestment Notice.

“**Reinvestment Notice**” means a written notice executed by a Responsible Officer stating that the Borrower or any Restricted Subsidiary intends and expects to use an amount of funds not to exceed the amount of Net Cash Proceeds of an Asset Sale to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets used or useful in the Borrower’s or a Restricted Subsidiary’s business.

“**Reinvestment Prepayment Amount**” means, with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto/less any amount expended by the Borrower or a Restricted Subsidiary prior to the relevant Reinvestment Prepayment Date to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets used or useful in the Borrower’s or a Restricted Subsidiary’s business.

“**Reinvestment Prepayment Date**” means, with respect to any Reinvestment Event, the date occurring one year after such Reinvestment Event or, if the Borrower or a Restricted Subsidiary has entered into a legally binding commitment within one year after such Reinvestment Event to restore, rebuild, repair, construct, improve, replace or otherwise acquire assets used or useful in the Borrower’s or a Restricted Subsidiary’s business, the date occurring two years after such Reinvestment Event.

“**Related Parties**” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, trustees, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“**Release**” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating in, into, upon, onto or through the Environment.

“**Remaining Present Value**” means, as of any date with respect to any lease, the present value as of such date of the scheduled future lease payments with respect to such lease, determined with a discount rate equal to a market rate of interest for such lease reasonably determined at the time such lease was entered into.

“**Reportable Event**” means any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30 day notice period referred to in Section 4043(c) of ERISA has been waived, with respect to a Plan (other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code).

“**Repricing Event**” means (1) any prepayment of any Class of Term Loans with the proceeds of, or any conversion of such Term Loans into, any new or replacement tranche of debt financing bearing interest at yield that

is less than the yield applicable to such Class of Term Loans and (2) any amendment to any Term Facility that, directly or indirectly, reduces the yield applicable to the Term Loans in such Term Facility (in each case, calculating such yield consistent with the methodology for calculating the “yield” of any Term Loans and any “Incremental Yield” pursuant to the terms of Section 2.18(8)); *provided* that no Repricing Event will be deemed to occur in connection with a Change in Control, Qualified IPO or Enterprise Transformative Event.

“*Required Financial Statements*” has the meaning assigned to such term in Section 5.04(2).

“*Required Lender Consent Items*” has the meaning assigned to such term in Section 10.04(12)(c).

“*Required Lenders*” means, at any time, Lenders having Term Loans outstanding and unused Commitments that, taken together, represent more than 50.0% of the sum of all Term Loans outstanding and Commitments at such time. The Term Loans and Commitments of any Defaulting Lender will be disregarded in determining Required Lenders; *provided* that subject to the Borrower’s right to replace Defaulting Lenders as set forth herein, Defaulting Lenders will be included in determining Required Lenders with respect to:

(1) any amendment that would disproportionately affect the obligation of the Borrower to make payment of the Term Loans or Commitments of such Defaulting Lender as compared to other Lenders holding the same Class of Term Loans or Commitments;

(2) any amendment relating to:

(a) increases in the Commitment of such Defaulting Lender;

(b) reductions of principal, interest, fees or premium applicable to the Class of Term Loans held by such Defaulting Lender or Commitments of such Defaulting Lender; and

(c) extensions of final maturity or the due date of any amortization, interest, fee or premium payment applicable to the Class of Term Loans held by such Defaulting Lender or Commitments of such Defaulting Lender; and

(3) matters requiring the approval of each Lender under subclauses (v) and (vi) of Section 10.08(2).

“*Required Percentage*” means, with respect to any Excess Cash Flow Period, the percentage set forth in the table below based on Senior Secured First Lien Net Leverage Ratio determined as of the last day of such Excess Cash Flow Period:

<u>Senior Secured First Lien Net Leverage Ratio</u>	<u>Required Percentage</u>
Greater than 4.00 to 1.00	50.00%
Less than or equal to 4.00 to 1.00 but greater than 3.50 to 1.00	25.00%
Less than or equal to 3.50 to 1.00	0.00%

“*Responsible Officer*” means, with respect to any Loan Party, the chief executive officer, president, vice president, secretary, assistant secretary or any Financial Officer of such Loan Party or any other individual designated in writing to the Administrative Agent by an existing Responsible Officer of such Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party will be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of such Loan Party and such Responsible Officer will be conclusively presumed to have acted on behalf of such Loan Party.

“*Restricted Payments*” has the meaning assigned to such term in Section 6.06.

“**Restricted Subsidiary**” means any Subsidiary of a Person other than an Unrestricted Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Restricted Subsidiaries will mean Restricted Subsidiaries of the Borrower.

“**Retained Percentage**” means, with respect to any Excess Cash Flow Period, 100% minus the Required Percentage with respect to such Excess Cash Flow Period.

“**S&P**” means Standard & Poor’s Ratings Services or any successor entity thereto.

“**Sale and Lease-Back Transaction**” has the meaning assigned to such term in Section 6.03.

“**Scheduled Unavailability**” has the meaning assigned to such term in Section 2.11(b)

“**Screen Rate**” has the meaning assigned to such term in the definition of “LIBO Rate.”

“**SEC**” means the Securities and Exchange Commission or any successor thereto.

“**Secured Parties**” means the collective reference to the “*Secured Parties*” as defined in the Collateral Agreement.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Security Documents**” means the collective reference to the Collateral Agreement, the Mortgages, the Intellectual Property Security Agreements and each of the security agreements and other instruments and documents executed and delivered by any Loan Party pursuant thereto or pursuant to Section 5.10.

“**Senior Secured First Lien Net Leverage Ratio**” means, as of any date, the ratio of Consolidated First Lien Net Debt as of such date to Consolidated EBITDA for the most recent four fiscal quarter period for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis.

“**Specified Event of Default**” means any Event of Default under Section 8.01(2), 8.01(3), 8.01(8) or 8.01(9).

“**Specified Hedge Agreement**” means any Hedge Agreement entered into or assumed between or among the Borrower or any other Subsidiary and any Qualified Counterparty and designated by the Qualified Counterparty and the Borrower in writing to the Administrative Agent as a “Specified Hedge Agreement” under this Agreement (but only if such Hedge Agreement has not been designated as a “Specified Hedge Agreement” under the ABL Credit Agreement).

“**Specified Hedge Obligations**” means all amounts owing to any Qualified Counterparty under any Specified Hedge Agreement.

“**Specified Representations**” means the representations and warranties of each of the Borrower and the other Loan Parties set forth in the following sections of this Agreement:

(1) Section 3.01(1) and (4) (but solely with respect to its organizational existence and status and organizational power and authority as to the execution, delivery and performance of this Agreement and the other Loan Documents);

(2) Section 3.02(1) (but solely with respect to its authorization of this Agreement and the other Loan Documents);

(3) Section 3.02(2)(a)(i) (but solely with respect to non-conflict of this Agreement and the other Loan Documents with its certificate or article of incorporation or other charter document);

(4) Section 3.03 (but solely with respect to execution and delivery by it, and enforceability against it, of this Agreement and the other Loan Documents);

(5) Section 3.08(2);

(6) Section 3.09;

(7) Section 3.14(1) (subject to Permitted Liens);

(8) Section 3.16; and

(9) Section 3.19.

“Specified Transaction” means any Investment (including any Limited Condition Acquisition), Permitted Change of Control, disposition, incurrence or repayment of Indebtedness, Restricted Payment, Subsidiary designation, Incremental Facility that by the terms of this Agreement requires such test to be calculated on a “Pro Forma Basis”; *provided* that any increase in the Commitments (including, for this purpose, any Commitment in respect of any Incremental Term Loan or Extended Term Loan) above the amount of Commitments in effect on the Closing Date, for purposes of this “Specified Transaction” definition, shall be deemed to be fully drawn; *provided, further*, that, at the Borrower’s election, any such Specified Transaction (other than a Restricted Payment) having an aggregate value of less than \$5,000,000 shall not be calculated on a “Pro Forma Basis.”

“Sponsors” means, any of CVC and LGP (and, following a Permitted Change of Control, the New Sponsor with respect to such Permitted Change of Control) and any of their respective Affiliates and funds or partnerships managed, advised or controlled by any of them or any of their respective Affiliates, but not including any operating portfolio company of any of the foregoing.

“Standard Securitization Undertakings” means representations, warranties, covenants, indemnities and Guarantees of performance entered into by the Borrower or any Subsidiary of the Borrower that a Responsible Officer of the Borrower has determined in good faith to be customary in a Receivables Financing including those relating to the servicing of the assets of a Receivables Subsidiary, it being understood that any Receivables Repurchase Obligation will be deemed to be a Standard Securitization Undertaking.

“Statutory Reserves” means, with respect to any currency, any reserve, liquid asset or similar requirements established by any Governmental Authority of the United States of America or of the jurisdiction of such currency or any jurisdiction in which Term Loans in such currency are made to which banks in such jurisdiction are subject for any category of deposits or liabilities customarily used to fund loans in such currency or by reference to which interest rates applicable to Term Loans in such currency are determined.

“Subagent” has the meaning assigned to such term in Section 9.02.

“Subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company or other entity of which (1) Equity Interests having ordinary voting power (other than Equity Interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors of such corporation, partnership, limited liability company or other entity are at the time owned by such Person; or (2) more than 50.0% of the Equity Interests are at the time owned by such Person. Unless otherwise indicated in this Agreement, all references to Subsidiaries will mean Subsidiaries of the Borrower.

“Subsidiary Loan Parties” means (1) each Wholly Owned Domestic Subsidiary of the Borrower on the Closing Date (other than any Excluded Subsidiary); and (2) each Wholly Owned Domestic Subsidiary (other than any Excluded Subsidiary) of the Borrower that becomes, or is required to become, a party to the Collateral Agreement after the Closing Date.

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

“**Taxes**” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding) or similar charges imposed by any Governmental Authority and any and all interest and penalties related thereto.

“**Term Facility**” means the facility and commitments utilized in making Term Loans hereunder. On the Amendment No. 2.3 Effective Date, there is one Term Facility, the Tranche B-2 Term Loan Facility. Following the establishment of any Incremental Term Loans (other than an increase to an existing Term Facility), Other Term Loans or Extended Term Loans, such Incremental Term Loans, Other Term Loans or Extended Term Loans will be considered a separate Term Facility hereunder.

“**Term Loan Installment Date**” means, as the context requires, an Original Term Loan Installment Date, an Incremental Term Loan Installment Date, an Other Term Loan Installment Date or an Extended Term Loan Installment Date.

“**Term Loans**” means the Tranche B Term Loans made to the Borrower on the Closing Date pursuant hereto, the Tranche B-1 Term Loans made to the Borrower or converted on the Amendment No. 2 Effective Date pursuant to Amendment No. 2, the Tranche B-2 Term Loans made to the Borrower or converted on the Amendment No. 3 Effective Date pursuant to Amendment No. 3, any Incremental Term Loans, any Other Term Loans and any Extended Term Loans, collectively (or if the context so requires, any of them individually).

“**Term Priority Collateral**” means “*Term Priority Collateral*” as defined in the Intercreditor Agreement.

“**Title Company**” has the meaning assigned to such term in Section 5.10(2)(c).

“**Title Policy**” has the meaning assigned to such term in Section 5.10(2)(c).

“**Total Net Leverage Ratio**” means, as of any date, the ratio of Consolidated Total Net Debt as of such date to Consolidated EBITDA for the most recent four fiscal quarter period for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis.

“**Total Secured Net Leverage Ratio**” means, as of any date, the ratio of Consolidated Secured Net Debt as of such date to Consolidated EBITDA for the most recent four fiscal quarter period for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis.

“**Tranche B Term Loan Commitments**” means (1) with respect to each Lender on the Closing Date, the commitment of such Lender to make Tranche B Term Loans as set forth on Schedule 2.01 and (2) with respect to each Amendment No. 1 Incremental Lender on the Amendment No. 1 Effective Date, the commitment of such Lender to make Amendment No. 1 Incremental Term Loans as set forth on Schedule I to Amendment No. 1.

“**Tranche B Term Loan Facility**” means the term loan facility consisting of Tranche B Term Loans made to the Borrower.

“**Tranche B Term Loan Lender**” means each financial institution listed on Schedule 2.01 (other than any such Person that has ceased to be a party hereto pursuant to an Assignment and Acceptance in accordance with Section 10.04), as well as any Person that becomes a Lender hereunder pursuant to Section 10.04 by assignment of any Tranche B Term Loans.

“**Tranche B Term Loans**” means, collectively, the term loans made to the Borrower (1) on the Closing Date pursuant to Section 2.01(1)(x) and (2) on the Amendment No. 1 Effective Date pursuant to Section 2.01(1)(y).

“*Tranche B-1 Term Loan Facility*” means the term loan facility consisting of Tranche B-1 Term Loans made to the Borrower.

“*Tranche B-1 Term Loan Lender*” means any Lender that holds a Tranche B-1 Term Loan.

“*Tranche B-1 Term Loans*” has the meaning assigned to such term in Section 2.01(1)(c).

“*Tranche B-2 Term Loan Facility*” means the term loan facility consisting of Tranche B-2 Term Loans made to the Borrower.

“*Tranche B-2 Term Loan Lender*” means any Lender that holds a Tranche B-2 Term Loan.

“*Tranche B-2 Term Loans*” has the meaning assigned to such term in Section 2.01(1)(d).

“*Transactions*” has the meaning assigned to such term in the recitals to this Agreement.

“*Type*” means, when used in respect of any Term Loan or Borrowing, the Rate by reference to which interest on such Term Loan or on the Term Loans comprising such Borrowing is determined. For purposes hereof, the term “Rate” means Adjusted LIBO Rate or ABR, as applicable.

“*Uniform Commercial Code*” or “*UCC*” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“*Unrestricted Cash*” means, as of any date, all cash and Cash Equivalents of the Borrower and its Restricted Subsidiaries as of such date that would not appear as “restricted” on the Required Financial Statements, determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“*Unrestricted Subsidiary*” means any Subsidiary of Holdings (other than the Borrower) designated by the Borrower as an Unrestricted Subsidiary hereunder by written notice to the Administrative Agent; *provided* that the Borrower will only be permitted to so designate a new Unrestricted Subsidiary after the Closing Date or subsequently re-designate any such Unrestricted Subsidiary as a Restricted Subsidiary (by written notice to the Administrative Agent) if:

(1) no Event of Default is continuing; *provided*, that if such Subsidiary is being designated as an Unrestricted Subsidiary in connection with a Limited Condition Acquisition, (i) the date of determination of such condition shall be the LCA Test Date and (ii) on the date such Subsidiary is designated as an Unrestricted Subsidiary, no Specified Event of Default shall have occurred and be continuing or would exist immediately after such designation;

(2) such designation or re-designation would not cause an Event of Default; *provided*, that if such Subsidiary is being designated as an Unrestricted Subsidiary in connection with a Limited Condition Acquisition, (i) the date of determination of such condition shall be the LCA Test Date and (ii) on the date such Subsidiary is designated as an Unrestricted Subsidiary, such designation or re-designation would not cause a Specified Event of Default; and

(3) compliance with a minimum Interest Coverage Ratio of 2.0 to 1.0, determined on a Pro Forma Basis; *provided*, that if such Subsidiary is being designated as an Unrestricted Subsidiary in connection with a Limited Condition Acquisition, the date of determination of such condition shall be the LCA Test Date.

The designation of any Restricted Subsidiary as an Unrestricted Subsidiary will constitute an Investment for purposes of Section 6.04. The redesignation of any Unrestricted Subsidiary as a Restricted Subsidiary will be deemed to be an incurrence at the time of such designation of Indebtedness of such Unrestricted Subsidiary and the Liens on the assets of such Unrestricted Subsidiary, in each case outstanding on the date of such redesignation.

“**USA PATRIOT Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107 56 (signed into law October 26, 2001)).

“**U.S. Person**” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“**Voting Stock**” means, as of any date, the Capital Stock of any Person that is at the time entitled to vote (without regard to the occurrence of any contingency) in the election of the Board of Directors of such Person.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness as of any date, the number of years obtained by dividing (1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal (excluding nominal amortization), including payment at final maturity, in respect thereof by (b) the number of years (calculated to the nearest 1/12) that will elapse between such date and the making of such payment; by (2) the then outstanding principal amount of such Indebtedness.

“**Wholly Owned Domestic Subsidiary**” means, with respect to any Person, a Domestic Subsidiary of such Person that is a Wholly Owned Subsidiary. Unless otherwise indicated in this Agreement, all references to Wholly Owned Domestic Subsidiaries will mean Wholly Owned Domestic Subsidiaries of the Borrower.

“**Wholly Owned Subsidiary**” means, with respect to any Person, a subsidiary of such Person, all of the Equity Interests of which (other than directors’ qualifying shares or nominee or other similar shares required pursuant to applicable law) are owned by such Person or another Wholly Owned Subsidiary of such Person. Unless otherwise indicated in this Agreement, all references to Wholly Owned Subsidiaries will mean Wholly Owned Subsidiaries of the Borrower.

“**Withdrawal Liability**” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“**Working Capital**” means, with respect to the Borrower and its Subsidiaries on a consolidated basis as of any date of determination, Current Assets at such date of determination minus Current Liabilities at such date of determination; *provided* that, for purposes of calculating Excess Cash Flow, increases or decreases in Working Capital will be calculated without regard to any changes in Current Assets or Current Liabilities as a result of (a) reclassification after the date hereof in accordance with GAAP of assets or liabilities, as applicable, between current and non-current or (b) the effects of purchase accounting.

“**Write-Down and Conversion Powers**” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.02. Terms Generally. The definitions set forth or referred to in Section 1.01 will apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine and neuter forms. Unless the context requires otherwise,

(1) the words “include,” “includes” and “including” will be deemed to be followed by the phrase “without limitation”;

(2) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including”;

(3) the word “will” will be construed to have the same meaning and effect as the word “shall”;

(4) the word “incur” will be construed to mean incur, create, issue, assume, become liable in respect of or suffer to exist (and the words “incurred” and “incurrence” will have correlative meanings);

(5) any reference to any Person will be construed to include such Person’s legal successors and permitted assigns; and

(6) the words “asset” and “property” will be construed to have the same meaning and effect.

All references herein to Articles, Sections, Exhibits and Schedules will be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context otherwise requires. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document or organizational document of the Loan Parties means such document as amended, restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document). Any reference to any law will include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation means, unless otherwise specified, such law or regulation as amended, modified or supplemented from time to time. Whenever this Agreement refers to the “knowledge” of the Company or any Loan Party, such reference will be construed to mean the knowledge of the chief executive officer, president, chief financial officer, treasurer or controller of such Person.

SECTION 1.03. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature will be construed in accordance with GAAP, as in effect from time to time; *provided* that, notwithstanding anything to the contrary herein, all accounting or financial terms used herein will be construed, and all financial computations pursuant hereto will be made, without giving effect to any election under Statement of Financial Accounting Standards Board Accounting Standards Codification 825 10 (or any other Statement of Financial Accounting Standards Board Accounting Standards Codification having a similar effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at “fair value,” as defined therein. In the event that any Accounting Change (as defined below) occurs and such change results in a change in the method of calculation of financial ratios, standards or terms in this Agreement, then upon the written request of the Borrower or the Administrative Agent (acting upon the request of the Required Lenders), the Borrower, the Administrative Agent and the Lenders will enter into good faith negotiations in order to amend such provisions of this Agreement so as to equitably reflect such Accounting Change with the desired result that the criteria for evaluating the Borrower’s financial condition will be the same after such Accounting Change as if such Accounting Change had not occurred; *provided* that provisions of this Agreement in effect on the date of such Accounting Change will remain in effect until the effective date of such amendment. “**Accounting Change**” means (1) any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants or (2) any change in the application of GAAP by Holdings or the Borrower.

SECTION 1.04. Effectuation of Transfers. Each of the representations and warranties of Holdings and the Borrower contained in this Agreement (and all corresponding definitions) is made after giving effect to the Transactions, unless the context otherwise requires.

SECTION 1.05. Currencies. Unless otherwise specifically set forth in this Agreement, monetary amounts are in Dollars. Notwithstanding anything to the contrary herein, no Default or Event of Default will arise as a result of any limitation or threshold set forth in Dollars being exceeded solely as a result of changes in currency exchange rates.

SECTION 1.06. Required Financial Statements. With respect to the determination of the Senior Secured First Lien Net Leverage Ratio, the Total Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio, or under any other applicable provision of the Loan Documents (including the definition of Immaterial Subsidiary) made on or prior to the date on which Required Financial Statements have been delivered for the first fiscal quarter ending after the Closing Date, such calculation will be determined for the period of four

consecutive fiscal quarters most recently ended prior to the Closing Date, and calculated on a Pro Forma Basis. Notwithstanding anything to the contrary herein, for purposes of determining compliance with any test contained in this Agreement with respect to any period during which any Specified Transaction occurs, the Senior Secured First Lien Net Leverage Ratio, the Total Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio or under any other applicable provision of the Loan Documents (including the definition of Immaterial Subsidiary) shall be calculated with respect to such period and such Specified Transaction on a Pro Forma Basis.

SECTION 1.07. Certain Calculations and Tests

(a) Notwithstanding anything in this Agreement or any Loan Document to the contrary, when calculating any applicable ratio or determining other compliance with this Agreement (including the determination of compliance with any provision of this Agreement which requires that no Default or Event of Default has occurred, is continuing or would result therefrom) in connection with a Specified Transaction undertaken in connection with the consummation of a Limited Condition Acquisition, the date of determination of such ratio and determination of whether any Default or Event of Default has occurred, is continuing or would result therefrom or other applicable covenant shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Acquisition, an "**LCA Election**"), be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the "**LCA Test Date**") and if, after such ratios and other provisions are measured on a Pro Forma Basis after giving effect to such Limited Condition Acquisition and the other Specified Transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) as if they occurred at the beginning of the four consecutive fiscal quarter period being used to calculate such financial ratio ending prior to the LCA Test Date, the Borrower could have taken such action on the relevant LCA Test Date in compliance with such ratios and provisions, such provisions shall be deemed to have been complied with. For the avoidance of doubt, (x) if any of such ratios are exceeded as a result of fluctuations in such ratio (including due to fluctuations in Consolidated EBITDA of the Borrower) at or prior to the consummation of the relevant Limited Condition Acquisition, such ratios and other provisions will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the Limited Condition Acquisition is permitted hereunder and (y) such ratios and other provisions shall not be tested at the time of consummation of such Limited Condition Acquisition or related Specified Transactions. If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio or basket availability with respect to any other Specified Transaction on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be calculated on (1) a Pro Forma Basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated and (2) on a Pro Forma Basis but without giving effect to such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and use of proceeds thereof).

(b) Notwithstanding anything to the contrary herein, with respect to any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement under any covenant that does not require compliance with a financial ratio or test (including, without limitation, pro forma compliance with any Senior Secured First Lien Net Leverage Ratio test, Total Secured Net Leverage Ratio, Total Net Leverage Ratio test and/or any Interest Coverage Ratio test) (any such amounts including the Non-Ratio Based Incremental Facilities Cap, the "**Fixed Amounts**") substantially concurrently with any amounts incurred or transactions entered into (or consummated) in reliance on a provision of this Agreement under the same covenant as such Fixed Amount that requires compliance with any such financial ratio or test (any such amounts, the "**Incurrence Based Amounts**"), it is understood and agreed that the Fixed Amounts being substantially concurrently incurred (other than, in the case of any Fixed Amounts contained in Section 6.01 or Section 6.02, any refinancings of any Indebtedness that was previously incurred) and any substantially concurrent borrowings under the ABL Credit Agreement or any Permitted Refinancing Indebtedness in respect thereof (and any cash proceeds thereof) shall be disregarded in the calculation of the financial ratio or test applicable to the Incurrence Based Amounts in connection with such substantially concurrent incurrence, except that incurrences of Indebtedness and Liens constituting Fixed Amounts and any substantially concurrent borrowings under the ABL Credit Agreement or any Permitted Refinancing Indebtedness in respect thereof shall be taken into account for purposes of any Incurrence Based Amounts under any covenant other than Incurrence Based Amounts contained in Section 6.01 or Section 6.02.

ARTICLE II

The Credits

SECTION 2.01. Term Loans and Borrowings.

(1) ~~(a)~~ Subject to the terms and conditions set forth herein, each Tranche B Term Loan Lender severally agrees to make to the Borrower Tranche B Term Loans denominated in Dollars equal to such Tranche B Term Loan Lender's Tranche B Term Loan Commitment on the Closing Date. The Tranche B Term Loans will be funded to the Borrower net of an upfront fee of 0.50% of the principal amount thereof which will be retained by each funding Tranche B Term Loan Lender for its own account.

~~(b)~~ (i) Subject to the terms and conditions set forth herein, each Amendment No. 1 Incremental Lender severally agrees to make to the Borrower Amendment No. 1 Incremental Term Loans denominated in Dollars equal to such Amendment No. 1 Incremental Lender's Tranche B Term Loan Commitment on the Amendment No. 1 Effective Date.

(ii) The Amendment No. 1 Incremental Term Loans shall have the same terms as the Term Loans that were funded on the Closing Date as set forth in this Agreement and the other Loan Documents before giving effect to Amendment No. 1, except as modified by Amendment No. 1; it being understood that the Amendment No. 1 Incremental Term Loans (and all principal, interest and other amounts in respect thereof) will constitute "Obligations" under this Agreement and the other Loan Documents and shall have the same rights and obligations under this Agreement and the other Loan Documents as the Term Loans funded on the Closing Date.

~~(c)~~ Subject to the terms and conditions set forth herein, (i) the Additional Tranche B-1 Term Loan Lender agrees to make a loan in Dollars (a "**Tranche B-1 Term Loan**", which term shall include each loan converted from a Converted Tranche B Term Loan pursuant to subclause (ii) below) on the Amendment No. 2 Effective Date in an amount equal to the Additional Tranche B-1 Term Loan Commitment and (ii) the Converted Tranche B Term Loan of each Lender shall be converted into a Tranche B-1 Term Loan of such Lender in the same principal amount as its Converted Tranche B Term Loan on the Amendment No. 2 Effective Date. To the extent that the Tranche B Term Loans were Eurocurrency Loans of a particular Eurocurrency Borrowing immediately prior to the Amendment No. 2 Effective Date, the Tranche B-1 Term Loans shall initially be Eurocurrency Loans with an initial Interest Period equal to the then remaining Interest Period for each such Eurocurrency Borrowing under ~~the~~ this Agreement immediately prior to the Amendment No. 2 Effective Date (and with the same Adjusted LIBO Rate).

~~(d)~~ Subject to the terms and conditions set forth herein, (i) the Additional Tranche B-2 Term Loan Lender agrees to make a loan in Dollars (a "**Tranche B-2 Term Loan**", which term shall include each loan converted from a Converted Tranche B-1 Term Loan pursuant to subclause (ii) below) on the Amendment No. 3 Effective Date in an amount equal to the Additional Tranche B-2 Term Loan Commitment and (ii) the Converted Tranche B-1 Term Loan of each Lender shall be converted into a Tranche B-2 Term Loan of such Lender in the same principal amount as its Converted Tranche B-1 Term Loan on the Amendment No. 3 Effective Date.

The failure of any Lender to make any Term Loan required to be made by it will not relieve any other Lender of its obligations hereunder *provided* that the Commitments of the Lenders are several and no Lender will be responsible for any other Lender's failure to make Term Loans as required. Amounts paid or prepaid in respect of Term Loans may not be reborrowed.

(2) Subject to Sections 2.04(7) and 2.11, each Borrowing will be comprised entirely of ABR Loans or Eurocurrency Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any ABR Loan or Eurocurrency Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Term Loan; *provided* that any exercise of such option will not affect the obligation of the Borrower to repay such Term Loan in accordance with the terms of this Agreement, and such Lender will not be entitled to any amounts payable under Section 2.12 or 2.14 solely in respect of increased costs resulting from, and existing at the time of, such exercise.

(3) Notwithstanding any other provision of this Agreement, the Borrower will not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.02. Request for Borrowing. The Borrower will deliver to the Administrative Agent a Borrowing Request not later than: (a) in the case of an ABR Borrowing, 11:00 a.m., New York City time, one Business Day prior to the anticipated Amendment No. 23 Effective Date (or such later time as the Administrative Agent may agree in its sole discretion) or (b) in the case of a Eurocurrency Borrowing, 11:00 a.m., New York City time, one Business Day prior to the anticipated Amendment No. 23 Effective Date (or such later time as the Administrative Agent may agree in its sole discretion), requesting that the Lenders make Term Loans on the Amendment No. 23 Effective Date. The Borrowing Request must specify:

- (1) the principal amount of Tranche B-12 Term Loans to be borrowed;
- (2) the requested date of the Borrowing (which will be a Business Day);
- (3) the Type of Tranche B-12 Term Loans to be borrowed;
- (4) in the case of a Eurocurrency Borrowing, the initial Interest Period to be applicable thereto, which, except as contemplated by Section 2.01(1)(z), will be a period contemplated by the definition of the term "Interest Period"; and
- (5) the location and number of the Borrower's account to which funds are to be disbursed.

If no election as to the Type of Borrowing is specified in the applicable Borrowing Request, then the Borrowing shall be an ABR Borrowing. If no Interest Period with respect to any Eurocurrency Borrowing is specified in the applicable Borrowing Request, then the Borrower will be deemed to have selected an Interest Period of one-month's duration. Upon receipt of such Borrowing Request, the Administrative Agent will promptly notify each Lender thereof. The proceeds of the Term Loans requested under this Section 2.02 will be disbursed by the Administrative Agent in immediately available funds by wire transfer to such bank account or accounts as designated by the Borrower in the Borrowing Request.

SECTION 2.03. Funding of Borrowings.

(1) Each Lender will make each Tranche B-12 Term Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 10:00 a.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. Upon receipt of all requested funds, the Administrative Agent will make such Term Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower as specified in the Borrowing Request (or as otherwise directed by the Borrower).

(2) Unless the Administrative Agent has received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (1) of this Section 2.03 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent, forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent at (a) in the case of such Lender, the greater of (i) the Federal Funds Rate and (ii) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (b) in the case of the Borrower, the interest rate applicable to ABR Loans at such time. If such Lender pays such amount to the Administrative Agent then such amount will constitute such Lender's Term Loan included in such Borrowing.

SECTION 2.04. Interest Elections.

(1) Each Borrowing initially will be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Borrowing, will have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurocurrency Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.04. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion will be allocated ratably among the Lenders holding the Term Loans comprising such Borrowing, and the Term Loans comprising each such portion will be considered a separate Borrowing; *provided* that the Term Loans comprising any Borrowing will be in an aggregate principal amount that is an integral multiple of \$500,000 and not less than \$1,000,000; *provided, further*, that there shall not be more than ten Eurocurrency Borrowings outstanding hereunder at any time.

(2) To make an election pursuant to this Section 2.04 following the Closing Date, the Borrower will notify the Administrative Agent of such election in writing (a) in the case of an election to convert to or continue a Eurocurrency Borrowing, not later than 2:00 p.m., New York City time, three Business Days before the effective date of such election or (b) in the case of an election to convert to or continue an ABR Borrowing, not later than 2:00 p.m., New York City time, one Business Day prior to such election (*provided* that, to make an election to convert any Eurocurrency Borrowing to an ABR Borrowing prior to the end of the effective Interest Period of such Eurocurrency Borrowing, the Borrower must notify the Administrative Agent not later than 2:00 p.m., two Business Days before the effective date of such election).

(3) Each written Interest Election Request will be irrevocable and will be substantially in the form of Exhibit D and signed by the Borrower and will specify the following information:

(a) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (c) and (d) below will be specified for each resulting Borrowing);

(b) the effective date of the election made pursuant to such Interest Election Request, which will be a Business Day;

(c) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Borrowing; and

(d) if the resulting Borrowing is a Eurocurrency Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which will be a period contemplated by the definition of "Interest Period."

(4) If any such Interest Election Request requests a Eurocurrency Borrowing but does not specify an Interest Period, then the Borrower will be deemed to have selected a Eurocurrency Borrowing having an Interest Period of one month's duration.

(5) Promptly following receipt of an Interest Election Request, the Administrative Agent will advise each applicable Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(6) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing will be automatically converted into an ABR Borrowing.

(7) Any portion of a Borrowing maturing or required to be repaid in less than one month may not be converted into or continued as a Eurocurrency Borrowing.

(8) Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the written request (including a request through electronic means) of the Required Lenders, so notifies the Borrower, then, so long as such Event of Default is continuing, (a) no outstanding Borrowing may be converted to or continued as a Eurocurrency Borrowing and (b) unless repaid, each Eurocurrency Borrowing will be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.05. Promise to Pay; Evidence of Debt

(1) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Term Loan of such Lender as provided in Section 2.06.

(2) Each Lender will maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Term Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(3) The Administrative Agent will maintain accounts in which it will record (a) the amount of each Term Loan made hereunder, the Type thereof and the Interest Period (if any) applicable thereto, (b) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (c) any amount received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(4) The entries made in the accounts maintained pursuant to paragraph (2) or (3) of this Section 2.05 will be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein will not in any manner affect the obligation of the Borrower to repay the Term Loans in accordance with the terms of this Agreement. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(5) Any Lender may request that Term Loans made by it be evidenced by a promissory note (a *Note*) substantially in the form of Exhibit I. In such event, the Borrower will prepare, execute and deliver to such Lender a Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent and reasonably acceptable to the Borrower. Thereafter, the Term Loans evidenced by such Note and interest thereon will at all times (including after assignment pursuant to Section 10.04) be represented by one or more Notes in such form payable to the payee named therein (or, if requested by such payee, to such payee and its registered assigns).

SECTION 2.06. Repayment of Term Loans

(1) The Borrower will repay to the Administrative Agent for the ratable account of the applicable Lenders with Tranche B-2 Term Loans on the last Business Day of each fiscal quarter of the Borrower, commencing with the last Business Day of the first fiscal quarter of the Borrower ending after the Amendment No. 23 Effective Date, in an amount equal to 0.25% of the aggregate principal amount of the Tranche B-2 Term Loans as of the Amendment No. 23 Effective Date, which payments will be reduced as a result of the application of prepayments of Tranche B-2 Term Loans in accordance with the order of priority set forth in Section 2.07 or 2.08, as applicable (each such date referred to as an "**Original Term Loan Installment Date**");

(2) (a) In the event that any Incremental Term Loans are made, the Borrower will repay Borrowings consisting of Incremental Term Loans on the dates (each an "**Incremental Term Loan Installment Date**") and in the amounts set forth in the applicable Incremental Facility Amendment, (b) in the event that any Other Term Loans are made, the Borrower will repay Borrowings consisting of Other Term Loans on the dates (each an "**Other Term Loan Installment Date**") and in the amounts set forth in the applicable Refinancing Amendment and (c) in the event that any Extended Term Loans are made, the Borrower will repay Borrowings consisting of Extended Term Loans on the dates (each an "**Extended Term Loan Installment Date**") and in the amounts set forth in the applicable Extension Amendment; and

(3) to the extent not previously paid, all outstanding Term Loans will be due and payable on the applicable Maturity Date;

together, in each case, with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment.

SECTION 2.07. Optional Prepayment of Term Loans The Borrower may at any time and from time to time prepay the Tranche B-~~1~~² Term Loans and/or any other Term Loans of any Class, in whole or in part, without premium or penalty (except as provided in Section 2.21 and subject to Section 2.13), in an aggregate principal amount, (1) in the case of Eurocurrency Loans, that is an integral multiple of \$1.0 million and not less than \$5.0 million, and (2) in the case of ABR Loans, that is an integral multiple of \$1.0 million and not less than \$5.0 million, or, in each case, if less, the amount outstanding. The Borrower will notify the Administrative Agent in writing of such election not later than 11:00 a.m., New York City time, (a) in the case of a Eurocurrency Borrowing, three Business Days before the anticipated date of such prepayment and (b) in the case of an ABR Borrowing, one Business Day before the anticipated date of such prepayment. Each such notice of prepayment will specify the prepayment date and the principal amount of each Borrowing (or portion thereof) to be prepaid and shall be substantially in the form of Exhibit J. All prepayments under this Section 2.07 will be accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment. Any such notice may be revocable or conditioned on a refinancing of all or any portion of the Term Facility. Any optional prepayments of Tranche B-~~1~~² Term Loans and/or other Term Loans of any Class pursuant to this Section 2.07 will be applied to the remaining scheduled amortization payments of such applicable Class of Term Loans as directed by the Borrower (or in the absence of such direction, in direct order of maturity, to the amortization payments of such applicable Class of Term Loans) and will be applied ratably to the Term Loans of such Class included in the prepaid Borrowing.

SECTION 2.08. Mandatory Prepayment of Term Loans

(1) The Borrower will apply all Net Cash Proceeds received in an Asset Sale made pursuant to Section 6.05(2) (other than Net Cash Proceeds attributable to any ABL Priority Collateral Asset Sale) or any Sale and Lease-Back Transaction to prepay Term Loans within ten Business Days following receipt of such Net Cash Proceeds, unless the Borrower has delivered a Reinvestment Notice on or prior to such tenth Business Day; *provided* that:

(a) if any Event of Default has occurred and is continuing, on or prior to the tenth Business Day following receipt thereof, such Net Cash Proceeds will be deposited in an Asset Sale Proceeds Account;

(b) subject to the other provisions of this Section 2.08(1), on each Reinvestment Prepayment Date the Borrower will apply an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event to the prepayment of the Term Loans (together with accrued interest thereon); and

(c) if at the time that any such prepayment would be required, the Borrower is required to, or to offer to, repurchase, redeem, repay or prepay Indebtedness secured on a *pari passu* basis with the Term Loans (any such Indebtedness, "**Other First Lien Indebtedness**"), then the Borrower may apply such Net Cash Proceeds to redeem, repurchase, repay or prepay all Classes of Term Loans and Other First Lien Indebtedness on a *pro rata* basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other First Lien Indebtedness at such time);

provided, further, that the portion of such Net Cash Proceeds allocated to the Other First Lien Indebtedness will not exceed the amount of such Net Cash Proceeds required to be allocated to the Other First Lien Indebtedness pursuant to the terms thereof, and the remaining amount, if any, of such Net Cash Proceeds will be allocated to the prepayment of the Term Loans (in accordance with the terms hereof) and to the repurchase or repayment of Other First Lien Indebtedness, and the amount of the prepayment of the Term Loans that would have otherwise been required pursuant to this clause (1) will be reduced accordingly; *provided, further*, that to the extent the holders of Other First Lien Indebtedness decline to have such Indebtedness repurchased, redeemed, repaid or prepaid with such

Net Cash Proceeds, the declined amount of such Net Cash Proceeds will promptly (and in any event within ten Business Days after the date of such rejection) be applied to prepay the Term Loans in accordance with the terms hereof (to the extent such Net Cash Proceeds would otherwise have been required to be so applied if such Other First Lien Indebtedness was not then outstanding).

(2) Commencing with the fiscal year ending on or around September 30, 2017, not later than 110 days after the end of each Excess Cash Flow Period, the Borrower will calculate Excess Cash Flow for such Excess Cash Flow Period and will apply the following amount to the prepayment of Term Loans:

- (a) the Required Percentage of such Excess Cash Flow; *minus*
- (b) the amount of any voluntary prepayments during such Excess Cash Flow Period or on or prior to the 110th day after the end of such Excess Cash Flow Period of:
 - (i) Term Loans (including Incremental Term Loans, Other Term Loans and Extended Term Loans *provided* that if any Incremental Term Loans, Other Term Loans or Extended Term Loans are optionally prepaid on a greater than *pro rata* basis with the Tranche B-2 Term Loans, such excess optional prepayment shall not reduce the amount of the Required Percentage of Excess Cash Flow for such period that is required to be applied to prepay Tranche B-2 Term Loans);
 - (ii) loans under the ABL Credit Agreement (to the extent accompanied by a corresponding reduction in the commitments);
 - (iii) Other First Lien Indebtedness (and, in the case of any revolving indebtedness, to the extent accompanied by a corresponding reduction in the commitments); or
 - (iv) Permitted Refinancing Indebtedness incurred to Refinance any of the foregoing Indebtedness (or Permitted Refinancing Indebtedness described in this clause (iv)), in each case that is secured on a *pari passu* basis with the Term Loans (and, in the case of any revolving indebtedness, to the extent accompanied by a corresponding reduction in the commitments);

in each case, to the extent not financed with the proceeds of the issuance or the incurrence of Indebtedness (other than proceeds of revolving loans), the sale or issuance of Equity Interests or Asset Sales; *provided* that any such voluntary prepayment that is made on or prior to the 110th day after the end of such Excess Cash Flow Period will not reduce Excess Cash Flow for the next succeeding Excess Cash Flow Period pursuant to this clause (b).

Not later than the date on which the Borrower is required to deliver financial statements with respect to the end of each Excess Cash Flow Period under Section 5.04(1), the Borrower will deliver to the Administrative Agent a certificate signed by a Financial Officer of the Borrower setting forth the amount, if any, of Excess Cash Flow for such fiscal year and the calculation thereof in reasonable detail.

(3) The Borrower will apply 100% of the net cash proceeds from the incurrence, issuance or sale by the Borrower or any Restricted Subsidiary of any Indebtedness that is not Excluded Indebtedness to the prepayment of Term Loans, on or prior to the date which is five Business Days after the receipt of such net cash proceeds.

(4) Notwithstanding anything in this Section 2.08 to the contrary, any Lender may elect, by written notice to the Administrative Agent at least two Business Days prior to the required prepayment date, to decline all or any portion of any mandatory prepayment of its Term Loans pursuant to this Section 2.08 (other than clause (3) of this Section 2.08), in which case the aggregate amount of the prepayment that would have been applied to prepay Term Loans but was so declined will be retained by the Borrower and applied for any permitted purpose hereunder. Such prepayments will be applied on a *pro rata* basis to the then outstanding Term Loans of all Classes being prepaid irrespective of whether such outstanding Term Loans are ABR Loans or Eurocurrency Loans; *provided* that if no Lenders exercise the right to waive a given mandatory prepayment of the Term Loans pursuant to this Section

2.08(4), then, with respect to such mandatory prepayment, the amount of such mandatory prepayment will be applied first to Term Loans that are ABR Loans to the full extent thereof before application to Term Loans that are Eurocurrency Loans in a manner that minimizes the amount of any payments required to be made by the Borrower pursuant to Section 2.13.

(5) The Borrower will deliver to the Administrative Agent, at the time of each prepayment required under this Section 2.08, (a) a certificate signed by a Financial Officer of the Borrower setting forth in reasonable detail the calculation of the amount of such prepayment and (b) to the extent practicable, at least three Business Days prior written notice of such prepayment. Each notice of prepayment shall specify the prepayment date, the Type of each Term Loan being prepaid, the principal amount of each Term Loan (or portion thereof) to be prepaid, and the Section, sub-section or clause of this Agreement pursuant to which such prepayment is being made. Prepayment of the Term Loans pursuant to this Section 2.08 will be made without premium or penalty, accompanied by accrued and unpaid interest on the principal amount to be prepaid to but excluding the date of payment, and applied as directed by the Borrower or, absent such direction, to reduce scheduled amortization payments of Term Loans under Section 2.06(1) in direct order of maturity; *provided* that any prepayment of Incremental Term Loans, Other Term Loans or Extended Term Loans will be applied in the order specified in the applicable Permitted Amendment. No payments under Section 2.13 will be required in connection with a prepayment of Term Loans pursuant to this Section 2.08. In the event of any prepayment of Term Loans pursuant to this Section 2.08 at a time when Term Loans of more than one Class remain outstanding, the aggregate amount of such prepayment will be allocated between each Class of Term Loans *pro rata* based on the aggregate principal amount of outstanding Term Loans of each such Class (except as otherwise provided in the applicable Permitted Amendment, in each case with respect to the applicable Class of Term Loans).

(6) Notwithstanding any provisions of this Section 2.08 to the contrary,

(a) to the extent that any or all of the Net Cash Proceeds or Excess Cash Flow giving rise to a prepayment event pursuant to this Section 2.08 is prohibited or delayed by (i) applicable local law (including laws related to financial assistance, corporate benefit, thin capitalization, capital maintenance, liquidity maintenance and similar legal principles, and in respect of restrictions on upstreaming of cash intra-group and the fiduciary and statutory duties of the Board of Directors of the applicable Restricted Subsidiaries) or (ii) material organizational document restrictions as a result of minority ownership, in each case from being repatriated to the United States, the portion of such Net Cash Proceeds or Excess Cash Flow so affected will not be required to be applied to prepay Term Loans at the times provided in this Section 2.08, but may be retained by the Borrower or the applicable Subsidiary for so long, but only so long, as the applicable local law or restriction will not permit repatriation to the United States. Once such repatriation of any of such affected Net Cash Proceeds or Excess Cash Flow is permitted under the applicable local law or restriction, such repatriation will be effected promptly and such repatriated Net Cash Proceeds or Excess Cash Flow will be promptly applied (net of additional taxes payable or reserved against as a result thereof) to the prepayment of the Term Loans pursuant to this Section 2.08 to the extent provided herein; *provided* that the Borrower hereby agrees, and will cause any applicable Subsidiary, to promptly take all commercially reasonable actions required by applicable local law to permit any such repatriation; or

(b) to the extent that a Responsible Officer of the Borrower has reasonably determined in good faith that repatriation of any of or all the Net Cash Proceeds or Excess Cash Flow giving rise to a prepayment event pursuant to this Section 2.08 would have an adverse tax cost consequence, the Net Cash Proceeds or Excess Cash Flow so affected will not be required to be applied to prepay Term Loans at the times provided in this Section 2.08, but may be retained by the Borrower or the applicable Subsidiary without being repatriated; *provided* that, in the case of this subclause (b), on or before the date on which any Net Cash Proceeds so retained would otherwise have been required to be applied to reinvestments or prepayments pursuant to this Section 2.08 (or such Excess Cash Flow would have been so required if it were Net Cash Proceeds to be applied to a prepayment):

(i) the Borrower applies an amount equal to such Net Cash Proceeds or Excess Cash Flow to such reinvestments or prepayments as if such Net Cash Proceeds or Excess Cash Flow had been repatriated, less the amount of additional taxes that would have been payable or reserved against if such Net Cash Proceeds or Excess Cash Flow had been repatriated; or

(ii) such Net Cash Proceeds or Excess Cash Flow are applied towards the permanent extinguishment (including, in the case of a revolving facility, a permanent reduction of commitments only) of Indebtedness of any Subsidiary.

For purposes of this Section 2.08(6), references to “law” mean, with respect to any Person, (1) the common law and any federal, state, local, foreign, multinational or international statutes, laws, treaties, judicial decisions, standards, rules and regulations, guidances, guidelines, ordinances, rules, judgments, writs, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions (including administrative or judicial precedents or authorities), in each case whether now or hereafter in effect, and (2) the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

SECTION 2.09. Fees.

(1) The Borrower agrees to pay to the Administrative Agent, for its own account, the fees set forth in that certain Administrative Agency Fee Letter, dated as of August 16, 2016, by and between the Borrower and Administrative Agent, at the times and on the terms specified therein (the “*Administrative Agent Fees*”).

(2) The Administrative Agent Fees will be paid on the dates due and payable, in immediately available funds, to the Administrative Agent at the Payment Office for distribution, if and as appropriate, among the Lenders. Once paid, none of the Administrative Agent Fees will be refundable under any circumstances.

SECTION 2.10. Interest.

(1) The Term Loans comprising each ABR Borrowing will bear interest at the ABR plus the Applicable Margin.

(2) The Term Loans comprising each Eurocurrency Borrowing will bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(3) Following the occurrence and during the continuation of a Specified Event of Default, the Borrower will pay interest on overdue amounts hereunder at a rate per annum equal to (i) in the case of overdue principal of, or interest on, any Term Loan, 2.00% *plus* the rate otherwise applicable to such Term Loan as provided in the preceding paragraphs of this Section 2.10 or (ii) in the case of any other overdue amount, 2.00% *plus* the rate applicable to ABR Loans as provided in clause (1) of this Section 2.10.

(4) Accrued interest on each Term Loan will be payable in arrears (i) on each Interest Payment Date for such Term Loan and (ii) on the applicable Maturity Date; *provided* that (A) interest accrued pursuant to paragraph (3) of this Section 2.10 will be payable on demand, (B) in the event of any repayment or prepayment of any Term Loan, accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment or prepayment and (C) in the event of any conversion of any Eurocurrency Loan prior to the end of the current Interest Period therefor, accrued interest on such Term Loan will be payable on the effective date of such conversion.

(5) All interest hereunder will be computed on the basis of a year of 360 days, except that interest computed by reference to the ABR at times when the ABR is based on the prime rate, will be computed on the basis of a year of 365 days (or 366 days in a leap year), and, in each case, will be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable ABR, Adjusted LIBO Rate or LIBO Rate will be determined by the Administrative Agent, and such determination will be conclusive absent manifest error.

SECTION 2.11. Alternate Rate of Interest. (a) If prior to the commencement of any Interest Period for a Eurocurrency Borrowing:

(1) the Administrative Agent determines (which determination will be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable (including without limitation, because the Screen Rate is not available or published on a current basis), for such Interest Period; or

(a) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Term Loans included in such Borrowing for such Interest Period;

then the Administrative Agent will give notice thereof to the Borrower and the applicable Lenders by telephone, facsimile transmission or e mail as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (a) any Interest Election Request that requests the conversion of any applicable Borrowing to, or continuation of any such Borrowing as, a Eurocurrency Borrowing will be ineffective and such Borrowing will be converted to or continued as on the last day of the Interest Period applicable thereto an ABR Borrowing and (b) if any Borrowing Request requests a Eurocurrency Borrowing, such Borrowing will be made as an ABR Borrowing.

(b) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that: (a) adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for any requested Interest Period, including, without limitation, because the Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or (b) the administrator of the Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the Adjusted LIBO Rate or the LIBO Rate, as applicable or the Screen Rate shall no longer be made available, or used for determining the interest rate of loans (such specific date, the "Scheduled Unavailability Date"), or (c) syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace the LIBO Rate, then, reasonably promptly after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace the LIBO Rate with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein), giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks (any such proposed rate, a "LIBOR Successor Rate"), together with any proposed LIBOR Successor Rate Conforming Changes, and any such amendment shall become effective (i) in the case of clause (a) and (b) above, at 5:00 p.m. (New York time) on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders do not accept such amendment and (ii) in the case of clause (c) above, upon execution of an amendment by the Administrative Agent and the Borrower.

SECTION 2.12. Increased Costs.

(1) If any Change in Law:

(a) imposes, modifies or deems applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate);

(b) imposes on any Lender or the London interbank market any other condition (other than Taxes), costs or expense affecting this Agreement or Eurocurrency Loans made by such Lender; or

(c) subjects any Recipient to any Taxes (other than (i) Indemnified Taxes, (ii) Taxes described in clauses (2) through (4) of the definition of Excluded Taxes and (iii) Connection Income Taxes) with respect to its loans, loan principal, letters of credit, commitments or other obligations, or deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any such Term Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(2) If any Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Term Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(3) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as applicable, as specified in paragraph (1) or (2) of this Section 2.12 will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

(4) Promptly after any Lender has determined that it will make a request for increased compensation pursuant to this Section 2.12, such Lender will notify the Borrower thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.12 will not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower will not be required to compensate a Lender pursuant to this Section 2.12 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; *provided, further*, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180 day period referred to above will be extended to include the period of retroactive effect thereof.

SECTION 2.13. Break Funding Payments. Except as otherwise set forth herein, the Borrower will compensate each Lender for the actual out-of-pocket loss, cost and expense (excluding loss of anticipated profits) attributable to the following events:

(1) the payment of any principal of any Eurocurrency Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default);

(2) the conversion of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto;

(3) the failure to borrow, convert, continue or prepay any Eurocurrency Loan on the date specified in any notice delivered pursuant hereto; or

(4) the assignment of any Eurocurrency Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.16.

Such loss, cost or expense to any Lender will be deemed to be the amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Term Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Term Loan (but not including the Applicable Margin applicable thereto), for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue a Eurocurrency Loan, for the period that would have been the Interest Period for such Term Loan) over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for deposits in Dollars of a comparable amount and period from other banks in the London interbank market.

A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.13 will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

Each Amendment No. 2.3 Consenting Lender with a Converted Tranche B-1 Term Loan waives the provisions of this Section 2.13 with respect to the prepayment and/or conversion of its Tranche B-1 Term Loans on the Amendment No. 2.3 Effective Date.

SECTION 2.14. Taxes.

(1) Any and all payments by or on account of any obligation of any Loan Party hereunder will be made free and clear of and without deduction for any Taxes, except as required by applicable law; *provided* that if any Taxes are required to be deducted by any applicable withholding agent under any applicable law from such payments (as determined in the good faith discretion of the Loan Party or the applicable withholding agent), then (a) the applicable withholding agent will make such deductions; (b) the applicable withholding agent will timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law, and (c) if such Tax is an Indemnified Tax, the sum payable by the Loan Party will be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.14) the Administrative Agent or any Lender, as applicable, receives an amount equal to the amount it would have received had no such deductions been made.

(2) In addition, the Loan Parties will pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(3) The Loan Parties will indemnify the Administrative Agent and each Lender, within ten days after written demand therefor, for the full amount of any Indemnified Taxes paid by the Administrative Agent or such Lender on or with respect to any payment by or on account of any obligation of such Loan Party hereunder (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.14) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Loan Party by a Lender, or by the Administrative Agent on its own behalf or on behalf of a Lender, will be conclusive absent manifest error.

(4) As soon as practicable after any payment of Indemnified Taxes by a Loan Party to a Governmental Authority pursuant to this Section 2.14, such Loan Party will deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(5)

(a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document will deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the

Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, will deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.14(5)(b), 2.14(5)(c) and 2.14(6) below) will not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(b) Without limiting the effect of Section 2.14(5)(a) above, each Lender that is a U.S. Person will deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), original copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

(c) Without limiting the effect of Section 2.14(5)(a) above, each Foreign Lender will, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the Recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two original copies of whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable (or any subsequent versions thereof or successors thereto), claiming eligibility for benefits of an income tax treaty to which the United States of America is a party;

(ii) duly completed copies of Internal Revenue Service Form W-8ECI (or any subsequent versions thereof or successors thereto);

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or 881(c) of the Code, (A) a certificate substantially in the form of the applicable Exhibit F to the effect that such Foreign Lender is not:

(x) a "bank" within the meaning of Section 881(c)(3)(A) of the Code;

(y) a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3) or 881(c)(3)(B) of the Code; or

(z) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code; and

(B) duly completed copies of Internal Revenue Service Form W 8BEN or W-8BEN-E, as applicable (or any subsequent versions thereof or successors thereto);

(iv) duly completed copies of Internal Revenue Service Form W-8IMY, together with forms and certificates described in clauses (i) through (iii) above (and any additional Form W-8IMYs) as may be required; or

(v) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

In addition, each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(6) If a payment made to a Recipient under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Recipient will deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Recipient has complied with such Recipient's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (6), "FATCA" will include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it will update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(7) Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation by such Lender to the Administrative Agent pursuant to Section 2.14(5) and 2.14(6).

(8) If the Administrative Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by a Loan Party or with respect to which such Loan Party has paid additional amounts pursuant to this Section 2.14, it will pay over promptly an amount equal to such refund to such Loan Party (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 2.14 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that such Loan Party, upon the request of the Administrative Agent or such Lender, agrees to repay as soon as reasonably practicable the amount paid over to such Loan Party pursuant to this Section 2.14(8) (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 2.14(8) will not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems, in good faith, to be confidential) to the Loan Parties or any other Person.

(9) Each party's obligations under this Section 2.14 will survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

(10) For purposes of this Section 2.14, the term "applicable law" includes FATCA.

SECTION 2.15. Payments Generally; Pro Rata Treatment; Sharing of Set-offs

(1) Unless otherwise specified, (a) the Borrower will make each payment required to be made by it hereunder (whether of principal, interest, fees or otherwise) prior to 2:00 p.m., New York City time, at the Payment Office, except that payments pursuant to Sections 2.12, 2.13, 2.14 and 10.05 will be made directly to the Persons entitled thereto; and (b) each such payment will be made, on the date when due, in immediately available funds, without condition or deduction for any defense, recoupment, set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. The Administrative Agent will distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following

receipt thereof and will make settlements with the Lenders with respect to other payments at the times and in the manner provided in this Agreement. Except as otherwise provided herein, if any payment hereunder is due on a day that is not a Business Day, the date for payment will be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon will be payable for the period of such extension. Any payment required to be made by the Administrative Agent hereunder will be deemed to have been made by the time required if the Administrative Agent, at or before such time, has taken the necessary steps to make such payment in accordance with the regulations or operating procedures of the clearing or settlement system used by the Administrative Agent to make such payment.

(2) Except as otherwise provided in this Agreement, if (a) at any time insufficient funds are received by and available to the Administrative Agent from the Borrower to pay fully all amounts of principal, interest and fees then due from the Borrower hereunder or (b) at any time an Event of Default shall have occurred and be continuing and the Administrative Agent will receive proceeds of Term Priority Collateral in connection with the exercise of remedies, such funds will be applied in accordance with Section 5.02 of the Collateral Agreement (subject to the application of proceeds provisions contained in the Intercreditor Agreement).

(3) Except as otherwise provided in this Agreement, if any Lender, by exercising any right of set-off or counterclaim or otherwise, obtains payment in respect of any principal of or interest on any of its Term Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Term Loans than the proportion received by any other Lender, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the Term Loans of other Lenders to the extent necessary so that the benefit of all such payments will be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Term Loans; *provided* that (a) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations will be rescinded and the purchase price restored to the extent of such recovery, without interest, and (b) the provisions of this paragraph (3) will not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender or a Disqualified Institution) or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Term Loans to any assignee or participant. The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(4) Unless the Administrative Agent has received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(5) If any Lender fails to make any payment required to be made by it pursuant to Section 2.03(1) or 2.15(3), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under Section 2.03(1) or 2.15(3), as applicable, until all such unsatisfied obligations are fully paid.

SECTION 2.16. Mitigation Obligations: Replacement of Lenders.

(1) If any Lender requests compensation under Section 2.12, or if the Borrower is required to pay any Indemnified Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, then such Lender will use reasonable efforts to designate a different Lending Office for funding or booking its Term Loans hereunder or assign its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the reasonable judgment of such Lender, such designation or assignment (a) would

eliminate or reduce amounts payable pursuant to Section 2.12 or 2.14, as applicable, in the future and (b) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(2) If any Lender requests compensation under Section 2.12 or is a Defaulting Lender, or if the Borrower is required to pay any Indemnified Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, then the Borrower may, at its sole expense, upon notice to such Lender and the Administrative Agent, either (a) prepay such Lender's outstanding Term Loans hereunder in full on a non-*pro rata* basis without premium or penalty (including with respect to the processing and recordation fee referred to in Section 10.04(2)(b)(ii)) or (b) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all its interests, rights and obligations under this Agreement to an assignee that will assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (i) in the case of clause (b) above, the Borrower has received the prior written consent of the Administrative Agent, which consent will not unreasonably be withheld, if a consent by the Administrative Agent would be required under Section 10.04 for an assignment of Term Loans to such assignee, (ii) such Lender has received payment of an amount equal to the outstanding principal of its Term Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.14, such assignment will result in a reduction in such compensation or payments thereafter. Nothing in this Section 2.16 will be deemed to prejudice any rights that the Borrower may have against any Lender that is a Defaulting Lender.

(3) If any Lender (such Lender, a "***Non-Consenting Lender***") has failed to consent to a proposed amendment, waiver, discharge or termination that, pursuant to the terms of Section 10.08, requires the consent of such Lender and with respect to which the Required Lenders have granted their consent, then the Borrower will have the right (unless such Non-Consenting Lender grants such consent) at its sole expense, to either (a) prepay such Lender's outstanding Term Loans hereunder in full on a non-*pro rata* basis without premium or penalty (including with respect to the processing and recordation fee referred to in Section 10.04(2)(b)(ii)) or (b) replace such Non-Consenting Lender by deeming such Non-Consenting Lender to have assigned its Term Loans and its Commitments hereunder to one or more assignees reasonably acceptable to the Administrative Agent if a consent by the Administrative Agent would be required under Section 10.04 for an assignment of Term Loans to such Assignee; *provided* that (i) all Obligations of the Borrower owing to such Non-Consenting Lender (including accrued Fees and any amounts due under Section 2.12, 2.13, 2.14 or 2.21) being removed or replaced will be paid in full to such Non-Consenting Lender concurrently with such removal or assignment and (ii) in the case of clause (b) above, the replacement Lender will purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof plus accrued and unpaid interest thereon. No action by or consent of the Non-Consenting Lender will be necessary in connection with such removal or assignment, in the case of clause (b) above, which shall be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment, the Borrower, the Administrative Agent, such Non-Consenting Lender and the replacement Lender will otherwise comply with Section 10.04; *provided* that if such Non-Consenting Lender does not comply with Section 10.04 within three Business Days after the Borrower's request, compliance with Section 10.04 will not be required to effect such assignment.

SECTION 2.17. Illegality. If any Lender reasonably determines that any change in law has made it unlawful, or if any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable Lending Office to make or maintain any Eurocurrency Loans, then, upon notice thereof by such Lender to the Borrower through the Administrative Agent, any obligations of such Lender to make or continue Eurocurrency Loans or to convert ABR Borrowings to Eurocurrency Borrowings will be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower will upon demand from such Lender (with a copy to the Administrative Agent), either convert all Eurocurrency Borrowings of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Term Loans. Upon any such prepayment or conversion, the Borrower will also pay accrued interest on the amount so prepaid or converted.

SECTION 2.18. Incremental Facilities.

(1) Notice. At any time and from time to time, on one or more occasions, subject to the terms and conditions set forth herein, the Borrower may, by written notice to the Administrative Agent, increase the aggregate principal amount of any outstanding Class of Term Loans or add one or more additional Classes of term loans under the Loan Documents (the “**Incremental Term Loans**”; each such increase or tranche, an “**Incremental Facility**”).

(2) Ranking. Incremental Term Loans shall be secured on a pari passu basis with all other Term Loans.

(3) Size. The principal amount of Incremental Facilities incurred pursuant to the Non-Ratio Based Incremental Facility Cap and Incremental Equivalent Term Debt incurred in reliance on the Non-Ratio Based Incremental Facility Cap will not exceed, in the aggregate, an amount equal to \$170.0 million (the “**Non-Ratio Based Incremental Facility Cap**”); *provided* that the Borrower may incur additional Incremental Facilities without regard to the Non-Ratio Based Incremental Facility Cap so long as the Senior Secured First Lien Net Leverage Ratio (determined on the date on which the applicable Incremental Facilities is incurred (and after giving effect to such incurrence) and after giving effect to any acquisition or other transaction consummated in connection with the incurrence of such Incremental Facility) is equal to or less than 4.50 to 1.00 (collectively, the “**Available Incremental Term Loan Facility Amount**”).

Each tranche of Incremental Term Loans will be in an integral multiple of \$1.0 million and in an aggregate principal amount that is not less than \$15.0 million (or such lesser minimum amount approved by the Administrative Agent in its reasonable discretion); *provided* that such amount may be less than the applicable minimum amount or integral multiple amount if such amount represents all the remaining availability under the Available Incremental Term Loan Facility Amount or the Non-Ratio Based Incremental Facility Cap.

(4) Incremental Lenders. Incremental Term Loans may be provided by any existing Lender (it being understood that no existing Lender will have an obligation to provide Incremental Term Loans) or any Additional Lender; *provided* that the Administrative Agent shall have consented (such consent not to be unreasonably withheld, delayed or conditioned) to any Additional Lender’s providing such Incremental Term Loans if such consent by the Administrative Agent would be required under Section 10.04 for an assignment of Term Loans to such Additional Lender.

(5) Incremental Facility Amendments. Each Incremental Facility will become effective pursuant to an amendment (each, an “**Incremental Facility Amendment**”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Lender or Additional Lender providing such Incremental Facility (the “**Incremental Lenders**”) and the Administrative Agent. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Incremental Facility Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Facility Amendment, this Agreement and the other Loan Documents, as applicable, will be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Facility and the Incremental Term Loans evidenced thereby.

(6) Conditions. The availability of Incremental Term Loans will be subject solely to the following conditions:

(a) no Default or Event of Default shall have occurred and be continuing on the date such Incremental Term Loans are incurred or would exist immediately after giving effect thereto; *provided*, that if the Incremental Facility is being incurred in connection with a Limited Condition Acquisition, (i) the date of determination of such condition shall be the LCA Test Date and (ii) on the date such Incremental Facility is incurred (or commitments in respect thereof are provided), no Specified Event of Default shall have occurred and be continuing or would exist immediately after giving effect thereto;

(b) the representations and warranties in the Loan Documents will be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be accurate in all respects) immediately prior to, and immediately after

giving effect to, the incurrence of such Incremental Term Loans; *provided*, that if the Incremental Facility is being incurred in connection with a Limited Condition Acquisition, (i) the date of determination of such condition shall be the LCA Test Date and (ii) on the date of incurrence of such Incremental Facility (or the date on which commitments in respect thereof are provided), the only representations and warranties that will be required to be true and correct in all material respects shall be the Specified Representations; and

(c) such other conditions (if any) as may be required by the Incremental Lenders providing such Incremental Term Loans, unless such other conditions are waived by such Incremental Lenders.

(7) Terms. Each notice delivered pursuant to this Section 2.18 will set forth the amount and proposed terms of the relevant Incremental Term Loans. The terms of each tranche of Incremental Term Loans will be as agreed between the Borrower and the Incremental Lenders providing such Incremental Term Loans; *provided* that:

(a) the final maturity date of such Incremental Term Loans will be no earlier than the Latest Maturity Date of the Term Loans;

(b) the Weighted Average Life to Maturity of such Incremental Term Loans will be no shorter than the longest remaining Weighted Average Life to Maturity of the Term Loans;

(c) such Incremental Term Loans may participate on *apro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any mandatory repayments or prepayments of the Term Loans; and

(d) subject to clauses (a) and (b) above, the amortization schedules applicable to such Incremental Term Loans will be as determined by the Borrower and the Incremental Lenders providing such Incremental Term Loans.

(8) Pricing.

(a) Subject to clause (b) below, (i) the interest rate, fees and original issue discount for any Incremental Term Loans will be as determined by a Responsible Officer of the Borrower and the Incremental Lenders providing such Incremental Term Loans;

(b) If the yield (as determined below) on any such Incremental Term Loans (such yield, the ***Incremental Yield***) incurred after the Closing Date exceeds the yield (as determined below) on the Tranche B-+2 Term Loans by more than 50 basis points, then the interest margins for the Tranche B-+2 Term Loans will automatically be increased to a level such that the yield on the Tranche B-+2 Term Loans will be 50 basis points below the Incremental Yield on such Incremental Term Loan. Any increase in yield on the Tranche B-+2 Term Loans required pursuant to this Section 2.18(8) and resulting from the application of an Adjusted LIBO Rate or ABR "floor" on any Incremental Term Loans will be effected solely through an increase in such "floor" (or an implementation thereof, as applicable) in respect of the Tranche B-+2 Term Loans. In determining whether the Incremental Yield on Incremental Term Loans exceeds the yield on the Tranche B-+2 Term Loans by more than 50 basis points, (A) such determination will take into account interest margins (and any coupon payable, if applicable), minimum Adjusted LIBO Rate, minimum ABR, upfront fees and original issue discount on the applicable Term Loans, with upfront fees and original issue discount being equated to interest margins or coupon based on an assumed four-year life to maturity, but will exclude any arrangement, syndication, structuring, commitment, placement, underwriting, or other fees payable in connection therewith that is not customarily shared among the applicable lenders or holders of such Indebtedness on a *pro rata* basis and (B) with respect to the Tranche B-+2 Term Loans, to the extent the Adjusted LIBO Rate on the closing date of the Incremental Facility is less than any LIBO Rate floor then applicable to the Tranche B-+2 Term Loans, the amount of such difference shall be deemed added to the applicable rate for such Tranche B-+2 Term Loans solely for the purposes of determining whether an increase in the interest margins for such Tranche B-+2 Term Loans shall be required.

SECTION 2.19. Other Term Loans.

(1) Other Term Loans. Credit Agreement Refinancing Indebtedness may, at the election of the Borrower, take the form of new Term Loans under an additional Term Facility hereunder (“**Other Term Loans**”) pursuant to a Refinancing Amendment.

(2) Refinancing Amendments. The effectiveness of any Refinancing Amendment will be subject only to the satisfaction on the date thereof of such of the conditions set forth in Section 4.01 as may be requested by the providers of Other Term Loans. The Administrative Agent will promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement will be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Other Term Loans incurred pursuant thereto (including any amendments necessary to treat the Term Loans subject thereto as Other Term Loans).

(3) Required Consents. Any Refinancing Amendment may, without the consent of any Person other than the Administrative Agent, the Borrower and the Lenders or Additional Lenders providing Other Term Loans, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.19. This Section 2.19 supersedes any provisions in Section 10.08 to the contrary.

(4) Providers of Other Term Loans. Any Lender approached to provide all or a portion of Other Term Loans may elect or decline, in its sole discretion, to provide such Other Term Loans (it being understood that there is no obligation to approach any existing Lenders to provide Other Term Loans). The consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or conditioned) will be required in respect of any Person providing Other Term Loans if such consent would be required under Section 10.04 for an assignment of Term Loans to such Person. To the extent provided in the relevant Refinancing Amendment with respect to any Other Term Loans, any portion of the Term Loans that would otherwise be repaid from the net proceeds of such Other Term Loans may be converted on a “cashless roll” basis into such Other Term Loans if agreed to by the Borrower and each Lender holding the Term Loans that are so converted.

SECTION 2.20. Extensions of Term Loans.

(1) Extension Offers. Pursuant to one or more offers (each, an “**Extension Offer**”) made from time to time by the Borrower to all Lenders of Term Loans with a like Maturity Date, the Borrower may, by written notice to the Administrative Agent from time to time, request an extension of the Maturity Date of Term Loans and otherwise modify the terms of Term Loans pursuant to the terms set forth in the relevant Extension Offer (each, an “**Extension**”). Each Extension Offer will specify the minimum amount of Term Loans with respect to which an Extension Offer may be accepted, which will be an integral multiple of \$1.0 million and an aggregate principal amount that is not less than \$50.0 million (or (a) if less, the aggregate principal amount of such Term Loans or (b) such lesser minimum amount as is approved by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed), and will be made on a *pro rata* basis to all Lenders of Term Loans of the applicable Class. If the aggregate outstanding principal amount of Term Loans (calculated on the face amount thereof) in respect of which Lenders have accepted an Extension Offer exceeds the maximum aggregate principal amount of Term Loans offered to be extended pursuant to an Extension Offer, then the Term Loans of such Lenders will be extended ratably up to such maximum amount based on the respective principal amounts (but not to exceed actual holdings of record) with respect to which such Lenders have accepted such Extension Offer. No Extension Offer or Extension Amendment (defined as follows) shall be required to be subject to any “most favored nation” pricing provisions. Each Lender accepting an Extension Offer is referred to herein as an “**Extending Term Lender**,” and the Term Loans held by such Lender accepting an Extension Offer is referred to herein as “**Extended Term Loans**.”

(2) Extension Amendments. The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents (an “**Extension Amendment**”) with the Borrower as may be necessary in order to establish new Classes in respect of Term Loans extended pursuant to an Extension Offer and such technical amendments as may be necessary or appropriate in the reasonable opinion of the

Administrative Agent and the Borrower in connection with the establishment of such new tranches. This Section 2.20 supersedes any provisions in Section 10.08 to the contrary. Except as otherwise set forth in an Extension Offer, there will be no conditions to the effectiveness of an Extension Amendment. Extensions will not constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement.

(3) Terms of Extension Offers and Extension Amendments. The terms of any Extended Term Loans will be set forth in an Extension Offer and as agreed between the Borrower and the Extending Term Lenders accepting such Extension Offer; *provided* that:

(a) the final maturity date of such Extended Term Loans will be no earlier than the Latest Maturity Date of the Term Loans subject to such Extension Offer;

(b) the Weighted Average Life to Maturity of such Extended Term Loans will be no shorter than the remaining Weighted Average Life to Maturity of the Term Loans subject to such Extension Offer;

(c) such Extended Term Loans may participate on *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any mandatory prepayments of Term Loans;

(d) such Extended Term Loans shall not be secured by any assets or property that do not constitute Collateral;

(e) such Extended Term Loans are not guaranteed by any Subsidiary of the Borrower other than a Subsidiary Loan Party; and

(f) except as to pricing terms (interest rate, fees, funding discounts and prepayment premiums) and maturity, the terms and conditions of such Extended Term Loans are substantially identical to (including as to ranking and priority), or, taken as a whole, no more favorable to the lenders or holders providing such Indebtedness than, those applicable to the Term Loans subject to such Extension Offer, as determined in good faith by a Responsible Officer of the Borrower.

Any Extended Term Loans will constitute a separate Class of Term Loans from the Term Loans held by Lenders that did not accept the applicable Extension Offer.

(4) Required Consents. No consent of any Lender or any other Person will be required to effectuate any Extension, other than the consent of the Administrative Agent (such consent not to be unreasonably withheld, delayed or condition), the Borrower and the applicable Extending Term Lender. The transactions contemplated by this Section 2.20 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Offer) will not require the consent of any other Lender or any other Person, and the requirements of any provision of this Agreement (including Sections 2.08 and 2.15) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.20 will not apply to any of the transactions effected pursuant to this Section 2.20.

SECTION 2.21. Repricing Event. In the event that, prior to the six month anniversary of the Amendment No. ~~23~~ Effective Date, the Borrower refinances or makes any prepayment of, or amends the terms of, any Class of Term Loans in connection with any Repricing Event (or causes any Class of Term Loans to be mandatorily assigned pursuant to the terms of Sections 2.16(3) or 10.04(7) hereof, in each case, in connection with a Repricing Event), the Borrower will pay to the Administrative Agent, for the ratable account of each applicable Lender, a payment of 1.00% of the aggregate principal amount of any such Term Loans so refinanced, prepaid or amended (or subject to mandatory assignment), as the case may be.

ARTICLE III

Representations and Warranties

With respect to any Borrowing made on the Closing Date (or after the Closing Date pursuant to Section 2.18, to the extent required by Section 2.18(6)), the Borrower, with respect to itself and each of the Restricted Subsidiaries, and Holdings, solely with respect to Sections 3.01, 3.02, 3.03, 3.04 and 3.19, will represent and warrant to each Agent and to each of the Lenders that:

SECTION 3.01. Organization; Powers. Each of Holdings, the Borrower and each Restricted Subsidiary:

(1) is a partnership, limited liability company, corporation, or trust duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization (to the extent such status or an analogous concept applies to such an organization);

(a) has all requisite power and authority to own its property and assets and to carry on its business as now conducted;

(b) is qualified to do business in each jurisdiction where such qualification is required, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect; and

(c) has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated thereby to which it is a party and, in the case of the Borrower, to borrow and otherwise obtain credit hereunder.

SECTION 3.02. Authorization. The execution, delivery and performance by the Loan Parties of each of the Loan Documents to which it is a party, the Borrowings hereunder and the Transactions:

(1) have been duly authorized by all corporate, stockholder, partnership, limited liability company or other applicable action required to be taken by the Loan Parties; and

(a) will not:

(b) violate:

(i) any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents (including any partnership, limited liability company or operating agreement or by-laws) of any Loan Party;

(A) any applicable order of any court or any rule, regulation or order of any Governmental Authority; or

(B) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which any Loan Party is a party or by which any of them or any of their property is or may be bound;

(c) be in conflict with, result in a breach of, constitute (alone or with notice or lapse of time or both) a default under, or give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) or to a loss of a material benefit under, any such indenture, certificate of designation for preferred stock, agreement or other instrument; or

(i) result in the creation or imposition of any Lien upon any property or assets of any Loan Party, other than the Liens created by the Loan Documents and Permitted Liens; except with respect to clauses (a) and (b) of this Section 3.02(2) as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.03. Enforceability. This Agreement has been duly executed and delivered by Holdings and the Borrower and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to:

- (1) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally;
- (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);
- (3) implied covenants of good faith and fair dealing; and
- (4) any foreign laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

SECTION 3.04. Governmental Approvals. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority or third party is or will be required in connection with the Transactions, the perfection or maintenance of the Liens created under the Security Documents or the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral, except for:

- (1) the filing of Uniform Commercial Code financing statements and equivalent filings in foreign jurisdictions;
- (2) filings with the United States Patent and Trademark Office and the United States Copyright Office and comparable offices in foreign jurisdictions and equivalent filings in foreign jurisdictions;
- (3) filings which may be required under Environmental Laws;
- (4) filings as may be required under the Exchange Act and applicable stock exchange rules in connection therewith;
- (5) such as have been made or obtained and are in full force and effect;
- (6) such actions, consents and approvals the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect; or
- (7) filings or other actions listed on Schedule 3.04.

SECTION 3.05. Title to Properties; Possession Under Leases

(1) Each of the Borrower and the Subsidiary Loan Parties has valid fee simple title to, or valid leasehold interests in, or easements or other limited property interests in, all of its Real Properties and valid title to its personal property and assets, in each case, except for Permitted Liens or defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes, in each case, except where the failure to have such title, interest, easement or right would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens.

(2) Neither the Borrower nor any of the Restricted Subsidiaries has defaulted under any lease to which it is a party, except for such defaults as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Each of the Borrower's and the Restricted Subsidiaries' leases is in full force and effect, except leases in respect of which the failure to be in full force and effect would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.05, on the Closing Date the Borrower and each of the Restricted Subsidiaries enjoys peaceful and undisturbed possession under all such leases, other than leases in respect of which the failure to enjoy peaceful and undisturbed possession would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.06. Subsidiaries.

(1) Schedule 3.06 sets forth as of the Closing Date the name and jurisdiction of incorporation, formation or organization of Holdings, the Borrower and each Restricted Subsidiary and, as to each Restricted Subsidiary, the percentage of each class of Equity Interests owned by the Borrower or by any other Subsidiary of the Borrower.

(2) As of the Closing Date, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments of any nature relating to any Equity Interests owned or held by Holdings, the Borrower or any Restricted Subsidiary.

SECTION 3.07. Litigation: Compliance with Laws.

(1) There are no actions, suits or proceedings at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any Restricted Subsidiary or any business, property or rights of any such Person (but excluding any actions, suits or proceedings arising under or relating to any Environmental Laws, which are subject to Section 3.13), in each case, which would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(2) To the knowledge of the Borrower, none of the Borrower, any Restricted Subsidiary or their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any law, rule or regulation (including any zoning, building, ordinance, code or approval, or any building permit, but excluding any Environmental Laws, which are subject to Section 3.13) or any restriction of record or agreement affecting any property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 3.08. Federal Reserve Regulations.

(1) None of Holdings, the Borrower or any Restricted Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

(2) No part of the proceeds of any Term Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund Indebtedness originally incurred for such purpose or (ii) for any purpose that entails a violation of, or that is inconsistent with, the provisions of the Regulations of the Board, including Regulations T, U or X.

SECTION 3.09. Investment Company Act. None of Holdings, the Borrower or any Guarantor is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.10. Use of Proceeds. The Borrower shall use the proceeds of the Term Loans made on the Closing Date to finance a portion of the Transactions. The Borrower will use the proceeds of the Amendment No. 1 Incremental Term Loans on the Amendment No. 1 Effective Date to directly or indirectly finance the Amendment No. 1 Transactions.

SECTION 3.11. Tax Returns. Except as set forth on Schedule 3.11:

(1) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of Holdings, the Borrower and the Restricted Subsidiaries has filed or caused to be filed all federal, state, local and non-U.S. Tax returns required to have been filed by it; and

(2) Each of Holdings, the Borrower and the Restricted Subsidiaries has timely paid or caused to be timely paid (a) all Taxes shown to be due and payable by it (taking into account any applicable extension) on the returns referred to in clause (1) of this Section 3.11 and (b) all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all Taxes due) with respect to all periods or portions thereof ending on or before the Closing Date, which Taxes, if not paid or adequately provided for, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, in each case except Taxes or assessments that are being contested in good faith by appropriate proceedings and for which Holdings, the Borrower or any Restricted Subsidiary (as the case may be) has set aside on its books adequate reserves in accordance with GAAP.

SECTION 3.12. No Material Misstatements.

(1) All written factual information and written factual data (other than the Projections, estimates and information of a general economic or industry specific nature) concerning Holdings, the Borrower or any Restricted Subsidiary that has been made available to the Administrative Agent or the Lenders, directly or indirectly, by or on behalf of Holdings, the Borrower or any Restricted Subsidiary in connection with the Transactions, when taken as a whole and after giving effect to all supplements and updates provided thereto, is correct in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made.

(2) The Projections that have been made available to the Administrative Agent or the Lenders by or on behalf of the Borrower in connection with the Transactions, when taken as a whole, have been prepared in good faith based upon assumptions that are believed by the Borrower to be reasonable at the time made and at the time delivered to the Administrative Agent or the Lenders, it being understood by the Administrative Agent and the Lenders that:

- (a) the Projections are merely a prediction as to future events and are not to be viewed as facts;
- (b) the Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of Holdings, the Borrower, the Company and/or the Sponsors;
- (c) no assurance can be given that any particular Projections will be realized; and
- (d) actual results may differ and such differences may be material.

SECTION 3.13. Environmental Matters. Except as set forth on Schedule 3.13 or as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(1) the Borrower and each of the Restricted Subsidiaries are in compliance with all Environmental Laws (including having obtained and complied with all permits, licenses and other approvals required under any Environmental Law for the operation of its business);

(2) neither the Borrower nor any Restricted Subsidiary has received notice of or is subject to any pending, or to the Borrower's knowledge, threatened action, suit or proceeding alleging a violation of, or liability under, any Environmental Law that remains outstanding or unresolved;

(3) to the Borrower's knowledge, no Hazardous Material is located at, on or under any property currently or formerly owned, operated or leased by the Borrower or any Restricted Subsidiary in violation of Environmental Laws and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by the Borrower or any Restricted Subsidiary and transported to or Released at any location which, in each case, described in this clause (3), would reasonably be expected to result in liability to the Borrower or any Restricted Subsidiaries; and

(4) there are no agreements in which the Borrower or any Restricted Subsidiary has expressly assumed or undertaken responsibility for any known or reasonably anticipated liability or obligation of any other Person arising under or relating to Environmental Laws or Hazardous Materials.

SECTION 3.14. Security Documents.

(1) The Collateral Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) legal and valid Liens on the Collateral described therein; and when financing statements in appropriate form are filed in the offices specified on Schedule III to the Collateral Agreement, a short form grant of security interest in intellectual property (in substantially the form of Exhibit B to the Collateral Agreement (for trademarks), Exhibit C to the Collateral Agreement (for patents) or Exhibit D to the Collateral Agreement (for copyrights)) is properly filed in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, and the Pledged Collateral described in the Collateral Agreement is delivered to the Collateral Agent, the Liens on the Collateral granted pursuant to the Collateral Agreement will constitute fully perfected Liens on all right, title and interest of the grantors in such Collateral in which (and to the extent) a security interest can be perfected under Article 9 of the Uniform Commercial Code by such filings, in each case prior to and superior in right of the Lien of any other Person (except for Permitted Liens).

(2) When financing statements in appropriate form are filed in the offices specified on Schedule III to the Collateral Agreement and the Collateral Agreement or a summary thereof or a short form grant of security interest in intellectual property (in substantially the form of Exhibit B to the Collateral Agreement (for trademarks), Exhibit C to the Collateral Agreement (for patents) or Exhibit D to the Collateral Agreement (for copyrights)) is properly filed in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, the Liens on the Collateral granted pursuant to the Collateral Agreement shall constitute fully perfected Liens on all right, title and interest of the Loan Parties thereunder in the domestic intellectual property, in each case prior and superior in right to the Lien of any other Person (except for Permitted Liens) (it being understood that subsequent recordings in the United States Patent and Trademark Office or the United States Copyright Office may be necessary to perfect a Lien on registered trademarks and patents, trademark and patent applications and registered copyrights acquired by the grantors after the Closing Date).

(3) Notwithstanding anything herein (including this Section 3.14) or in any other Loan Document to the contrary, neither the Borrower nor any other Loan Party makes any representation or warranty as to the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign law.

SECTION 3.15. Location of Real Property and Leased Premises.

(1) Schedule 3.15(1) correctly identifies, in all material respects, as of the Closing Date, all material Real Property owned in fee by the Loan Parties ("**Owned Material Real Property**"). As of the Closing Date, the Loan Parties own in fee all the Real Property set forth as being owned by them on Schedule 3.15(1).

(2) Schedule 3.15(2) lists correctly in all material respects, as of the Closing Date, all material Real Property leased by any Loan Party ("**Leased Material Real Property**") and the addresses thereof. As of the Closing Date, the Loan Parties have in all material respects valid leases in all material Real Property set forth as being leased by them on Schedule 3.15(2).

SECTION 3.16. Solvency. On the Amendment No. 23 Effective Date, after giving effect to the consummation of the refinancing of the Tranche B-1 Term Loans with the Tranche B-12 Term Loans, including the making of the Term Loans hereunder, and after giving effect to the application of the proceeds of the Term Loans:

(1) the fair value of the assets of the Borrower and its Subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities (subordinated, contingent or otherwise);

(2) the present fair saleable value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities (subordinated, contingent or otherwise) as such debts and other liabilities become absolute and matured;

(3) the Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities (subordinated, contingent or otherwise) as such liabilities become absolute and matured; and

(4) the Borrower and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

For purposes of this Section 3.16, the amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

SECTION 3.17. No Material Adverse Effect. Since October 3, 2015, there has been no event that has had, or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

SECTION 3.18. Insurance. Schedule 3.18 sets forth a true, complete and correct description of all material insurance maintained by or on behalf of the Borrower or any Restricted Subsidiary as of the Closing Date. As of such date, such insurance is in full force and effect.

SECTION 3.19. USA PATRIOT Act; FCPA; OFAC; Anti-Terrorism

(1) To the extent applicable, each of Holdings, the Borrower and their respective Subsidiaries is in compliance, in all material respects, with the USA PATRIOT Act.

(2) No part of the proceeds of the Term Loans will be used by Holdings, the Borrower or any of their respective Subsidiaries, directly or, to the knowledge of Holdings, the Borrower or any of their respective Subsidiaries, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977 ("**FCPA**").

(3) None of Holdings, the Borrower or any of their respective Subsidiaries is any of the following:

(a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the "**Executive Order**");

(b) a Person owned or Controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any laws with respect to terrorism or money laundering;

(d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(e) a Person that is named as a “specially designated national and blocked Person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control (“*OFAC*”) at its official website or any replacement website or other replacement official publication of such list and none of the proceeds of the Term Loans will be, directly or, to the knowledge of Holdings, the Borrower or any of their respective Subsidiaries, indirectly, offered, lent, contributed or otherwise made available to any Restricted Subsidiary, joint venture partner or other Person for the purpose of financing the activities of any Person currently the subject of sanctions administered by OFAC.

SECTION 3.20. Intellectual Property; Licenses, Etc. Except as set forth on Schedule 3.20:

(1) except as would not reasonably be expected to have a Material Adverse Effect, the Borrower and each Restricted Subsidiary owns, or possesses the right to use, all of the patents, patent rights, trademarks, service marks, trade names, copyrights or mask works, domain names, trade secrets and other intellectual property rights (collectively, “*Intellectual Property Rights*”) that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person;

(2) except as would not reasonably be expected to have a Material Adverse Effect, neither the Borrower nor any of the Restricted Subsidiaries nor any Intellectual Property Rights, product, process, method, substance, part or other material now employed, sold or offered by the Borrower or the Restricted Subsidiaries is infringing upon, misappropriating or otherwise violating Intellectual Property Rights of any Person; and

(3) no claim or litigation regarding any of the foregoing is pending or, to the knowledge of the Borrower, threatened.

SECTION 3.21. Employee Benefit Plans. The Borrower and each of its ERISA Affiliates are in compliance in all material respects with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events, would reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, the present value of all accumulated benefit obligations under all Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plans, in the aggregate.

SECTION 3.22. Regulation H. No Mortgage encumbers improved Real Property which is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (except any Mortgaged Properties as to which such flood insurance as required by Regulation H has been obtained and is in full force and effect as required by this Agreement).

ARTICLE IV

Conditions of Lending

SECTION 4.01. Conditions Precedent. The agreement of each Lender to make Term Loans on the Closing Date is subject solely to the satisfaction or waiver by the Administrative Agent, prior to or concurrently with the making of the Term Loans on the Closing Date, of the following conditions precedent:

(1) Loan Documents. The Administrative Agent shall have received this Agreement, the Collateral Agreement, the Intercreditor Agreement and each other Loan Document, in each case, dated as of the Closing Date, duly executed and delivered by a Responsible Officer of each of the Loan Parties party thereto.

- (2) Borrowing Request. On or prior to the Closing Date, the Administrative Agent shall have received a Borrowing Request.
- (3) [Reserved]
- (4) [Reserved]
- (5) Fees. All fees and expenses required to be paid to the Administrative Agent and the Arranger on or prior to the Closing Date shall have been paid.
- (6) Solvency Certificate. The Administrative Agent shall have received a solvency certificate substantially in the form attached hereto as Exhibit B.
- (7) Closing Date Certificates. The Administrative Agent shall have received a certificate of a Responsible Officer of the Loan Parties dated the Closing Date and certifying:
- (a) that attached thereto is a true and complete copy of the charter or other similar organizational document of such Loan Party, and each amendment thereto, certified (as of a date reasonably near the Closing Date) as being a true and correct copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which such Loan Party is organized;
 - (i) that attached thereto is a true and complete copy of a certificate of the Secretary of State or other applicable Governmental Authority of the jurisdiction in which such Loan Party is organized, dated reasonably near the Closing Date, listing the charter or other similar organizational document of such Person and each amendment thereto on file in such office and, if available, certifying that (i) such amendments are the only amendments to such Person's charter on file in such office, (ii) such Person has paid all franchise taxes to the date of such certificate and (iii) such Person is duly organized and in good standing under the laws of such jurisdiction;
 - (ii) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which it is a party or any other document delivered in connection herewith on the Closing Date and certifying that such resolutions have not been modified, rescinded or amended and are in full force and effect; and
 - (iii) as to the incumbency and specimen signature of each Responsible Officer executing the Loan Documents specified in Section 4.01(1) (together with a certificate of another officer as to the incumbency and specimen signature of the Responsible Officer executing the certificate pursuant to this Section 4.01(7)).
- (8) Legal Opinions. The Administrative Agent shall have received a customary legal opinion of Gibson, Dunn & Crutcher LLP, special New York and Texas counsel to the Loan Parties and from local counsel to the Loan Parties in Georgia, Illinois and Virginia.
- (9) Pledged Equity Interests; Pledged Notes. Except as otherwise agreed by the Administrative Agent, the Administrative Agent shall have received the certificates representing the Equity Interests (if such Equity Interests are certificated) of each Subsidiary Loan Party, in each case to the extent such Equity Interests are included in the Collateral and required to be pledged pursuant to the Collateral Agreement, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof.
- (10) Lien Searches. The Administrative Agent shall have received a completed Perfection Certificate dated as of the Closing Date and signed by a Responsible Officer of the Borrower, together with, if requested by the Administrative Agent at least 21 days prior to the Closing Date, the results of a search of

Uniform Commercial Code filings made with respect to the Loan Parties (for purposes of this clause (10), giving effect to the Transactions) in the applicable jurisdiction of organization of each Loan Party and copies of the financing statements (or similar documents) disclosed by such search.

(11) Know Your Customer and Other Required Information. All documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, as has been reasonably requested in writing by the Administrative Agent at least ten calendar days prior to the Closing Date, will be provided not later than the date that is three Business Days prior to the Closing Date.

(12) Representations and Warranties: Absence of Default. All representations and warranties contained in Article III of this Agreement shall be true and correct in all material respects on the Closing Date, except to the extent such representation or warranty specifically refers to an earlier date, in which case it shall be true and correct in all material respects as of such earlier date (in each case, any representation or warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct in all respects) and no Default shall have occurred immediately after giving effect to the Transactions to occur on the Closing Date.

There are no conditions, implied or otherwise, to the making of Term Loans on the Closing Date other than as set forth in the preceding clauses (1) through (12) and upon satisfaction or waiver by the Administrative Agent of such conditions the Tranche B Term Loans will be made by the Lenders.

ARTICLE V

Affirmative Covenants

The Borrower covenants and agrees with each Lender that so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations (other than Obligations in respect of (i) Specified Hedge Agreements and Cash Management Obligations that are not then due and payable and (ii) contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full, unless the Required Lenders otherwise consent in writing, the Borrower will, and will cause its Restricted Subsidiaries, to, and will cause Holdings (solely with respect to Sections 5.01, 5.03, 5.06, 5.07 and 5.10), to:

SECTION 5.01. Existence: Businesses and Properties.

(1) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except:

(a) in the case of a Restricted Subsidiary, where the failure to do so would not reasonably be expected to have a Material Adverse Effect; or

(b) in connection with a transaction permitted under Section 6.05.

(2) (a) Do or cause to be done all things necessary to lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, Intellectual Property Rights, licenses and rights with respect thereto necessary to the normal conduct of its business and (b) at all times maintain and preserve all property necessary to the normal conduct of its business and keep such property in good repair, working order and condition (ordinary wear and tear excepted) and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith, if any, may be properly conducted at all times, in each case, except:

(i) as expressly permitted by this Agreement;

(A) such as may expire, be abandoned or lapse in the ordinary course of business; or

(B) where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.02. Insurance.

(1) Maintain, with insurance companies reasonably believed to be financially sound and reputable, insurance in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or similar businesses operating in the same or similar locations, and cause the Collateral Agent to be listed as a co-loss payee on property and casualty policies and as an additional insured on liability policies. The Borrower will furnish to the Administrative Agent or Collateral Agent, upon request, information in reasonable detail as to the insurance so maintained. Notwithstanding the foregoing, it is understood and agreed that no Loan Party will be required to maintain flood insurance other than with respect to any Owned Material Real Property required to be so insured pursuant to the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1968, and the regulations promulgated thereunder, because such Owned Material Real Property is located in an area which has been identified by the Secretary of Housing and Urban Development as a "special flood hazard area."

(2) Use commercially reasonable efforts to: (a) if insurance is procured from insurance companies, obtain certificates and endorsements reasonably acceptable to the Administrative Agent with respect to property and casualty insurance; (b) cause each insurance policy referred to in this Section 5.02 and procured from an insurance company to provide that it shall not be cancelled, modified or not renewed (x) by reason of nonpayment of premium except upon not less than 10 days' prior written notice thereof by the insurer to the Administrative Agent (giving the Administrative Agent the right to cure defaults in the payment of premiums) or (y) for any other reason except upon not less than 30 days' prior written notice thereof by the insurer to the Administrative Agent; and (c) deliver to the Administrative Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Administrative Agent, including an insurance binder) together with evidence reasonably satisfactory to the Administrative Agent of payment of the premium therefor.

SECTION 5.03. Taxes. Pay and discharge promptly when due all material Taxes imposed upon it or its income or profits or in respect of its property, before the same becomes delinquent or in default; *provided* that such payment and discharge will not be required with respect to any Tax if (1) the validity or amount thereof is being contested in good faith by appropriate proceedings and (2) Holdings, the Borrower or any affected Restricted Subsidiary, as applicable, has set aside on its books reserves in accordance with GAAP with respect thereto.

SECTION 5.04. Financial Statements, Reports, etc. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders):

(1) within 105 days following the end of each fiscal year ended after the Closing Date (i), a consolidated balance sheet and related statements of operations, cash flows and owners' equity showing the financial position of the Borrower and the Restricted Subsidiaries as of the close of such fiscal year and the consolidated results of its operations during such fiscal year and, in each case, starting with the following fiscal year, setting forth in comparative form the corresponding figures for the prior fiscal year, which consolidated balance sheet and related statements of operations, cash flows and owners' equity will be audited by independent public accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Administrative Agent, and accompanied by an opinion of such accountants (which opinion shall not be subject to any "going concern" statement, explanatory note or like qualification or exception (other than a "going concern" statement, explanatory note or like qualification or exception resulting solely from an upcoming maturity date occurring within one year from the time such opinion is delivered or anticipated (but not actual) covenant non-compliance)) to the effect that such consolidated financial statements fairly present, in all material respects, the financial position and results of operations of the Borrower and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP (the applicable financial statements delivered pursuant to this clause (1) being the "*Annual Financial Statements*") and (ii) a management's discussion and analysis of financial condition and results of operations, discussing and analyzing the results of operations of the Borrower for the period covered by such Annual Financial Statements;

(2) within 60 days following the end of each of the first three fiscal quarters of each fiscal year, (i) a consolidated balance sheet and related statements of operations and cash flows showing the financial position of the Borrower and the Restricted Subsidiaries as of the close of such fiscal quarter and the consolidated results of its operations during such fiscal quarter and, in each case, the then-elapsing portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, which consolidated balance sheet and related statements of operations and cash flows will be certified by a Responsible Officer of the Borrower on behalf of the Borrower as fairly presenting, in all material respects, the financial position and results of operations of the Borrower and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes, and (ii) a management's discussion and analysis of financial condition and results of operations, discussing and analyzing the results of operations of the Borrower for such fiscal quarter (the applicable financial statements delivered pursuant to this clause (2) being the "**Quarterly Financial Statements**" and, together with the Annual Financial Statements, the "**Required Financial Statements**");

(3) concurrently with any delivery of Required Financial Statements, a certificate of a Financial Officer of the Company:

(a) certifying that no Default or Event of Default has occurred and is continuing or, if a Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto;

(i) setting forth the calculation and uses of the Available Amount for the fiscal period then ended if the Borrower has used the Available Amount for any purpose during such fiscal period;

(ii) certifying a list of all Immaterial Subsidiaries, that each Subsidiary set forth on such list individually qualifies as an Immaterial Subsidiary and that all such Subsidiaries in the aggregate do not exceed the limitation set forth in clause (ii) of the definition of the term "Immaterial Subsidiary";

(iii) setting forth, in reasonable detail, the calculation of the Senior Secured First Lien Net Leverage Ratio for the most recent period of four consecutive fiscal quarters as of the close of such fiscal year or such fiscal quarter, as applicable; and

(iv) certifying a list of all Unrestricted Subsidiaries at such time and that each Subsidiary set forth on such list qualifies as an Unrestricted Subsidiary;

(4) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by the Administrative Agent, other materials publicly filed by Holdings, the Borrower or any Restricted Subsidiary with the SEC or, after an initial public offering, distributed to its stockholders generally, as applicable;

(5) within 105 days following the end of each full fiscal year ended after the Closing Date, a consolidated annual budget for such fiscal year in the form customarily prepared by the Borrower (the "**Budget**"), which Budget will in each case be accompanied by the statement of a Financial Officer of the Borrower on behalf of the Borrower to the effect that the Budget is based on assumptions believed by the Borrower to be reasonable as of the date of delivery thereof;

(6) upon the reasonable request of the Collateral Agent, concurrently with the delivery of the Annual Financial Statements, an updated Perfection Certificate (or, to the extent such request relates to specified information contained in the Perfection Certificate, such information) reflecting all changes since the date of the information most recently received pursuant to this paragraph (6) or Section 5.10;

(7) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of Holdings, the Borrower or any Restricted Subsidiary, in each case, as the Administrative Agent may reasonably request (for itself or on behalf of any Lender); and

(8) promptly upon request by the Administrative Agent (so long as the following are obtainable using commercially reasonable measures), copies of any documents described in Section 101(k)(1) of ERISA that the Borrower or any of its ERISA Affiliates may request with respect to any Multiemployer Plan; *provided* that if the Borrower or any of its ERISA Affiliates has not requested such documents from the administrator or sponsor of the applicable Multiemployer Plan, the Borrower or the applicable ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and shall provide copies of such documents and notices promptly after receipt thereof.

Anything to the contrary notwithstanding, the obligations in clauses (1) and (2) of this Section 5.04 may be satisfied with respect to financial information of the Borrower and the Restricted Subsidiaries by furnishing (1) the applicable financial statements of Holdings (or any other Parent Entity) or (2) the Borrower's or Holdings' (or any such other Parent Entity's), as applicable, Form 10 K or 10 Q, as applicable, filed with the SEC; *provided* that with respect to each of the foregoing clauses (1) and (2) (a) to the extent such information relates to Holdings (or a Parent Entity), such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings (or such Parent Entity), on the one hand, and the information relating to the Borrower and the Restricted Subsidiaries on a standalone basis, on the other hand, and (b) to the extent such information is in lieu of information required to be provided under Section 5.04(1), such materials are accompanied by a report and opinion of independent public accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Administrative Agent, and accompanied by an opinion of such accountants (which opinion shall not be subject to any "going concern" statement, explanatory note or like qualification or exception (other than a "going concern" statement, explanatory note or like qualification or exception resulting solely from an upcoming maturity date occurring within one year from the time such opinion is delivered or anticipated (but not actual) covenant non-compliance)) (it being understood and agreed that if, in compliance with this paragraph, (x) the Borrower provides audited financial statements of Holdings (or any other Parent Entity) and related report and opinion of accountants with respect thereto in lieu of information required to be provided under Section 5.04(1), no such audited financial information, opinion or report shall be required with respect to the Borrower, (y) the Borrower provides unaudited financial statements of Holdings (or any other Parent Entity) in lieu of information required to be provided under Section 5.04(2), no such unaudited financial information shall be required with respect to the Borrower and (z) the Borrower provides a Budget of Holdings and accompanying statement (or any other Parent Entity) in lieu of information required to be provided under Section 5.04(5), no such Budget shall be required with respect to the Borrower; *provided* that for the avoidance of doubt, with respect to the foregoing clauses (x), (y) and (z) (i) to the extent such information relates to Holdings (or a Parent Entity), such information is accompanied by consolidating information that explains in reasonable detail the differences between the information relating to Holdings (or such Parent Entity), on the one hand, and the information relating to the Borrower and the Restricted Subsidiaries on a standalone basis, on the other hand, and (ii) to the extent such information is in lieu of information required to be provided under Section 5.04(1), such materials are accompanied by a report and opinion of independent public accountants of recognized national standing, or such other accountants as are reasonably acceptable to the Administrative Agent, and accompanied by an opinion of such accountants (which opinion shall not be subject to any "going concern" statement, explanatory note or like qualification or exception (other than a "going concern" statement, explanatory note or like qualification or exception resulting solely from an upcoming maturity date occurring within one year from the time such opinion is delivered or anticipated (but not actual) covenant non-compliance)). The obligations in clauses (1) and (2) of this Section 5.04 may be satisfied by delivery of financial information of the Borrower and its Subsidiaries so long as such financial statements include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, of the financial condition and results of operations of the Borrower and the Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Borrower.

Documents required to be delivered pursuant to this Section 5.04 may be delivered electronically in accordance with Section 10.01(5).

SECTION 5.05. Litigation and Other Notices. Furnish to the Administrative Agent (which will promptly thereafter furnish to the Lenders) written notice of the following promptly after any Responsible Officer of the Borrower obtains actual knowledge thereof:

- (1) any Default or Event of Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;
- (2) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against Holdings or any of the Restricted Subsidiaries as to which an adverse determination is reasonably probable and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect; and
- (3) the occurrence of any ERISA Event that, together with all other ERISA Events that have occurred, would reasonably be expected to have a Material Adverse Effect.

SECTION 5.06. Compliance with Laws. Comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including ERISA, FCPA, OFAC and the PATRIOT Act), except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; *provided* that this Section 5.06 will not apply to Environmental Laws, which are the subject of Section 5.09, or laws related to Taxes, which are the subject of Section 5.03.

SECTION 5.07. Maintaining Records; Access to Properties and Inspections. Permit any Persons designated by the Administrative Agent to visit and inspect the financial records and the properties of the Borrower or any Restricted Subsidiary at reasonable times, upon reasonable prior notice to the Borrower, and as often as reasonably requested, to make extracts from and copies of such financial records, and permit any Persons designated by the Administrative Agent, upon reasonable prior notice to the Borrower to discuss the affairs, finances and condition of Holdings, the Borrower or any Restricted Subsidiary with the officers thereof and independent accountants therefor (subject to such accountant's policies and procedures); *provided* that the Administrative Agent may not exercise such rights more often than two times during any calendar year unless an Event of Default is continuing and only one such time will be at the Borrower's expense; and *provided, further*, that when an Event of Default is continuing, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice.

Notwithstanding anything to the contrary in this Agreement (including Sections 5.04(7), 5.05, 5.07 and 5.12) or any other Loan Document, none of the Loan Parties or any of the Restricted Subsidiaries will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter with any competitor to the Borrower or any of its Subsidiaries or that (1) constitutes non-financial trade secrets or non-financial proprietary information, (2) in respect of which disclosure is prohibited by law or any binding agreement, (3) is subject to attorney-client or similar privilege or constitutes attorney work product or (4) creates an unreasonably excessive expense or burden on the Borrower or any of its Subsidiaries.

SECTION 5.08. Use of Proceeds. Use the proceeds of the Term Loans made on the Closing Date to finance, in part, the Transactions.

SECTION 5.09. Compliance with Environmental Laws. Comply, and make reasonable efforts to cause all lessees and other Persons occupying its fee-owned Real Properties to comply, with all Environmental Laws applicable to its operations and properties, and obtain and renew all material authorizations and permits required pursuant to Environmental Law for its operations and properties, in each case in accordance with Environmental Laws, except, in each case, to the extent the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.10. Further Assurances: Additional Security.

(1) If (a) a Restricted Subsidiary (other than an Excluded Subsidiary) of the Borrower is formed or acquired after the Closing Date or (b) an Excluded Subsidiary ceases to constitute an Excluded Subsidiary (but remains a Restricted Subsidiary), within five Business Days after the date such Restricted Subsidiary is formed or acquired or such Excluded Subsidiary ceases to constitute an Excluded Subsidiary, as applicable, notify the Collateral Agent thereof and, within 20 Business Days after the date such Restricted Subsidiary is formed or acquired or such Subsidiary ceases to constitute an Excluded Subsidiary (or such longer period as the Administrative Agent may agree in its sole discretion), the Borrower will or will cause such Restricted Subsidiary to:

(i) deliver a joinder to the Collateral Agreement, substantially in the form specified therein, duly executed on behalf of such Restricted Subsidiary;

(A) to the extent required by and subject to the exceptions set forth in the Collateral Agreement, pledge the outstanding Equity Interests (other than Excluded Equity Interests) owned by such Restricted Subsidiary, and cause each Loan Party owning any Equity Interests issued by such Restricted Subsidiary to pledge such outstanding Equity Interests (other than Excluded Equity Interests), and deliver all certificates (if any) representing such Equity Interests, together with stock powers or other instruments of transfer with respect thereto endorsed in blank, to the Collateral Agent (or a designated bailee thereof);

(B) to the extent required by and subject to the exceptions set forth in this Section 5.10 or the Security Documents, deliver to the Collateral Agent (or a designated bailee thereof) Uniform Commercial Code financing statements with respect to such Restricted Subsidiary and such other documents reasonably requested by the Collateral Agent to create the Liens intended to be created under the Security Documents and perfect such Liens to the extent required by the Security Documents; and

(C) except as otherwise contemplated by this Section 5.10 or any Security Document, obtain all consents and approvals required to be obtained by it in connection with (A) the execution and delivery of all Security Documents (or supplements thereto) to which it is a party and the granting by it of the Liens thereunder and (B) the performance of its obligations thereunder.

(2) If any Loan Party (a) acquires fee simple title in Real Property after the Closing Date or (b) enters a joinder pursuant to Section 5.10(1)(i) hereof and owns fee simple title in Real Property, then, in each case, within 60 days (or such longer period as the Administrative Agent may agree in its sole discretion) after such acquisition or entry of a joinder (as applicable):

(a) notify the Collateral Agent thereof of such acquired or owned Real Property (as applicable);

(b) cause any such acquired or owned Real Property (as applicable) that has a fair market value (as determined in good faith by a Responsible Officer of the Borrower) of \$3.0 million or more to be subjected to a Mortgage securing the Obligations unless such Real Property shall be subject to a Sale and Lease-Back Transaction permitted by Section 6.03 hereunder or is already mortgaged to a third party to the extent permitted by Section 6.02;

(c) (A) obtain fully paid American Land Title Association Lender's Extended Coverage title insurance policies in form and substance reasonably satisfactory to Collateral Agent, with endorsements (including zoning endorsements where available) and in an amount not less than 125% of the fair market value of each Mortgaged Property that is owned in fee insuring the fee simple title to each of the fee owned Mortgaged Properties vested in the applicable Loan Party and insuring the Collateral Agent that the relevant Mortgage creates a valid and enforceable first priority Lien on the Mortgaged Property encumbered thereby, each of which title policy ("**Title Policy**") (1) shall include all endorsements reasonably requested by the Collateral Agent and available in the related jurisdiction and (2) shall provide for affirmative insurance and such reinsurance as the Collateral Agent may reasonably request, all of the foregoing in form and substance reasonably satisfactory to the Collateral Agent; (B) evidence reasonably satisfactory to the

Collateral Agent that the applicable Loan Party has (1) delivered to the title company (the "***Title Company***") all certificates and affidavits reasonably required by the Title Company in connection with the issuance of the applicable Title Policy and (2) paid to the Title Company or to the appropriate Governmental Authorities all expenses and premiums of the Title Company and all other sums required in connection with the issuance of the Title Policies and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgages in the applicable real property records; and (C) a title report issued by the Title Company with respect thereto, together with copies of all recorded documents listed as exceptions to title or otherwise referred to therein, each in form and substance reasonably satisfactory to the Collateral Agent. (the "***Mortgage Policies***");

(d) obtain (i) American Land Title Association/American Congress on Surveying and Mapping surveys, dated no more than 30 days before the date of their delivery to the Collateral Agent, certified to the Collateral Agent and the issuer of the Mortgage Policies in a manner reasonably satisfactory to the Collateral Agent or (ii) previously obtained ALTA surveys and affidavits of "no-change" with respect to each such survey, such surveys and affidavits to be sufficient to issue Title Policies to the Administrative Agent providing all reasonably required survey coverage and survey endorsements;

(e) deliver to the Collateral Agent: (A) a completed Flood Certificate with respect to each Mortgaged Property, which Flood Certificate shall (1) be addressed to the Collateral Agent, (2) be completed by a company which has guaranteed the accuracy of the information contained therein, and (3) otherwise comply with the Flood Program; (B) evidence describing whether the community in which each Mortgaged Property is located participates in the Flood Program; (C) if any Flood Certificate states that a Mortgaged Property is located in a Flood Zone, the Borrower's written acknowledgement of receipt of written notification from the Collateral Agent (1) as to the existence of each such Mortgaged Property, and (2) as to whether the community in which each such Mortgaged Property is located is participating in the Flood Program; and (D) if any Mortgaged Property is located in a Flood Zone and is located in a community that participates in the Flood Program, evidence that the applicable Loan Party has obtained a policy of flood insurance that is in compliance with all applicable regulations of the Board of Governors;

(f) provide evidence of insurance (including all insurance required to comply with applicable flood insurance laws) naming the Collateral Agent as loss payee and additional insured with such responsible and reputable insurance companies or associations, and in such amounts and covering such risks, as are reasonably satisfactory to the Collateral Agent, including the insurance required by the terms of any mortgage or deed of trust;

(g) for each Mortgage delivered pursuant to clause (b), obtain customary mortgage or deed of trust enforceability opinions of local counsel for the Loan Parties in the states in which such acquired Real Properties owned in fee simple are located; and

(h) take, or cause the applicable Loan Party to take, such actions as shall be necessary or reasonably requested by the Collateral Agent to perfect such Liens, in each case, at the expense of the Loan Parties, subject to paragraph (5) of this Section 5.10.

(3) Furnish to the Collateral Agent five Business Days prior written notice of any change in any Loan Party's:

(a) corporate or organization name;

(b) organizational structure;

(c) location (determined as provided in UCC Section 9-307); or

(d) organizational identification number (or equivalent) or, solely if required for perfecting a security interest in the applicable jurisdiction, Federal Taxpayer Identification Number.

The Borrower will not effect or permit any such change unless all filings have been made, or will be made within any statutory period, under the Uniform Commercial Code or otherwise that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest, for the benefit of the applicable Secured Parties, in all Collateral held by such Loan Party.

(4) Execute any and all other documents, financing statements, agreements and instruments, and take all such other actions (including the filing and recording of financing statements and other documents), not described in the preceding clauses (1) through (3) and that may be required under any applicable law, or that the Collateral Agent may reasonably request, to satisfy the requirements set forth in this Section 5.10 and in the Security Documents with respect to the creation and perfection of the Liens on the Collateral in favor of the Collateral Agent, for the benefit of the Secured Parties, contemplated herein and in the Security Documents and to cause such requirement to be and remain satisfied, all at the expense of the Borrower, and provide to the Collateral Agent, from time to time upon reasonable request, evidence as to the perfection and priority of the Liens created by the Security Documents.

(5) Notwithstanding anything to the contrary,

(a) the other provisions of this Section 5.10 need not be satisfied with respect to any Excluded Assets or Excluded Equity Interests or any exclusions and carve-outs from the perfection requirements set forth in the Collateral Agreement;

(b) neither the Borrower nor the other Loan Parties will be required to grant a security interest in any asset or perfect a security interest in any Collateral to the extent the cost, burden, difficulty or consequence of obtaining or perfecting a security interest therein outweighs the benefit of the security afforded thereby as reasonably determined by a Responsible Officer of the Borrower and the Administrative Agent; and

(c) no actions will be required outside of the United States in order to create or perfect any security interest in any assets located outside of the United States and no foreign law security or pledge agreements, foreign law mortgages or deeds or foreign intellectual property filings or searches will be required.

SECTION 5.11. Credit Ratings. Use commercially reasonable efforts to maintain at all times (a) a credit rating by each of S&P and Moody's in respect of the Term Facility and (b) a public corporate rating by S&P and a public corporate family rating by Moody's for the Borrower, in each case with no requirement to maintain any specific minimum rating.

SECTION 5.12. Preparation of Environmental Reports. At any time during the continuance of an Event of Default, provide to the Lenders within 60 days after reasonable request from the Administrative Agent or the Required Lenders, at the expense of the Borrower, an environmental site assessment report for any of its Real Properties described in such request, prepared by an environmental consulting firm reasonably acceptable to the Administrative Agent, indicating the presence or absence of Hazardous Materials at such property and the estimated cost of any compliance, including, if applicable, the estimated costs of legally required removal or remedial actions in connection with any such Hazardous Materials on such Real Property; without limiting the generality of the foregoing, if the Administrative Agent reasonably determines at any time following 30 days after its initial request that a material risk exists that any such report will not be provided within the time referred to above, the Administrative Agent may retain an environmental consulting firm to prepare such report at the expense of the Borrower, and Holdings hereby grants and agrees to cause any Subsidiary that maintains an interest in any Real Property described in such request to grant at the time of such request to the Administrative Agent, the Lenders, such firm and any agents or representatives thereof an irrevocable non-exclusive license, after reasonable advance notice subject to the reasonable rights of tenants or any limitation contained in applicable leases, to enter onto their respective properties to undertake such an assessment. Any such assessment shall be conducted during normal business hours and in a manner reasonably designed to mitigate any material interference with the ongoing operations of the Loan Party's business. The Loan Parties may require that, prior to entry onto the Real Property, any such engineer or consultant shall present evidence of reasonable and customary insurance coverage, including

general liability and professional liability policies. Unless there exists a reasonable belief that there has been a material Release of Hazardous Materials at the Real Property any such assessment shall be limited to a visual inspection of the property and shall not include the taking of any samples of soil, groundwater, surface water, building materials or other environmental media.

SECTION 5.13. Post-Closing Matters. Deliver to Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, the items described on Schedule 5.13 hereof on or before the dates specified with respect to such items on Schedule 5.13 (or, in each case, such later date as may be agreed to by Administrative Agent in its sole discretion or, with respect to matters relating primarily to the ABL Priority Collateral, in the sole discretion of the administrative agent under the ABL Credit Agreement). All representations and warranties contained in this Agreement and the other Loan Documents will be deemed modified to the extent necessary to effect the foregoing (and to permit the taking of the actions described on Schedule 5.13 within the time periods specified thereon, rather than as elsewhere provided in the Loan Documents).

ARTICLE VI

Negative Covenants

The Borrower covenants and agrees with each Lender that, so long as this Agreement is in effect and until the Commitments have been terminated and the Obligations (other than Obligations in respect of (i) Specified Hedge Agreements and Cash Management Obligations that are not then due and payable and (ii) contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full, unless the Required Lenders otherwise consent in writing, it will not and will not permit any of its Restricted Subsidiaries to:

SECTION 6.01. Indebtedness. Issue, incur or assume any Indebtedness; *provided* that the Borrower and the Restricted Subsidiaries may issue, incur or assume Indebtedness so long as immediately after giving effect to the issuance, incurrence or assumption of such Indebtedness, the Interest Coverage Ratio is 2.00 to 1.00 or greater ("**Ratio Debt**"); and *provided, further*, that the aggregate principal amount of Ratio Debt incurred by Restricted Subsidiaries that are not Guarantors, when aggregated with the amount of Permitted Refinancing Indebtedness incurred by Restricted Subsidiaries that are not Guarantors in respect of Ratio Debt, may not exceed \$25.0 million at any time outstanding.

The foregoing limitation will not apply to (collectively, "**Permitted Debt**"):

(1) (a) Indebtedness created under the Loan Documents (including Incremental Term Loans, Other Term Loans and Extended Term Loans); (b) Incremental Equivalent Term Debt and (c) Credit Agreement Refinancing Indebtedness;

(2) (a) Indebtedness incurred pursuant to the ABL Credit Agreement and the issuance and creation of letters of credit and bankers' acceptances thereunder (with letters of credit and bankers' acceptances being deemed to have a principal amount equal to the face amount thereof) up to an aggregate outstanding principal amount as of any date and (b) any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (2) (and any successive Permitted Refinancing Indebtedness in respect thereof), not to exceed, in the case of all Indebtedness incurred pursuant to this clause (2), \$200.0 million;

(3) the New Senior Notes issued on the Closing Date and any Registered Equivalent Notes with respect thereto and, in each case, any capitalized interest added thereto;

(4) Indebtedness existing on the Closing Date (other than Indebtedness described in clause (1), (2) or (3) above) after giving effect to the Refinancing and, with respect to Indebtedness exceeding \$5,000,000 in the aggregate, set forth on Schedule 6.01;

(5) Capital Lease Obligations, Indebtedness with respect to mortgage financings and purchase money Indebtedness to finance all or any part of the purchase, lease, construction, installation, repair or improvement of property (real or personal), plant or equipment or other fixed or capital assets and Indebtedness arising from the conversion of the obligations of the Borrower or any Restricted Subsidiary under or pursuant to any "synthetic lease" transactions to on-balance sheet Indebtedness of the Borrower or such Restricted Subsidiary, in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause

(5) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) \$35.0 million and (b) 9.00% of Consolidated Total Assets as of the date any such Indebtedness is incurred; *provided* that such Indebtedness is incurred within 270 days after the purchase, lease, construction, installation, repair or improvement of the property that is the subject of such Indebtedness;

(6) Indebtedness owed to (including obligations in respect of letters of credit or bank Guarantees or similar instruments for the benefit of) any Person providing workers' compensation, health, disability or other employee benefits (whether to current or former employees) or property, casualty or liability insurance or self-insurance in respect of such items, or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance; *provided* that upon the incurrence of any Indebtedness with respect to reimbursement obligations regarding workers' compensation claims, such obligations are reimbursed not later than 45 days following such incurrence;

(7) Indebtedness arising from agreements of the Borrower or any Restricted Subsidiary providing for indemnification, earn-outs, adjustment of purchase or acquisition price or similar obligations, in each case, incurred or assumed in connection with the Transactions, any Permitted Acquisition or the disposition of any business, assets or Restricted Subsidiaries not prohibited by this Agreement, other than Guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiaries for the purpose of financing any such Permitted Acquisition;

(8) intercompany Indebtedness between or among the Borrower and the Restricted Subsidiaries; *provided* that the aggregate outstanding principal amount of such Indebtedness that is owing by any Restricted Subsidiary that is not a Guarantor to a Loan Party may not exceed the amount, as of the date such Indebtedness is incurred, permitted pursuant to Sections 6.04(5) and (6);

(9) Indebtedness pursuant to Hedge Agreements;

(10) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion Guarantees and similar obligations, in each case, *provided* in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(11) Guarantees of Indebtedness of the Borrower or the Restricted Subsidiaries permitted to be incurred under this Agreement to the extent such Guarantees are not prohibited by the provisions of Section 6.04 (without giving effect to Section 6.04(20));

(12) (a) Indebtedness incurred or assumed in connection with a Permitted Acquisition and Indebtedness of any Person that becomes a Restricted Subsidiary if such Indebtedness was not created in anticipation or contemplation of such Permitted Acquisition or such Person becoming a Restricted Subsidiary and (b) Indebtedness incurred or assumed in anticipation or contemplation of a Permitted Acquisition; *provided* that, in each case of the foregoing subclauses (a) and (b):

(i) no Event of Default is continuing immediately before such Permitted Acquisition or would result therefrom;

(ii) immediately after giving effect to such Permitted Acquisition, on a Pro Forma Basis, either (A) the Borrower would be permitted to incur at least \$1 of Ratio Debt or (B) the Interest Coverage Ratio would increase;

(iii) the aggregate principal amount of any such Indebtedness incurred pursuant to clause (12)(b) by Restricted Subsidiaries that are not Guarantors, together with any Permitted Refinancing Indebtedness incurred by Restricted Subsidiaries that are not Guarantors to Refinance any Indebtedness originally incurred pursuant to clause (12)(b) (and any successive Permitted Refinancing Indebtedness), may not exceed \$25.0 million at any one time outstanding as of the date such Indebtedness is incurred;

(13) Indebtedness incurred in connection with a Sale and Lease-Back Transactions permitted by Section 6.03, together with any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (13);

(14) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, so long as such Indebtedness (other than credit or purchase cards) is extinguished within 10 Business Days after notification received by the Borrower of its incurrence;

(15) Indebtedness supported by a letter of credit under the ABL Credit Agreement (or any Permitted Refinancing Indebtedness in respect thereof), in a principal amount not in excess of the stated amount of such letter of credit;

(16) Indebtedness in an aggregate outstanding principal amount not to exceed an amount equal to 100% of the net proceeds received by the Borrower from the issuance or sale of its Equity Interests or as a contribution to its capital after the Closing Date, other than (a) proceeds from the issuance or sale of the Borrower's Disqualified Stock, (b) Excluded Contributions, (c) [reserved] and (d) any such proceeds that are used prior to the date of incurrence to (i) make an Investment under Section 6.04(3), a Restricted Payment under Section 6.06(15) or a payment in respect of Junior Financing under Section 6.09(2)(a), in each case utilizing the Available Amount or (ii) make a Restricted Payment under Section 6.06(1) or Section 6.06(2)(b) (any such Indebtedness, "**Contribution Indebtedness**"), to the extent such contribution is designated by the Borrower as specified equity contributions for the incurrence of Contribution Indebtedness;

(17) Indebtedness consisting of (a) the financing of insurance premiums or (b) take or pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(18) Indebtedness incurred by a Receivables Subsidiary in a Qualified Receivables Financing that is not recourse to the Borrower or any Restricted Subsidiary other than a Receivables Subsidiary (except for Standard Securitization Undertakings);

(19) Cash Management Obligations and other Indebtedness in respect of Cash Management Services entered into in the ordinary course of business;

(20) Indebtedness issued to future, current or former officers, directors, managers, and employees, consultants and independent contractors of the Borrower or any Restricted Subsidiary or any direct or indirect parent thereof, their respective estates, heirs, family members, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of any Parent Entity permitted by Section 6.06;

(21) Indebtedness incurred on behalf of, or representing Guarantees of Indebtedness of, joint ventures; *provided* that the aggregate outstanding principal amount of such Indebtedness, together with any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (21) (and any successive Permitted Refinancing Indebtedness) may not exceed the greater of (a) \$15.0 million and (b) 3.75% of Consolidated Total Assets as of the date any such Indebtedness is incurred;

(22) Indebtedness of Foreign Subsidiaries in an aggregate outstanding principal amount, together with any Permitted Refinancing Indebtedness incurred by Foreign Subsidiaries to Refinance any Indebtedness originally incurred pursuant to this clause (22) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) \$25.0 million and (b) 6.25% of Consolidated Total Assets as of the date any such Indebtedness is incurred;

(23) unsecured Indebtedness in respect of short-term obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services so long as such obligations are incurred in the ordinary course of business and not in connection with the borrowing of money;

(24) Indebtedness representing deferred compensation or other similar arrangements incurred by the Borrower or any Restricted Subsidiary (a) in the ordinary course of business or (b) in connection with a Permitted Change of Control or any Permitted Investment;

(25) any Permitted Refinancing Indebtedness incurred to Refinance Ratio Debt, Incremental Equivalent Term Debt, Credit Agreement Refinancing Indebtedness or Indebtedness incurred under clauses (3), (4), (5), (12), (16), (21), (22), this clause (25) or clause (28) of this Section 6.01;

(26) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(27) Indebtedness incurred by the Borrower or any Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange, warehouse receipts or similar facilities or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business;

(28) additional Indebtedness in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (28) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) \$40.0 million and (b) 10.25% of Consolidated Total Assets as of the date any such Indebtedness is incurred; and

(29) guaranties in the ordinary course of business consistent with past practice of the obligations of suppliers, customers, franchisees and licensees of the Borrower and its subsidiaries; and

(30) unsecured Indebtedness of the Borrower owing to the Equity Investors, so long as such Indebtedness is (1) subordinated in right of payment to the Loans on terms reasonably satisfactory to the Administrative Agent and (2) neither due nor payable (nor is any interest thereon payable) in each case until at least ninety-one (91) days after the Maturity Date and *provided* that the documentation with respect thereto contains no mandatory prepayments and no operative or financial covenants.

For purposes of determining compliance with this Section 6.01, in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories of Permitted Debt or is entitled to be incurred as Ratio Debt, the Borrower may, in its sole discretion, at the time of incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such item of Indebtedness (or any portion thereof) in any manner that complies with this covenant; *provided* that all Indebtedness outstanding under the Loan Documents and the ABL Credit Agreement will be deemed to have been incurred in reliance on the exception in clauses (1) and (2), respectively, of the definition of "Permitted Debt" and shall not be permitted to be reclassified pursuant to this paragraph. All unsecured Permitted Debt originally incurred under clause (5), (21), (22) or (28) of the definition of Permitted Debt will be automatically reclassified as Ratio Debt on the first date on which such Indebtedness would have been permitted to be incurred as Ratio Debt. Accrual of interest, the accretion of accreted value, amortization

of original issue discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms (including pay-in-kind interest on the New Senior Notes), and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, will not be deemed to be an incurrence of Indebtedness for purposes of this Section 6.01. Guarantees of, or obligations in respect of letters of credit relating to Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such Guarantee or letter of credit, as the case may be, was in compliance with this Section 6.01.

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness, the Dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness is incurred to Refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced (plus unpaid accrued interest and premium (including tender premiums) thereon and underwriting discounts, defeasance costs, fees, commissions and expenses in connection therewith).

SECTION 6.02. Liens. Create, incur, assume or permit to exist any Lien that secures obligations under any Indebtedness on any property or assets at the time owned by it, except the following (collectively, "**Permitted Liens**"):

(1) Liens securing Indebtedness incurred in accordance with Sections 6.01(1) or 6.01(2); *provided* that, in the case of Indebtedness incurred in accordance with Section 6.01(2), the applicable Liens are subject to the Intercreditor Agreement or other intercreditor agreement(s) substantially consistent with and no less favorable to the Lenders in any material respect than the Intercreditor Agreement as determined in good faith by a Responsible Officer of the Borrower;

(2) Liens securing Indebtedness existing on the Closing Date and, to the extent securing Indebtedness exceeding \$5,000,000 in the aggregate, set forth on Schedule 6.02; *provided* that such Liens only secure the obligations that they secure on the Closing Date (and any Permitted Refinancing Indebtedness in respect of such obligations permitted by Section 6.01) and do not apply to any other property or assets of the Borrower or any Restricted Subsidiary other than replacements, additions, accessions and improvements thereto;

(3) Liens securing Indebtedness incurred in accordance with Section 6.01(5); *provided* that such Liens only extend to the assets financed with such Indebtedness (and any replacements, additions, accessions and improvements thereto);

(4) Liens on accounts receivable and related assets of the type specified in the definition of Qualified Receivables Financing securing Indebtedness incurred in accordance with Section 6.01(18);

(5) Liens on assets or Equity Interests of Foreign Subsidiaries securing Indebtedness incurred in accordance with Section 6.01(22);

(6) Liens securing Permitted Refinancing Indebtedness incurred in accordance with Section 6.01(25); *provided* that the Liens securing such Permitted Refinancing Indebtedness are limited to all or part of the same property that secured (or, under the written arrangements under which the original Lien arose, could secure) the original Lien (plus any replacements, additions, accessions and improvements thereto);

(7) (a) Liens on property or Equity Interests of a Person at the time such Person becomes a Restricted Subsidiary if such Liens were not created in connection with, or in contemplation of, such other Person becoming a Restricted Subsidiary and (b) Liens on property at the time the Borrower or a Restricted Subsidiary acquired such property, including any acquisition by means of a merger or consolidation with or into the Borrower or any of the Restricted Subsidiaries, if such Liens were not created in connection with, or in contemplation of, such acquisition;

(8) Liens on property or assets of any Restricted Subsidiary that is not a Guarantor securing obligations of Restricted Subsidiaries that are not Guarantors;

(9) Liens for Taxes, assessments or other governmental charges or levies not yet delinquent or that are being contested in compliance with Section 5.03;

(10) Liens disclosed by the title insurance policies delivered on or subsequent to the Closing Date and any replacement, extension or renewal of any such Liens (so long as the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(11) Liens securing judgments that do not constitute an Event of Default under Section 8.01(10) and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and in respect of which Holdings, the Borrower or any affected Restricted Subsidiary has set aside on its books reserves in accordance with GAAP with respect thereto;

(12) Liens imposed by law, including landlord's, carriers', warehousemen's, mechanics', materialmen's, repairmen's, construction or other like Liens arising in the ordinary course of business securing obligations that are not overdue by more than 30 days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Borrower or a Restricted Subsidiary has set aside on its books reserves in accordance with GAAP;

(13) (a) pledges and deposits and other Liens made in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers' compensation, unemployment insurance and other similar laws or regulations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (b) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or any Restricted Subsidiary;

(14) deposits to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capital Lease Obligations), statutory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof) incurred by the Borrower or any Restricted Subsidiary in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(15) survey exceptions and such matters as an accurate survey would disclose, easements, trackage rights, leases (other than Capital Lease Obligations), licenses, special assessments, rights of way covenants, conditions, restrictions and declarations on or with respect to the use of Real Property, servicing agreements, development agreements, site plan agreements and other similar encumbrances incurred in the ordinary course of business and title defects or irregularities that are of a minor nature and that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Borrower or any Restricted Subsidiary;

(16) any interest or title of a lessor or sublessor under any leases or subleases entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business;

(17) Liens that are contractual rights of set-off (a) relating to pooled deposit or sweep accounts of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower or any Restricted Subsidiary or (b) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business;

(18) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;

(19) leases or subleases, licenses or sublicenses (including with respect to intellectual property and software) granted to others in the ordinary course of business that do not interfere in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole;

(20) Liens solely on any cash earnest money deposits made by the Borrower or any Restricted Subsidiary in connection with any letter of intent or other agreement in respect of any Permitted Investment;

(21) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(22) Liens arising from precautionary Uniform Commercial Code financing statements;

(23) Liens on Equity Interests of any joint venture (a) securing obligations of such joint venture or (b) pursuant to the relevant joint venture agreement or arrangement;

(24) 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;

(25) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition thereof;

(26) Liens securing insurance premium financing arrangements;

(27) Liens on vehicles or equipment of the Borrower or any of the Restricted Subsidiaries granted in the ordinary course of business;

(28) Liens on cash and Cash Equivalents used to defease or to satisfy and discharge Indebtedness; *provided* that such defeasance or satisfaction and discharge is not prohibited by this Agreement;

(29) Liens:

(a) of a collection bank arising under Section 4-210 of the Uniform Commercial Code, or any comparable or successor provision, on items in the course of collection;

(i) attaching to pooling, commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business;

or

(ii) in favor of banking or other financial institutions or entities, or electronic payment service providers, arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking or finance industry;

(30) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit entered into in the ordinary course of business issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(31) Liens that rank *pari passu* with the Liens securing the Obligations if the Senior Secured First Lien Net Leverage Ratio as of the date on which such Liens are first created is less than or equal to 4.50 to 1.00; *provided* (x) that a Debt Representative acting on behalf of the holders of such Indebtedness will become party to or otherwise subject to the provisions of the Intercreditor Agreement and a First Lien Intercreditor Agreement and (y) such Liens shall not secure Indebtedness in the form of term loans;

(32) Liens that rank junior to the Liens securing Obligations, if the Total Secured Net Leverage Ratio as of the date on which such Liens are first created is less than or equal to 7.25 to 1.00; *provided* that a Debt Representative acting on behalf of the holders of such Indebtedness will become party to or otherwise subject to the provisions of the Intercreditor Agreement and a Junior Lien Intercreditor Agreement;

(33) Liens securing additional obligations in an aggregate outstanding principal amount not to exceed the greater of (a) \$35.0 million and (b) 9.00% of Consolidated Total Assets as of the date such Liens are first created;

(34) Liens securing (a) Specified Hedge Obligations and Cash Management Obligations, which amounts are secured under the Loan Documents, and (b) amounts owing to any Qualified Counterparty (as defined in the ABL Credit Agreement) under any Specified Swap Agreement (as defined in the ABL Credit Agreement) and obligations in respect of Cash Management Services (as defined in the ABL Credit Agreement), which amounts are secured under the ABL Loan Documents; *provided* that, in each case, the applicable Liens are subject to the Intercreditor Agreement or other intercreditor agreement(s) substantially consistent with and no less favorable to the Lenders in any material respect than the Intercreditor Agreement as determined in good faith by a Responsible Officer of the Borrower;

(35) Liens securing Indebtedness incurred in accordance with Section 6.01(13) solely encumbering the assets that are subject of such Indebtedness;

(36) Liens in favor of a trustee in an indenture to the extent such Liens secure only customary compensation and reimbursement obligations of such trustee under such indenture; and

(37) assignments to landlords or mortgagees of insurance or condemnation proceeds.

For purposes of this Section 6.02, Indebtedness will not be considered incurred under a subsection or clause of Section 6.01 if it is later reclassified as outstanding under another subsection or clause of Section 6.01 (in which event, and at which time, same will be deemed incurred under the subsection or clause to which reclassified).

SECTION 6.03. Sale and Lease-Back Transactions. Enter into any arrangement, directly or indirectly, with any Person whereby it sells or transfers any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a "**Sale and Lease-Back Transaction**"), except the following:

(1) Sale and Lease-Back Transactions with respect to property owned (a) by the Borrower or any of its Domestic Subsidiaries that is acquired after the Closing Date so long as such Sale and Lease-Back Transaction is consummated within 270 days of the acquisition of such property or (b) by any Foreign Subsidiary of the Borrower regardless of when such property was acquired; and

(2) Sale and Lease-Back Transactions with respect to any property owned by the Borrower or any Restricted Subsidiary, if at the time the lease in connection therewith is entered into, and after giving effect to the entering into of such lease, the Remaining Present Value of such lease would not exceed \$50.0 million, *provided*, that in each case, the Net Cash Proceeds thereof are applied in accordance with Section 2.08(1).

SECTION 6.04. Investments, Loans and Advances. Purchase, hold or acquire (including pursuant to any merger, consolidation or amalgamation with a Person that is not a Wholly Owned Subsidiary immediately prior to such merger, consolidation or amalgamation) any Equity Interests, evidences of Indebtedness or other securities of, make or permit to exist any loans or advances to or Guarantees of the obligations of, or make or permit to exist any investment or any other interest in (each, a “*Investment*”), any other Person, except the following (collectively, “*Permitted Investments*”):

- (1) the Transactions;
- (2) loans and advances to officers, directors, employees or consultants of any Parent Entity, the Borrower or any Restricted Subsidiary not to exceed \$5.0 million in an aggregate principal amount at any time outstanding (calculated without regard to write-downs or write-offs thereof after the date made);
- (3) Investments in an amount not to exceed the Available Amount as of the date such Investments are made; *provided* that no Event of Default has occurred and is continuing immediately prior to making such Investment or would result therefrom;
- (4) Permitted Acquisitions and pre-existing Investments held by Persons acquired in Permitted Acquisitions or acquired in connection with Permitted Acquisitions and not created in contemplation thereof;
- (5) intercompany Investments among the Borrower and the Restricted Subsidiaries (including intercompany Indebtedness); *provided* that the sum of (a) the aggregate fair market value of all such Investments (other than intercompany Indebtedness and Guarantees of Indebtedness) made since the Closing Date (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value) by the Borrower and the Guarantors in Restricted Subsidiaries that are not Guarantors; (b) the aggregate principal amount of Indebtedness owing to the Borrower and the Guarantors by Restricted Subsidiaries that are not Guarantors at any time outstanding; and (c) the aggregate principal amount of Indebtedness of Restricted Subsidiaries that are not Guarantors that is Guaranteed by the Borrower and the Guarantors at any time outstanding, together with any Investments made in Restricted Subsidiaries that are not Guarantors pursuant to Section 6.04(31), may not exceed the greater of (i) \$15.0 million and (ii) 3.75% of Consolidated Total Assets as of the date any such Investment is made, *plus* an amount equal to any returns of capital or sale proceeds actually received in respect of any such Investments (which such amount shall not exceed the amount of such Investment (as determined above) at the time such Investment was made);
- (6) Investments in Foreign Subsidiaries; *provided* that the sum of (a) the aggregate fair market value of all such Investments (other than intercompany Indebtedness and Guarantees of Indebtedness) made by the Borrower and the Restricted Subsidiaries since the Closing Date (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value); (b) the aggregate principal amount of Indebtedness of Foreign Subsidiaries owing to the Borrower and the other Restricted Subsidiaries at any time outstanding; and (c) the aggregate principal amount of Indebtedness of Foreign Subsidiaries that is Guaranteed by the Borrower and the other Restricted Subsidiaries at any time outstanding, when taken together with the aggregate amount of payments made with respect to entities that do not become Guarantors pursuant to clause (2) of the definition of Permitted Acquisitions, may not exceed the greater of (i) \$25.0 million and (ii) 6.25% of Consolidated Total Assets as of the date any such Investment is made, *plus* an amount equal to any returns of capital or sale proceeds actually received in respect of any such Investments (which such amount shall not exceed the amount of such Investment (as determined above) at the time such Investment was made);

(7) Cash Equivalents and, to the extent not made for speculative purposes, Investment Grade Securities or Investments that were Cash Equivalents or Investment Grade Securities when made;

(8) Investments arising out of the receipt by the Borrower or any of the Restricted Subsidiaries of non-cash consideration in connection with any sale of assets permitted under Section 6.05;

(9) accounts receivable, security deposits and prepayments and other credits granted or made in the ordinary course of business and any Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors and others, including in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, such account debtors and others, in each case in the ordinary course of business;

(10) Investments acquired as a result of a foreclosure by the Borrower or any Restricted Subsidiary with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(11) Hedge Agreements;

(12) Investments existing on, or contractually committed as of, the Closing Date and set forth on Schedule 6.04 and any replacements, refinancings, refunds, extensions, renewals or reinvestments thereof, so long as the aggregate amount of all Investments pursuant to this clause (12) is not increased at any time above the amount of such Investments existing or committed on the Closing Date (other than pursuant to an increase as required by the terms of any such Investment as in existence on the Closing Date);

(13) Investments resulting from pledges and deposits that are Permitted Liens;

(14) intercompany loans among Foreign Subsidiaries and Guarantees by Foreign Subsidiaries permitted by Section 6.01(22);

(15) acquisitions of obligations of one or more officers or other employees of any Parent Entity, Borrower or any Subsidiary of the Borrower in connection with such officer's or employee's acquisition of Equity Interests of any Parent Entity, so long as no cash is actually advanced by the Borrower or any Restricted Subsidiary to such officers or employees in connection with the acquisition of any such obligations;

(16) Guarantees of operating leases (for the avoidance of doubt, excluding Capital Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case, entered into by the Borrower or any Restricted Subsidiary in the ordinary course of business;

(17) Investments to the extent that payment for such Investments is made with Equity Interests of any Parent Entity;

(18) Investments consisting of the redemption, purchase, repurchase or retirement of any Equity Interests permitted under Section 6.06;

(19) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers;

(20) Guarantees of Indebtedness permitted under Section 6.01;

(21) advances in the form of a prepayment of expenses, so long as such expenses are being paid in accordance with customary trade terms of the Borrower or any Restricted Subsidiary;

(22) Investments, including loans and advances, to any Parent Entity so long as Borrower or any Restricted Subsidiary would otherwise be permitted to make a Restricted Payment in such amount; *provided* that the amount of any such Investment will be deemed to be a Restricted Payment under the appropriate clause of Section 6.06 for all purposes of this Agreement;

(23) Investments consisting of the leasing or licensing of intellectual property in the ordinary course of business or the contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(24) purchases or acquisitions of inventory, supplies, materials and equipment or purchases or acquisitions of contract rights or intellectual property in each case in the ordinary course of business;

(25) Investments in assets useful in the business of the Borrower or any Restricted Subsidiary made with (or in an amount equal to) any Reinvestment Deferred Amount or Below Threshold Asset Sale Proceeds; *provided* that if the underlying Asset Sale was with respect to assets of the Borrower or a Subsidiary Loan Party, then such Investment shall be consummated by the Borrower or a Subsidiary Loan Party;

(26) any Investment in a Receivables Subsidiary or any Investment by a Receivables Subsidiary in any other Person, in each case in connection with a Qualified Receivables Financing, including Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Receivables Financing or any related Indebtedness;

(27) intercompany current liabilities owed to Unrestricted Subsidiaries or joint ventures incurred in the ordinary course of business in connection with the cash management operations of the Borrower and its Subsidiaries;

(28) Investments that are made with Excluded Contributions;

(29) additional Investments; *provided* that the aggregate fair market value of such Investments made since the Closing Date that remain outstanding (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value), when taken together with the aggregate amount of payments made with respect to Junior Financings pursuant to Section 6.09(2)(c) and Restricted Payments pursuant to Section 6.06(17), does not exceed the greater of (a) \$40.0 million and (b) 10.25% of Consolidated Total Assets as of the date any such Investment is made, in each case, *plus* any returns of capital actually received by the Borrower or any of the Restricted Subsidiary in respect of such Investments;

(30) Investments by the Borrower in the Captive Insurance Company; *provided* that the aggregate amount of such Investments by the Borrower in the Captive Insurance Company may not exceed an initial amount of \$15.0 million plus an additional \$5.0 million per fiscal year following the fiscal year in which such initial investment was made;

(31) Investments in Indebtedness of the Borrower or any of its Restricted Subsidiaries; *provided* that an Investment in Junior Financing will be treated as a repayment thereof for purposes of compliance with the covenant described in Section 6.09(2) and such Investment will be permitted only to the extent a repayment of such Junior Financing would be permitted at the time of such Investment and *provided, further*, that any Investments in Indebtedness of any Restricted Subsidiary that is not a Guarantor, taken together with intercompany investments made pursuant to Section 6.04(5), may not exceed the greater of (i) \$15.0 million and (ii) 3.75% of Consolidated Total Assets as of the date any such Investment is made, plus an amount equal to any returns of capital or sale proceeds actually received in respect of any such Investments (which such amount shall not exceed the amount of such Investment (as determined therein) at the time such Investment was made); and

(32) any Investment, if (a) no Event of Default is continuing immediately prior to making such Investment or would result therefrom and (b) the Total Net Leverage Ratio, on a Pro Forma Basis, is less than or equal to 4.50 to 1.00.

SECTION 6.05. Mergers, Consolidations, Sales of Assets and Acquisitions. Merge into, or consolidate or amalgamate with, any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer or otherwise dispose of (in one transaction or in a series of transactions) all or any part of its assets, or issue, sell, transfer or otherwise dispose of any Equity Interests of any Restricted Subsidiary, or purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or any substantial part of the assets of any other Person or any division, unit or business of any other Person, except that this Section 6.05 will not prohibit:

(1) if at the time thereof and immediately after giving effect thereto no Event of Default has occurred and is continuing or would result therefrom:

(a) the merger, consolidation or amalgamation of any Restricted Subsidiary into (or with) the Borrower in a transaction in which the Borrower is the survivor;

(i) the merger, consolidation or amalgamation of any Restricted Subsidiary into or with any Subsidiary Loan Party in a transaction in which the surviving or resulting entity is a Subsidiary Loan Party;

and, in the case of each of the foregoing clauses (a) and (b), no Person other than the Borrower or a Subsidiary Loan Party receives any consideration;

(ii) the merger, consolidation or amalgamation of any Restricted Subsidiary that is not a Loan Party into or with any other Restricted Subsidiary that is not a Loan Party;

(iii) any transfer of inventory among the Borrower and its Restricted Subsidiaries or between Restricted Subsidiaries and any other transfer of property or assets among the Borrower and its Restricted Subsidiaries or between Restricted Subsidiaries, in each case, in the ordinary course of business;

(iv) the liquidation or dissolution or change in form of entity of any Restricted Subsidiary of the Borrower if a Responsible Officer of the Borrower determines in good faith that such liquidation, dissolution or change in form is in the best interests of the Borrower and is not materially disadvantageous to the Lenders;

(v) the merger, consolidation or amalgamation of any Restricted Subsidiary with or into any other Person in order to effect a Permitted Investment so long as the continuing or surviving Person will be a Subsidiary Loan Party if the merging, consolidating or amalgamating Subsidiary was a Subsidiary Loan Party and which, together with each of its Subsidiaries, shall have complied with the requirements of Section 5.10; or

(vi) a merger or consolidation of the Borrower into a newly formed entity organized under the laws of the United States of America, any state thereof or the District of Columbia in connection with a Permitted Change of Control; *provided* that either the Borrower shall be the surviving Person in such transaction or the Person surviving such transaction shall expressly assume, pursuant to an instrument reasonably satisfactory to the Administrative Agent, all liabilities and obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is party;

(2) any sale, transfer or other disposition if:

(a) the Net Cash Proceeds therefrom are to be applied in accordance with Section 2.08(1);

-
- (i) at least 75% of the consideration therefor is in the form of cash and Cash Equivalents; and
- (ii) such sale, transfer or disposition is made for fair market value (as determined by a Responsible Officer of the Borrower in good faith);
- provided* that each of the following items will be deemed to be cash for purposes of this Section 6.05(2):
- (iii) any liabilities of the Borrower or the Restricted Subsidiaries (as shown on the most recent Required Financial Statements or in the notes thereto), other than liabilities that are by their terms subordinated in right of payment to the Obligations, that are assumed by the transferee with respect to the applicable disposition and for which the Borrower and the Restricted Subsidiaries have been validly released by all applicable creditors in writing;
- (A) any securities received by the Borrower or any Restricted Subsidiary from such transferee that are converted by the Borrower or such Restricted Subsidiary into cash (to the extent of the cash received) within 180 days following the closing of the applicable disposition; and
- (B) any Designated Non-Cash Consideration received in respect of such disposition; *provided* that the aggregate fair market value of all such Designated Non-Cash Consideration, as determined by a Responsible Officer of the Borrower in good faith, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (iii) that is then outstanding, does not exceed the greater of (A) \$40.0 million and (B) 10.25% of Consolidated Total Assets as of the date any such Designated Non-Cash Consideration is received, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value;
- (3) (a) the purchase and sale of inventory in the ordinary course of business, (b) the acquisition or lease (pursuant to an operating lease) of any other asset in the ordinary course of business, (c) the sale of surplus, obsolete, damaged or worn out equipment or other property in the ordinary course of business or (d) the disposition of Cash Equivalents (or Investments that were Cash Equivalents when made);
- (4) Sale and Lease-Back Transactions permitted by Section 6.03;
- (5) Investments permitted by Section 6.04, (including any Permitted Acquisition or merger, consolidation or amalgamation in order to effect a Permitted Acquisition), *provided*, that, following any such merger, consolidation or amalgamation involving the Borrower, the Borrower is the surviving corporation;
- (6) Permitted Liens; and
- (7) Restricted Payments permitted by Section 6.06;
- (8) the sale or discount of overdue or defaulted receivables in the ordinary course of business and not as part of an accounts receivables financing transaction;
- (9) leases, licenses, or subleases or sublicenses of any real or personal property in the ordinary course of business;

(10) sales, leases or other dispositions of inventory of the Borrower or any Restricted Subsidiary determined by the management of the Borrower to be no longer useful or necessary in the operation of the business of the Borrower or such Restricted Subsidiary;

(11) acquisitions and purchases made with Below Threshold Asset Sale Proceeds;

(12) to the extent allowable under Section 1031 of the Code (or comparable or successor provision), any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Borrower or any Restricted Subsidiary that is not in contravention of Section 6.08; *provided* that to the extent the property being transferred constitutes Term Priority Collateral, such replacement property will constitute Term Priority Collateral;

(13) any sale, transfer or other disposition, in a single transaction or a series of related transactions, of any asset or assets having a fair market value, as determined by a Responsible Officer of the Borrower in good faith, of not more than \$5.0 million.

To the extent any Collateral is disposed of in a transaction expressly permitted by this Section 6.05 to any Person other than Holdings, the Borrower or any Guarantor, such Collateral will be free and clear of the Liens created by the Loan Documents, and the Administrative Agent will take, and each Lender hereby authorizes the Administrative Agent to take, any actions reasonably requested by the Borrower in order to evidence the foregoing, in each case, in accordance with Section 10.18.

SECTION 6.06. Restricted Payments. Declare or pay any dividend or make any other distribution (by reduction of capital or otherwise), directly or indirectly, whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests (other than dividends and distributions on Equity Interests payable solely by the issuance of additional Equity Interests (other than Disqualified Stock) of the Person paying such dividends or distributions) or directly or indirectly redeem, purchase, retire or otherwise acquire for value any of its Equity Interests or set aside any amount for any such purpose (other than through the issuance of additional Equity Interests (other than Disqualified Stock) of the Person redeeming, purchasing, retiring or acquiring such shares) (the foregoing, "**Restricted Payments**") other than:

(1) the making of any Restricted Payment in exchange for, or out of or with the net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary of the Borrower) of, Equity Interests of the Borrower (other than Disqualified Stock) or from the substantially concurrent contribution of common equity capital to the Borrower, other than (a) Excluded Contributions, (b) [reserved] and (c) any such proceeds that are used prior to the date of determination to (i) make an Investment under Section 6.04(3), a Restricted Payment under Section 6.06(15) or a payment in respect of Junior Financing under Section 6.09(2)(a), in each case utilizing the Available Amount, (ii) make a Restricted Payment under Section 6.06(2)(b) or (iii) incur Contribution Indebtedness;

(2) Restricted Payments to any Parent Entity the proceeds of which are used to purchase, retire, redeem or otherwise acquire, or to any Parent Entity for the purpose of paying to any other Parent Entity to purchase, retire, redeem or otherwise acquire, the Equity Interests of such Parent Entity (including related stock appreciation rights or similar securities) held directly or indirectly by then present or former directors, consultants, officers, employees, managers or independent contractors of Holdings, the Borrower or any of the Restricted Subsidiaries or any Parent Entity or their estates, heirs, family members, spouses or former spouses (including for all purposes of this clause (2), Equity Interests held by any entity whose Equity Interests are held by any such future, present or former employee, officer, director, manager, consultant or independent contractor or their estates, heirs, family members, spouses or former spouses) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement or any stock subscription or shareholder or similar agreement; *provided* that the aggregate amount of such purchases or redemptions may not exceed:

(a) \$15.0 million in any fiscal year (with any unused amounts in any fiscal year being carried over to the next three succeeding fiscal years); *plus*

(i) the amount of net cash proceeds contributed to the Borrower that were received by any Parent Entity since the Closing Date from sales of Equity Interests of any Parent Entity to directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Borrower or any Restricted Subsidiary in connection with permitted employee compensation and incentive arrangements, other than (a) Excluded Contributions, (b) [reserved] and (c) any such proceeds that are used prior to the date of determination to (1) make an Investment under Section 6.04(3), a Restricted Payment under Section 6.06(15) or a payment in respect of Junior Financing under Section 6.09(2)(a), in each case utilizing the Available Amount, (2) make a Restricted Payment under Section 6.06(1) or (3) incur Contribution Indebtedness; *plus*

(ii) the amount of net proceeds of any key man life insurance policies received during such fiscal year; *plus*

(iii) the amount of any bona fide cash bonuses otherwise payable to directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Borrower or any Restricted Subsidiary that are foregone in return for the receipt of Equity Interests, the fair market value of which is equal to or less than the amount of such cash bonuses, which, if not used in any year, may be carried forward to any subsequent fiscal year;

and *provided, further*, that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from directors, consultants, officers, employees, managers or independent contractors of any Parent Entity, the Borrower or any Restricted Subsidiary in connection with a repurchase of Equity Interests of any Parent Entity will not be deemed to constitute a Restricted Payment;

(3) Restricted Payments to consummate the Transactions;

(4) at any time after the consummation of a Qualified IPO, Restricted Payments in an amount equal to 6.0% per annum of the net cash proceeds received from any public sale of the Equity Interests of the Borrower or any Parent Entity that are contributed to the Borrower in cash;

(5) Restricted Payments in the form of cash distributions to any Parent Entity that files, or to any Parent Entity for the purpose of paying to any other Parent Entity that files, a consolidated, combined or unitary U.S. federal, state or local income tax return that includes the Borrower and the Subsidiaries (or the taxable income thereof), or to any Parent Entity that is a partner or a sole owner of the Borrower in the event the Borrower is treated as a partnership or a "disregarded entity" for U.S. federal income tax purposes, to pay U.S. federal, state or local income taxes, in each case, in an amount not to exceed the amount that the Borrower and its relevant Subsidiaries would have been required to pay in respect of the applicable U.S. federal or state or local income taxes had Borrower been the parent of a consolidated group only including the Borrower and its subsidiaries included in the applicable consolidated, combined or unitary return; *provided, however*, that any distributions pursuant to the foregoing in respect of any tax liability attributed to taxable income of any Unrestricted Subsidiary shall be permitted only to the extent that cash distributions were made by such Unrestricted Subsidiary to the Borrower or any of its Restricted Subsidiary for such purpose;

(6) Restricted Payments to permit any Parent Entity to:

(a) pay operating, overhead, legal, accounting and other professional fees and expenses (including directors' fees and expenses and administrative, legal, accounting, filings and similar expenses), in each case to the extent related to its separate existence as a holding company or to its ownership of the Borrower and the Restricted Subsidiaries;

(i) pay fees and expenses related to any public offering or private placement of debt or equity securities of, or incurrence of any Indebtedness by, any Parent Entity or any Permitted Investment, whether or not consummated;

- (ii) pay franchise taxes and other similar taxes and expenses, in each case, in connection with the maintenance of its legal existence;
- (iii) make payments under transactions permitted under Section 6.07 (other than Section 6.07(8)) or Article VII, in each case to the extent such payments are due at the time of such Restricted Payment; or
- (iv) pay customary salary, bonus and other benefits payable to, and indemnities provided on behalf of, officers, employees, directors, managers, consultants or independent contractors of any Parent Entity to the extent related to its ownership of the Borrower and the Restricted Subsidiaries;
- (7) non-cash repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;
- (8) Restricted Payments to allow any Parent Entity to make, or to any Parent Entity for the purpose of paying to any other Parent Entity to make, payments in cash, in lieu of the issuance of fractional shares, upon the exercise of warrants or upon the conversion or exchange of Equity Interests of any such Person, in connection with any merger, consolidation, amalgamation or other business combination, or in connection with any dividend, distribution or split of Equity Interests;
- (9) so long as no Event of Default is continuing, Restricted Payments to any Parent Entity for the purpose of paying (a) monitoring, consulting, management, transaction, advisory, termination or similar fees payable to any Sponsor or any Affiliate of Sponsor in accordance with the Management Agreement in an amount not to exceed amounts payable pursuant to the Management Agreement (it being understood that any amounts that are not paid due to the existence of an Event of Default shall accrue and may be paid when the applicable Event of Default ceases to exist or is otherwise waived) and (b) indemnities, reimbursements and reasonable and documented out-of-pocket fees and expenses of any Sponsor or any Affiliate of Sponsor;
- (10) Restricted Payments to the Borrower or any Restricted Subsidiary (or, in the case of non-Wholly Owned Subsidiaries, to the Borrower and to each other owner of Equity Interests of such Restricted Subsidiary on a *pro rata* basis (or more favorable basis from the perspective of the Borrower or such Restricted Subsidiary) based on their relative ownership interests so long as any repurchase of its Equity Interests from a Person that is not the Borrower or a Restricted Subsidiary is permitted under Section 6.04);
- (11) Restricted Payments to any Parent Entity to finance, or to any Parent Entity for the purpose of paying to any other Parent Entity to finance, any Permitted Investment; *provided* that (a) such Restricted Payment is made substantially concurrently with the closing of such Investment and (b) promptly following the closing thereof, such Parent Entity causes (i) all property acquired (whether assets or Equity Interests) to be contributed to the Borrower or any Restricted Subsidiary of the Borrower or (ii) the merger, consolidation or amalgamation (to the extent permitted by Section 6.05) of the Person formed or acquired into the Borrower or any Restricted Subsidiary of the Borrower in order to consummate such Permitted Investment, in each case, in accordance with the requirements of Section 5.10;
- (12) the payment of any dividend or distribution or consummation of any redemption within 60 days after the date of declaration thereof or the giving of a redemption notice related thereto, if at the date of declaration or notice such payment would have complied with the provisions of this Agreement;
- (13) Restricted Payments as part of a Permitted Change of Control;
- (14) the distribution, as a dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Borrower or any Restricted Subsidiary by, one or more Unrestricted Subsidiaries (other than Unrestricted Subsidiaries the primary assets of which are cash or Cash Equivalents);

(15) any Restricted Payment in an amount not to exceed the Available Amount on the date such Restricted Payment is made if (a) no Event of Default is continuing immediately prior to making such Restricted Payment or would result therefrom and (b) the Interest Coverage Ratio would be at least 2.00 to 1.00 after giving effect thereto;

(16) any Restricted Payment, if (a) no Event of Default is continuing immediately prior to making such Restricted Payment or would result therefrom and (b) the Total Net Leverage Ratio, on a Pro Forma Basis, is less than or equal to 4.50 to 1.00; or

(17) additional Restricted Payments in an aggregate amount, when taken together with the aggregate amount of payments made with respect to Junior Financings pursuant to Section 6.09(2)(c) and Investments made pursuant to Section 6.04(29) that remain outstanding, not to exceed \$20.0 million.

SECTION 6.07. Transactions with Affiliates. Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates in a transaction involving aggregate consideration in excess of \$5.0 million, unless such transaction is (i) otherwise permitted (or required) under this Agreement or (ii) upon terms no less favorable to the Borrower and the Restricted Subsidiaries, as applicable, than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate, except that this Section 6.07 will not prohibit:

(1) transactions between or among (a) the Borrower and the Restricted Subsidiaries or (b) the Borrower and any Person that becomes a Restricted Subsidiary as a result of such transaction (including by way of a merger, consolidation or amalgamation in which a Loan Party is the surviving entity);

(2) so long as no Event of Default is continuing, payment of management, monitoring, consulting, transaction, oversight, advisory and similar fees and payment of all expenses and indemnification claims, in each case, in accordance with the Management Agreement (it being understood that any amounts that are not paid due to the existence of an Event of Default will accrue and may be paid when the applicable Event of Default ceases to exist or is otherwise waived);

(3) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, equity purchase agreements, stock options and stock ownership plans approved by the Board of Directors of the Borrower or any Parent Entity in good faith;

(4) loans or advances to employees or consultants of any Parent Entity, the Borrower or any Restricted Subsidiary in accordance with Section 6.04(2);

(5) the payment of fees, reasonable out-of-pocket costs and indemnities to directors, officers, consultants and employees of any Parent Entity, the Borrower or any of the Restricted Subsidiaries in the ordinary course of business (limited, in the case of any Parent Entity, to the portion of such fees and expenses that are allocable to the Borrower and the Restricted Subsidiaries (which shall be 100% for so long as such Parent Entity owns no assets other than the Equity Interests in the Borrower and assets incidental to the ownership of the Borrower and its Restricted Subsidiaries));

(6) a Permitted Change of Control and the payment of Permitted Change of Control Costs and other transactions, agreements and arrangements in existence on the Closing Date and set forth on Schedule 6.07 or any amendment thereto to the extent such amendment is not adverse to the Lenders in any material respect as determined in good faith by a Responsible Officer of the Borrower;

(7) (a) any employment agreements entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business, (b) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers or directors and (c) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transactions pursuant thereto;

-
- (8) Restricted Payments permitted under Section 6.06, including payments to any Parent Entity;
- (9) any purchase by any Parent Entity of the Equity Interests of the Borrower and the purchase by the Borrower of Equity Interests in any Restricted Subsidiary;
- (10) payments to the Sponsors for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by the majority of the Board of Directors of the Borrower, or a majority of the Disinterested Directors of the Borrower, in good faith;
- (11) transactions with Restricted Subsidiaries for the purchase or sale of goods, products, parts and services entered into in the ordinary course of business;
- (12) any transaction in respect of which the Borrower delivers to the Administrative Agent (for delivery to the Lenders) a letter addressed to the Board of Directors of Holdings or the Borrower from an accounting, appraisal or investment banking firm, in each case, of nationally recognized standing that is (a) in the good faith determination of the Borrower qualified to render such letter and (b) reasonably satisfactory to the Administrative Agent, which letter states that such transaction is on terms that are no less favorable to the Borrower or the Restricted Subsidiaries, as applicable, than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate;
- (13) transactions with joint ventures for the purchase or sale of goods, equipment and services entered into in the ordinary course of business;
- (14) the issuance, sale or transfer of Equity Interests of the Borrower to any Parent Entity and capital contributions by any Parent Entity to the Borrower (and payment of reasonable out-of-pocket expenses incurred by the Sponsors in connection therewith);
- (15) the issuance of Equity Interests to the management of Holdings, the Borrower or any of the Restricted Subsidiaries in connection with a Permitted Change of Control;
- (16) payments by Holdings, the Borrower or any of the Restricted Subsidiaries pursuant to tax sharing agreements among Holdings, the Borrower and any of the Restricted Subsidiaries;
- (17) payments or loans (or cancellation of loans) to employees or consultants that are:
- (a) approved by a majority of the Disinterested Directors of Holdings or the Borrower in good faith;
 - (i) made in compliance with applicable law; and
 - (ii) otherwise permitted under this Agreement;
- (18) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case, in the ordinary course of business and otherwise in compliance with the terms of this Agreement, that are fair to the Borrower and the Restricted Subsidiaries;
- (19) transactions between or among the Borrower and the Restricted Subsidiaries and any Person, a director of which is also a director of the Borrower or any Parent Entity, so long as (a) such director abstains from voting as a director of the Borrower or such Parent Entity, as the case may be, on any matter involving such other Person and (b) such Person is not an Affiliate of the Borrower for any reason other than such director's acting in such capacity;

(20) transactions pursuant to, and complying with, the provisions of Section 6.01, Section 6.04 or Section 6.05(1);

(21) the existence of, or the performance by any Loan Party of its obligations under the terms of, any customary registration rights agreement to which a Loan Party or any Parent Entity is a party or becomes a party in the future; and

(22) intercompany transactions undertaken in good faith (as certified by a Responsible Officer of the Borrower) for the purpose of improving the consolidated tax efficiency of Holdings and the Restricted Subsidiaries and not for the purpose of circumventing any covenant set forth herein.

SECTION 6.08. Business of the Borrower and its Subsidiaries. Notwithstanding any other provisions hereof, engage at any time in any business or business activity other than any business or business activity conducted by the Borrower and the Restricted Subsidiaries on the Closing Date (after giving effect to the Transactions) and any similar, corollary, related, ancillary, incidental or complementary business or business activities or a reasonable extension, development or expansion thereof or ancillary thereto.

SECTION 6.09. Limitation on Payments and Modifications of Indebtedness; Modifications of Certificate of Incorporation, By Laws and Certain Other Agreements: etc.

(1) amend or modify in any manner materially adverse to the Lenders the articles or certificate of incorporation (or similar document), by-laws, limited liability company operating agreement, partnership agreement or other organizational documents of the Borrower or any Restricted Subsidiary;

(2) make any cash payment or other distribution in cash in respect of, or amend or modify, or permit the amendment or modification of, any provision of, any Junior Financing, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposits, on account of the purchase, redemption, retirement, acquisition, cancellation or termination in respect of any Junior Financing; except in the case of this clause (2):

(a) payments in respect of Junior Financings in an amount not to exceed the Available Amount on the date the payments are made if (i) no Event of Default is continuing immediately prior to making such Restricted Payment or would result therefrom and (ii) the Interest Coverage Ratio would be at least 2.00 to 1.00 on Pro Forma Basis after giving effect thereto;

(b) payments in respect of Junior Financings so long as (i) immediately after giving effect to such payment, the Borrower's Total Net Leverage Ratio is 4.50 to 1.00 or less and (ii) no Event of Default is continuing immediately prior to making such Restricted Payment or would result therefrom;

(c) additional payments in respect of Junior Financings, when taken together with the aggregate amount of payments made with respect to Investments pursuant to Section 6.04(29) and Restricted Payments pursuant to Section 6.06(17), in an amount not to exceed the greater of (i) \$20.0 million and (ii) 5.00% of Consolidated Total Assets as of the date such payment is made;

(d) (i) the conversion or exchange of any Junior Financing into or for Equity Interests of any Parent Entity or other Junior Financing and (ii) any payment that is intended to prevent any Junior Financing from being treated as an "applicable high yield discount obligation" within the meaning of Section 163(i)(1) of the Code;

(e) the incurrence of Permitted Refinancing Indebtedness in respect thereof;

(f) (i) payments of regularly scheduled principal and interest; (ii) mandatory offers to repay, repurchase or redeem (including in connection with the Net Cash Proceeds of Asset Sales); (iii) mandatory prepayments of principal, premium and interest; and (iv) payments of fees, expenses and indemnification obligations, in each case, with respect to such Junior Financing; and

(g) payments or distributions in respect of all or any portion of such Junior Financing with the proceeds contributed directly or indirectly to the Borrower by any Parent Entity from the issuance, sale or exchange by any Parent Entity of Equity Interests made within 18 months prior thereto; or

(3) permit any Material Subsidiary to enter into any agreement or instrument that by its terms restricts (a) with respect to any such Material Subsidiary that is not a Guarantor, Restricted Payments from such Material Subsidiary to the Borrower or any other Loan Party that is a direct or indirect parent of such Material Subsidiary or (b) with respect to any such Material Subsidiary that is a Guarantor, the granting of Liens by such Material Subsidiary pursuant to the Security Documents; except in the case of this clause (3):

(a) restrictions imposed by applicable law;

(b) contractual encumbrances or restrictions:

(i) under the ABL Loan Documents;

(ii) under the New Senior Notes Documents; or

(iii) under any agreement relating to Ratio Debt, Indebtedness incurred pursuant to Section 6.01(1), (2), (3), (4), (5), (7), (12), (16), (21), (22), (25) or (28), Indebtedness that is secured on a *pari passu* basis with Indebtedness under the Loan Documents or Indebtedness under the ABL Credit Agreement, or any Permitted Refinancing Indebtedness in respect thereof, that does not materially expand the scope of any such encumbrance or restriction;

(c) any restriction on a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Equity Interests or assets of a Restricted Subsidiary pending the closing of such sale or disposition;

(d) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business;

(e) any restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

(f) customary provisions contained in leases or licenses of intellectual property and other similar agreements entered into in the ordinary course of business;

(g) customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(h) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(i) customary restrictions and conditions contained in any agreement relating to the sale, transfer or other disposition of any asset permitted under Section 6.05 pending the consummation of such sale, transfer or other disposition;

(j) customary restrictions and conditions contained in the document relating to any Lien, so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 6.09;

(k) customary net worth provisions contained in Real Property leases entered into by Restricted Subsidiaries, so long as a Responsible Officer of the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower and the other Restricted Subsidiaries to meet their ongoing obligations;

(l) any agreement in effect at the time any Person becomes a Restricted Subsidiary, so long as such agreement was not entered into in contemplation of such Person becoming a Restricted Subsidiary;

(m) restrictions in agreements representing Indebtedness permitted under Section 6.01 of a Restricted Subsidiary that is not a Subsidiary Loan Party;

(n) customary restrictions on leases, subleases, licenses or Equity Interests or asset sale agreements otherwise permitted hereby as long as such restrictions relate to the Equity Interests and assets subject thereto;

(o) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; or

(p) any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (o) above, so long as such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, not materially more restrictive with respect to such Lien, dividend and other payment restrictions, taken as a whole, than those contained in the Lien, dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

ARTICLE VII

Holdings Covenant

SECTION 7.01. Holdings Covenant. Holdings will not, so long as this Agreement is in effect and until all Obligations (other than Obligations in respect of (i) Specified Hedge Agreements and Cash Management Obligations that are not then due and payable and (ii) contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full, unless the Required Lenders otherwise consent in writing, conduct, transact or otherwise engage in any active trade or business or operations other than through the Borrower and its Subsidiaries.

The foregoing will not prohibit Holdings from taking actions related to the following (and activities incidental thereto):

- (1) its ownership of the Equity Interests of the Borrower;
- (2) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance);
- (3) the performance of its obligations with respect to the ABL Credit Agreement, the Term Facility, the New Senior Notes and other Indebtedness permitted by this Agreement;
- (4) any offering of its common stock or any other issuance of its Equity Interests;

(5) the making of Restricted Payments; *provided* that Holdings will not be permitted to make Restricted Payments using the cash from the Borrower or any Subsidiary unless such cash has been dividended or otherwise distributed to Holdings as a permitted Restricted Payment pursuant to the terms of Section 6.06;

(6) the incurrence of Permitted Holdings Debt;

(7) making contributions to the capital or acquiring Equity Interests of its Subsidiaries;

(8) guaranteeing the obligations of the Borrower and its Subsidiaries;

(9) participating in tax, accounting and other administrative matters as a member or parent of the consolidated group;

(10) holding any cash or property (including cash and property received in connection with Restricted Payments made by the Borrower, but excluding the Equity Interests of any Person other than the Borrower);

(11) providing indemnification to officers and directors;

(12) the making of Investments consisting of Cash Equivalents or, to the extent not made for speculative purposes, Investment Grade Securities;

(13) the consummation of the Transactions on the Closing Date and any Permitted Change of Control; and

(14) activities incidental to the businesses or activities described above.

ARTICLE VIII

Events of Default

SECTION 8.01. Events of Default. In case of the happening of any of the following events (each, an "*Event of Default*"):

(1) any representation or warranty made by Holdings, the Borrower or any other Loan Party herein or in any other Loan Document or any certificate or document required to be delivered pursuant hereto or thereto proves to have been false or misleading in any material respect when so made;

(2) default is made in the payment of any principal of any Term Loan when and as the same becomes due and payable, whether at the due date thereof, at a date fixed for prepayment thereof, by acceleration thereof or otherwise;

(3) default is made in the payment of any interest on any Term Loan or in the payment of any Fee or any other amount due under any Loan Document (other than an amount referred to in clause (2) of this Section 8.01), when and as the same becomes due and payable, and such default continues unremedied for a period of five Business Days;

(4) default is made in the due observance or performance by Holdings, the Borrower or any Restricted Subsidiary of any covenant, condition or agreement contained in Section 5.01(1), 5.05(1) or 5.08 or in Article VI or Article VII (in each case solely to the extent applicable to such Person);

(5) default is made in the due observance or performance by Holdings, the Borrower or any Restricted Subsidiary of any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (2), (3) and (4) of this Section 8.01), in each case solely to the extent applicable to such Person, and such default continues unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Borrower;

(6) (a) any event or condition occurs that (i) results in any Material Indebtedness becoming due prior to its scheduled maturity or (ii) enables or permits (with all applicable grace periods having expired) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity or (b) the Borrower or any Restricted Subsidiary fails to pay the principal of any Material Indebtedness at the stated final maturity thereof; *provided* that this clause (6) will not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; *provided, further*, that such event or condition is unremedied and is not waived or cured by the holders of such Indebtedness prior to any acceleration of the Term Loans pursuant to this Section 8.01; *provided, further*, that the failure to observe or perform a covenant under the ABL Credit Agreement (or any Permitted Refinancing Indebtedness in respect thereof) shall not in and of itself constitute an Event of Default hereunder until the date on which the lenders under the ABL Credit Agreement (or any Permitted Refinancing Indebtedness in respect thereof) shall have accelerated payment of the ABL Obligations (or any Permitted Refinancing Indebtedness in respect thereof) and terminated the commitments with respect thereto or foreclosed upon the collateral securing the ABL Obligations (or any Permitted Refinancing Indebtedness in respect thereof);

(7) a Change in Control occurs;

(8) an involuntary proceeding is commenced or an involuntary petition is filed in a court of competent jurisdiction seeking:

(a) relief in respect of Holdings, the Borrower or any of the Material Subsidiaries, or of a substantial part of the property or assets of Holdings, the Borrower or any Material Subsidiary, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law;

(i) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, the Borrower or any of the Material Subsidiaries or for a substantial part of the property or assets of Holdings, the Borrower or any Restricted Subsidiary; or

(ii) the winding up or liquidation of Holdings, the Borrower or any Material Subsidiary (except, in the case of any Material Subsidiary, in a transaction permitted by Section 6.05) and such proceeding or petition continues undismissed for 60 days or an order or decree approving or ordering any of the foregoing is entered;

(9) Holdings, the Borrower or any Material Subsidiary:

(a) voluntarily commences any proceeding or files any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law;

(i) consents to the institution of, or fails to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (8) of this Section 8.01;

(ii) applies for or consents to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Holdings, the Borrower or any of the Material Subsidiaries or for a substantial part of the property or assets of Holdings, the Borrower or any Material Subsidiary;

(iii) files an answer admitting the material allegations of a petition filed against it in any such proceeding;

(iv) makes a general assignment for the benefit of creditors; or

(v) becomes unable or admits in writing its inability or fails generally to pay its debts as they become due;

(10) the Borrower or any Restricted Subsidiary fails to pay one or more final judgments aggregating in excess of \$25.0 million (to the extent not covered by insurance), which judgments are not discharged or effectively waived or stayed for a period of 45 consecutive days, or any action is legally taken by a judgment creditor to levy upon assets or properties of the Borrower or any other Subsidiary Loan Party to enforce any such judgment;

(11) (a) a trustee is appointed by a United States district court to administer any Plan or (b) an ERISA Event or ERISA Events occurs with respect to any Plan or Multiemployer Plan, and, in each case, with respect to clauses (a) and (b) above, such event or condition, together with all other such events or conditions, if any, is reasonably expected to have a Material Adverse Effect; or

(12) (a) any material provision of any Loan Document ceases to be, or is asserted in writing by Holdings, the Borrower or any Restricted Subsidiary not to be, for any reason, a legal, valid and binding obligation of any party thereto, (b) any security interest purported to be created by any Security Document and to extend to assets that are not immaterial to Holdings, the Borrower and the Restricted Subsidiaries on a consolidated basis ceases to be, or is asserted in writing by the Borrower or any other Loan Party not to be, a valid and perfected security interest in the securities, assets or properties covered thereby, except to the extent that any such loss of validity, perfection or priority results from the limitations of foreign laws, rules and regulations as they apply to pledges of Equity Interests in Foreign Subsidiaries or the application thereof, or from the failure of the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under a Security Document or to file Uniform Commercial Code continuation statements and except to the extent that such loss is covered by a lender's title insurance policy and the Collateral Agent is reasonably satisfied with the credit of such insurer or (c) the Guarantees pursuant to the Security Documents by any Loan Party of any of the Obligations cease to be in full force and effect (other than in accordance with the terms thereof) or are asserted in writing by Holdings, the Borrower or any other Subsidiary Loan Party not to be in effect or not to be legal, valid and binding obligations, except in the cases of clauses (a) and (b), in connection with an Asset Sale permitted by this Agreement;

then, (i) upon the occurrence of any such Event of Default (other than an Event of Default with respect to the Borrower described in clause (8) or (9) of this Section 8.01), and at any time thereafter during the continuance of such Event of Default, the Administrative Agent, at the request of the Required Lenders, will, by notice to the Borrower, take any or all of the following actions, at the same or different times: (A) declare the Term Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Term Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, will become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding; and (B) exercise all rights and remedies granted to it under any Loan Document and all of its rights under any other applicable law or in equity, and (ii) in any event with respect to the Borrower described in clause (8) or (9) of this Section 8.01, the principal of the Term Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Borrower accrued hereunder and under any other Loan Document, will automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding.

ARTICLE IX

The Agents

SECTION 9.01 Appointment

(1) Each Lender (in its capacities as a Lender and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) hereby irrevocably designates and appoints the Administrative Agent as agent of such Lender under this Agreement and the other Loan Documents, as applicable, including as the Collateral Agent for such Lender and the other applicable Secured Parties under the applicable Security Documents, and each such Lender irrevocably authorizes the Administrative Agent, in such capacities, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than the United States, each of the Lenders hereby grants to the Administrative Agent any required powers of attorney to execute any Security Document governed by the laws of such jurisdiction on such Lender's behalf. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent.

(2) To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.01(2). The agreements in this Section 9.01(2) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations. For the avoidance of doubt, no Borrower shall have liability for the actions of the Administrative Agent pursuant to the immediately preceding sentence.

(3) In furtherance of the foregoing, each Lender (in its capacities as a Lender and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) hereby appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on the Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In connection therewith, the Administrative Agent (and any Subagents appointed by the Administrative Agent pursuant to Section 9.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights or remedies thereunder at the direction of the Administrative Agent) shall be entitled to the benefits of this Article IX (including Section 9.07) as though the Administrative Agent (and any such Subagents) were an "Agent" under the Loan Documents, as if set forth in full herein with respect thereto.

(4) Each Lender (in its capacities as a Lender and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) irrevocably authorizes the Administrative Agent, at its option and in its discretion:

- (a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document:

(i) upon termination of the Commitments, the payment in full of all Obligations (other than Obligations in respect of (i) Specified Hedge Agreements and Cash Management Obligations that are not then due and payable and (ii) contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted);

(ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document; or

(iii) if approved, authorized or ratified in writing in accordance with Section 10.08 hereof;

(b) to release any Loan Party from its obligations under the Loan Documents if such Person ceases to be a Restricted Subsidiary as a result of a transaction permitted hereunder; and

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(3) (and to the extent required by the terms thereof as of the Closing Date).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release its interest in particular types or items of property, or to release any Loan Party from its obligations under the Loan Documents.

(5) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, (a) the Administrative Agent (irrespective of whether the principal of any Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise (i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of any or all of the Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agents and any Subagents allowed in such judicial proceeding and (ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and (b) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under the Loan Documents. Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition (each, a "**Plan of Reorganization**") affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

(6) The Lenders and each other holder of an Obligation under a Loan Document shall act collectively through the Administrative Agent and, without limiting the delegation of authority to the Administrative Agent set forth herein, the Required Lenders shall direct the Administrative Agent with respect to the exercise of rights and remedies hereunder and under other Loan Documents (including with respect to alleging the existence or occurrence of, and exercising rights and remedies as a result of, any Default or Event of Default in each case that could be waived with the consent of the Required Lenders), and such rights and remedies shall not be exercised other than through the Administrative Agent; *provided* that the foregoing shall not preclude any Lender from exercising any right of set-off in accordance with the provisions of Section 10.06 or from exercising rights and remedies (other than the enforcement of Collateral) with respect to any payment default after the occurrence of the Maturity Date with respect to any Term Loans made by it.

SECTION 9.02. Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement and the other Loan Documents (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof)) by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of the agents or attorneys-in-fact selected by it with reasonable care. The Administrative Agent may also from time to time, when the Administrative Agent deems it to be necessary or desirable, appoint one or more trustees, co-trustees, collateral co-agents, collateral subagents or attorneys-in-fact (each, a "**Subagent**") with respect to all or any part of the Collateral; *provided* that no such Subagent shall be authorized to take any action with respect to any Collateral unless and except to the extent expressly authorized in writing by the Administrative Agent. Should any instrument in writing from the Borrower or any other Loan Party be required by any Subagent so appointed by the Administrative Agent to more fully or certainly vest in and confirm to such Subagent such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by the Administrative Agent. If any Subagent, or successor thereto, shall die, become incapable of acting, resign or be removed, all rights, powers, privileges and duties of such Subagent, to the extent permitted by law, shall automatically vest in and be exercised by the Administrative Agent until the appointment of a new Subagent. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent, attorney-in-fact or Subagent that it selects in accordance with the foregoing provisions of this Section 9.02 in the absence of the Administrative Agent's gross negligence or willful misconduct.

SECTION 9.03. Exculpatory Provisions. None of the Administrative Agent, its Affiliates or any of their respective officers, directors, employees, agents or attorneys-in-fact shall be (1) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or any other Loan Document (except to the extent that any of the foregoing are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from its or such Person's own gross negligence or willful misconduct) or (2) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Agents under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party party thereto to perform its obligations hereunder or thereunder. The Agents shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (1) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, and (2) the Administrative Agent shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into:

- (1) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document;
- (2) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith;
- (3) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default;
- (4) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents;
- (5) the value or the sufficiency of any Collateral; or

(6) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

SECTION 9.04. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) or conversation believed in good faith by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed in good faith by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to any Borrowing that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to such Borrowing. The Administrative Agent may consult with legal counsel (including counsel to Holdings or the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent may deem and treat the payee of any Note as the owner thereof for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or, if so specified by this Agreement, all or other Lenders) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with a request of the Required Lenders (or, if so specified by this Agreement, all or other Lenders), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Term Loans.

SECTION 9.05. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received written notice from a Lender, Holdings or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all or other Lenders); *provided* that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

SECTION 9.06. Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that none of the Agents, the Arranger or any of their respective officers, directors, employees, agents, attorneys-in-fact or affiliates have made any representations or warranties to it and that no act by the Administrative Agent hereafter taken, including any review of the affairs of a Loan Party or any Affiliate of a Loan Party, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Agents and Arranger that it has, independently and without reliance upon the Administrative Agent or Arranger, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates and made its own decision to make its Term Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent or Arranger, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Affiliates. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, condition (financial or otherwise), prospects or creditworthiness of any Loan Party or any Affiliate of a Loan Party that may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

SECTION 9.07. Indemnification. The Lenders agree to indemnify each Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), in the amount of its *pro rata* share (based on its aggregate outstanding Term Loans determined at the time such indemnity is sought or, if indemnification is sought after the date upon which the Term Loans shall have been paid in full, ratably in accordance with its *pro rata* share or the outstanding Term Loans immediately prior to the repayment or retirement in full of the Term Loans), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Term Loans) be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under or in connection with any of the foregoing; *provided* that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from the Administrative Agent's gross negligence or willful misconduct. The failure of any Lender to reimburse the Administrative Agent promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the Administrative Agent as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Administrative Agent for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Administrative Agent for such other Lender's ratable share of such amount. The agreements in this Section 9.07 shall survive the payment of the Term Loans and all other amounts payable hereunder.

SECTION 9.08. Agent in Its Individual Capacity. Each Agent and its affiliates may make loans to, accept deposits from, and generally engage in any kind of business with any Loan Party as though the Administrative Agent were not the Administrative Agent. With respect to its Term Loans made or renewed by it, each Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not the Administrative Agent, and the terms "Lender" and "Lenders" shall include each Agent in its individual capacity.

SECTION 9.09. Successor Agent. The Administrative Agent may resign as Administrative Agent upon ten days' notice to the Lenders and the Borrower. If the Administrative Agent resigns as the Administrative Agent under this Agreement and the other Loan Documents, then the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders, which successor agent shall (unless a Specified Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed), whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent, and the reference to the resigning Administrative Agent means such successor agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Term Loans. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 10 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. If no successor agent has accepted appointment as Administrative Agent by the date that is ten days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation will nevertheless thereupon become effective, and the Required Lenders will thereafter perform all the duties of such Administrative Agent hereunder and/or under any other Loan Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent, which shall (unless a Specified Event of Default shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed). After any retiring Administrative Agent's resignation as Administrative Agent, the provisions of this Section 9.09 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement and the other Loan Documents.

SECTION 9.10. Arranger. The Arranger will not have any duties, responsibilities or liabilities hereunder in its capacity as such.

SECTION 9.11. Certain ERISA Matters.

(1) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(a) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans or the Commitments, or

(b) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable, and the conditions of such exemption have been satisfied, with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(c) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(d) (iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(2) In addition, (I) unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (II) if such sub-clause (i) is not true with respect to a Lender and such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(a) none of the Administrative Agent or the Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(b) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(c) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(d) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(e) no fee or other compensation is being paid directly to the Administrative Agent or the Arranger or any of their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Commitments or this Agreement.

(3) The Administrative Agent and the Arranger hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans or the Commitments for an amount less than the amount being paid for an interest in the Loans or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

ARTICLE X

Miscellaneous

SECTION 10.01. Notices; Communications.

(1) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in Section 10.01(2)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or e mail, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, in each case, as follows:

(a) if to any Loan Party or the Administrative Agent, to the address, facsimile number, e mail address or telephone number specified for such Person on Schedule 10.01; and

(b) if to any other Lender, to the address, facsimile number, e mail address or telephone number specified in its Administrative Questionnaire.

(2) Notices and other communications to the Lenders may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(3) Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received. Notices sent by facsimile shall be deemed to have been given when sent and confirmation of transmission received (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in Section 10.01(2) shall be effective as provided in such Section 10.01(2).

(4) Any party hereto may change its address, facsimile number or e mail address for notices and other communications hereunder by notice to the other parties hereto.

(5) Documents required to be delivered pursuant to Section 5.04 (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically (including as set forth in Section 10.17) and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.01 or (b) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that the Borrower shall notify the Administrative Agent (by facsimile or e mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents; *provided, further*, that, upon reasonable request by the Administrative Agent, the Borrower shall also provide a hard copy to the Administrative Agent of any such document; *provided, further*, that any documents posted for which a link is provided after normal business hours for the recipient shall be deemed to have been given at the opening of business on the next Business Day for such recipient. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

SECTION 10.02. Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties herein, in the other Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Loan Document will be considered to have been relied upon by the Lenders and shall survive the making by the Lenders of the Term Loans and the execution and delivery of the Loan Documents, regardless of any investigation made by such Persons or on their behalf, and shall continue in full force and effect as long as the principal of or any accrued interest on any Term Loan or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid and so long as the Commitments have not been terminated. Without prejudice to the survival of any other agreements contained herein, indemnification and reimbursement obligations contained herein (including pursuant to Sections 2.12, 2.14 and 10.05) shall survive the payment in full of the principal and interest hereunder and the termination of the Commitments or this Agreement.

SECTION 10.03. Binding Effect. This Agreement shall become effective when it has been executed by Holdings, the Borrower and the Administrative Agent and when the Administrative Agent has received copies hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of Holdings, the Borrower, the other Loan Parties, each Agent, each Lender and their respective permitted successors and assigns.

SECTION 10.04. Successors and Assigns.

(1) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (a) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void), and (b) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 10.04 (and any attempted assignment, transfer or delegation in contravention with this Section 10.04 shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in paragraph (3) of this Section 10.04) and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement or the other Loan Documents.

(2) (a) Subject to the conditions set forth in paragraph (2)(b) of this Section 10.04 (and, with respect to an assignment to Holdings, the Borrower, any Subsidiary or any of their respective Affiliates, subject to the limitations set forth in Section 10.04(10) or 10.04(14), as applicable), any Lender may assign to one or more assignees (other than a natural person, a Defaulting Lender or a Disqualified Institution) (each such non-excluded Person, an “**Assignee**”) all or a portion of its rights and obligations under this Agreement (including all or a portion of the Term Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, delayed or conditioned) of:

(i) the Borrower; *provided* that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if a Specified Event of Default has occurred and is continuing, any other Person; *provided, further*, that such consent shall be deemed to have been given if the Borrower has not responded within ten Business Days after delivery of a written request therefor by the Administrative Agent; *provided, further*, that no consent of the Borrower shall be required for any assignment by the Arranger (or any Affiliate thereof) pursuant to the initial syndication of the Term Loans; and

(A) the Administrative Agent; *provided* that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

(b) Assignments shall be subject to the following additional conditions:

(i) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender’s Term Loans, the amount of the Term Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1.0 million, unless each of the Borrower and the Administrative Agent otherwise consent; *provided* that (1) no such consent of the Borrower shall be required if a Specified Event of Default has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds (with simultaneous assignments to or by two or more Approved Funds being treated as one assignment for purposes of meeting the minimum assignment amount requirement), if any;

(A) the assignee or assigning Lender to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent);

(B) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required to be delivered pursuant to Section 2.14; and

(C) the assignor shall deliver to the Administrative Agent any Note issued to it with respect to the assigned Term Loan.

For the purposes of this Section 10.04, “**Approved Fund**” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(c) Subject to acceptance and recording thereof pursuant to paragraph (2)(e) of this Section 10.04, from and after the effective date specified in each Assignment and Acceptance, the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender’s rights and obligations under this

Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.12, 2.13, 2.14 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such Assignment and Acceptance). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (4) of this Section 10.04 to the extent such participation would be permitted by such Section 10.04(4).

(i) The Administrative Agent, acting for this purpose as the Administrative Agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the principal amount (and stated interest with respect thereto) of the Term Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender (solely with respect to such Lender's Term Loans) at any reasonable time and from time to time upon reasonable prior notice.

(ii) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee's completed Administrative Questionnaire (unless the Assignee shall already be a Lender hereunder), all applicable tax forms, any Note outstanding with respect to the assigned Term Loan, the processing and recordation fee referred to in paragraph (2)(b)(ii) of this Section 10.04 and any written consent to such assignment required by paragraph (2) of this Section 10.04, the Administrative Agent promptly shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment, whether or not evidenced by a promissory note, shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph (2)(e).

(3) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows:

(a) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim;

(b) except as set forth in clause (a) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto, or the financial condition of Holdings, the Borrower or any Restricted Subsidiary or the performance or observance by Holdings, the Borrower or any Restricted Subsidiary of any of its obligations under this Agreement, any other Loan Document or any other instrument or document furnished pursuant hereto;

(c) the Assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance;

(d) the Assignee confirms that it has received a copy of this Agreement, together with copies of the most recent Required Financial Statements delivered pursuant to Section 5.04, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance;

(e) the Assignee will independently and without reliance upon the Administrative Agent or the Collateral Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement;

(f) the Assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent by the terms of this Agreement, together with such powers as are reasonably incidental thereto; and

(g) the Assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(4) (a) Any Lender may, without the consent of the Administrative Agent or, subject to Section 10.04(8), the Borrower, sell participations to one or more banks or other entities (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of the Term Loans owing to it); *provided* that

(i) such Lender's obligations under this Agreement shall remain unchanged;

(A) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and

(B) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

(C) Any agreement pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; *provided* that (A) such agreement may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to Section 10.04(1)(a) or clauses (i), (ii), (iii), (iv), (v) or (vi) of the first proviso to Section 10.08(2) and (2) directly affects such Participant and (B) no other agreement with respect to amendment, modification or waiver may exist between such Lender and such Participant. Subject to clause (4)(b) of this Section 10.04, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.14 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (2) of this Section 10.04, *provided* that such Participant agrees to be subject to the provisions of Sections 2.16(2) as if it were an assignee pursuant to paragraph (2) of this Section 10.04. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.16(2) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.06 as though it were a Lender; *provided* that such Participant shall be subject to Section 2.15(3) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Term Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103 1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(b) A Participant shall not be entitled to receive any greater payment under Section 2.12, 2.13 or 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent the entitlement to a greater payment results from a Change in Law occurring after the sale of the participation to such Participant.

(5) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank and in the case of any Lender that is an Approved Fund, any pledge or assignment to any holders of obligations owed, or securities issued, by such Lender, including to any trustee for, or any other representative of, such holders, and this Section 10.04 shall not apply to any such pledge or assignment of a security interest; *provided* that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or Assignee for such Lender as a party hereto.

(6) The Borrower, upon receipt of written notice from the relevant Lender, agrees to issue Notes to any Lender requiring Notes to facilitate transactions of the type described in paragraph (5) of this Section 10.04.

(7) If the Borrower wishes to replace the Term Loans with ones having different terms, it shall have the option, with the consent of the Administrative Agent and subject to at least three Business Days' advance notice to the Lenders, instead of prepaying the Term Loans to be replaced, to (a) require the Lenders to assign such Term Loans to the Administrative Agent or its designees and (b) amend the terms thereof in accordance with Section 10.08 (with such replacement, if applicable, being deemed to have been made pursuant to Section 10.08(4)). Pursuant to any such assignment, all Term Loans to be replaced shall be purchased at par (allocated among the Lenders in the same manner as would be required if such Term Loans were being optionally prepaid, and for the avoidance of doubt, subject to Section 2.21), accompanied by payment of any accrued interest and fees thereon and any amounts owing pursuant to Section 10.05(2). By receiving such purchase price, the Lenders shall automatically be deemed to have assigned the Term Loans pursuant to the terms of the form of Assignment and Acceptance attached hereto as Exhibit A, and accordingly no other action by such Lenders shall be required in connection therewith. The provisions of this paragraph (7) are intended to facilitate the maintenance of the perfection and priority of existing security interests in the Collateral during any such replacement.

(8) (a) No assignment or participation shall be made to any Person that was a Disqualified Institution as of the date (the "*Trade Date*") on which the assigning Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any Assignee that becomes a Disqualified Institution after the applicable Trade Date, (x) such Assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Acceptance with respect to such Assignee will not by itself result in such Assignee no longer being considered a Disqualified Institution. Any assignment in violation of this clause (8)(a) shall not be void, but the other provisions of this clause (8) shall apply.

(b) If any assignment or participation is made to any Disqualified Institution without the Borrower's prior written consent in violation of clause (a) above, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) [reserved.], (B) in the case of outstanding Term Loans held by Disqualified Institutions, purchase or prepay such Term Loan by paying the lowest of (x) the principal amount thereof, (y) the amount that such Disqualified Institution paid to acquire such Term Loans and (z) the market price of such Term Loans (as reasonably determined by the Borrower), in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (C) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 10.04), all of its interest, rights and obligations under this Agreement to one or more Assignees at the lowest of (x) the principal amount thereof, (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations and (z) the market price of such Term Loans (as reasonably determined by the Borrower), in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(c) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any Plan of Reorganization, each Disqualified Institution party hereto hereby agrees (1) not to vote on such Plan of Reorganization, (2) if such Disqualified Institution does vote on such Plan of Reorganization notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other debtor relief laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan of Reorganization in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other debtor relief laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(d) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to provide the list of Disqualified Institutions to each Lender requesting the same; *provided* that the Lenders shall not be restricted from participating their obligations in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of the Term Loans owing to it) to Disqualified Institutions if the Borrower has not posted the list of Disqualified Institutions to the Platform.

(9) Notwithstanding anything to the contrary contained herein, no Non-Debt Fund Affiliate shall have any right to:

(a) attend (including by telephone) any meeting or discussions (or portion thereof) among the Administrative Agent or any Lender to which representatives of Holdings or the Borrower are not then present;

(b) receive any information or material prepared by the Administrative Agent or any Lender or any communication by or among Administrative Agent and one or more Lenders, except to the extent such information or materials have been made available to the Borrower or its representatives (and in any case, other than the right to receive notices of prepayments and other administrative notices in respect of its Term Loans required to be delivered to Lenders pursuant to this Agreement); or

(c) make or bring (or participate in, other than as a passive participant in or recipient of its *pro rata* benefits of) any claim, in its capacity as a Lender, against Administrative Agent or any other Lender with respect to any duties or obligations or alleged duties or obligations of such Agent or any other such Lender under the Loan Documents in the absence, with respect to any such Person, of the gross negligence, bad faith (including a material breach of obligations under the Loan Documents) or willful misconduct by such Person and its Related Parties (as determined by a court of competent jurisdiction by final and non-appealable judgment).

(10) Notwithstanding anything to the contrary contained herein, any Lender may assign all or any portion of its Term Loans hereunder to any Person who, after giving effect to such assignment, would be an Affiliated Lender; *provided* that:

(a) such assignment shall be made pursuant to (i) an open market purchase (including, for the avoidance of doubt, any purchase made during the initial syndication of the Term Loans) on a non-*pro rata* basis or (ii) a Dutch Auction open to all Lenders of the applicable Class on *pro rata* basis;

(b) in the case of an assignment to a Non-Debt Fund Affiliate, the assigning Lender and such Non-Debt Fund Affiliate purchasing such Lender’s Term Loans shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit E (a “**Non-Debt Fund Affiliate Assignment and Acceptance**”) in lieu of an Assignment and Acceptance;

(c) in the case of an assignment to a Non-Debt Fund Affiliate, at the time of such assignment and after giving effect to such assignment, Non-Debt Fund Affiliates shall not, in the aggregate, hold Term Loans (and participating interests in Term Loans) with an aggregate principal amount in excess of 30.0% of the principal amount of all Term Loans (including, for the avoidance of doubt, any Incremental Term Loans, Other Term Loans or Extended Term Loans, if any) then outstanding;

(d) in the case of an assignment to a Non-Debt Fund Affiliate, each Non-Debt Fund Affiliate shall at each of the time of its execution of a written trade confirmation in respect of, and at the time of consummation of, such assignment, either (i) make a No MNPI Representation or (ii) if it is not able to make the No MNPI Representation, inform the assignor and the assignor will deliver to such Non-Debt Fund Affiliate customary written assurance that it is a sophisticated investors and is willing to proceed with the assignment; and

(e) in the case of an assignment to a Non-Debt Fund Affiliate, if such Non-Debt Fund Affiliate subsequently assigns the Term Loans acquired by it in accordance with this Section 10.04(10), such Non-Debt Fund Affiliate shall at the time of such assignment of such Term Loans held by it, either (i) affirm the No MNPI Representation or (ii) if it is not able to affirm the No MNPI Representation, inform the assignee and the assignee will deliver to such Non-Debt Fund Affiliate customary written assurance that it is a sophisticated investors and is willing to proceed with the assignment.

(11) To the extent not previously disclosed to the Administrative Agent, the Borrower shall, upon reasonable request of the Administrative Agent (but not more frequently than once per calendar quarter), report to the Administrative Agent the amount and Class of Term Loans held by Non-Debt Fund Affiliates and the identity of such holders. Notwithstanding the foregoing, any Affiliated Lender shall be permitted to contribute any Term Loan so assigned to such Affiliated Lender pursuant to this Section 10.04(11) to Holdings or any of the Restricted Subsidiaries for purposes of cancellation, which contribution may be made, subject to Section 6.07, in exchange for Equity Interests (other than Disqualified Stock) of any Parent Entity or Indebtedness of the Borrower to the extent such Indebtedness is permitted to be incurred pursuant to Section 6.01 at such time; *provided* that any Term Loans so contributed shall be automatically and permanently canceled upon the effectiveness of such contribution and will thereafter no longer be outstanding for any purpose hereunder.

(12) Notwithstanding anything in Section 10.04 or the definition of "Required Lenders" to the contrary, for purposes of determining whether the Required Lenders, all affected Lenders or all Lenders have:

(a) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom;

(b) otherwise acted on any matter related to any Loan Document; or

(c) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document (collectively, "**Required Lender Consent Items**");

(i) a Non-Debt Fund Affiliate shall be deemed to have voted its interest as a Lender in the same proportion as the allocation of voting with respect to such matter by Lenders who are not Non-Debt Fund Affiliates, unless such Required Lender Consent Item requires the consent of each Lender or each affected Lender or the result of such Required Lender Consent Item would reasonably be expected to deprive such Non-Debt Fund Affiliate of its *pro rata* share (compared to Lenders which are not Non-Debt Fund Affiliates) of any payments to which such Non-Debt Fund Affiliate is entitled under the Loan Documents without such Non-Debt Fund Affiliate providing its consent or such Non-Debt Fund Affiliate is otherwise adversely affected thereby compared to Lenders which are not Non-Debt Fund Affiliates (in which case for purposes of such vote such Non-Debt Fund Affiliate shall have the same voting rights as other Lenders which are not Non-Debt Fund Affiliates); and

(ii) Term Loans held by Debt Fund Affiliates may not account for more than 49.9% of the Term Loans of consenting Lenders included in determining whether the Required Lenders have consented to any action pursuant to Section 10.04.

(13) Additionally, the Loan Parties and each Non-Debt Fund Affiliate hereby agree that, and each Non-Debt Fund Affiliate Assignment and Acceptance by a Non-Debt Fund Affiliate shall provide a confirmation that, if a case under Title 11 of the United States Code is commenced against any Loan Party, such Loan Party shall seek (and each Non-Debt Fund Affiliate shall consent) to provide that the vote of any Non-Debt Fund Affiliate (in its capacity as a Lender) with respect to any plan of reorganization of such Loan Party shall not be counted except that such Non-Debt Fund Affiliate's vote (in its capacity as a Lender) may be counted to the extent any such plan of reorganization proposes to treat the Obligations or claims held by such Non-Debt Fund Affiliate in a manner that is less favorable to such Non-Debt Fund Affiliate than the proposed treatment of the Term Loans or claims held by Lenders that are not Affiliates of the Borrower.

(14) Notwithstanding anything to the contrary contained in this Agreement, any Lender may assign all or a portion of its Term Loans to any Purchasing Borrower Party; *provided that*:

(a) the assigning Lender and the Purchasing Borrower Party purchasing such Lender's Term Loans, as applicable, shall execute and deliver to the Administrative Agent a Non-Debt Fund Affiliate Assignment and Acceptance in lieu of an Assignment and Acceptance;

(b) such assignment shall be made pursuant to (i) an open market purchase on a non-*pro rata* basis or (ii) a Dutch Auction open to all Lenders of the applicable Class on a *pro rata* basis;

(c) any Term Loans assigned to any Purchasing Borrower Party shall be automatically and permanently cancelled upon the effectiveness of such assignment and will thereafter no longer be outstanding for any purpose hereunder;

(d) at the time of and immediately after giving effect to any such purchase, no Event of Default shall exist;

(e) the applicable Purchasing Borrower Party shall at each of the time of its execution of a written trade confirmation in respect of, and at the time of consummation of, such assignment, either (i) make a No MNPI Representation or (ii) if it is not able to make the No MNPI Representation, inform the assignor and the assignor will deliver to such Non-Debt Fund Affiliate customary written assurance that it is a sophisticated investors and is willing to proceed with the assignment;

(f) the aggregate outstanding principal amount of the Term Loans of the applicable Class shall be deemed reduced by the full par value of the aggregate principal amount of the Term Loans purchased pursuant to this Section 10.04(14) and each principal repayment installment with respect to the Term Loans of such Class shall be reduced *pro rata* by the aggregate principal amount of Term Loans purchased; and

(g) no proceeds from revolving loans under the ABL Credit Agreement shall be used to fund any such purchases.

SECTION 10.05. Expenses; Indemnity.

(1) If the Transactions are consummated and the Closing Date occurs, the Borrower agrees to pay all reasonable, documented and invoiced out-of-pocket expenses incurred by the Administrative Agent and the Arranger in connection with the preparation of this Agreement and the other Loan Documents, or by the Administrative Agent (and, in the case of enforcement of this Agreement, each Lender) in connection with the syndication of the Term Facility, preparation, execution and delivery, amendment, modification, waiver or enforcement of this Agreement (including expenses incurred in connection with due diligence (including third party expenses) and initial and ongoing Collateral examination to the extent incurred with the reasonable prior approval of the Borrower or

provided for in this Agreement) or in connection with the administration of this Agreement and any amendments, modifications or waivers of the provisions hereof or thereof, including the reasonable, documented and invoiced fees, charges and disbursements of a single counsel for the Administrative Agent and the Arranger, one firm of local counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and, in the case of any actual or perceived conflict of interest, one additional firm of counsel for the Administrative Agent and the Arranger and, in the case of enforcement of this Agreement, the Lenders.

(2) The Borrower agrees to indemnify the Administrative Agent, the Arranger, each Lender, each of their respective Affiliates and each of their respective directors, officers, employees, agents, advisors, controlling Persons, equityholders, partners, members and other representatives and each of their respective successors and permitted assigns (each such Person being called an "*Indemnitee*") against, and to hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and reasonable, documented and invoiced out-of-pocket fees and expenses (limited to reasonable and documented legal fees of a single firm of counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest, where the Indemnitee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of an additional counsel for each group of affected Indemnitees similarly situated, taken as a whole)), incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of:

(a) the execution or delivery of this Agreement or any other Loan Document, the performance by the parties hereto and thereto of their respective obligations thereunder or the consummation of the Transactions and the other transactions contemplated hereby;

(b) the use of the proceeds of the Term Loans; or

(c) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto and regardless of whether such matter is initiated by a third party or by Holdings, the Borrower or any of their Restricted Subsidiaries or Affiliates or creditors;

provided that no Indemnitee will be indemnified for any loss, claim, damage, liability, cost or expense to the extent it (i) has been determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from (A) the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties or (B) a material breach of the obligations of such Indemnitee under the Loan Documents or (ii) relates to any proceeding between or among Indemnitees other than (A) claims against Administrative Agent or Arranger or their respective Affiliates, in each case, in their capacity or in fulfilling their role as the agent or arranger, syndication agent or documentation agent or any other similar role under the Term Facility (excluding their role as a Lender) to the extent such Persons are otherwise entitled to receive indemnification under this paragraph (2) or (B) claims arising out of any act or omission on the part of Holdings, the Borrower or their Affiliates.

(3) Subject to and without limiting the generality of the foregoing sentence, the Borrower agrees to indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses claims, damages, liabilities and related expenses, including reasonable, documented and invoiced fees, charges and disbursements of one firm of counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel in multiple jurisdictions) for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest, an additional counsel for all Indemnitees taken as a whole) and reasonable, documented and invoiced consultant fees, in each case, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of any claim related in any way to Environmental Laws and the Borrower or any of the Restricted Subsidiaries, or any actual or alleged presence, Release or threatened Release of Hazardous Materials at, under, on or from any property for which the Borrower or any Restricted Subsidiaries would reasonably be expected to be held liable under Environmental Laws; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Parties.

(4) Any indemnification or payments required by the Loan Parties under this Section 10.05 shall not apply with respect to (a) Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim or (b) Taxes that are duplicative of any indemnification or payments required by the Loan Parties under Section 2.14.

(5) To the fullest extent permitted by applicable law, Holdings and the Borrower shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Term Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(6) The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Obligations and the termination of this Agreement. All amounts due under this Section 10.05 shall be payable on written demand therefor accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

SECTION 10.06. Right of Set-off. If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Lender to or for the credit or the account of Holdings or any Subsidiary Loan Party against any of and all the Obligations of Holdings or any Subsidiary Loan Party now or hereafter existing under this Agreement or any other Loan Document held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although the Obligations may be unmatured. The rights of each Lender under this Section 10.06 are in addition to other rights and remedies (including other rights of set-off) that such Lender may be exercised only at the direction of the Administrative Agent or the Required Lenders.

SECTION 10.07. Applicable Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN THE OTHER LOAN DOCUMENTS) AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (EXCEPT FOR CONFLICTS OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION).

SECTION 10.08. Waivers; Amendment.

(1) No failure or delay of the Administrative Agent or any Lender in exercising any right or power hereunder or under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by Holdings, the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (2) of this Section 10.08, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on Holdings, the Borrower or any other Loan Party in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances.

(2) ~~Neither~~ Subject to Section 2.11(b), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except

(a) as provided in Sections 2.18, 2.19 and 2.20;

(b) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Holdings, the Borrower and the Required Lenders; and

(c) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by each party thereto and the Administrative Agent and consented to by the Required Lenders;

provided, however, that except as provided in Section 2.18, 2.19 and 2.20, no such agreement shall:

(i) decrease, forgive, waive or excuse the principal amount of, or any interest on, or extend the final maturity of, or decrease the rate of interest on, any Term Loan beyond the Maturity Date, without the prior written consent of each Lender directly affected thereby;

(ii) increase or extend the Commitment of any Lender or decrease, forgive, waive or excuse the fees of any Agent without the prior written consent of such Lender or Agent (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default shall not constitute an increase of the Commitments of any Lender);

(iii) extend or waive any Term Loan Installment Date or reduce the amount due on any Term Loan Installment Date or extend any date on which payment of principal or interest on any Term Loan or any Fee is due, without the prior written consent of each Lender adversely affected thereby;

(iv) amend the provisions of Section 2.15(2) or (3) of this Agreement, Section 5.02 of the Collateral Agreement, Section 4.3 of the Intercreditor Agreement or any analogous provision of any other Loan Document, in a manner that would by its terms alter the *pro rata* sharing of payments required thereby, without the prior written consent of each Lender adversely affected thereby;

(v) amend or modify the provisions of this Section 10.08 or the definition of the term "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the prior written consent of each Lender (it being understood that, with the consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders on substantially the same basis as the Term Loans are included on the Closing Date); or

(vi) release a material portion of the Collateral (or subordinate the Liens in favor of the Administrative Agent on a material portion of the Collateral including by altering the definition of "Term Priority Collateral" in the Intercreditor Agreement), unless pursuant to a transaction permitted by this Agreement, or release any of Holdings, the Borrower or any of the other Subsidiary Loan Parties from their respective Guarantees under the Collateral Agreement, unless, in the case of a Subsidiary Loan Party (other than the Borrower), all or substantially all the Equity Interests of such Subsidiary Loan Party is sold or otherwise disposed of in a transaction permitted by this Agreement, without the prior written consent of each Lender;

provided that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent acting as such at the effective date of such agreement, as applicable. Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 10.08 and any consent by any Lender pursuant to this Section 10.08 shall bind any assignee of such Lender.

(3) Without the consent of the Administrative Agent or any Lender, the Loan Parties and the Administrative Agent may (in their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment, modification or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable law.

(4) This Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent, Holdings and the Borrower (i) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Term Loans and the accrued interest and fees in respect thereof and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders.

(5) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Borrower may enter into Incremental Facility Amendments in accordance with Section 2.18, Refinancing Amendments in accordance with Section 2.19, Extension Amendments in accordance with Section 2.20 and Refinancing Amendments, and such Incremental Facility Amendments, Extension Amendments and Refinancing Amendments shall be effective to amend the terms of this Agreement and the other applicable Loan Documents, in each case, without any further action or consent of any other party to any Loan Document.

(6) Notwithstanding the foregoing, any amendment or waiver that by its terms affects the rights or duties of Lenders holding Term Loans or Commitments of a particular Class (but not the rights or duties of Lenders holding Term Loans or Commitments of any other Class) will require only the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto if such Class of Lenders were the only Class of Lenders.

(7) Notwithstanding the foregoing, technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent to the extent necessary to integrate any Incremental Facilities on substantially the same basis as the Term Loans, as applicable.

Notwithstanding the foregoing, the Administrative Agent, with the consent of the Borrower, may amend, modify or supplement any Loan Document without the consent of any Lender or the Required Lenders in order to correct, amend or cure any ambiguity, inconsistency or defect or correct any typographical error or other manifest error in any Loan Document, and such amendment, modification or supplement shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days following receipt of notice thereof.

SECTION 10.09. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under applicable law (collectively, the “*Charges*”), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by any Lender, shall exceed the maximum lawful rate (the “*Maximum Rate*”) that may be contracted for, charged, taken, received or reserved by such Lender in accordance with applicable law, the rate of interest payable hereunder, together with all Charges payable to such Lender, shall be limited to the Maximum Rate; *provided* that such excess amount shall be paid to such Lender on subsequent payment dates to the extent not exceeding the legal limitation. In no event will the total interest received by any Lender exceed the amount which it could lawfully have received and any such excess amount received by any Lender will be applied to reduce the principal balance of the Term Loans or to other amounts (other than interest) payable hereunder to such Lender, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining will be paid to the Borrower.

SECTION 10.10. Entire Agreement. This Agreement, the other Loan Documents and the agreements regarding certain Fees referred to herein constitute the entire contract between the parties relative to the subject matter hereof. Any previous agreement among or representations from the parties or their Affiliates with respect to the subject matter hereof is superseded by this Agreement and the other Loan Documents. Nothing in this Agreement or in the other Loan Documents, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

SECTION 10.11. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11.

SECTION 10.12. Severability. In the event any one or more of the provisions contained in this Agreement or in any other Loan Document should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 10.13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute but one contract, and shall become effective as provided in Section 10.03. Delivery of an executed counterpart to this Agreement by facsimile or other electronic transmission (e.g., "pdf" or "tiff") shall be as effective as delivery of a manually signed original.

SECTION 10.14. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 10.15. Jurisdiction: Consent to Service of Process.

(1) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York County, Borough of Manhattan and any appellate court from any thereof (collectively, "*New York Courts*"), in any action or proceeding arising out of or relating to this Agreement or the other Loan Documents, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State court or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Agreement or any of the other Loan Documents in the courts of any jurisdiction, except that each of the Loan Parties agrees that (a) it will not bring any such action or proceeding in any court other than New York Courts (it being acknowledged and agreed by the parties hereto that any other forum would be inconvenient and inappropriate in view of the fact that more of the Lenders who would be affected by any such action or proceeding have contacts with the State of New York than any other jurisdiction), and (b) in any such action or proceeding brought against any Loan Party in any other court, it will not assert any cross-claim, counterclaim or setoff, or seek any other affirmative relief, except to the extent that the failure to assert the same will preclude such Loan Party from asserting or seeking the same in the New York Courts.

(2) Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Loan Documents in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 10.16. Confidentiality. Each of the Lenders and each of the Agents agrees (and agrees to cause each of its Affiliates) to use all information provided to it by or on behalf of Holdings, the Borrower or its Restricted Subsidiaries under the Loan Documents or otherwise in connection with the Transactions solely for the purposes of the transactions contemplated by this Agreement and the other Loan Documents and shall not publish, disclose or otherwise divulge such information, other than information that:

- (1) has become generally available to the public other than as a result of a disclosure by such party;
- (2) has been independently developed by such Lender or the Administrative Agent without violating this Section 10.16; or
- (3) was available to such Lender or the Administrative Agent from a third party having, to such Person's knowledge, no obligations of confidentiality to Holdings, the Borrower or any other Loan Party);
- (4) and shall not reveal the same other than to its directors, trustees, officers, employees and advisors with a need to know or to any Person that approves or administers the Term Loans on behalf of such Lender or any numbering, administration or settlement service providers (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16), except:
 - (a) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Authority, the National Association of Insurance Commissioners or of any securities exchange on which securities of the disclosing party or any Affiliate of the disclosing party are listed or traded, in which case such Person agrees, to the extent practicable and not prohibited by applicable law, to inform the Borrower promptly thereof prior to disclosure;
 - (i) as part of normal reporting or review procedures to, or examinations by, Governmental Authorities or any bank accountants or bank regulatory authority exercising examination or regulatory authority, in which case (except with respect to any audit or examination conducted by any such bank accountant or bank regulatory authority) such Person agrees, to the extent practicable and not prohibited by applicable law, to inform the Borrower promptly thereof prior to disclosure;
 - (ii) to its parent companies, Affiliates or auditors (so long as each such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16);
 - (iii) in order to enforce its rights under any Loan Document in a legal proceeding;
 - (iv) to any pledgee or assignee under Section 10.04(5) or any other prospective or actual Assignee of, or prospective or actual Participant in, any of its rights under this Agreement (so long as such Person shall have been instructed to keep the same confidential in accordance with this Section 10.16); and
 - (v) to any direct or indirect contractual counterparty in Hedge Agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 10.16).

(vi) Notwithstanding the foregoing, no such information (other than the fact that such Disqualified Institution is a Disqualified Institution) shall be disclosed to a Disqualified Institution that constitutes a Disqualified Institution at the time of such disclosure without the Borrower's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned).

SECTION 10.17. Platform; Borrower Materials. The Borrower hereby acknowledges that (1) the Administrative Agent or the Arranger will make available to the Lenders materials or information provided by or on behalf of the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**"), and (2) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "**Public Lender**"). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that

(a) all the Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "**PUBLIC**" shall appear prominently on the first page thereof;

(b) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arranger and the Lenders to treat the Borrower Materials as either publicly available information or not material information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws;

(c) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and

(d) the Administrative Agent and the Arranger shall be entitled to treat the Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

Notwithstanding the foregoing, the following Borrower Materials shall be deemed to be marked "PUBLIC" unless the Borrower notifies the Administrative Agent that any such document contains MNPI: (1) the Loan Documents, (2) any notification of changes in the terms of the Term Loans, (3) any notification of the identity of Disqualified Institutions and (4) all information delivered pursuant to clauses (1), (2) and (3) of Section 5.04.

SECTION 10.18. Release of Liens and Guarantees. In the event that any Loan Party conveys, sells, leases, assigns, transfers or otherwise disposes of all or any portion of any of the Equity Interests or assets of any Loan Party (other than Equity Interests of the Borrower) to a Person that is not (and is not required to become) a Loan Party in a transaction not prohibited by the Loan Documents, at the request of the Borrower, any Liens created by any Loan Document in respect of such Equity Interests or assets shall be automatically released and the Administrative Agent shall promptly (and the Lenders hereby authorize the Administrative Agent to) take such action and execute any such documents as may be reasonably requested by Holdings or the Borrower and at the Borrower's expense in connection with such release of any Liens created by any Loan Document in respect of such Equity Interests or assets, and, in the case of a disposition of the Equity Interests of any Subsidiary Loan Party (other than the Borrower) in a transaction permitted by the Loan Documents (including through merger, consolidation, amalgamation or otherwise) and as a result of which such Subsidiary Loan Party would cease to be a Restricted Subsidiary, such Subsidiary Loan Party's obligations under the Collateral Agreement shall be automatically terminated and the Administrative Agent shall promptly (and the Lenders hereby authorize the Administrative Agent to) and at the Borrower's expense take such action and execute any such documents as may be reasonably requested by Holdings or the Borrower to terminate such Subsidiary Loan Party's obligations under the Collateral Agreement. In addition, the Administrative Agent agrees to take such actions as are reasonably requested by Holdings or the Borrower and at the Borrower's expense to terminate the Liens and security interests created by the Loan Documents when all the Obligations (other than Obligations in respect of (i) Specified Hedge Agreements and Cash Management Obligations that are not then due and payable and (ii) contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) are paid in full and the Commitments are terminated.

SECTION 10.19. USA PATRIOT Act Notice. Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act.

SECTION 10.20. Security Documents and Intercreditor Agreements

(a) The parties hereto acknowledge and agree that any provision of any Loan Document to the contrary notwithstanding, prior to the discharge in full of all ABL Claims, the Loan Parties shall not be required to act or refrain from acting under any Security Document with respect to the ABL Priority Collateral in any manner that would result in a "Default" or "Event of Default" (as defined in any ABL Loan Document) under the terms and provisions of the ABL Loan Documents. Each Lender hereunder:

- (1) consents to the subordination of Liens provided for in the Intercreditor Agreement;
- (2) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement; and
- (3) authorizes and instructs the Administrative Agent to enter into the Intercreditor Agreement as on behalf of such Lender.

The foregoing provisions are intended as an inducement to the lenders under the ABL Credit Agreement to extend credit and such lenders are intended third party beneficiaries of such provisions and the provisions of the Intercreditor Agreement.

(i) The parties hereto authorize the Administrative Agent to enter into any First Lien Intercreditor Agreement or Junior Lien Intercreditor Agreement each in the form attached hereto or in such other form as may be satisfactory to the Administrative Agent. The Administrative Agent may from time to time enter into a modification of the Intercreditor Agreement, any First Lien Intercreditor Agreement or any Junior Lien Intercreditor Agreement, as the case may be, so long as the Administrative Agent reasonably determines that such modification is consistent with the terms of this Agreement.

SECTION 10.21. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of Holdings and the Borrower acknowledge and agree that: (1) (a) the arranging and other services regarding this Agreement provided by the Agents and the Arranger are arm's-length commercial transactions between Holdings and the Borrower, on the one hand, and the Agents and the Arranger, on the other hand; (b) the Borrower and Holdings have consulted their own legal, accounting, regulatory and tax advisors to the extent they deemed appropriate; and (c) the Borrower and Holdings are capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (2) (a) each Agent and each Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, Holdings or any other Person and (b) none of the Agents or Arranger has any obligation to the Borrower, Holdings or any of their Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (3) the Agents, the Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, Holdings and their respective Affiliates, and none of the Agents or any Arranger has any obligation to disclose any of such interests to the Borrower, Holdings or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and Holdings hereby waives and releases any claims that it may have against the Agents and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.22. Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Term Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

SECTION 10.23. Acknowledgement and Consent to Bail-In of EEA Financial Institutions Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(1) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(a) the effects of any Bail-in Action on any such liability, including, if applicable:

(b) a reduction in full or in part or cancellation of any such liability;

(i) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(ii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

LESLIE'S POOLMART, INC., as the Borrower

By: _____
Name:
Title:

LESLIE'S HOLDINGS, INC., as Holdings

By: _____
Name:
Title:

[Signature Page to Term Loan Credit Agreement]

NOMURA CORPORATE FUNDING AMERICAS, LLC, as
Administrative Agent, Collateral Agent and Lender

By: _____
Name:
Title:

[Signature Page to Term Loan Credit Agreement]

AMENDMENT No. 2, dated as of September 29, 2016 (this "Amendment"), to the Credit Agreement dated as of October 16, 2012, among LESLIE'S POOLMART, INC., a Delaware corporation (the "Parent Borrower"), LESLIE'S HOLDINGS, INC., a Delaware corporation ("Holdings"), the Subsidiary Borrowers from time to time party thereto, the several banks and other financial institutions or entities from time to time party to the Credit Agreement (the "Lenders"), BANK OF AMERICA, N.A., as administrative agent (in such capacity, including any successor thereto, the "Administrative Agent"), U.S. BANK NATIONAL ASSOCIATION, as Co-Collateral Agent (in such capacity, the "Co-Collateral Agent") and the other parties thereto (as amended, restated, modified and supplemented from time to time prior to the effectiveness of the Amendment, including Amendment No. 1, dated as of August 16, 2016, the "Credit Agreement"), by and among the Parent Borrower, the Subsidiary Borrower, the Guarantors party hereto, each Lender, the Administrative Agent and the Co-Collateral Agent. Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Amended Credit Agreement (as defined below).

WHEREAS, the parties desire to amend the Credit Agreement on the terms set forth herein;

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

Section 1. **Amendment.** The Credit Agreement is, effective as of the Amendment No. 2 Effective Date (as defined below), hereby amended to (i) delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Exhibit A hereto and (ii) to add thereto Schedule 1.01 annexed hereto (the "Amended Credit Agreement").

Section 2. **Representations and Warranties, No Default.** The Borrower hereby represents and warrants that as of the Amendment No. 2 Effective Date, after giving effect to the amendments set forth in this Amendment, (i) no Default or Event of Default exists and is continuing and (ii) all representations and warranties contained in the Amended Credit Agreement are true and correct in all material respects (except for representations and warranties that are already qualified by materiality, in which case such representations and warranties shall be true and correct in all respects) on and as of the date hereof, as though made on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they were true and correct in all material respects (except for representations and warranties that are already qualified by materiality, in which case such representations and warranties shall be true and correct in all respects) as of such earlier date.

Section 3. **Effectiveness.** Section 1 of this Amendment shall become effective on the date (such date, the "Amendment No. 2 Effective Date") that the following conditions have been satisfied or waived:

(i) **Consents.** The Administrative Agent shall have received executed signature pages hereto from each Loan Party, the Administrative Agent, the Co-Collateral Agent and each Lender.

(ii) **Fees and Expenses.** The Administrative Agent shall have received all fees and expenses separately agreed among the Parent Borrower and the Lenders to be payable on the Amendment No. 2 Effective Date.

(iii) **Legal Opinions.** The Administrative Agent shall have received a customary written opinion of Gibson Dunn & Crutcher LLP, New York, California and Texas counsel to the Loan Parties.

(iv) **Solvency Certificate.** The Administrative Agent shall have received a solvency certificate in form reasonably satisfactory to the Administrative Agent.

(v) **Officer's Certificate.** The Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower dated the Amendment No. 2 Effective Date certifying as to the accuracy of the representation and warranty set forth in Section 2.

(vi) **Amendment No. 2 Effective Date Certificates.** The Administrative Agent shall have received a certificate of a Responsible Officer of each of the Loan Parties dated the Amendment No. 2 Effective Date and certifying:

(1) that the charter or other similar organizational document of such Loan Party, and each amendment thereto, delivered on or about the Amendment No. 1 Effective Date, and certified as being a true and correct copy thereof by the Secretary of State or other applicable Governmental Authority of the jurisdiction in which such Loan Party is organized, is in full force and effect on and as of the date hereof and has not been amended, modified or repealed since the Amendment No. 1 Effective Date;

(2) that the certificate of the Secretary of State or other applicable Governmental Authority of the jurisdiction in which such Loan Party is organized, delivered on or about the Amendment No. 1 Effective Date, (A) listing the charter or other similar organizational document of such Person and each amendment thereto on file in such office and, (B) if available, certifying that (i) such amendments are the only amendments to such Person's charter on file in such office, (ii) such Person has paid all franchise taxes to the date of such certificate and (iii) such Person is duly organized and in good standing under the laws of such jurisdiction, is true and complete on and as of the date hereof and has not been amended, modified or repealed since the Amendment No. 1 Effective Date;

(3) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which it is a party or any other document delivered in connection herewith on the Amendment No. 2 Effective Date and certifying that such resolutions have not been modified, rescinded or amended and are in full force and effect; and

(4) that the incumbency and specimen signature of each Responsible Officer executing the Loan Documents specified in this Section 3 (together with a certificate of another officer as to the incumbency and specimen signature of the Responsible Officer executing the certificate pursuant to this Section 3) and delivered on or about the Amendment No. 1 Effective Date, is true and complete on and as of the date hereof and has not been amended, modified or withdrawn since the Amendment No. 1 Effective Date.

Section 4. **Counterparts.** This Amendment may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all of which when taken together shall constitute a single instrument. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or any other electronic transmission shall be effective as delivery of a manually executed counterpart hereof.

Section 5. **Applicable Law.**

The provisions of Section 11.14 and Section 11.15 of the Amended Credit Agreement shall apply to this Amendment mutatis mutandis.

Section 6. **Headings.** The headings of this Amendment are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

Section 7. **Effect of Amendment.** Except as expressly set forth herein, (i) this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders, the Administrative Agent, the Co-Collateral Agent or any other Person, in each case under the Credit Agreement or any other Loan Document, and (ii) shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other provision of either such agreement or any other Loan Document. Each and every term, condition, obligation, covenant and agreement contained in the Credit Agreement as amended hereby, or any other Loan Document as amended hereby, is hereby ratified and re-affirmed in all respects and shall continue in full force and effect. This Amendment shall constitute a Loan Document for purposes of the Credit Agreement and from and after the Amendment No. 2 Effective Date, all references to the Credit Agreement in any Loan Document and all references in the Credit Agreement to "this Agreement", "hereunder", "hereof" or words of like import referring to the Credit Agreement, shall, unless expressly provided otherwise, refer to the Amended Credit Agreement. Each of the Loan Parties hereby consents to this Amendment and confirms that all obligations of such Loan Party under the Loan Documents to which such Loan Party is a party shall continue to apply to the Amended Credit Agreement.

Section 8. **Reaffirmation.** Each of the Loan Parties hereby consents to the amendment of the Credit Agreement described in Section 1 of this Amendment and hereby confirms its respective guarantees, pledges, grants of security interests, subordinations and other obligations, as applicable, under and subject to the terms of each of the Loan Documents to which it is party, and confirms, agrees and acknowledges that, notwithstanding the consummation of this Amendment, such guarantees, pledges, grants of security interests, subordinations and other obligations, and the terms of each of the Loan Documents to which it is a party, except as expressly modified by this Amendment, are not affected or impaired in any manner whatsoever and shall continue to be in full force and effect and shall also guarantee and secure all obligations as amended and reaffirmed pursuant to the Credit Agreement and this Amendment.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized officers as of the day and year first above written.

LESLIE'S POOLMART, INC.,
as the Parent Borrower

By: /s/ Steven M. Weddell
Name: Steven M. Weddell
Title: Secretary, Treasurer, Chief Financial
Officer, Executive Vice President

LESLIE'S HOLDINGS, INC.,
as Holdings

By: /s/ Steven M. Weddell
Name: Steven M. Weddell
Title: Secretary, Treasurer, Chief Financial
Officer, Executive Vice President

CORTZ, INC.,
as a Subsidiary Borrower

By: /s/ Steven M. Weddell
Name: Steven M. Weddell
Title: Secretary, Treasurer, Chief Financial
Officer

LPM MANUFACTURING, INC.,
as a Subsidiary Borrower

By: /s/ Steven M. Weddell
Name: Steven M. Weddell
Title: Secretary, Treasurer, Chief Financial
Officer, Executive Vice President

[Signature Page to Leslie's Poolmart, Inc. ABL Amendment No. 2]

BLACKWOOD & SIMMONS, INC.
HOT TUB WORKS, LLC
IN THE SWIM HOLDING CORP.
ITS HOLDING I CORPORATION
LPM SERVICE, INC.
POOL PARTS, INC.
POOLCENTER.COM, INC.
RAM CHEMICAL & SUPPLY, INC.
SANDY'S POOL SUPPLY, INC.
SPP HOLDING CORPORATION
WAREHOUSE POOL SERVICE &
CONSTRUCTION, INC.
WAREHOUSE POOL SUPPLY, INC.
WAREHOUSE POOLS, INC. ,
as Guarantors

By: /s/ Steven M. Weddell

Name: Steven M. Weddell

Title: Secretary, Treasurer, Chief Financial
Officer, Executive Vice President, as applicable

[Signature Page to Leslie's Poolmart, Inc. ABL Amendment No. 2]

BANK OF AMERICA, N.A.,
as Administrative Agent

By: /s/ Richard D. Hill, Jr.
Name: Richard D. Hill, Jr.
Title: Managing Director

BANK OF AMERICA, N.A.,
as Lender

By: /s/ Richard D. Hill, Jr.
Name: Richard D. Hill, Jr.
Title: Managing Director

[Signature Page to Leslie's Poolmart, Inc. ABL Amendment No. 2]

U.S. BANK NATIONAL ASSOCIATION,
as Lender and Co-Collateral Agent

By: /s/ David Lawrence
Name: David Lawrence
Title: Vice President

[Signature Page to Leslie's Poolmart, Inc. ABL Amendment No. 2]

CREDIT AGREEMENT

Dated as of October 16, 2012,

As Amended by
Amendment No. 1, dated as of August 16, 2016 [and](#)
[Amendment No. 2, dated as of September 29, 2016](#)

among

LESLIE'S POOLMART, INC.,
as the Parent Borrower,

LESLIE'S HOLDINGS, INC.,
as Holdings,

The Subsidiary Borrowers
named herein,

BANK OF AMERICA, N.A. ,
as Administrative Agent,

U.S. BANK NATIONAL ASSOCIATION,
as Co-Collateral Agent and Syndication Agent,

and

The Other Lenders Party Hereto

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

and

U.S. BANK NATIONAL ASSOCIATION,
as Joint Lead Arrangers and Joint Bookrunners

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
ARTICLE I	
DEFINITIONS AND ACCOUNTING TERMS	
1.01. Defined Terms	1
1.02. Other Interpretive Provisions	41
1.03. Accounting Terms	42
1.04. Rounding	42 <u>43</u>
1.05. Times of Day	43
1.06. Letter of Credit Amounts	43
1.07. Joint and Several Liability of Borrowers for Obligations	43
1.08. Parent Borrower	43
1.09. Administrative Agent and Co-Collateral Agent	43
ARTICLE II	
THE COMMITMENTS AND CREDIT EXTENSIONS	
2.01. Revolving Credit Commitments	43 <u>44</u>
2.02. Termination or Reduction of Revolving Credit Commitments	44
2.03. [Reserved]	44 <u>45</u>
2.04. [Reserved]	44 <u>45</u>
2.05. Borrowings, Conversions and Continuations of Loans	45
2.06. Swing Line Commitment	46 <u>47</u>
2.07. Procedure for Swing Line Borrowing; Refunding of Swing Line Loans	47
2.08. Incremental Credit Extensions	48
2.09. Prepayments	49 <u>50</u>
2.10. Interest	50
2.11. Fees	51
2.12. Computation of Interest and Fees	51
2.13. Evidence of Debt	51
2.14. Payments Generally; Administrative Agent's Clawback	52
2.15. Sharing of Payments by Lenders	53
2.16. Letters of Credit Commitment	54
2.17. Procedure for Issuance of Letter of Credit	55
2.18. L/C Fees and Other Charges	55 <u>56</u>
2.19. L/C Participations	56
2.20. Letters of Credit Reimbursement Obligation of the Borrowers	57
2.21. Letters of Credit Obligations Absolute	57 <u>58</u>
2.22. Letter of Credit Payments	58
2.23. Letter of Credit Applications	58
2.24. Defaulting Lender Adjustments	58

ARTICLE III

TAXES, YIELD PROTECTION AND ILLEGALITY

3.01. Taxes	60
3.02. Illegality	63
3.03. Inability to Determine Rates	63
3.04. Increased Costs; Reserves on Eurodollar Rate Loans	64
3.05. Compensation for Losses	65
3.06. Mitigation Obligations; Replacement of Lenders	65 <u>66</u>
3.07. Survival	66

ARTICLE IV

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01. Conditions	66
4.02. Conditions to Each Extension of Credit	68

ARTICLE V

REPRESENTATIONS AND WARRANTIES

5.01. Existence, Qualification and Power	68 <u>69</u>
5.02. Authorization; No Contravention	69
5.03. Governmental Authorization; Other Consents	69
5.04. Binding Effect	69
5.05. Financial Statements; No Material Adverse Effect	69 <u>70</u>
5.06. Litigation	70
5.07. No Default	70
5.08. Ownership of Property; Liens; Investments	70
5.09. Environmental Compliance	71
5.10. Insurance	71 <u>72</u>
5.11. Taxes	72
5.12. ERISA Compliance	72
5.13. Subsidiaries; Equity Interests; Loan Parties	72 <u>73</u>
5.14. Margin Regulations; Investment Company Act	73
5.15. Disclosure	73
5.16. Compliance with Laws	73
5.17. Intellectual Property; Licenses, Etc.	73
5.18. Solvency	73 <u>74</u>
5.19. Labor Matters	73 <u>74</u>
5.20. Collateral Documents	74
5.21. Indebtedness and Liens	74 <u>75</u>
5.22. Licenses and Permits	74 <u>75</u>
5.23. Status as Senior Debt	74 <u>75</u>
5.24. Deposit Accounts; Credit Card Arrangements	74 <u>75</u>
5.25. USA PATRIOT Act; FCPA; OFAC; Anti-Terrorism	75

ARTICLE VI

AFFIRMATIVE COVENANTS

6.01. Financial Statements	76
6.02. Certificates; Other Information	77
6.03. Notices	79

<u>Section</u>	<u>Page</u>
6.04. Payment of Obligations	80
6.05. Preservation of Existence, Etc.	80 <u>81</u>
6.06. Maintenance of Properties	80 <u>81</u>
6.07. Maintenance of Insurance	81
6.08. Compliance	82
6.09. Books and Records	82
6.10. Inspection Rights	82
6.11. Use of Proceeds	83
6.12. Covenant to Guarantee Obligations and Give Security	83
6.13. Compliance with Environmental Laws	84
6.14. Preparation of Environmental Reports	84
6.15. Further Assurances	84 <u>85</u>
6.16. Designation as Senior Debt	85
6.17. Cash Management	85
6.18. Physical Inventories	86
6.19. Compliance with Terms of Leaseholds	86

ARTICLE VII

NEGATIVE COVENANTS

7.01. Liens	87
7.02. Indebtedness	89
7.03. Investments	91 <u>92</u>
7.04. Fundamental Changes	92 <u>93</u>
7.05. Dispositions	93 <u>94</u>
7.06. Restricted Payments	94 <u>95</u>
7.07. Change in Nature of Business	95 <u>96</u>
7.08. Transactions with Affiliates	95 <u>96</u>
7.09. Burdensome Agreements	96 <u>97</u>
7.10. Use of Proceeds	96 <u>98</u>
7.11. Change in Fiscal Year	96 <u>98</u>
7.12. Prepayments, Etc. of Indebtedness	96 <u>98</u>
7.13. Amendment, Etc. of Term Loan Documents and Indebtedness	97 <u>98</u>
7.14. Holding Company	97 <u>98</u>
7.15. Swap Contracts	97 <u>98</u>
7.16. Designation as Designated Senior Debt	97 <u>99</u>
7.17. Deposit Accounts	97 <u>99</u>
7.18. Limitations on Sales and Leasebacks	97 <u>99</u>
7.19. Minimum Consolidated Fixed Charge Coverage Ratio	97 <u>99</u>
7.20. Clean Down	98 <u>99</u>

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

8.01. Events of Default	98 <u>99</u>
8.02. Right to Cure	100 <u>102</u>
8.03. Remedies upon Event of Default	101 <u>102</u>
8.04. Application of Funds	102 <u>103</u>

ARTICLE IX

AGENTS

9.01.	Appointment and Authority	102 <u>104</u>
9.02.	Rights as a Lender	103 <u>104</u>
9.03.	Exculpatory Provisions	103 <u>105</u>
9.04.	Reliance by Administrative Agent	104 <u>106</u>
9.05.	Delegation of Duties	104 <u>106</u>
9.06.	Resignation of Administrative Agent	105 <u>106</u>
9.07.	Non-Reliance on Administrative Agent, Co-Collateral Agent and Other Lenders	106 <u>108</u>
9.08.	No Other Duties, Etc.	106 <u>108</u>
9.09.	Administrative Agent May File Proofs of Claim	107 <u>108</u>
9.10.	Collateral and Guaranty Matters	107 <u>109</u>
9.11.	Indemnification	108 <u>110</u>
9.12.	Withholding Taxes	109 <u>110</u>
9.13.	Reports and Financial Statements	109 <u>111</u>

ARTICLE X

CONTINUING GUARANTY

10.01.	Guaranty	110 <u>111</u>
10.02.	Rights of Lenders	110 <u>112</u>
10.03.	Certain Waivers	110 <u>112</u>
10.04.	Obligations Independent	111 <u>112</u>
10.05.	Subrogation	111 <u>112</u>
10.06.	Termination; Reinstatement	111 <u>113</u>
10.07.	Subordination	111 <u>113</u>
10.08.	Stay of Acceleration	111 <u>113</u>
10.09.	Condition of the Borrowers	112 <u>113</u>

ARTICLE XI

MISCELLANEOUS

11.01.	Amendments, Etc.	112 <u>113</u>
11.02.	Notices; Effectiveness; Electronic Communications	114 <u>115</u>
11.03.	No Waiver; Cumulative Remedies	115 <u>117</u>
11.04.	Expenses; Indemnity; Damage Waiver	115 <u>117</u>
11.05.	Payments Set Aside	117 <u>119</u>
11.06.	Successors and Assigns	117 <u>119</u>
11.07.	Treatment of Certain Information; Confidentiality	120 <u>122</u>
11.08.	Right of Setoff	121 <u>123</u>
11.09.	Interest Rate Limitation	122 <u>123</u>
11.10.	Counterparts; Integration; Effectiveness	122 <u>123</u>
11.11.	Survival of Representations and Warranties	122 <u>124</u>
11.12.	Severability	122 <u>124</u>
11.13.	Replacement of Lenders	122 <u>124</u>
11.14.	Governing Law; Jurisdiction; Etc.	123 <u>125</u>

<u>Section</u>	<u>Page</u>
11.15. WAIVER OF JURY TRIAL	+24 <u>126</u>
11.16. No Advisory or Fiduciary Responsibility	+24 <u>126</u>
11.17. USA PATRIOT Act Notice	+25 <u>127</u>
11.18. Electronic Execution of Assignments and Certain Other Documents	+25 <u>127</u>
11.19. No Strict Construction	+26 <u>127</u>
11.20. Attachments	+26 <u>127</u>
11.21. Acknowledgement and Consent to Bail-In of EEA Financial Institutions.	+26 <u>127</u>
SIGNATURES	S-1

SCHEDULES

<u>1.01</u>	<u>Revolving Credit Commitments</u>
5.01	Loan Parties
5.03	Certain Authorizations
5.08(c)	Owned Real Property
5.08(d)(i)	Leased Real Property (Lessee)
5.08(d)(ii)	Leased Real Property (Lessor)
5.08(e)	Existing Investments
5.10	Insurance
5.13	Subsidiaries and Other Equity Investments
5.17	Intellectual Property Rights
5.19	Labor Matters
5.24	Deposit Accounts; Processing and Payment Arrangements
6.02	Certain Reporting Requirements
6.12	Subsidiary Guarantors
7.01(b)	Existing Liens
7.02	Existing Indebtedness
7.08(d)	Transactions with Affiliates
7.09	Burdensome Agreements
11.02	Administrative Agent's Office, Certain Addresses for Notices

EXHIBITS

Form of

A-1	Committed Loan Notice
A-2	Conversion/Continuation Notice
B	Lender Addendum
C	Revolving Credit Note
D	Compliance Certificate
E	Assignment and Assumption
F	Guarantee and Collateral Agreement
G	Opinion Matters – Counsel to Loan Parties
H	Perfection Certificate
I	Closing Certificate
J	Collateral Access Agreement
K	Customs Broker Agreement
L	Borrowing Base Certificate
M	Credit Card Notification
N	Joinder Agreement
O	United States Tax Compliance Certificate

CREDIT AGREEMENT

This CREDIT AGREEMENT (this "Agreement") is entered into as of October 16, 2012 and amended by Amendment No. 1, dated as of August 16, 2016, and Amendment No. 2, dated as of September 29, 2016, among LESLIE'S POOLMART, INC., a Delaware corporation ("Leslie's" or the "Parent Borrower"), the Subsidiary Borrowers from time to time party hereto, LESLIE'S HOLDINGS, INC., a Delaware corporation ("Holdings"), each lender from time to time party hereto, BANK OF AMERICA, N.A., as Administrative Agent, and U.S. BANK NATIONAL ASSOCIATION, as Co-Collateral Agent.

PRELIMINARY STATEMENTS:

The Borrowers have requested that the Lenders provide a ~~\$125,000,000~~ 150,000,000 asset based revolving credit facility to be used, in part, to (i) refinance indebtedness incurred under that certain credit agreement, dated as of November 30, 2010 (the "Existing Credit Agreement"), by and among Leslie's Poolmart, Inc., Leslie's Holdings, Inc. and Bank of America, N.A., as Administrative Agent and the other lenders party thereto, as amended, and (ii) for other general corporate purposes (including permitted acquisitions), and the Lenders have indicated their willingness to lend, on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

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

"ABL Priority Collateral" has the meaning ascribed to such term in the Intercreditor Agreement.

"ACH" means automated clearing house transfers.

"Acceptable Document of Title" means, with respect to any Inventory, a negotiable bill of lading or other Document (as defined in the UCC) that (a) is issued by a common carrier which is not an Affiliate of any Loan Party which is in actual possession of such Inventory, (b) reflects a Borrower as consignee or, if requested by the Administrative Agent after the occurrence and during the continuance of an Event of Default, names the Administrative Agent as consignee, and (c) is not subject to any Lien (other than Permitted Liens described in clauses (a), (d), (n) and (w) of Section 7.01).

"Accounts" means "accounts" as defined in the UCC, and also means a right to payment of a monetary obligation, whether or not earned by performance, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a policy of insurance issued or to be issued, (d) for a secondary obligation incurred or to be incurred, or (d) arising out of the use of a credit or charge card or information contained on or for use with the card.

"Adjustment Date" means the first day of each Fiscal Quarter, commencing with the Fiscal Quarter beginning December 30, 2012.

"Additional Lender" has the meaning ascribed thereto in Section 2.08(d).

“Administrative Agent” means Bank of America, N.A. in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent Fee Letter” means the Administrative Agent Fee Letter dated as of the Closing Date by and between the Administrative Agent and the Parent Borrower.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 11.02, or such other address or account as the Administrative Agent may from time to time notify to the Parent Borrower and the Lenders.

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

“Agent Parties” has the meaning ascribed thereto in Section 11.02(c).

“Aggregate Commitments” means the Revolving Credit Commitments of all the Lenders. “Aggregate Exposure” means, with respect to any Lender at any time, an amount equal to the aggregate amount of such Lender’s Revolving Credit Commitment then in effect or, if the Revolving Credit Commitments have been terminated, the amount of such Lender’s Revolving Extensions of Credit then outstanding.

“Agreement” means this Credit Agreement.

“AHYDO Catch-Up Payment” means any redemption, retirement or repayment made in respect of Indebtedness to the extent required to prevent such Indebtedness from being treated as an “applicable high yield discount obligation” within the meaning of Section 163(i)(1) of the Code and so that such Indebtedness shall be treated as not having “significant original issue discount” within the meaning of Section 163(i)(2) of the Code.

“Amendment No. 1” means Amendment No. 1 to this Agreement, dated as of August 16, 2016.

“Amendment No. 1 Effective Date” has the meaning set forth in Amendment No. 1.

[“Amendment No. 2” means Amendment No. 2 to this Agreement, dated as of September 29, 2016.](#)

[“Amendment No. 2 Effective Date” has the meaning set forth in Amendment No. 2.](#)

“Applicable Margin” means:

- (a) From and after the Closing Date until the first Adjustment Date no less than the percentages set forth in Level II of the pricing grid below; and
- (b) From and after the first Adjustment Date and on each Adjustment Date thereafter, the Applicable Margin shall be determined from the pricing grid below based upon Average Daily Excess Availability for the most recently ended Fiscal Quarter immediately preceding such Adjustment Date; provided that if any Borrowing Base Certificates are at any time restated or otherwise revised (including as a result of an audit) or if the information set forth in any Borrowing Base Certificates otherwise proves to be false or incorrect such that the

Applicable Margin would have been higher than was otherwise in effect during any period, without constituting a waiver of any Default or Event of Default arising as a result thereof, interest due under this Agreement shall be immediately recalculated at such higher rate for any applicable periods and shall be due and payable on demand.

<u>Level</u>	<u>Average Daily Excess Availability as a Percentage of the Aggregate Commitments</u>	<u>Eurodollar Rate Loans Applicable Margin</u>	<u>Base Rate Loans Applicable Margin</u>
I	Greater than 66 2/3%	1.25%	0.25%
II	Greater than 33 1/3% but less than or equal to 66 2/3%	1.50%	0.50%
III	Less than or equal to 33 1/3%	1.75%	0.75%

Notwithstanding anything to the contrary herein contained, upon the occurrence of an Event of Default, the Applicable Margin, at the option of the Administrative Agent or at the direction of the Required Lenders, shall be immediately increased to the percentages set forth in Level III of the pricing grid above (even if the Average Daily Excess Availability requirements for a different Level have been met) for so long as such Event of Default is continuing.

“Applicable Percentage” means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of such Lender’s Aggregate Exposure at such time to the sum of the Aggregate Exposures of all Lenders.

“Application” means an application, in such form as the relevant Issuing Lender may specify from time to time, requesting such Issuing Lender to issue a Letter of Credit to be issued (which application shall be subject to Section 2.23).

“Appraised Value” means the net orderly liquidation value of the Borrowers’ Inventory (expressed as a percentage of the Cost of such Inventory) as determined from time to time by an independent appraiser engaged by the Administrative Agent.

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

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease and (c) all Synthetic Debt of such Person.

“Audited Financial Statements” means the audited consolidated balance sheet of the Parent Borrower and its Subsidiaries for the Fiscal Years ended October 3, 2009, October 2, 2010 and October 1, 2011, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such Fiscal Years of the Parent Borrower and its Subsidiaries, including the notes thereto.

“Availability Reserves” means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves, if any, as the Administrative Agent and Co-Collateral Agent from time to time determine in their reasonable discretion as being reasonably required pursuant to this Agreement, equal to the sum of (a) the amount of all sales taxes that have been collected by the Borrowers and not remitted to any state taxing authority when due, (b) an amount equal to two (2) months’ gross rent for (i) each leased Store of the Borrowers located in a Landlord Lien State (consistent with the Administrative Agent’s and Co-Collateral Agent’s usual practices) other than those Stores with respect to which the Administrative Agent has received a Collateral Access Agreement, and (ii) each leased distribution center or other location at which Inventory is maintained (but excluding any Store) other than those distribution centers and other locations with respect to which the Administrative Agent has received a Collateral Access Agreement, (c) Customer Credit Liabilities and customer deposits, (d) an amount based on rent which is past due for more than ten days for any of the Borrowers’ leased locations, with the exception of past due rent that is the subject of a Permitted Protest as determined by the Administrative Agent and the Co-Collateral Agent in their reasonable discretion, (e) an amount equal to 50% of the liabilities for gift cards accrued by the Borrowers, as shown on the most recent balance sheet of the Parent Borrower in accordance with GAAP, (f) such other reserves as the Administrative Agent and the Co-Collateral Agent from time to time determines in their reasonable discretion as being reasonably required pursuant to this Agreement, including, without limitation, reserves implemented in connection with Permitted Liens and Permitted Indebtedness, but in the case of each of the foregoing, only to the extent such Liens, encumbrances and Indebtedness relate or in any way affect the Borrowing Base, (g) Bank Product Reserves and (h) Cash Management Reserves.

“Average Daily Excess Availability” means the average daily Excess Availability for the immediately preceding Fiscal Quarter.

“Available Revolving Credit Commitment” means, with respect to any Lender at any time, an amount equal to (a) such Lender’s Revolving Credit Commitment then in effect minus (b) such Lender’s Revolving Extensions of Credit then outstanding; provided, that in calculating any Lender’s Revolving Extensions of Credit for the purpose of determining such Lender’s Available Revolving Credit Commitment pursuant to Section 2.11(b), the aggregate principal amount of Swing Line Loans then outstanding shall be deemed to be zero.

“Average Revolving Loan Utilization” means, at any Adjustment Date, the average daily outstanding amount of Loans and Letters of Credit for the Fiscal Quarter immediately preceding such Adjustment Date, divided by the Aggregate Commitments at such time.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bank Products” means any services or facilities provided to any Loan Party by any Lender or any of its Affiliates (but excluding Cash Management Services) on account of (a) credit cards, (b) Swap Contracts, (c) purchase cards, (d) merchant services constituting a line of credit and (e) leasing.

“Bank Product Reserves” means such reserves as the Administrative Agent from time to time determines in its reasonable discretion as being appropriate to reflect the liabilities and obligations of the Borrowers and their Subsidiaries with respect to Bank Products then provided or outstanding.

“Base Rate” means, for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus 1/2 of 1% and (c) the Eurodollar Rate plus 1.00%. For purposes hereof: “Prime Rate” means, at any time, the rate of interest per annum publicly announced or otherwise identified from time to time by Bank of America, N.A. at its principal office in New York, New York as its prime rate. The parties hereto acknowledge that the rate announced publicly by Bank of America, N.A. as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Blocked Account” has the meaning ascribed thereto in Section 6.17.

“Blocked Account Agreement” has the meaning ascribed thereto in Section 6.17.

“Blocked Account Bank” means each bank with whom deposit accounts are maintained in which any funds of any of the Loan Parties from one or more DDAs are concentrated and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof.

“Borrowers” means the Parent Borrower and the Subsidiary Borrowers, collectively.

“Borrower Materials” has the meaning ascribed thereto in Section 6.02.

“Borrowing” means Loans of the same Type, made on the same date and, in the case of Eurodollar Rate Loans, as to which a single Interest Period is in effect.

“Borrowing Base” means, at any time of calculation, an amount equal to:

- (a) the lesser of (i) \$50,000,000 and (ii) 100% of cash and Cash Equivalents that are either held collectively in deposit accounts and securities accounts either (x) maintained with the Administrative Agent or (y) that constitute Blocked Accounts or that otherwise are the subject of a control agreement in favor of the Administrative Agent, subject to no other Liens (other than non-consensual Liens and Liens permitted by clauses (a), (l) and (w) of Section 7.01); plus
- (b) the Credit Card Receivables Component; plus
- (c) the Trade Receivables Component; plus
- (d) the Inventory Component; plus
- (e) the Letter of Credit Component; minus

(f) the then amount of all Availability Reserves.

“Borrowing Base Certificate” has the meaning ascribed thereto in Section 6.02(i).

“Borrowing Date” means any Business Day specified by the Borrowers as a date on which the Borrowers requests the relevant Lenders to make Loans hereunder.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located or the Parent Borrower’s headquarters are located and, if such day relates to any Eurodollar Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Capital Expenditures” means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations) which is, or should be in accordance with GAAP, reflected as a “capital expenditure” in a consolidated statement of cash flows of such Person for the period in which such expenditure occurs, but excluding (i) expenditures constituting reinvestment of Net Cash Proceeds permitted by Section 2.09(b)(ii) and (ii) leasehold improvement expenditures funded directly or indirectly with cash allowances provided by landlords in the ordinary course of business.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“Cash Collateral Account” means a blocked non-interest-bearing account established by one or more of the Loan Parties with, and in the name of, the Administrative Agent, for its own benefit and the ratable benefit of the other Secured Parties, under the sole and exclusive dominion and control of the Administrative Agent, in the name of the Administrative Agent or as the Administrative Agent shall otherwise direct, in which deposits are required to be made in accordance with Section 2.09(b)(i), Section 2.24(a) or Section 8.03.

“Cash Collateralize” means, as to any Letter of Credit, to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the relevant Issuing Lender and the Lenders, as collateral for the L/C Obligations, (i) cash or deposit balances in an amount equal to 103% of the aggregate amount available to be drawn under the applicable Letter of Credit pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the relevant Issuing Lender, or (ii) a “backstop” letter of credit (a “Backstop LC”) in an amount equal to 100% of the aggregate amount available to be drawn under the applicable Letter of Credit pursuant to documentation in form and substance, and with a counterparty, reasonably satisfactory to the Administrative Agent and the relevant Issuing Lender; provided that in the case of this clause (ii), the Administrative Agent or the relevant Issuing Lender may, at their discretion, demand at any time that such Backstop LC be funded or be replaced with a new Backstop LC with revised terms or a different counterparty reasonably satisfactory to them, in each case upon a determination by the Administrative Agent or the relevant Issuing Lender, acting reasonably and in good faith, that the credit risk to the Lenders of the relevant Backstop LC issuer in respect of the relevant Letter of Credit has deteriorated in any material respect. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Dominion Event” means either (i) the occurrence and continuance of any Event of Default or (ii) Excess Availability at any time is less than the greater of (A) 12.5% of the Line Cap at the

time of calculation, or (B) \$8,750,000. For purposes of this Agreement, the occurrence of a Cash Dominion Event shall be deemed continuing (i) so long as such Event of Default has not been waived, and/or (ii) if the Cash Dominion Event arises pursuant to clause (ii) above, until Excess Availability has exceeded the amounts required pursuant to clause (ii) of this definition for thirty (30) consecutive days, in which case a Cash Dominion Event shall no longer be deemed to be continuing for purposes of this Agreement; provided that a Cash Dominion Event shall be deemed continuing (even if an Event of Default is no longer continuing and/or Excess Availability exceeds the required amount for thirty (30) consecutive days) at all times after a Cash Dominion Event has occurred and been discontinued on five (5) occasion(s) after the Closing Date.

“Cash Equivalents” means any of the following types of Investments:

- (a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 365 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;
- (b) time deposits or insured certificates of deposit or bankers’ acceptances that are either (i) issued by (or with) (A) a Lender or (B) any commercial bank organized under the laws of the United States of America, any state thereof or the District of Columbia or that is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, or (ii) in an amount of less than \$250,000 in the aggregate issued by any other commercial bank insured by the Federal Deposit Insurance Corporation, in each case with maturities of not more than 365 days from the date of acquisition thereof;
- (c) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than 365 days from the date of acquisition thereof;
- (d) commercial paper rated at least “Prime-1” (or the then equivalent grade) by Moody’s or at least “A-1” (or the then equivalent grade) by S&P, in each case with maturities of not more than 365 days from the date of acquisition thereof;
- (e) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (a) above or that are (i) marketable general obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within 365 days of the date of purchase and, at the time of purchase, having a credit rating of “A” or better from either S&P or Moody’s (or carrying an equivalent rating by a nationally recognized rating agency, if both of S&P and Moody’s cease publishing ratings of investments) or (ii) investments in certificates of deposit, eurodollar time deposits, bankers’ acceptances or overnight bank deposits issued by a bank organized under the laws of the United States of America or any state thereof or the District of Columbia, in each case having capital, surplus and undivided profits totaling more than \$500,000,000 and rated at least “A” by S&P and “A-2” by Moody’s (or carrying an equivalent rating by a nationally recognized rating agency, if both of S&P and Moody’s cease publishing ratings of investments), maturing within 365 days of purchase; and

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

“Cash Management Reserves” means such reserves as the Administrative Agent and the Co-Collateral Agent, from time to time, determine in their reasonable discretion as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Parent Borrower and its Subsidiaries with respect to Cash Management Services then provided or outstanding.

“Cash Management Services” means any one or more of the following types or services or facilities provided to the Parent Borrower or any of its Subsidiaries by any Lender or any of its Affiliates: (a) ACH transactions, (b) cash management services, including, without limitation, controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) foreign exchange facilities, (d) credit or debit cards, and (e) merchant services not constituting a Bank Product.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder.

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

“CFC” means a Person that is a controlled foreign corporation under Section 957 of the Code.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. For purposes of this definition (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, are in each case deemed to have been adopted and to have taken effect after the date of this Agreement.

“Change of Control” means an event or series of events by which:

(a) at any time prior to the creation of a Public Market, the Equity Investors shall cease to own beneficially, either directly or indirectly, equity securities in Holdings representing more than 50% of the combined voting power of all equity securities entitled to vote for members of the board of directors or equivalent governing body of Holdings (the “Board of Directors”) (such equity securities excluding any class of preferred stock with a right to elect two or fewer such members so long as at all times at least a majority of the Board of Directors shall have been elected by the Equity Investors), with such equity securities being referred to hereinafter as the “Voting Shares”; or

(b) at any time after the creation of a Public Market, any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such Person or its subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than any of the Equity Investors, becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934) of more than 35% or more of the combined voting power of the Voting Shares of Holdings, and at such time, the Equity Investors beneficially own, directly or indirectly, a lesser percentage of the combined voting power of the Voting Shares of Holdings; provided that any plan, agreement or arrangement among the Equity Investors and any such “person” or “group” shall not be considered to represent a “group” for purposes of this definition so long as the Equity Investors continue to have Voting Shares sufficient to enable them to elect, and have not granted a proxy preventing them from electing, a greater number of members of the Board of Directors than such person or group would have without the participation of the Equity Investors pursuant to any such plan, agreement or arrangement that gave rise to the determination in question; or

(c) except as permitted by Section 7.04, Holdings shall cease to own (directly or indirectly) and control legally and beneficially the Equity Interests in the Parent Borrower; or

(d) a “change of control” or any comparable term under, and as defined in any instrument, document or agreement relating to Indebtedness above the Threshold Amount shall have occurred and not been the subject of a waiver or other modification, in any case that gives the holders thereof the immediate right to require Holdings or any of its Subsidiaries to repurchase, offer to repurchase or immediately repay such Indebtedness.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 11.01.

“Co-Collateral Agent” means U.S. Bank National Association in its capacity as Co-Collateral Agent under this Agreement, or any successor co-collateral agent.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral” means all of the property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties, including the “Collateral” referred to in the Collateral Documents.

“Collateral Access Agreement” means an agreement substantially in the form of Exhibit J.

“Collateral Documents” means, collectively, the Guarantee and Collateral Agreement, each of the collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Commercial Letter of Credit” means any Letter of Credit issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by any Borrower in the ordinary course of business of such Borrower.

“Commitment Fee Rate” means 0.25% per annum.

“Committed Loan Notice” means a notice of a Borrowing, which, if in writing, shall be substantially in the form of Exhibit A-1 or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Parent Borrower.

“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.

“Compliance Certificate” means a certificate substantially in the form of Exhibit D.

“Concentration Account” has the meaning ascribed thereto in Section 6.17.

“consolidated” means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

“Consolidated EBITDA” means with respect to the Parent Borrower and its Subsidiaries, for any Measurement Period, the sum (without duplication) of (i) Consolidated Net Income and (ii) to the extent Consolidated Net Income has been reduced thereby, (A) all income taxes of the Parent Borrower and its Subsidiaries paid or accrued in accordance with GAAP for such Measurement Period, (B) Consolidated Interest Expense, (C) Management Fees, (D) Consolidated Non-cash Charges, (E) Transaction Expenses incurred within twelve months of the Closing Date, (F) costs and expenses incurred in connection with the issuance, prepayment or amendment of or refinancing of Indebtedness or issuance of equity permitted hereunder (in each case whether or not such transaction is consummated), (G) out-of-pocket costs and expenses related to actual or potential Investments permitted hereunder, including acquisitions (in each case whether or not such investment or acquisition is consummated), (H) fees, costs and expenses incurred under the Revolving Credit Facility, (I) non-recurring cash expenses or losses; provided that the aggregate amount added to Consolidated EBITDA pursuant to this clause (I) during the term of this Agreement shall not exceed \$20,000,000 and shall be demonstrated in reasonable detail in the relevant Compliance Certificate (it being understood and agreed that Item 10(e) of Regulation S-K of the Securities Act of 1933 shall not constitute a limitation on any determination of non-recurring items and non-recurring items) and (J) fees, costs and expenses incurred in connection with the Acquisition incurred within twelve months of the closing date of the Acquisition less (iii) any non-cash items increasing Consolidated Net Income for the Measurement Period, all as determined on a consolidated basis for the Parent Borrower and its Subsidiaries in accordance with GAAP.

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Parent Borrower and its Subsidiaries on a consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money and all principal obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct obligations arising under letters of credit (including standby and commercial letters of credit), bankers’ acceptances, bank guaranties, surety bonds and other similar instruments, in each case, to the extent required to be reflected on a consolidated balance sheet of the Parent Borrower in accordance with GAAP and representing any unreimbursed drawings thereunder, (d) all obligations in respect of the deferred purchase price of property or services (other than (i) deferred compensation and (ii) trade accounts payable in the ordinary course of business) to the extent that the liability on account of any such obligations becomes fixed (including, without limitation, earn-outs to the extent they have been treated as a liability on the balance sheet in accordance with GAAP and such liability has become fixed), (e) all Attributable Indebtedness, (f) without duplication, all Guarantees with

respect to outstanding Indebtedness of the types specified in clauses (a) through (c) above of Persons other than the Parent Borrower or any Subsidiary, and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Parent Borrower or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is non-recourse to the Parent Borrower or such Subsidiary, minus, unrestricted cash and Cash Equivalents (other than any cash or cash equivalents relating to or derived from any Cure Amount or from any incurrence of Indebtedness on the date of determination) up to \$75,000,000 on the consolidated balance sheet of the Parent Borrower as at such date to the extent that the use thereof for application to payment of Indebtedness is not prohibited by law or any contract to which the Parent Borrower or any of its Subsidiaries is a party and provided that such cash and Cash Equivalents are not subject to any Liens other than Liens created under the Collateral Documents, Liens securing the Term Loan Facility or non-consensual Permitted Liens imposed under applicable law.

“Consolidated Fixed Charge Coverage Ratio” means, at any date of determination, the ratio of (a) (i) Consolidated EBITDA for the most recently ended Measurement Period prior to such date minus (ii) Unfinanced Capital Expenditures made in such period minus (iii) the aggregate amount of Federal, state, local and foreign income taxes paid in cash in such period to (b) the sum of (i) Debt Service Charges for such period plus (ii) the aggregate amount of all Restricted Payments paid in cash, in each case, of or by the Parent Borrower and its Subsidiaries for such period, all as determined on a consolidated basis in accordance with GAAP.

“Consolidated Interest Expense” means, with respect to the Parent Borrower and its Subsidiaries for any Measurement Period, the sum of, without duplication: (i) the aggregate of the interest expense of the Parent Borrower and its Subsidiaries for such Measurement Period determined on a consolidated basis in accordance with GAAP (excluding any accruals of dividends on preferred stock that are not paid in cash in such period, Indebtedness or Disqualified Capital Stock), including, without limitation, (a) any amortization of debt discount, (b) the net costs under Swap Contracts, (c) all capitalized interest and (d) the interest portion of any deferred payment obligation; and (ii) the interest component of capitalized lease obligations paid, accrued and/or scheduled to be paid or accrued by the Parent Borrower and its Subsidiaries during such Measurement Period as determined on a consolidated basis in accordance with GAAP.

“Consolidated Net Income” means, with respect to the Parent Borrower and its Subsidiaries, for any Measurement Period, the aggregate net income (or loss) of the Parent Borrower and its Subsidiaries for such Measurement Period on a consolidated basis, determined in accordance with GAAP; provided that there shall be excluded therefrom (a) after-tax gains from asset sales or abandonments or reserves relating thereto, (b) after-tax items classified as extraordinary or nonrecurring gains or losses, (c) the net income (but not loss) of any Subsidiary of the Parent Borrower to the extent that the declaration of dividends or similar distributions by that Subsidiary of that income is restricted by contract, operation of law or otherwise, (d) the net income of any person, other than a Subsidiary of the Parent Borrower, except to the extent of cash dividends or distributions paid to the Parent Borrower or to a wholly owned Subsidiary of the Parent Borrower by such person, (e) any restoration to income of any contingency, reserve, except to the extent that provision for such reserve was made out of Consolidated Net Income accrued at any time following the Closing Date, (f) income or loss attributable to discontinued operations (including, without limitation, operations disposed of during such Measurement Period whether or not such operations were classified as discontinued), (g) in the case of a successor to the Parent Borrower or any of its Subsidiaries by consolidation or merger or as a transferee of the Parent Borrower’s or any of its Subsidiaries’ assets, any earnings of the successor corporation prior to such consolidation, merger or transfer of assets and (h) accruals of dividends on preferred stock that are not paid in cash in such period, Indebtedness or Disqualified Capital Stock, to the extent that accrued dividends are classified as interest expense in accordance with GAAP.

“Consolidated Non-cash Charges” means, with respect to the Parent Borrower and its Subsidiaries, for any Measurement Period, the aggregate depreciation, amortization and other non-cash expenses and charges of the Parent Borrower and its Subsidiaries reducing Consolidated Net Income of the Parent Borrower and its Subsidiaries for such Measurement Period, determined on a consolidated basis in accordance with GAAP (including, without limitation, any LIFO adjustments, but excluding any such charge which requires an accrual of or a reserve for cash charges for any future period).

“Consolidated Total Assets” means, as of any date, the total assets of the Parent Borrower and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, determined based upon the most recent month-end financial statements available internally as of the date of determination, and calculated on a Pro Forma Basis.

“Consolidated Total Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA of the Parent Borrower and its Subsidiaries for the most recently completed Measurement Period.

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

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

“Conversion/Continuation Notice” means a notice of (a) a conversion of Loans from one Type to the other, or (b) a continuation of Eurodollar Rate Loans, pursuant to Section 2.05(a), which, if in writing, shall be substantially in the form of Exhibit A-2.

“Cost” means the calculated cost of purchases, based upon the Borrowers’ accounting practices, known to the Administrative Agent, which practices are in effect on the Closing Date as such calculated cost is determined from invoices received by the Borrowers, the Borrowers’ purchase journals or the Borrowers’ stock ledger. “Cost” does not include inventory capitalization costs (other than capitalized distribution costs) or other non-purchase price charges (such as freight) used in the Borrowers’ calculation of cost of goods sold.

“Covenant Compliance Event” means that Excess Availability at any time is less than the greater of (a) ten (10%) percent of the Line Cap or (b) \$7,000,000. For purposes hereof, the occurrence of a Covenant Compliance Event shall be deemed continuing until Excess Availability has exceeded the amounts set forth above for thirty (30) consecutive days, in which case a Covenant Compliance Event shall no longer be deemed to be continuing for purposes of this Agreement. The termination of a Covenant Compliance Event as provided herein shall in no way limit, waive or delay the occurrence of a subsequent Covenant Compliance Event in the event that the conditions set forth in this definition again arise.

“Credit Card Advance Rate” means 90%.

“Credit Card Notifications” has the meaning ascribed thereto in Section 6.17.

“Credit Card Receivables Component” means the face amount of Eligible Credit Card Receivables multiplied by the Credit Card Advance Rate.

“Credit Extension” means the making of a Loan or the issuance of a Letter of Credit by a Lender or Issuing Lender, as the case may be.

“Cure Amount” has the meaning ascribed thereto in Section 8.02.

“Cure Right” has the meaning ascribed thereto in Section 8.02.

“Customer Credit Liabilities” means, at any time, the aggregate remaining value at such time of (a) outstanding gift certificates and gift cards sold by the Borrowers entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, and (b) outstanding merchandise credits issued by the Borrowers.

“Customs Broker Agreement” means an agreement in substantially the form attached hereto as Exhibit K among the applicable Borrower, a customs broker or other carrier, and the Administrative Agent, in which the customs broker or other carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Administrative Agent and agrees, upon notice from the Administrative Agent, to hold and dispose of the subject Inventory solely as directed by the Administrative Agent.

“CVC” means CVC Capital Partners.

“DDA” means each checking or other demand deposit account maintained by any of the Loan Parties. All funds in each DDA shall be conclusively presumed to be Collateral and proceeds of Collateral and the Administrative Agent and the Lenders shall have no duty to inquire as to the source of the amounts on deposit in any DDA.

“Debt Representative” means, with respect to any Indebtedness that is secured on a junior basis to the Revolving Credit Loans, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

“Debt Service Charges” for any Measurement Period, the sum of (a) Consolidated Interest Expense paid in cash or required to be paid in cash for such period, plus (b) principal payments made or required to be made on account of Indebtedness (excluding the Obligations and any principal payments made with the proceeds of Permitted Refinancing Indebtedness or with the proceeds of Indebtedness under the Term Loan Facility, but including, without limitation, any Synthetic Lease Obligations) for such period, in each case determined in accordance with GAAP.

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

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

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Margin, if any, applicable

to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan plus 2% per annum and (b) when used with respect to Letter of Credit Fees, a rate equal to the applicable percentage set forth in Section 2.18(a) for Standby Letters of Credit or Commercial Letters of Credit, as applicable, plus 2% per annum.

“Defaulting Lender” means, subject to Section 2.24(b), any Lender that (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans or participations in respect of Letters of Credit or Swing Line Loans, within one Business Day of the date required to be funded by it hereunder, (b) has notified the Parent Borrower, or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after a request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property (including, without limitation, any Equity Interests of any other Person held by a specified Person) 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, in each case, resulting in consideration to such Person (including assumption of liabilities) for any such transaction or series of related transactions in excess of ~~\$1,000,000~~ \$5,000,000.

“Disqualified Capital Stock” means those Equity Interests which, by their terms (or by the terms of any security into which such Equity Interests are convertible or exchangeable), or upon the happening of any event, mature or are mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or are redeemable at the sole option of the holder thereof.

“Distribution” means a distribution of up to \$226,602,805 by the Parent Borrower (and the further distribution of such amount by Holdings to its shareholders) on or about the Amendment No. 1 Effective Date.

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

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

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

“Eligible Credit Card Receivables” means Accounts due to a Borrower on a non-recourse basis from Visa, Mastercard, American Express Company, Discover, and other major credit card processors, in each case acceptable to the Administrative Agent in its reasonable discretion, as arise in the ordinary course of business, which have been earned by performance, and are deemed by the Administrative Agent in its reasonable discretion to be eligible for inclusion in the calculation of the Borrowing Base. Without limiting the foregoing, none of the following shall be deemed to be Eligible Credit Card Receivables:

- (a) Accounts due from major credit card processors that have been outstanding for more than five (5) Business Days from the date of sale;
- (b) Accounts due from major credit card processors with respect to which a Borrower does not have good, valid and marketable title, free and clear of any Lien (other than Liens granted to the Administrative Agent for the benefit of the Secured Parties and Liens in favor of the Term Loan Administrative Agent permitted by Section 7.01(w));
- (c) Accounts due from major credit card processors that are not subject to a first priority security interest in favor of the Administrative Agent for the benefit of the Secured Parties (it being the intent that chargebacks in the ordinary course by the credit card processors shall not be deemed violative of this clause (c));
- (d) Accounts due from major credit card processors which are disputed, are with recourse, or with respect to which a claim, counterclaim, offset or chargeback has been asserted (to the extent of such claim, counterclaim, offset or chargeback);
- (e) Accounts due from major credit card processors as to which the credit card processor has the right under certain circumstances to require a Borrower to repurchase the Accounts from such credit card processor;
- (f) Accounts due from any Person on account of any private label credit card receivables of a Borrower in the name of such Person; or
- (g) Accounts due from major credit card processors which the Administrative Agent determines in its reasonable discretion to be uncertain of collection.

“Eligible In-Transit Inventory” means, as of any date of determination thereof, without duplication of other Eligible Inventory, Inventory:

- (a) which has been shipped (i) from a foreign location for receipt by a Borrower within sixty (60) days of the date of shipment, or (ii) from a domestic location for receipt by a Borrower within fifteen (15) days of the date of shipment, but, in either case, which has not yet been delivered to such Borrower;

(b) for which the purchase order is in the name of a Borrower and title has passed to such Borrower;

(c) for which an Acceptable Document of Title has been issued and, in the case of Inventory shipped from a foreign location of a Borrower, as to which the Administrative Agent has control over the documents of title which evidence ownership of the subject Inventory by virtue of either (i) the Administrative Agent's actual possession of such documents of title or (ii) the receipt of a Customs Broker Agreement with each of such Borrower's customs brokers and freight forwarders;

(d) which is insured in accordance with the terms of this Agreement; and

(e) which otherwise would constitute Eligible Inventory;

provided that the Administrative Agent may, in its reasonable discretion, exclude any particular Inventory from the definition of "Eligible In-Transit Inventory" in the event the Administrative Agent determines that such Inventory is subject to any Lien (other than Permitted Liens described in clauses (a), (d), (n) and (w) of Section 7.01).

"Eligible Inventory" means, as of the date of determination thereof, without duplication, (i) Eligible In-Transit Inventory and (ii) items of Inventory of a Borrower that are (i) raw materials or (ii) finished goods, merchantable and readily saleable to the public in the ordinary course deemed by the Administrative Agent in its reasonable discretion to be eligible for inclusion in the calculation of the Borrowing Base, in each case that, except as otherwise agreed by the Administrative Agent, complies with each of the representations and warranties respecting Inventory made by the Borrowers in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the criteria set forth below. The following items of Inventory shall not be included in Eligible Inventory:

(a) Inventory that is not solely owned by a Borrower;

(b) Inventory that is leased by or is on consignment to a Borrower or to which a Borrower does not have good and valid title;

(c) Inventory (other than Eligible In Transit Inventory or Inventory which is the subject of an Eligible Letter of Credit) that is not (i) located in the United States of America (excluding territories or possessions of the United States) or (ii) at a location that is owned or leased by a Borrower, except, with respect to this clause (ii) only, to the extent that such Borrower has furnished the Administrative Agent with (A) any UCC financing statements or other documents that the Administrative Agent may determine to be necessary to perfect its security interest in such Inventory at such location, and (B) if the value of the Inventory at a location is greater than \$1,500,000, a Collateral Access Agreement executed by the Person owning such location on terms reasonably acceptable to the Administrative Agent;

(d) Inventory that is comprised of goods which (i) are damaged, defective, "seconds," or otherwise unmerchantable, (ii) are to be returned to the vendor, (iii) are obsolete or slow moving, or custom items, work in process, or that constitute spare parts, promotional, marketing, packaging and shipping materials or supplies used or consumed in a Borrower's business or that are raw materials consisting of cartons or components, (iv) are not in compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale, (v) that is vendor serviced merchandise not reflected in the stock ledger, or (vi) are bill and hold goods;

(e) Inventory that is not subject to a perfected first-priority security interest in favor of the Administrative Agent for its own benefit and the ratable benefit of the other Secured Parties;

(f) Inventory that consists of samples, labels, and other similar non-merchandise categories;

(g) Inventory that is not insured in compliance with the provisions of Section 6.07 hereof;

(h) Inventory that has been sold but not yet delivered or as to which a Borrower has accepted a deposit;

(i) Inventory that is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third party from which the Parent Borrower or any of its Subsidiaries has received notice of a dispute in respect of any such agreement; or

(j) Inventory acquired in an acquisition permitted under Section 7.03, unless (i) the acquired Inventory has an aggregate Cost of less than \$2,000,000 and (ii) in the case of acquired Inventory with an aggregate Cost of greater than \$2,000,000, the Administrative Agent has completed or received (A) an appraisal of such Inventory from appraisers satisfactory to the Administrative Agent, establishes an Inventory Advance Rate and Inventory Reserves (if applicable) therefor, and otherwise agrees that such Inventory shall be deemed Eligible Inventory, and (B) such other due diligence as the Administrative Agent may require, all of the results of the foregoing to be reasonably satisfactory to the Administrative Agent.

“Eligible Letter of Credit” means, as of any date of determination thereof, a Commercial Letter of Credit which supports the purchase of Inventory,

(i) which Inventory does not constitute Eligible In-Transit Inventory and for which no documents of title have then been issued, (ii) which Inventory otherwise would constitute Eligible Inventory, (iii) which Commercial Letter of Credit has an expiry within sixty (60) days of the date of initial issuance of such Commercial Letter of Credit, (iv) which Commercial Letter of Credit provides that it may be drawn only after the Inventory is completed and after an Acceptable Document of Title has been issued for such Inventory reflecting a Borrower or the Administrative Agent as consignee of such Inventory and (v) which will constitute Eligible In-Transit Inventory upon satisfaction of the requirements of clause (iv) hereof; provided that the Administrative Agent may, in its reasonable discretion, exclude any particular Inventory from the definition of “Eligible Letter of Credit” in the event the Administrative Agent determines that such Inventory is subject to any Lien (other than Permitted Liens described in clauses (a), (d), (n) and (w) of Section 7.01).

“Eligible Trade Receivables” means Accounts arising from the sale of a Borrower’s Inventory which arise in the ordinary course of business, which have been earned by performance. None of the following shall be deemed to be Eligible Trade Receivables:

(a) Accounts that are not evidenced by an invoice;

(b) Accounts that have been outstanding for more than sixty (60) days from the relevant invoice due date or ninety (90) days from invoice date;

(c) Accounts due from any account debtor with respect to which more than fifty percent (50%) of the aggregate dollar amount of all outstanding invoices to such account debtor are accounts described in clause (b) above.

(d) Accounts to an account debtor whose total obligations owing to a Borrower exceed twenty percent (20%) in the aggregate of the Borrowers' Eligible Trade Receivables;

(e) Accounts which are pre-billed or arise from progress billings;

(f) Accounts with respect to which a Borrower does not have good, valid and marketable title thereto, free and clear of any Lien (other than Liens granted to the Administrative Agent, for its benefit and the benefit of the Secured Parties, pursuant to the Collateral Documents and Liens permitted by clause (w) of Section 7.01);

(g) Accounts which are disputed or with respect to which a claim, counterclaim, offset or chargeback has been asserted, but only to the extent of such dispute, counterclaim, offset or chargeback;

(h) Accounts which arise out of any sale made not in the ordinary course of business, made on a basis other than upon credit terms usual to the business of a Borrower or are not payable in Dollars;

(i) Accounts which are owed by any account debtor whose principal place of business is not within the continental United States;

(j) Accounts which are owed by any Affiliate, employee, officer or director of a Borrower;

(k) Accounts for which all consents, approvals or authorizations of, or registrations or declarations required to be obtained, effected or given in connection with the performance of such Account by the account debtor or in connection with the enforcement of such Account by the Administrative Agent have not been duly obtained, effected or given and are not in full force and effect;

(l) Accounts due from an account debtor which is the subject of any bankruptcy or insolvency proceeding, has had a trustee or receiver appointed for all or a substantial part of its property, has made an assignment for the benefit of creditors or has suspended its business;

(m) Accounts due from any Governmental Authority except to the extent that the subject account debtor is the federal government of the United States of America and has complied with the Federal Assignment of Claims Act of 1940;

(n) Accounts (i) owing from any Person that is also a supplier to or creditor of the Parent Borrower or any of its Subsidiaries unless such Person has waived any right of setoff in a manner acceptable to the Administrative Agent or (ii) representing any manufacturer's or supplier's credits, discounts, incentive plans or similar arrangements entitling the Parent Borrower or any of its Subsidiaries to discounts on future purchase therefrom;

(o) Account arising out of sales on a bill-and-hold, guaranteed sale, sale-or-return, sale on approval or consignment basis or subject to any right of return, setoff or charge back; or

(p) Accounts which the Administrative Agent determines in its reasonable discretion to be unacceptable for borrowing.

“Environment” means ambient air, indoor air, surface water, groundwater, drinking water, land surface and subsurface strata and natural resources such as wetlands, flora and fauna.

“Environmental Laws” means any and all Federal, state, local, and foreign Laws, other legally enforceable agreements or governmental restrictions (including Environmental Permits) relating to pollution and the protection of the Environment or the Release or threat of Release of any Hazardous Materials into the Environment, including those related to air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) directly or indirectly resulting from or based upon (a) violation of any Environmental Law or Environmental Permit, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the indoor or outdoor Environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed, retained or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, registration, exemption, identification number, license, franchise, concession, grant or other authorization pursuant to or required under any Environmental Law.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination; provided that Equity Interests shall not include any debt securities that are convertible or exchangeable for any of the foregoing Equity Interests.

“Equity Investors” means the Sponsors, any member of management and any other equity holders of the outstanding Equity Interests of the Parent Borrower or its direct or indirect parent company on the Closing Date (and, in the case of any management equity holder, any such management equity holder after the Closing Date).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with any Loan Party within the meaning of Section 414(b) or (c) of the Code (or Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (f) the imposition

of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate; (g) any person shall engage in a "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan; or (h) any failure to satisfy the minimum funding standard under Section 412 of the Code and Section 302 of ERISA, whether or not waived, shall exist with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan, or any Lien in favor of the PBGC shall arise on the assets of any Loan Party or any ERISA Affiliate.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Eurodollar Rate" means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate (LIBOR) or a comparable or successor rate, which rate is approved by the Administrative Agent, as published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two Business Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day; and

(c) if the Eurodollar Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement;

provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

"Eurodollar Rate Loan" means a Loan that bears interest at a rate based on the Eurodollar Rate.

"Event of Default" has the meaning ascribed thereto in Section 8.01.

"Excess Availability" means, as of any date of determination thereof, the result of:

(a) the Line Cap minus

(b) the Total Revolving Extensions of Credit.

"Excluded Swap Obligation" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guaranty 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 Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to any "keepwell, support or other agreement")

for the benefit of such Guarantor and any and all guarantees of such Guarantor's Swap Obligations by other Loan Parties) at the time the Guaranty of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party under any Loan Document, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes (including taxes on overall gross receipts) imposed on it (in lieu of net income taxes), by a jurisdiction (or any political subdivision thereof) as a result of such recipient being organized or having its principal office or applicable Lending Office located in such jurisdiction or as a result of a present or former connection between such recipient and the jurisdiction (other than a connection arising from such recipient having executed, delivered, enforced, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or engaged in any other transaction pursuant to, or enforced, a Loan Document), (b) any branch profits taxes imposed by the United States or any political subdivision thereof, or any similar tax imposed by any other jurisdiction described in clause (a), (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrowers under Section 11.13), any United States federal withholding tax that is imposed on amounts payable to such Foreign Lender pursuant to any Laws in effect at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office), except to the extent that such Foreign Lender (or in the case of a Foreign Lender that becomes a Lender as a result of an assignment, its assignor) was entitled, immediately prior to the designation of a new Lending Office (or assignment), to receive additional amounts from any Loan Party with respect to such withholding tax pursuant to Section 3.01(a), (d) any withholding tax attributable to a Lender's failure to comply with Section 3.01(e) that would establish exemption from all withholding taxes; (e) any U.S. federal withholding tax imposed pursuant to FATCA; and (f) any interest, additions to tax or penalties incurred with respect to any of the foregoing.

"Executive Order" has the meaning set forth in Section 5.25.

"Existing Credit Agreement" has the meaning ascribed thereto in the recitals.

"Existing Holdco Senior Notes" means all outstanding senior notes of Holdings due 2019 issued pursuant to that certain Note Exchange Agreement, dated as of November 30, 2010, by and among Holdings and the other parties thereto, as amended and supplemented prior to the Amendment No. 1 Effective Date, which shall be repaid in full on the Amendment No. 1 Effective Date.

"Existing Senior Notes" means the 10.5% Senior Notes of the Parent Borrower due 2018, issued pursuant to that certain Note Exchange Agreement, dated as of November 30, 2010, by and among the Parent Borrower and the other parties thereto, as amended and supplemented prior to the Amendment No. 1 Effective Date, which shall be repaid in full on the Amendment No. 1 Effective Date.

"Existing Term Facility" means the Credit Agreement, dated as of October 16, 2012, by and among the Parent Borrower, Bank of America, as Administrative Agent and the lenders from time to time party thereto, relating to senior secured term loans borrowed by the Parent Borrower on the date thereof, which shall be repaid in full on the Amendment No. 1 Effective Date.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantially comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1).

“FCPA” has the meaning set forth in [Section 5.25](#).

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“Financial Performance Covenant” shall mean the covenant of the Parent Borrower set forth in [Section 7.19](#).

“First Priority” means, with respect to any Lien purported to be created on any Collateral pursuant to any Collateral Document, that such Lien is the most senior Lien to which such Collateral is subject (subject to Permitted Liens).

“Fiscal Month” means any fiscal month of any Fiscal Year.

“Fiscal Quarter” means any fiscal quarter of any Fiscal Year.

“Fiscal Year” means any period of twelve consecutive months ending on the Saturday closest to September 30 of any calendar year.

“Foreign Lender” means any Lender that is not a “United States Person,” as defined in Section 7701(a)(30) of the Code.

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

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“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).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantee and Collateral Agreement” means the Guarantee and Collateral Agreement to be executed and delivered by Holdings, the Borrowers and each other Guarantor, substantially in the form of Exhibit F, as the same may be amended, supplemented or otherwise modified from time to time.

“Guarantors” means, collectively, Holdings, the Subsidiaries of the Parent Borrower listed on Schedule 6.12 and each other Subsidiary of the Parent Borrower that shall be required to execute and deliver a supplement to the Guarantee and Collateral Agreement pursuant to Section 6.12.

“Guaranty” means, collectively, the Guaranty made by Holdings under Article X in favor of the Secured Parties and the Guaranty made by the other Guarantors in favor of the Secured Parties pursuant to the Guarantee and Collateral Agreement, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.12.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic molds, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to, or which could reasonably be expected to give rise to liability under, any Environmental Law.

“Holdings” has the meaning ascribed thereto in the introductory paragraph hereto and shall include any successor Person as permitted by Section 7.04.

“Impacted Loans” has the meaning assigned to such term in Section 3.03.

“Incremental Amendment” has the meaning ascribed thereto in Section 2.08(d).

“Incremental Facility Closing Date” has the meaning ascribed thereto in Section 2.08(d).

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

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

-
- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial letters of credit), bankers' acceptances, bank guaranties, surety bonds and similar instruments;
 - (c) net obligations of such Person under Swap Contracts;
 - (d) all obligations of such Person to pay the deferred purchase price of property or services (other than deferred compensation and trade accounts payable in the ordinary course of business which are being disputed in good faith by appropriate proceedings or which are not past due for more than 120 days after the date on which such trade account was created);
 - (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse (but limited, in the case of indebtedness of others, to the lesser of the fair market value of such property and the outstanding principal amount of such indebtedness);
 - (f) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations of such Person and all Synthetic Debt of such Person;
 - (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and
 - (h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of outstanding Indebtedness as of any date shall be the principal amount or accreted value thereof at such date.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Indemnitee” has the meaning ascribed thereto in Section 11.04(b).

“Information” has the meaning ascribed thereto in Section 11.07.

“Intellectual Property” means all present and future: trade secrets, know-how and other proprietary information; trademarks, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and all registrations which have heretofore been or may hereafter be issued thereon throughout the world and all business goodwill associated therewith; copyrights and copyright applications (including copyrights in computer programs), unpatented inventions (whether or not patentable), patents and patent applications, industrial design applications and registered industrial designs, rights arising under computer software, whether in source or object code format, and any related databases; and any other intellectual property wherever recognized in the world.

“Intercreditor Agreement” means that certain Amended and Restated Intercreditor Agreement, dated as of the Amendment No. 1 Effective Date, by and among the Administrative Agent and the Term Loan Administrative Agent.

“Interest Coverage Ratio” means, as of any date, the ratio of (1) Consolidated EBITDA for the most recently ended Measurement Period prior to such date, calculated on a Pro Forma Basis, to (2) the sum of (a) the Consolidated Interest Expense for such period, calculated on a Pro Forma Basis, and (b) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Capital Stock of the Parent Borrower or preferred stock of any of the Subsidiaries, in each case, made during such period.

“Interest Payment Date” means, (a) as to any Base Rate Loan, the first Business Day of each January, April, July and October to occur while such Loan is outstanding and the final maturity date of such Loan, (b) as to any Eurodollar Rate Loan having an Interest Period of three months or shorter, the last day of such Interest Period, (c) as to any Eurodollar Rate Loan having an Interest Period longer than three months, the last day of such Interest Period and each other day that is three months, or a whole multiple thereof, after the first day of such Interest Period and (d) as to any Loan (other than any Loan that is a Base Rate Loan and any Swing Line Loan), the date of any repayment or prepayment made in respect thereof.

“Interest Period” means, as to any Eurodollar Rate Loan, (a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurodollar Rate Loan and ending one, two, three or six months (or twelve months if agreed to by all of the Lenders) thereafter, in each case, subject to availability, as selected by the Borrowers in the Committed Loan Notice or Conversion/Continuation Notice, as the case may be, given with respect thereto; and (b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Rate Loan and ending one, two, three or six months (or nine or twelve months or less than one month if agreed to by all of the relevant Lenders) thereafter, as selected by the Borrowers by irrevocable notice to the Administrative Agent not later than 11:00 a.m., on the date that is three Business Days prior to the last day of the then current Interest Period with respect thereto; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

- (1) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Rate Loan, the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;
- (2) any Interest Period that would otherwise extend beyond the Revolving Credit Termination Date shall end on the Revolving Credit Termination Date; and
- (3) any Interest Period pertaining to a Eurodollar Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period.

“Inventory” has the meaning given that term in the UCC, and shall also include, without limitation, all: (a) goods which (i) are leased by a Person as lessor, (ii) are held by a Person for sale or

lease or to be furnished under a contract of service, (iii) are furnished by a Person under a contract of service, or (iv) consist of raw materials, work in process, or materials used or consumed in a business; (b) goods of said description in transit; (c) goods of said description which are returned, repossessed or rejected; and (d) packaging, advertising, and shipping materials related to any of the foregoing.

“Inventory Advance Rate” means, with respect to any calculation of the Inventory Component in connection with a calculation of the Borrowing Base in any Borrowing Base Certificate, the applicable percentage set forth below opposite the date below that is the first day of any calendar month that is the closest to the date by which such Borrowing Base Certificate is required to be delivered (e.g., November 1 in the case of a Borrowing Base Certificate required to be delivered on October 18):

Date	Percentage
January 1, February 1, March 1 or April 1	75%
September 1	65%
October 1	50%
November 1	45%
December 1	60%

: provided, however, that, if Consolidated EBITDA for the most recently ended Measurement Period is less than \$110,000,000, the Inventory Advance Rate set forth above opposite of and in respect of the calendar months beginning on April 1, September 1, October 1 and November 1 shall be the lesser of (x) 90% of the Appraised Value of Eligible Inventory and (y) the applicable percentage set forth above for such month.

“Inventory Component” means, (a) with respect to the calculation of the Inventory Component for purposes of any Borrowing Base Certificate that is required to be delivered no later than a date which is closest to the first day of any calendar month which is January 1, February 1, March 1, April 1, September 1, October 1, November 1 or December 1, the applicable Inventory Advance Rate, multiplied by the Cost of Eligible Inventory, net of Inventory Reserves and (b) with respect to the calculation of the Inventory Component for purposes of any Borrowing Base Certificate the nearest first day of any calendar month which is not set forth in clause (a) above, the lesser of (x) 90% of the Appraised Value of Eligible Inventory and (y) 75% of the Cost of Eligible Inventory, in each case, net of Inventory Reserves.

“Inventory Reserves” means such reserves as may be established from time to time by the Administrative Agent and the Co-Collateral Agent in their reasonable discretion (exercised in a manner consistent with their practices with respect to their other similarly situated customers) which negatively affect the saleability, at retail, of the Eligible Inventory or which reflect such other factors as negatively affect the market value of the Eligible Inventory. Without limiting the generality of the foregoing, Inventory Reserves may include (but are not limited to) reserves based on:

- (a) obsolescence;
- (b) seasonality;

-
- (c) shrink;
 - (d) imbalance;
 - (e) change in Inventory character;
 - (f) change in Inventory composition;
 - (g) change in Inventory mix;
 - (h) markdowns (both permanent and point of sale);
 - (i) retail mark-ons and markups inconsistent with prior period practice and performance, industry standards, current business plans or advertising calendar and planned advertising events; and
 - (j) out-of-date and/or expired Inventory.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the assets of another Person or of the assets of another Person that constitute a discrete business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“Investors” has the meaning ascribed thereto in Section 11.06(h).

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

“Issuing Lender” means Bank of America, N.A. and any other financial institution from time to time designated as an Issuing Lender hereunder (including, without limitation, the initial Issuing Lender) and any Lender or an Affiliate thereof satisfactory to the Parent Borrower from time to time designated by the Parent Borrower as an Issuing Lender with the consent of such Lender and the Administrative Agent. To the extent there is more than one Issuing Lender, each reference to “Issuing Lender” herein shall be deemed, where appropriate, to be a reference to the relevant Issuing Lender with respect to the relevant Letter of Credit.

“Joinder Agreement” means an agreement, in the form attached hereto as Exhibit N, pursuant to which, among other things, a Person becomes a party to, and bound by the terms of, this Agreement as a Subsidiary Borrower.

“Joint Bookrunners” means each of Merrill Lynch, Pierce, Fenner & Smith Incorporated (or any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation’s or any of its subsidiaries’ investment banking, commercial lending services or related businesses may be transferred following the date of this Agreement) and U.S. Bank National Association in its capacity as sole Joint Bookrunners under the Loan Documents, or any successor sole Joint Bookrunners.

“Joint Lead Arrangers” means each of Merrill Lynch, Pierce, Fenner & Smith Incorporated (or any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation’s or any of its subsidiaries’ investment banking, commercial lending services or related businesses may be transferred following the Amendment No. 42 Effective Date) and U.S. Bank National Association in its capacity as a joint lead arranger.

“Landlord Lien State” means such state(s) in which a landlord’s claim for rent has priority over the Lien of the Administrative Agent in any of the Collateral.

“Laws” means, collectively, all international, foreign, Federal, state and local laws (including common law) statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable and legally enforceable administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“L/C Commitment” means \$25,000,000, which amount is part of and not in addition to the Revolving Credit Commitments.

“L/C Fee Payment Date” means the first Business Day of each January, April, July and October and the last day of the Revolving Credit Commitment Period.

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

“L/C Participants” means, with respect to any Letter of Credit, the collective reference to all the Lenders other than the Issuing Lender that issued such Letter of Credit.

“Lender” means each Lender that has a Revolving Credit Commitment or that is the holder of Revolving Credit Exposure.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Parent Borrower and the Administrative Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

“Letter of Credit Component” means, with respect to any Eligible Letter of Credit, the lesser of (i) the applicable Inventory Advance Rate, multiplied by the Cost when completed of the Inventory supported by such Eligible Letter of Credit, or (ii) the Stated Amount of such Eligible Letter of Credit, multiplied by the applicable Inventory Advance Rate.

“Letters of Credit” has the meaning ascribed thereto in Section 2.16.

“Letter of Credit Fee” has the meaning ascribed thereto in Section 2.18.

“LGP” means Leonard Green & Partners, L.P.

“Line Cap” means, at any time of determination, the lesser of (a) the Aggregate Commitments or (b) the Borrowing Base.

“Liquidation” means the exercise by the Administrative Agent of those rights and remedies accorded to the Administrative Agent under the Loan Documents and applicable Law as a creditor of the Loan Parties with respect to the realization on the Collateral, including (after the occurrence and continuation of an Event of Default) the conduct by the Loan Parties acting with the consent of the Administrative Agent, of any public, private or going out of business sale or other disposition of the Collateral for the purpose of liquidating the Collateral. Derivations of the word “Liquidation” (such as “Liquidate”) are used with like meaning in this Agreement.

“Loan” means an extension of credit by a Lender to the Borrowers under Article II (other than a Letter of Credit).

“Loan Documents” means, collectively, (a) this Agreement, (b) the Intercreditor Agreement, (c) the Applications, (d) the Notes, (e) the Collateral Documents and (f) the Administrative Agent Fee Letter and any waiver, amendment, supplement or other modification to any of the foregoing and all other documents, instruments or agreements executed and delivered by a Loan Party in connection herewith.

“Loan Parties” means, collectively, the Borrowers and each Guarantor (other than Holdings).

“Management Agreement” means that certain Amended and Restated Management Services Agreement dated as of February 20, 2007 (as amended through the Closing Date) by and between LGP and an affiliate of CVC on the one hand, and the Borrowers, on the other hand, as in effect on the Closing Date or as amended in any manner not adverse to the Lenders, including to assign such agreement to any Affiliate of LGP or CVC.

“Management Fees” means all fees and expense reimbursements payable to LGP or CVC or any of their controlled Affiliates pursuant to the Management Agreement.

“Material Adverse Effect” means (a) any change, circumstance, event or effect that would be materially adverse to the assets and liabilities, business, financial condition or results of operations of the Parent Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document, or of the ability of the Parent Borrower or any Material Subsidiary to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Parent Borrower or any Material Subsidiary of any Loan Document to which it is a party.

“Material Subsidiary” means, at any date of determination, any Subsidiary or group of Subsidiaries with respect to which a specified condition applies (a) whose total assets at the last day of the most recently ended Measurement Period were equal to or greater than 5% of the consolidated total assets of the Parent Borrower and its consolidated Subsidiaries at such date, or (b) whose gross revenues for such Measurement Period were equal to or greater than 5% of the consolidated gross revenues of the Parent Borrower and its consolidated Subsidiaries for such period, in each case determined in accordance with GAAP.

“Maximum Rate” has the meaning ascribed thereto in Section 11.09.

“Measurement Period” means, at any date of determination, the most recently completed four Fiscal Quarters of the Parent Borrower for which financial statements pursuant to Section 6.01(a) or (b) have been delivered for the applicable fiscal period (or, in the case of any calculation made prior to the first such delivery, the four Fiscal Quarter period ended June 30, 2012).

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

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Net Cash Proceeds” means (a) with respect to any Disposition by the Parent Borrower or any of its Subsidiaries, or any Recovery Event received or paid to the account of the Parent Borrower or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents and Indebtedness (other than Indebtedness constituting Capitalized Leases, Synthetic Lease Obligations or purchase money obligations) secured by a Lien on such assets ranking junior to the Liens under the Loan Documents), (B) the reasonable out-of-pocket expenses incurred by the Parent Borrower or such Subsidiary in connection with such transaction, (C) income taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction as a result of any gain recognized in connection therewith, (D) any amount of such Net Cash Proceeds set aside as a cash reserve for indemnity or other potential claims in connection with any such transaction until any unused reserves are no longer maintained in connection with such sale and (E) in respect of a Recovery Event, any amounts required to be paid over to any applicable lessor or mortgagee; provided that, if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds; and (b) with respect to the incurrence or issuance of any Indebtedness by the Parent Borrower or any of its Subsidiaries, the excess of (i) the sum of cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable out-of-pocket expenses, incurred by the Parent Borrower or such Subsidiary in connection therewith.

“Note” means a promissory note made by the Borrowers in favor of a Lender, evidencing Loans made by such Lender, substantially in the form of Exhibit C.

“NPL” means the National Priorities List under CERCLA.

“Obligations” means the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Loans and Reimbursement Obligations and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans, the Reimbursement Obligations and all

other obligations and liabilities of any Loan Party to the Administrative Agent or to any Lender or any Qualified Counterparty, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document, the Letters of Credit, any Specified Swap Contract, any Cash Management Services or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including, without limitation, all fees, charges and disbursements of counsel to the Administrative Agent or to any Lender that are required to be paid by the Borrowers pursuant hereto) or otherwise; provided that (i) obligations of the Parent Borrower or any of its Subsidiaries under any Specified Swap Contract, any Bank Products and any Cash Management Services shall be secured and guaranteed pursuant to the Collateral Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed, (ii) any release of Collateral or Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Specified Swap Contracts, Bank Products or Cash Management Services in their capacities as such and (iii) Obligations with respect to any Guarantor shall exclude Excluded Swap Obligations of such Guarantor.

“OFAC” has the meaning assigned to such term in Section 5.25.

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

“Other Liabilities” means amounts due on account of or arising from (a) any Cash Management Services furnished to any of the Loan Parties or any of their Subsidiaries, (b) any Bank Product entered into with any Loan Party and (c) any Specified Swap Contract, as each may be amended from time to time.

“Other Taxes” means any and all present or future stamp 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.

“Overadvance” means a Credit Extension to the extent that, immediately after it having been made, Excess Availability is less than zero.

“Parent Borrower” has the meaning ascribed thereto in the introductory paragraph hereto.

“Participant” has the meaning ascribed thereto in Section 11.06(d).

“Participation Amount” has the meaning ascribed thereto in Section 2.19(b).

“Payment Amount” has the meaning ascribed thereto in Section 2.20.

“Payment Conditions” means, at the time of determination with respect to any specified Investment or prepayment, that (a) no Default then exists or would arise as a result of entering into such transaction or making such payment, (b) the Borrowers have demonstrated to the reasonable satisfaction of the Administrative Agent that average monthly Excess Availability, on a Pro Forma Basis after giving effect to such Investment or prepayment on such date and for the twelve (12) months following such date, will be greater than twelve and one-half percent (12.5%) of the Line Cap, and (c) after giving effect to such Investment or prepayment on a Pro Forma Basis, the Consolidated Fixed Charge Coverage Ratio, as calculated on a trailing twelve months basis, is greater than 1.0 to 1.0; provided that if that average monthly Excess Availability, as projected on a Pro Forma Basis for the twelve (12) months following and after giving effect to such acquisition or prepayment, will be greater than seventeen and one-half percent (17.5%) of the Line Cap, the provisions of clause (c) will not be required to be satisfied.

“PBGC” means the Pension Benefit Guaranty Corporation.

“PCAOB” means the Public Company Accounting Oversight Board.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any ERISA Affiliate or to which any Loan Party or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

“Perfection Certificate” means a certificate in the form of Exhibit H or any other form approved by the Administrative Agent, as the same shall be supplemented from time to time.

“Permitted Cure Securities” means any equity securities of the Parent Borrower or Holdings issued pursuant to the Cure Right.

“Permitted Indebtedness” has the meaning ascribed thereto in Section 7.02.

“Permitted Lien” has the meaning ascribed thereto in Section 7.01.

“Permitted Overadvance” means an Overadvance made by the Administrative Agent, in its discretion, which:

- (a) is made to maintain, protect or preserve the Collateral, the business of the Borrowers and/or the Secured Parties’ rights under the Loan Documents or which is otherwise for the benefit of the Secured Parties; or
- (b) is made to enhance the likelihood of, or to maximize the amount of, repayment of any Obligation;
- (c) is made to pay any other amount chargeable to any Loan Party hereunder; and
- (d) together with all other Permitted Overadvances then outstanding, shall not, at the time of making of such Permitted Overadvance, (i) exceed five percent (5%) of the Borrowing Base in the aggregate outstanding at any time or (ii) unless a Liquidation is taking place, remain outstanding for more than forty-five (45) consecutive Business Days, or (iii) be made on more than two occasions in any 180 day period;

provided, however, that the foregoing shall not (i) modify or abrogate any of the provisions of Section 2.19 regarding the Lenders' obligations with respect to Participation Amounts, or (ii) result in any claim or liability against the Administrative Agent (regardless of the amount of any Overadvance) for "inadvertent Overadvances" (i.e. where an Overadvance results from changed circumstances beyond the control of the Administrative Agent (such as a reduction in the collateral value)), and such "inadvertent Overadvances" shall not reduce the amount of Permitted Overadvances allowed hereunder; and provided further that in no event shall the Administrative Agent make an Overadvance, if after giving effect thereto, the Total Revolving Extensions of Credit would exceed the Aggregate Commitments at the time such Overadvance is made.

"Permitted Protest" shall mean the right of the Borrowers to protest any Lien (other than any such Lien that secures the Obligations), taxes, or rental payment; provided that (a) a reserve with respect to such obligation is established on the books and records in such amount (if any) to the extent required under GAAP, (b) any such protest is prosecuted diligently by the Borrowers in good faith, by appropriate proceedings, (c) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, and (d) the failure to make payment, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

"Permitted Refinancing Indebtedness" means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person (or any successor of such Person); provided, however, that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the sum of (i) the outstanding principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended plus (ii) prepayment premiums and other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension, (b) such modification, refinancing, refunding, renewal or extension has (i) a final maturity date equal to or later than the final maturity date of the Indebtedness being modified, refinanced, refunded, renewed or extended and (ii) a weighted average life to maturity equal to or greater than the weighted average life to maturity of the Indebtedness being modified, refinanced, refunded, renewed or extended, and (c) if the Indebtedness being modified, refinanced, refunded, renewed or extended is Subordinated Indebtedness, such modification, refinancing, refunding, renewal or extension (i) is subordinated in right of payment to the Obligations on terms at least as favorable, taken as a whole, to the Lenders as those contained in the documentation governing the Subordinated Indebtedness being modified, refinanced, refunded, renewed or extended, and (ii) contains terms that are not less favorable to such Person taken as a whole than the terms contained in the documentation governing the Indebtedness being refinanced (as determined in good faith by the Parent Borrower).

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

"Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) established by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

"Platform" has the meaning ascribed thereto in Section 6.02.

"Pledged Debt" means any debt instrument constituting Collateral under any of the Collateral Documents.

"Pledged Equity" means any certificated equity security constituting Collateral under any of the Collateral Documents.

“Pro Forma Basis” means:

- (a) with respect to any determination for any Measurement Period covering any period prior to the Closing Date, that such determination shall be made giving pro forma effect to the Transactions, as if the Transactions had been consummated on the first day of such Measurement Period; and
- (b) with respect to any test hereunder, that such test shall be calculated after giving effect on a pro forma basis for the period of such calculation to:
 - (i) the incurrence of any Indebtedness (including any pro forma change to consolidated interest expense) by the Parent Borrower or any of its Subsidiaries (and the application of the proceeds thereof) and any repayment of other Indebtedness of the Parent Borrower or any of its Subsidiaries (other than the incurrence or repayment of Indebtedness in the ordinary course of business for working capital purposes pursuant to any revolving credit arrangement) occurring during the Measurement Period or at any time subsequent to the last day of the Measurement Period and on or prior to the date of determination, as if such incurrence, repayment, issuance or redemption, as the case may be (and the application of the proceeds thereof), occurred on the first day of the Measurement Period; and
 - (ii) any Disposition or acquisition of a Person or a line of business occurring during the Measurement Period or at any time subsequent to the last day of the Measurement Period and on or prior to the date of determination, as if such Disposition or acquisition occurred on the first day of the Measurement Period;

in each case based on historical results accounted for in accordance with GAAP and, to the extent applicable, reasonable adjustments and assumptions that are specified in detail in the relevant Compliance Certificate, financial statements delivered to the Lenders in accordance with Section 6.01(a) or (b) or other document provided to the Administrative Agent in connection herewith, as would be in accordance with Regulation S-X under the Securities Act of 1933 or otherwise reasonably estimated by the Parent Borrower.

“Public Lender” has the meaning ascribed thereto in Section 6.02.

“Public Market” shall exist if (a) a Public Offering has been consummated and (b) any Equity Interests of any parent company of Holdings or Holdings have been distributed by means of an effective registration statement under the Securities Act of 1933.

“Public Offering” means a public offering of the Equity Interests of any parent company of Holdings or Holdings pursuant to an effective registration statement under the Securities Act of 1933.

“Qualified Counterparty” means, with respect to any Specified Swap Contract, Bank Product or Cash Management Services, any counterparty thereto that, at the time such Specified Swap Contract, Bank Product or Cash Management Services were entered into, was a Lender or an Affiliate of a Lender.

“Qualified ECP Guarantor” shall mean, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another person to qualify as an “eligible contract participant” at such time under §1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Real Property” means, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Receivables Advance Rate” means 90%.

“Receivables Reserves” means such Reserves as may be established from time to time by the Administrative Agent and the Co-Collateral Agent in their reasonable discretion with respect to the determination of the collectability in the ordinary course of Eligible Trade Receivables, including, without limitation, on account of bad debts and dilution.

“Recovery Event” means any settlement or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of the Parent Borrower or any of its Subsidiaries.

“Refunded Swing Line Loan” has the meaning ascribed thereto in Section 2.07(b).

“Refunding Date” has the meaning ascribed thereto in Section 2.07(c).

“Register” has the meaning ascribed thereto in Section 11.06(c).

“Registered Public Accounting Firm” has the meaning specified by the Securities Laws and shall be independent of the Parent Borrower and its Subsidiaries as prescribed by the Securities Laws.

“Reimbursement Obligation” means the obligation of the Borrowers to reimburse each Issuing Lender pursuant to Section 2.20 for amounts drawn under Letters of Credit issued by such Issuing Lender.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“Release” means any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharge, injecting, escaping, leaching, dumping, disposing, depositing or migration into the Environment, or into or through any building or structure.

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

“Reports” has the meaning ascribed thereto in Section 9.13.

“Request for Credit Extension” means (a) with respect to a Borrowing of Revolving Credit Loans, a Committed Loan Notice, (b) with respect to conversion or continuation of the Revolving Credit Loans, a Conversion/Continuation Notice, (c) with respect to an issuance of a Letter of Credit, an Application, and (d) with respect to a Swing Line Loan, a notice pursuant to Section 2.07(a).

“Required Lenders” means, at any time, the holders of more than 50% of the Aggregate Commitments then in effect or, if the Revolving Credit Commitments have been terminated, the Total

Revolving Extensions of Credit then outstanding; provided that (i) the Loans, L/C Obligations and unused Revolving Credit Commitments held or deemed held by any Defaulting Lender shall be excluded for all purposes of making a determination of Required Lenders, (ii) at any time there are fewer than three Lenders, "Required Lenders" shall mean all Lenders and (iii) at any time there are three Lenders, Required Lenders shall mean two or more Lenders with more than 50% of the Aggregate Commitments then in effect or, if the Revolving Credit Commitments have been terminated, the Total Revolving Extensions of Credit then outstanding.

"Reserves" means all (if any) Inventory Reserves, Availability Reserves and Receivables Reserves.

"Responsible Officer" means the chief executive officer, president, chief financial officer, any executive or senior vice president, treasurer, assistant treasurer or controller of a Loan Party or any of the other individuals designated in writing to the Administrative Agent by an existing Responsible Officer of a Loan Party as an authorized signatory of any certificate or other document to be delivered hereunder. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) by the Parent Borrower or any of its Subsidiaries with respect to any capital stock or other Equity Interest of any Person, or any payment by the Parent Borrower or any of its Subsidiaries (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to the Parent Borrower's or any of its Subsidiaries' direct or indirect stockholders, partners or members (or the equivalent of any thereof).

"Revolving Credit Commitment" means, as to any Lender, the obligation of such Lender, if any, to make Revolving Credit Loans and participate in Swing Line Loan Overadvances and Letters of Credit, in an aggregate principal and/or face amount not to exceed the amount set forth under the heading "Revolving Credit Commitment" opposite such Lender's name on Schedule ~~1 to the Lender Addendum delivered by such Lender~~ 1.01 annexed to Amendment No. 2 or, as the case may be, in the Assignment and Assumption pursuant to which such Lender became a party hereto, as the same may be changed from time to time pursuant to the terms hereof.

"Revolving Credit Commitment Increase" has the meaning ascribed thereto in Section 2.08(a).

"Revolving Credit Commitment Increase Lender" has the meaning ascribed thereto in Section 2.08(d).

"Revolving Credit Commitment Period" means the period after (but not including) the Closing Date to the Revolving Credit Termination Date.

"Revolving Credit Exposure" means, at any time, Total Revolving Extensions of Credit, minus L/C Obligations that have been Cash Collateralized.

"Revolving Credit Facility" means the Revolving Credit Commitments and the extensions of credit made thereunder.

“Revolving Credit Loans” has the meaning ascribed thereto in Section 2.01(a).

“Revolving Credit Percentage” means, as to any Lender at any time, the percentage which such Lender’s Revolving Credit Commitment then constitutes of the Aggregate Commitments (or, at any time after the Revolving Credit Commitments shall have expired or terminated, the percentage which the aggregate amount of such Lender’s Revolving Extensions of Credit then outstanding constitutes of the Total Revolving Extensions of Credit then outstanding).

“Revolving Credit Termination Date” means August 16, 2021.

“Revolving Extensions of Credit” means, as to any Lender at any time, an amount equal to the sum of (a) the aggregate principal amount of all Revolving Credit Loans made by such Lender then outstanding, (b) such Lender’s Revolving Credit Percentage of the L/C Obligations then outstanding, (c) such Lender’s Revolving Credit Percentage of the Overadvances then outstanding and (d) such Lender’s Revolving Credit Percentage of the aggregate principal amount of Swing Line Loans then outstanding.

“RP Conditions” means, at the time of determination with respect to any specified Restricted Payment, that (a) no Default then exists or would arise as a result of making such payment, (b) the Borrowers have demonstrated to the reasonable satisfaction of the Administrative Agent that average monthly Excess Availability on a Pro Forma Basis after giving effect to such Restricted Payment as of such date and for the twelve (12) months following such date, will be greater than fifteen percent (15%) of the Line Cap, and (c) after giving effect to such Restricted Payment on a Pro Forma Basis, the Consolidated Fixed Charge Coverage Ratio, as calculated on a trailing twelve months basis, is greater than 1.1 to 1.0; provided that if that average monthly Excess Availability, as projected on a Pro Forma Basis for the twelve (12) months following and after giving effect to such Restricted Payment, will be greater than twenty percent (20%) of the Line Cap, the provisions of clause (c) will not be required to be satisfied.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and any successor thereto.

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

“Secured Parties” means, collectively, the Administrative Agent, the Co-Collateral Agent, the Lenders and their Affiliates, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, the Issuing Lender, the Joint Lead Arrangers, the Joint Bookrunners, the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, any other Person to whom Obligations under this Agreement and other Loan Documents are owing, and the successors and assigns of each of the foregoing, each Qualified Counterparty party to a Specified Swap Contract, Bank Product or Cash Management Services, and the other Persons which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

“Secured Party Expenses” means, without limitation, (a) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including, without limitation, Merrill Lynch, Pierce, Fenner & Smith Incorporated) and the Co-Collateral Agent and its Affiliates in connection with this Agreement and the other Loan Documents, including without limitation (i) the reasonable fees, charges and disbursements of (A) one firm of counsel for the Administrative Agent and the Co-Collateral Agent plus on additional firm of local counsel to the Administrative Agent and the Co-Collateral Agent in each applicable jurisdiction, (B) appraisers, (C) commercial finance examinations, and (D) all such

out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, (ii) in connection with (A) the syndication of the credit facilities provided for herein, (B) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (C) the enforcement or protection of their rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or enforce the Collateral, or (D) any workout, restructuring or negotiations in respect of any Obligations; (b) with respect to the Issuing Lender, and its Affiliates, all reasonable out-of-pocket expenses incurred in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder; and (c) all reasonable out-of-pocket expenses incurred by the Secured Parties who are not the Administrative Agent, Merrill Lynch, Pierce, Fenner & Smith Incorporated, the Issuing Lender or any Affiliate of any of them, after the occurrence and during the continuance of an Event of Default; provided that such Secured Parties shall be entitled to reimbursement for no more than one counsel representing all such Secured Parties (absent a conflict of interest, in which case the Secured Parties may engage and be reimbursed for additional counsel) plus one local counsel in each applicable jurisdiction.

“Securities Laws” means the Securities Act of 1933, the Securities Exchange Act of 1934, Sarbanes-Oxley, and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the PCAOB.

“Senior Notes” means \$390,000,000 aggregate principal amount of floating rate senior notes due 2024 issued by the Parent Borrower on the Amendment No. 1 Effective Date.

“Shrink” means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

“Shrink Reserve” means an amount reasonably estimated by the Administrative Agent and the Co-Collateral Agent to be equal to that amount which is required in order that the Shrink reflected the Borrowers’ general ledger would be reasonably equivalent to the Shrink calculated as part of the Borrowers’ most recent physical inventory.

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

“Specified Swap Contract” means any Swap Contract entered into by any Borrower or any of their Subsidiaries with any Qualified Counterparty.

“Sponsors” means (i) LGP, the general partner of LGP and any Affiliate of LGP or its general partner (other than portfolio companies of LGP) and (ii) CVC, the general partner of the constituent owners of CVC and any Affiliate of such owners or their respective general partners (other than portfolio companies of CVC).

“Standby Letter of Credit” means any Letter of Credit that is not a Commercial Letter of Credit and that (a) is used in lieu or in support of performance guaranties or performance, surety or similar bonds (excluding appeal bonds) arising in the ordinary course of business, (b) is used in lieu or in support of stay or appeal bonds, (c) supports the payment of insurance premiums for reasonably necessary casualty insurance carried by any of the Loan Parties, or (d) supports payment or performance for identified purchases or exchanges of products or services in the ordinary course of business.

“Store” means any retail store operated, or to be operated, by any Loan Party.

“Subordinated Indebtedness” means all Indebtedness of a Loan Party that is subordinate in right of payment to any or all of the Obligations.

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

“Subsidiary Borrower” means LPM Manufacturing, Inc., Cortz, Inc. and each other Subsidiary of the Parent Borrower that becomes a Subsidiary Borrower following the Amendment No. +2 Effective Date pursuant to Section 6.12.

“Swap Contract” means any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement.

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

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Swing Line Commitment” means the obligation of the Swing Line Lender to make Swing Line Loans pursuant to Section 2.06 in an aggregate principal amount at any one time outstanding not to exceed \$10,000,000, which amount is part of and not in addition to the Revolving Credit Commitment.

“Swing Line Lender” means Bank of America, N.A., in its capacity as the lender of Swing Line Loans.

“Swing Line Loans” has the meaning ascribed thereto in Section 2.06(a).

“Swing Line Participation Amount” has the meaning ascribed thereto in Section 2.07.

“Syndication Agent” means U.S. Bank National Association, in its capacity as syndication agent.

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

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions but excluding operating leases entered into in the ordinary course of business), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“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 Loan Administrative Agent” means Nomura Corporate Funding Americas, LLC in its capacity as administrative agent under the Term Loan Facility and its successors in such capacity.

“Term Loan Documents” means the “Loan Documents” as defined in the Term Loan Facility.

“Term Loan Facility” means that certain term loan credit agreement, dated as of August 16, 2016 by and among the Company, the Term Loan Lenders, the Term Loan Administrative Agent and the other parties thereto and any Permitted Refinancing indebtedness in respect thereof.

“Term Loan Lender” means each lender under the Term Loan Facility.

“Term Loan Documents Obligations” means the “~~Loan Documents~~Obligations” as defined in the Term Loan Facility.

“Term Loan Priority Collateral” has the meaning ascribed to such term in the Intercreditor Agreement.

“Threshold Amount” means \$25,000,000.

“Total Revolving Extensions of Credit” means, at any time, the aggregate amount of the Revolving Extensions of Credit of the Lenders outstanding at such time.

“Trade Receivables Component” means the face amount of Eligible Trade Receivables minus Receivables Reserves multiplied by the Receivables Advance Rate.

“Tranche B Term Loans” has the meaning given to such term in the Term Loan Facility as in effect on the Closing Date.

“Transaction Expenses” means fees and expenses incurred in connection with the closing of this Agreement, the effectuation of the Transactions and any transactions contemplated in connection with the foregoing.

“Transactions” means the entering into of Amendment No. 1, the borrowing of the Tranche B Term Loans on the Amendment No. 1 Effective Date, the issuance of the Senior Notes, the repayment in full of the Existing Term Loan Facility, the Existing Senior Notes and the Existing Holdco Senior Notes, the Distribution and the payment of fees and expenses in connection with the foregoing.

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

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

“Unfinanced Capital Expenditures” means Capital Expenditures other than those made with the proceeds of Indebtedness or capital lease transactions, or equity contributions permitted hereunder; provided that any Capital Expenditures made with the proceeds of Credit Extensions hereunder shall constitute Unfinanced Capital Expenditures.

“Unfunded Pension Liability” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

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

“Work Fee” means the fee charged by the initial Issuing Lender in connection with any issuance or amendment of any Letter of Credit, which Work Fee shall in no event exceed (i) \$1,500 per Letter of Credit issued by such initial Issuing Lender with respect to any issuance thereof and (ii) \$250 per Letter of Credit issued by such initial Issuing Lender with respect to any amendment thereof.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

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

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”

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

1.03. Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements for the Fiscal Year ended October 1, 2011, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Parent Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrowers shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this

Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding the foregoing (i) any changes in GAAP following the Closing Date in whether a lease is required to be capitalized shall be disregarded for purposes of any financial ratio or limitation in this Agreement and (ii) for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(c) Consolidation of Variable Interest Entities. All references herein to consolidated financial statements of the Parent Borrower and its Subsidiaries or to the determination of any amount for the Parent Borrower and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Parent Borrower is required to consolidate pursuant to FASB Interpretation No. 46 — Consolidation of Variable Interest Entities: an interpretation of ARB No. 51 (January 2003) as if such variable interest entity were a Subsidiary as defined herein.

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

1.05. Times of Day.

Unless otherwise specified, all references herein to times of day shall be references to New York City time.

The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Eurodollar Rate” or with respect to any comparable or successor rate thereto.

1.06. Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Loan Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.07. Joint and Several Liability of Borrowers for Obligations. All Credit Extensions made hereunder are made to or for the mutual benefit, directly and indirectly, of the Borrowers, collectively, and in consideration of the agreement of each of the Borrowers to accept joint and several liability for the Obligations. Each of the Borrowers, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several and direct and primary liability for the full payment when due and performance of all Obligations and each of the Borrowers agree that such liability is independent of the duties, obligations and liabilities of each of the joint and several Borrowers. In furtherance of the foregoing, each of the Borrowers, jointly and severally, absolutely and unconditionally guarantees to the Administrative Agent, the Lenders and the other Secured Parties the full payment and performance when due of all the Obligations.

1.08. Parent Borrower. The Borrowers hereby each appoint the Leslie's as the "Parent Borrower" hereunder and each hereby agrees that any notice required to be provided to or by any Borrower hereunder may be provided solely to or by the Parent Borrower on behalf of each of the Borrowers.

1.09. Administrative Agent and Co-Collateral Agent. All determinations under this Agreement that are specified to be made by the Administrative Agent and the Co-Collateral Agent shall be made jointly by such Persons; provided that, in the event that the Administrative Agent and the Co-Collateral Agent cannot agree on any matter to be determined by the Administrative Agent and the Co-Collateral Agent, then (a) if the aggregate amount of the Reserves with respect to which there is such a disagreement is less than or equal to \$10,000,000, the determination shall be made by the Administrative Agent or the Co-Collateral Agent asserting the more conservative credit judgment or (b) if the aggregate amount of the Reserves with respect to which there is such a disagreement is greater than \$10,000,000, the determination shall be made by the Administrative Agent.

ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS

2.01. Revolving Credit Commitments.

(a) Subject to the terms and conditions hereof, the Lenders severally agree to make revolving credit loans ("Revolving Credit Loans") to the Borrowers from time to time after the Closing Date and during the Revolving Credit Commitment Period; provided that after giving effect thereto (i) the aggregate principal amount of Revolving Credit Loans at any one time outstanding for each Lender, when added to such Lender's Revolving Credit Percentage of the sum of (x) the L/C Obligations then outstanding and (y) the aggregate principal amount of the Swing Line Loans then outstanding, does not exceed the amount of such Lender's Revolving Credit Commitment and (ii) the Total Revolving Extensions of Credit do not exceed the Line Cap. During the Revolving Credit Commitment Period the Borrowers may use the Revolving Credit Commitments by borrowing, prepaying the Revolving Credit Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. The Revolving Credit Loans may from time to time be Eurodollar Rate Loans or Base Rate Loans, as determined by the Borrowers and notified to the Administrative Agent in accordance with Section 2.05; provided that no Revolving Credit Loan shall be made as a Eurodollar Rate Loan after the day that is one month prior to the Revolving Credit Termination Date.

(b) The Borrowers shall repay all outstanding Revolving Credit Loans on the applicable Revolving Credit Termination Date.

(c) The Inventory Reserves and Availability Reserves as of the Closing Date are set forth in the Borrowing Base Certificate delivered pursuant to Section 4.01(g).

The Administrative Agent shall have the right, at any time and from time to time after the Closing Date in its reasonable discretion to establish, modify or eliminate Reserves.

2.02. Termination or Reduction of Revolving Credit Commitments

(a) The Borrowers may, upon notice from the Parent Borrower to the Administrative Agent, terminate the Revolving Credit Commitments or from time to time permanently reduce the Revolving Credit Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 2:00 p.m. fifteen Business Days prior to the date of termination or five Business Days prior to the date of reduction, as the case may be, (ii) any such notice shall be irrevocable (except in

the case of a termination, such notice shall be irrevocable only beginning three days prior to the date of the proposed termination), (iii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$5,000,000 and (iv) the Borrowers shall not terminate or reduce the Revolving Credit Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Extensions of Credit would exceed the Line Cap. Each such reduction or termination shall be applied ratably to the Revolving Credit Commitments of each Lender.

(b) If, after giving effect to any reduction of the Aggregate Commitments, the L/C Commitment or the Swing Line Commitment exceeds the amount of the Aggregate Commitments, such Commitment shall be automatically reduced by the amount of such excess.

(c) Upon the Revolving Credit Termination Date, the Revolving Credit Commitments of the Lenders shall be terminated in full, and the Borrowers shall pay, in full and in cash, all outstanding Revolving Credit Loans then owing by them to the Lenders.

The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Revolving Credit Commitments, the L/C Commitment or the Swing Line Commitment under this Section 2.02. All fees accrued until the effective date of any such termination or reduction shall be paid on the effective date of such termination or reduction.

2.03. [Reserved].

2.04. [Reserved].

2.05. Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrowers' irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a Committed Loan Notice or Conversion/Continuation Notice, as the case may be; provided that any telephone notice must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice or Conversion/Continuation, as applicable. Each such notice must be received by the Administrative Agent not later than 2:00 p.m. (i) three Business Days prior to the requested date of the Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) one Business Day prior to the requested date of the Borrowing of Base Rate Loans. The Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$250,000 in excess thereof. The Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$250,000 or a whole multiple of \$100,000 in excess thereof; provided that the Swing Line Lender may request, on behalf of the Borrowers, borrowings of Base Rate Loans under the Revolving Credit Commitments in other amounts pursuant to Section 2.07. Each Committed Loan Notice (whether telephonic or written) shall specify (i) the requested date of the Borrowing (which shall be a Business Day), (ii) the principal amount of Loans to be borrowed, (iii) the Type of Loans to be borrowed, and (iv) if applicable, the duration of the Interest Period with respect thereto. Each Conversion/Continuation Notice shall specify (i) whether the Borrowers are requesting a conversion of Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the conversion or continuation (which shall be a Business Day), (iii) the principal amount of Loans to be converted or continued, (iv) the Type of Loans to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrowers fail to specify a Type of Loan in a Committed Loan Notice or if the Borrowers fail to give a timely notice of a conversion or continuation in a Conversion/Continuation Notice, then the Loans shall be made as, or converted to, Base Rate Loans. Any such automatic

conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrowers request a Borrowing of Eurodollar Rate Loans in any such Committed Loan Notice or a conversion to or continuation of Eurodollar Rate Loans in a Conversion/Continuation Notice, but fail to specify an Interest Period, they will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Revolving Credit Loan, and if no timely notice of a conversion or continuation in a Conversion/Continuation Notice is provided by the Parent Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.05(a). Each Lender shall make the amount of its Revolving Credit Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 3:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Article IV, the Administrative Agent shall make all funds so received available to the Borrowers in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrowers on the books of the Administrative Agent with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Parent Borrower.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of an Event of Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrowers and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than (i) 15 Interest Periods or (ii) more than two Interest Periods of less than one month, in each case, in effect with respect of all Loans.

(f) The Administrative Agent, without the request of any Borrower, may advance any interest, fee, service charge, Secured Party Expenses, or other payment to which any Secured Party is entitled from the Loan Parties pursuant hereto or any other Loan Document and may charge the same to the Register notwithstanding that an Overadvance may result thereby; provided that, prior to advancing any amounts for payment of Secured Party Expenses, the Administrative Agent shall furnish the Borrowers with five (5) Business Days advance notice thereof; provided further that in no event shall the Administrative Agent make an advance hereunder, if after giving effect thereto, the Total Revolving Extensions of Credit would exceed the Aggregate Commitments. The Administrative Agent shall deliver to the Borrowers a statement of any such advance or charge promptly after the making thereof (or in the case of Secured Party Expenses, at the time that the five (5) Business Days' notice is furnished) in reasonable detail sufficient to allow the Borrowers to verify such interest, fee, service charge, Secured Party Expenses or other payment. Such action on the part of the Administrative Agent shall not constitute a waiver of the Administrative Agent's rights and the Borrowers' obligations under Section 2.09(b). Any amount which is added to the principal balance of the Register as provided in this Section 2.05(f) shall bear interest at the interest rate then and thereafter applicable to Base Rate Loans.

(g) The Administrative Agent, the Lenders, the Swing Line Lender and the Issuing Lender shall have no obligation to make any Loan or to provide any Letter of Credit if an Overadvance would result. The Administrative Agent may, in its discretion, make Permitted Overadvances without the consent of the Lenders, the Swing Line Lender and the Issuing Lender and each Lender shall be bound thereby. Any Permitted Overadvance may constitute a Swing Line Loan. A Permitted Overadvance is for the account of the Borrowers and shall constitute a Loan and an Obligation. Any Permitted Overadvance shall be subject to such required repayments and other terms as the Administrative Agent may determine. The making of any such Permitted Overadvance on any one occasion shall not obligate the Administrative Agent or any Lender to make or permit any Permitted Overadvance on any other occasion or to permit such Permitted Overadvances to remain outstanding. The making by the Administrative Agent of a Permitted Overadvance shall not modify or abrogate any of the provisions of Section 2.19 regarding the Lenders' obligations to purchase participations with respect to Letters of Credit or of Section 2.07 regarding the Lenders' obligations to purchase participations with respect to Swing Line Loans. The Administrative Agent shall have no liability for, and no Loan Party or Secured Party shall have the right to, or shall, bring any claim of any kind whatsoever against the Administrative Agent with respect to "inadvertent Overadvances" (i.e. where an Overadvance results from changed circumstances beyond the control of the Administrative Agent (such as a reduction in the collateral value)) regardless of the amount of any such Overadvance(s).

2.06. Swing Line Commitment.

(a) Subject to the terms and conditions hereof, the Swing Line Lender agrees that, after the Closing Date and during the Revolving Credit Commitment Period, it will make available to the Borrowers, in the sole reasonable discretion of the Swing Line Lender, in the form of swing line loans ("Swing Line Loans") a portion of the credit otherwise available to the Borrowers under the Revolving Credit Commitments, which portion is a part of and not in addition to the Revolving Credit Commitments; provided that (i) the aggregate principal amount of Swing Line Loans outstanding at any time shall not exceed the Swing Line Commitment then in effect (notwithstanding that the Swing Line Loans outstanding at any time, when aggregated with the Swing Line Lender's other outstanding Revolving Credit Loans hereunder, may exceed the Swing Line Commitment then in effect or such Swing Line Lender's Revolving Credit Commitment then in effect) and (ii) the Borrowers shall not request, and the Swing Line Lender shall not make, any Swing Line Loan if, after giving effect to the making of such Swing Line Loan, the Total Revolving Extensions of Credit would exceed the Line Cap. During the Revolving Credit Commitment Period, the Borrowers may use the Swing Line Commitment by borrowing, repaying and reborrowing, all in accordance with the terms and conditions hereof. Swing Line Loans shall be Base Rate Loans only.

(b) The Borrowers shall repay all outstanding Swing Line Loans on the Revolving Credit Termination Date.

2.07. Procedure for Swing Line Borrowing; Refunding of Swing Line Loans

(a) The Borrowers may borrow under the Swing Line Commitment on any Business Day during the Revolving Credit Commitment Period; provided that the Borrowers shall give the Swing Line Lender irrevocable telephonic notice confirmed promptly in writing (which telephonic notice must be received by the Swing Line Lender not later than 2:00 p.m. on the proposed Borrowing Date), specifying (i) the amount to be borrowed and (ii) the requested Borrowing Date. Each borrowing under the Swing Line Commitment shall be in an amount equal to \$500,000 or a whole multiple of \$100,000 in excess thereof. Not later than 4:00 p.m. on the Borrowing Date specified in the borrowing notice in respect of any Swing Line Loan, the Swing Line Lender shall make available to the Administrative Agent at the Administrative Agent's Office an amount in immediately available funds

equal to the amount of such Swing Line Loan. The Administrative Agent shall make the proceeds of such Swing Line Loan available to the Borrowers on such Borrowing Date in like funds as received by the Administrative Agent.

(b) The Swing Line Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of the Borrowers (which hereby irrevocably directs the Swing Line Lender to act on its behalf), on one Business Day's notice given by the Swing Line Lender no later than 12:00 noon, request each Lender to make, and each Lender hereby agrees to make, a Revolving Credit Loan (which shall initially be a Base Rate Loan), in an amount equal to such Lender's Revolving Credit Percentage of the aggregate amount of the Swing Line Loans (the "Refunded Swing Line Loans") outstanding on the date of such notice, to repay the Swing Line Lender. Each Lender shall make the amount of such Revolving Credit Loan available to the Administrative Agent at the Administrative Agent's Office in immediately available funds, not later than 10:00 a.m., one Business Day after the date of such notice. The proceeds of such Revolving Credit Loans shall be made immediately available by the Administrative Agent to the Swing Line Lender for application by the Swing Line Lender to the repayment of the Refunded Swing Line Loans.

(c) If prior to the time a Revolving Credit Loan would have otherwise been made pursuant to Section 2.07(b), one of the events described in Section 8.01(f) shall have occurred and be continuing with respect to any Borrower, or if for any other reason, as determined by the Swing Line Lender in its sole discretion, Revolving Credit Loans may not be made as contemplated by Section 2.07(b), each Lender shall, on the date such Revolving Credit Loan was to have been made pursuant to the notice referred to in Section 2.07(b) (the "Refunding Date"), purchase for cash an undivided participating interest in the then outstanding Swing Line Loans by paying to the Swing Line Lender an amount (the "Swing Line Participation Amount") equal to (i) such Lender's Revolving Credit Percentage times (ii) the sum of the aggregate principal amount of Swing Line Loans then outstanding which were to have been repaid with such Revolving Credit Loans.

(d) Whenever, at any time after the Swing Line Lender has received from any Lender such Lender's Swing Line Participation Amount, the Swing Line Lender receives any payment on account of the Swing Line Loans, the Swing Line Lender will distribute to such Lender its Swing Line Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Lender's pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swing Line Loans then due); provided, however, that in the event that such payment received by the Swing Line Lender is required to be returned, such Lender will return to the Swing Line Lender any portion thereof previously distributed to it by the Swing Line Lender.

(e) Each Lender's obligation to make the Loans referred to in Section 2.07(b) and to purchase participating interests pursuant to Section 2.07(c) shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any setoff, counterclaim, recoupment, defense or other right which such Lender or the Borrowers may have against the Swing Line Lender, any Borrower or any other Person for any reason whatsoever; (ii) the occurrence or continuance of a Default or the failure to satisfy any of the other conditions specified in Article IV; (iii) any adverse change in the condition (financial or otherwise) of the Borrowers; (iv) any breach of this Agreement or any other Loan Document by any Borrower, any other Loan Party or any other Lender; or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

2.08. Incremental Credit Extensions

(a) The Borrowers may at any time or from time to time after the Closing Date, by notice from the Parent Borrower to the Administrative Agent (whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders), request one or more increases in the amount of the Revolving Credit Commitments (each such increase, a "Revolving Credit Commitment Increase"); provided that both at the time of any such request and upon the effectiveness of any Incremental Amendment referred to below (i) all representations and warranties in Article V shall be true and correct in all material respects (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date and except to the extent that a particular representation or warranty is already qualified by materiality, in which case such representation or warranty shall be true and correct), (ii) no Default or Event of Default shall exist or would result therefrom and (iii) the aggregate principal amount of all Revolving Credit Commitment Increases shall not exceed \$50,000,000.

(b) Each Revolving Credit Commitment Increase shall be in an aggregate principal amount that is a whole multiple of \$500,000 which is not less than \$10,000,000 (provided that such amount may be less than \$10,000,000 if such amount represents all remaining availability under the limit set forth in Section 2.08(a)(iii) above).

(c) The Revolving Credit Loans made pursuant to the Revolving Credit Commitment Increases (a) shall be made under and documented in this Agreement or pursuant to an amendment hereto and shall rank pari passu in right of payment and of security with the Revolving Credit Loans and (b) shall be treated substantially the same as or less favorably than the Revolving Credit Loans (including with respect to mandatory and voluntary prepayments and voting rights).

(d) Each notice from the Borrowers pursuant to this Section 2.08 shall set forth the requested amount and proposed terms of the relevant Revolving Credit Commitment Increases. Revolving Credit Commitment Increases may be provided by any existing Lender or by any other bank or other financial institution selected by the Borrowers (any such bank or other financial institution being called an "Additional Lender"); provided that the Administrative Agent shall have consented (not to be unreasonably withheld) to such Lender's or Additional Lender's providing any such Revolving Credit Commitment Increases if such consent would be required under Section 11.06 for an assignment of Commitments to such Lender or Additional Lender. Revolving Credit Commitments in respect of Revolving Credit Commitment Increases shall become Revolving Credit Commitments (or in the case of a Revolving Credit Commitment Increase to be provided by an existing Lender, an increase in such Lender's applicable Revolving Credit Commitment) under this Agreement pursuant to an amendment (an "Incremental Amendment") to this Agreement and, as appropriate, the other Loan Documents, executed by Holdings, the Borrowers, each Lender agreeing to provide such Revolving Credit Commitment, if any, each Additional Lender, if any, and the Administrative Agent. The Incremental Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrowers, to effect the provisions of this Section 2.08. The effectiveness of any Incremental Amendment shall be subject to the satisfaction on the date thereof (each, an "Incremental Facility Closing Date") of each of the conditions set forth in Section 4.02 and such other conditions as the parties thereto shall agree. The Borrowers will use the proceeds of the Revolving Credit Commitment Increases for any purpose not prohibited by this Agreement. No Lender shall be obligated to provide any Revolving Credit Commitment Increases, unless it so agrees. Upon each increase in the Revolving Credit Commitments pursuant to this Section 2.08, each Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each

Lender providing a portion of the Revolving Credit Commitment Increase (each, a “Revolving Credit Commitment Increase Lender”) in respect of such increase, and each such Revolving Credit Commitment Increase Lender will automatically and without further act be deemed to have assumed, a portion of such Lender’s participations hereunder in outstanding Letters of Credit and Swing Line Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (i) participations hereunder in Letters of Credit and (ii) participations hereunder in Swing Line Loans held by each Lender (including each such Revolving Credit Commitment Increase Lender) will equal the percentage of the aggregate Revolving Credit Commitments of all Lenders represented by such Lender’s Revolving Credit Commitment and (b) if, on the date of such increase, there are any Revolving Credit Loans outstanding, the Lenders (including the Additional Lenders) shall make such payments as directed by the Administrative Agent in order that the Revolving Credit Loans are held by the Lenders (including Additional Lenders) ratably in accordance with the increased Revolving Credit Commitments (and interest and other payments shall be adjusted accordingly).

(e) The Administrative Agent and the Lenders hereby agree that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in this Agreement shall not apply to the transactions effected pursuant to this Section 2.08.

(f) This Section 2.08 shall supersede any provisions in Section 2.14, 2.15 or 11.01 to the contrary.

2.09. Prepayments.

(a) Optional. The Borrowers may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Administrative Agent not later than 2:00 p.m., (1) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (2) one Business Day prior to the date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender’s ratable portion of such prepayment. If such notice is given by the Borrowers, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that if such prepayment is being made in connection with the closing of another transaction it may be conditioned upon the closing of such transaction. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of any Loans shall be paid to the Lenders thereof in accordance with their respective Applicable Percentages in respect of the Revolving Credit Facility.

(b) Mandatory. (i) If for any reason the Total Revolving Extensions of Credit at any time exceed the Line Cap as then in effect, the Borrowers shall immediately prepay Revolving Credit Loans, Swing Line Loans, and Letter of Credit borrowings and/or Cash Collateralize the L/C Obligations (other than Letter of Credit borrowings) in an aggregate amount equal to such excess; provided, however, that the Borrowers shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.09(b)(i) unless after the prepayment in full of the Revolving Credit Loans and the Swing Line Loans and the Total Revolving Extensions of Credit exceed the Line Cap as then in effect.

(ii) The Borrowers shall also prepay the Loans and Cash Collateralize Letters of Credit in accordance with the provisions of Section 6.17.

2.10. Interest.

(a) Subject to the provisions of Section 2.10(b), (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Margin; and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin.

(b) (i) If any Obligation is not paid when due (in each case, without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then the Administrative Agent upon the request of the Required Lenders shall notify the Borrowers that such amount shall, until such time as such Event of Default has ceased to exist, bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any other Event of Default exists, then the Administrative Agent, upon the request of the Required Lenders, shall notify the Borrowers that the principal amount of all outstanding Obligations (including, without limitation, all Letter of Credit Fees) shall, until such time as such Event of Default has ceased to exist, bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; provided that such request and notice shall not be required with respect to any Event of Default under Section 8.01(f) and, upon such an Event of Default such amounts shall bear interest at the Default Rate automatically.

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

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.11. Fees.

(a) The Borrowers shall pay an upfront fee to each Lender with a Revolving Credit Commitment a fee on the Closing Date equal to 0.375% of the principal amount of the Revolving Credit Commitment of such Lender on the Closing Date. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(b) The Borrowers shall pay the fees relating to the Revolving Credit Facility to the Persons in the amounts and at the times specified in the Administrative Agent Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(c) The Borrowers agree to pay to the Administrative Agent for the account of each Lender (other than any Defaulting Lender) a commitment fee for the period from and including the Closing Date to but excluding the last day of the Revolving Credit Commitment Period, computed at the

Commitment Fee Rate on the actual daily amount of the Available Revolving Credit Commitment of such Lender during the period for which payment is made, payable quarterly in arrears on the last Business Day of each March, June, September and December and on the Revolving Credit Termination Date, commencing on the first of such dates to occur after the date hereof.

2.12. Computation of Interest and Fees. All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.14(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.13. Evidence of Debt. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrowers shall execute and deliver to such Lender (through the Administrative Agent) a Note or Notes, which shall evidence such Lender's Loans and Revolving Credit Commitments in addition to such accounts or records. Each Lender may attach schedules to its Note(s) and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and Revolving Credit Commitments and payments with respect thereto. Upon receipt of an affidavit of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note(s) and upon cancellation of such Note(s), the Borrowers will issue, in lieu thereof, a replacement Note or Notes in favor of such Lender, in the same principal amount thereof and otherwise of like tenor.

2.14. Payments Generally: Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 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 the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(b) Funding by Lenders: Presumption by Administrative Agent (i) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any

Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.05 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.05) and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrowers prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

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

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

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

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Insufficient Funds. Subject to Section 8.03, if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

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

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

(iii) the provisions of this Section 2.15 shall not be construed to apply to (A) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant if made in accordance with Section 11.06.

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.16. Letters of Credit Commitment.

(a) Subject to the terms and conditions hereof, each Issuing Lender agrees, in each case, in reliance on the agreements of the other Lenders set forth in Section 2.19(a), to issue Standby Letters of Credit or Commercial Letters of Credit (the "Letters of Credit") for the account of the Borrowers (which the Borrowers may request be issued with respect to obligations of any Subsidiary of a Borrower) on any Business Day during the Revolving Credit Commitment Period in such form as may be approved from time to time by the Issuing Lender; provided that no Issuing Lender shall be obligated to issue any Letter of Credit if, after giving effect to such issuance, (i) the L/C Obligations would exceed the L/C Commitment or (ii) the Total Revolving Extensions of Credit would exceed the Line Cap. Each Letter of Credit shall be denominated in Dollars.

(b) No Issuing Lender shall be obligated to issue any Letter of Credit hereunder if such issuance would conflict with, or cause the Issuing Lender or any L/C Participant to exceed any limits imposed by, any applicable Law. The L/C Issuer shall not issue any Letter of Credit, if:

(i) subject to Section 2.16(d), the expiry date of such requested Standby Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(ii) subject to Section 2.16(d), the expiry date of such requested Commercial Letter of Credit would occur more than 120 days after the date of issuance, unless the Required Lenders have approved such expiry date; or

(iii) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless Cash Collateralized or otherwise credit supported to the reasonable satisfaction of the Administrative Agent and the applicable Issuing Lender at the time of issuance.

(c) No Issuing Lender shall not be under any obligation to issue any Letter of Credit if any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Lender from issuing the Letter of Credit, or any Law applicable to the Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the Issuing Lender with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Lender is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Lender in good faith deems material to it.

(d) Unless otherwise expressly agreed by the Issuing Lender and the Borrowers when a Letter of Credit is issued (i) the rules of the ISP shall apply to each Standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each Commercial Letter of Credit. Notwithstanding the foregoing, the Issuing Lenders shall not be responsible to the Borrowers for, and the Issuing Lenders' rights and remedies against the Borrowers shall not be impaired by, any action or inaction of the Issuing Lenders required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the Issuing Lenders or the beneficiary is located, the practice stated in clause (i) or (ii) of the previous sentence, as applicable, or in the decisions, opinions, practice

statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

2.17. Procedure for Issuance of Letter of Credit. The Borrowers may from time to time request that an Issuing Lender issue a Letter of Credit by delivering to the Issuing Lender at its address for notices specified herein an Application therefor, completed to the reasonable satisfaction of the Issuing Lender and such other certificates, documents and other papers and information as the Issuing Lender may reasonably request. Such Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the Issuing Lender, by personal delivery or by any other means acceptable to the L/C Issuer. Concurrently with the delivery of an Application to the Issuing Lender, the Parent Borrower shall deliver a copy thereof to the Administrative Agent. Upon receipt of any Application, the Issuing Lender will process such Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with their respective customary procedures and the Issuing Lender will issue the Letter of Credit requested thereby by causing or issuing the original of such Letter of Credit to be issued to the beneficiary thereof or as otherwise may be agreed to by such Issuing Lender and the Borrowers (but in no event shall any Issuing Lender be required to issue any Letter of Credit earlier than three Business Days after the Issuing Lender's receipt of the Application therefor and all such other certificates, documents and other papers and information relating thereto). Promptly after issuance by an Issuing Lender of a Letter of Credit, the Issuing Lender shall furnish a copy of such Letter of Credit to the Borrowers. The Issuing Lender shall promptly give notice to the Administrative Agent of the issuance of each Letter of Credit issued by such Issuing Lender (including the face amount thereof), and shall provide a copy of such Letter of Credit to the Administrative Agent as soon as possible after the date of issuance.

2.18. L/C Fees and Other Charges.

(a) The Borrowers shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") (i) with respect to each Commercial Letter of Credit, equal to 50% of the Applicable Margin for Eurodollar Rate Loans, times the daily maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit), and (ii) with respect to each Standby Letter of Credit, equal to the Applicable Margin for Eurodollar Rate Loans, times the daily maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit).

(b) The Borrowers shall pay directly to the Issuing Lender for its own account a fronting fee (i) with respect to each Commercial Letter of Credit, at the rate per annum equal to one-eighth of one percent (0.125%), computed on the amount of such Letter of Credit, and payable upon the issuance thereof, (ii) with respect to any amendment of a Commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed between the Borrowers and the Issuing Lender, computed on the amount of such increase, and payable upon the effectiveness of such amendment, and (iii) with respect to each Standby Letter of Credit, at the rate per annum equal to one-eighth of one percent (0.125%), computed on the daily amount available to be drawn under such Letter of Credit and on a quarterly basis in arrears.

(c) In addition to the foregoing fees, the Borrowers shall (i) pay or reimburse each Issuing Lender other than the initial Issuing Lender, without duplication, for such normal and customary costs and expenses as are incurred or charged by such Issuing Lender in issuing, negotiating, effecting payment under, amending or otherwise administering any Letter of Credit and (ii) with respect to any Letter of Credit issued by the initial Issuing Lender, pay the Work Fee applicable thereto.

2.19. L/C Participations.

(a) Each Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce the Issuing Lender to issue Letters of Credit hereunder, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lender on the terms and conditions hereinafter stated, for such L/C Participant's own account and risk, an undivided interest equal to such L/C Participant's Revolving Credit Percentage of each Issuing Lender's obligations and rights under each Letter of Credit issued by such Issuing Lender hereunder and the amount of each draft paid by such Issuing Lender thereunder. Each L/C Participant unconditionally and irrevocably agrees with each Issuing Lender that, if a draft is paid under any Letter of Credit for which the Issuing Lender is not reimbursed in full by the Borrowers in accordance with the terms of this Agreement, such L/C Participant shall pay to the Administrative Agent for the account of the Issuing Lender upon demand of the Administrative Agent at the Administrative Agent's address for notices (and thereafter the Administrative Agent shall promptly pay to the Issuing Lender) an amount equal to such L/C Participant's Revolving Credit Percentage of the amount of such draft, or any part thereof, that is not so reimbursed. Each L/C Participant's obligation to pay such amount shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such L/C Participant may have against the Issuing Lender, any Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Article IV, (iii) any adverse change in the condition (financial or otherwise) of any Borrower, (iv) any breach of this Agreement or any other Loan Document by any Borrower, any other Loan Party or any other L/C Participant or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(b) If any amount (a "Participation Amount") required to be paid by any L/C Participant to an Issuing Lender pursuant to Section 2.19(a) in respect of any unreimbursed portion of any payment made by such Issuing Lender in connection with any Letter of Credit is not paid to an Issuing Lender within three Business Days after the date such payment is due, the Administrative Agent shall promptly notify the L/C Participants, and each L/C Participant shall pay to the Administrative Agent, for the account of such Issuing Lender, as the case may be, on demand (and thereafter the Administrative Agent shall promptly pay to such Issuing Lender) an amount equal to the product of (i) such Participation Amount, times (ii) the daily average Federal Funds Rate during the period from and including the date such payment is required to the date on which such payment is immediately available to such Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. If any Participation Amount required to be paid by any L/C Participant pursuant to Section 2.19(a) is not made available to the Administrative Agent for the account of such Issuing Lender by such L/C Participant within three Business Days after the date such payment is due, the Administrative Agent on behalf of such Issuing Lender shall be entitled to recover from such L/C Participant, on demand, such Participation Amount with interest thereon calculated from such due date at the rate per annum applicable to Base Rate Loans under the Revolving Credit Facility. A certificate of the Administrative Agent submitted on behalf of such Issuing Lender to any L/C Participant with respect to any amounts owing under this Section 2.19 shall be conclusive in the absence of manifest error.

(c) Whenever, at any time after an Issuing Lender has made payment under any Letter of Credit and has received from the Administrative Agent any L/C Participant's pro rata share of such payment in accordance with Section 2.19(a) and the Administrative Agent receives any payment

related to such Letter of Credit (whether directly from the Borrowers or otherwise, including proceeds of collateral applied thereto by such Issuing Lender), or any payment of interest on account thereof, the Administrative Agent will promptly distribute to such L/C Participant its pro rata share thereof; provided, however, that in the event that any such payment received by such Issuing Lender shall be required to be returned by such Issuing Lender, such L/C Participant shall return to the Administrative Agent for the account of such Issuing Lender (and thereafter the Administrative Agent shall promptly return to such Issuing Lender), the portion thereof previously distributed by such Issuing Lender.

2.20. Letters of Credit Reimbursement Obligation of the Borrowers. The Borrowers agree to reimburse the Issuing Lender on each date on which such Issuing Lender notifies the Borrowers of the date and amount of a draft presented under any Letter of Credit and paid by the Issuing Lender, for the amount of (a) such draft so paid and (b) any Taxes, fees, charges or other costs or expenses incurred by the Issuing Lender (without duplication) in connection with such payment (the amounts described in the foregoing clauses (a) and (b) in respect of any drawing, collectively, the "Payment Amount"). Each such payment shall be made through the Administrative Agent in lawful money of the United States of America and in immediately available funds. Interest shall be payable on each Payment Amount from the date of the applicable drawing until payment in full at the rate set forth in (i) until the second Business Day following the date of the applicable drawing, Section 2.10(a)(ii) and (ii) thereafter, Section 2.10(b). Each drawing under any Letter of Credit shall (unless an event of the type described in Section 8.01(f) shall have occurred and be continuing with respect to the Borrowers, in which case the procedures specified in Section 2.19 for funding by L/C Participants shall apply) constitute a request by the Borrowers provided that the Borrowers shall not be deemed to have made any representations or warranties in connection with such request) to the Administrative Agent for a borrowing pursuant to Section 2.05 of Base Rate Loans (or, at the option of the Administrative Agent and the Swing Line Lender in their sole discretion, a borrowing pursuant to Section 2.07 of Swing Line Loans) in the amount of such drawing. The Borrowing Date with respect to such borrowing shall be the first date on which a borrowing of Revolving Credit Loans (or, if applicable, Swing Line Loans) could be made, pursuant to Section 2.05 (or, if applicable, Section 2.07), if the Administrative Agent had received a notice of such borrowing at the time the Administrative Agent receives notice from the Issuing Lender of such drawing under such Letter of Credit. If Revolving Credit Loans (or, if applicable, Swing Line Loans) are otherwise unavailable to the Borrowers, the Payment Amount shall be paid to the Issuing Lender, on (x) the same Business Day that the Issuing Lender notifies the Borrowers of the date and amount of a draft presented under any Letter of Credit and paid by the Issuing Lender, if such notice is provided prior to 12:00 p.m. (New York City time) or (y) the following Business Day, in all other cases.

2.21. Letters of Credit Obligations Absolute. The Borrowers' obligations under Section 2.20 in respect of the Letters of Credit shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment that any Borrower may have or have had against any Issuing Lender, any beneficiary of a Letter of Credit or any other Person. The Borrowers also agree with each Issuing Lender that the Issuing Lenders shall not be responsible for, and the Borrowers' reimbursement obligations under Section 2.20 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among any Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of any Borrower against any beneficiary of such Letter of Credit or any such transferee. No Issuing Lender shall be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except that the Issuing Lender shall be liable to the extent provided by law for errors or omissions found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Issuing Lender. The Borrowers agree that any action taken or omitted by an Issuing Lender under or in connection with any Letter of

Credit issued by it or the related drafts or documents, if done in the absence of gross negligence or willful misconduct and in accordance with the standards or care specified in the Uniform Commercial Code of the State of New York, shall be binding on each Borrower and shall not result in any liability of any Issuing Lender to any Borrower. The initial Issuing Lender shall not have any liability to any Borrower, the Administrative Agent or the Lenders in respect of any Letters of Credit issued by it or any Letters of Credit requested to be issued by it, nor shall the initial Issuing Lender owe any duty to any Person, or be deemed to have agreed, to issue any Letters of Credit. The Issuing Lenders may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication (SWIFT) message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

2.22. Letter of Credit Payments. If any draft shall be presented for payment under any Letter of Credit, the Issuing Lender shall promptly notify the Borrowers and the Administrative Agent of the date and amount thereof. The responsibility of any Issuing Lender to the Borrowers in connection with any draft presented for payment under any Letter of Credit, in addition to any payment obligation expressly provided for in such Letter of Credit issued by such Issuing Lender, shall be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentation appear on their face to be in conformity with such Letter of Credit and, in the case of any Issuing Lender, making any payment to the applicable beneficiary in accordance with the applicable Letter of Credit.

2.23. Letter of Credit Applications. To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Article II, the provisions of this Article II shall apply.

2.24. Defaulting Lender Adjustments. (a) Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 11.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 11.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the Issuing Lender or Swing Line Lender hereunder; *third*, if so determined by the Administrative Agent or requested by the Issuing Lender or Swing Line Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Swing Line Loan or Letter of Credit; *fourth*, as the Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrowers, to be held in a non-interest bearing deposit account (which amount shall not bear interest under this Agreement) and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Lender or Swing Line Lender as a result of any

judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Lender or Swing Line Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Obligations in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Obligations were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.24(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender (x) shall not be entitled to receive any commitment fee pursuant to Section 2.11(b) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall not be entitled to receive Letter of Credit fees.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Swing Line Loans pursuant to Sections 2.07 and 2.19, the "Applicable Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Commitment of that Defaulting Lender; provided that (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swing Line Loans shall not exceed the positive difference, if any, of (1) the Revolving Credit Commitment of that non-Defaulting Lender minus (2) the aggregate outstanding amount of the Revolving Extensions of Credit of that Lender. For the avoidance of doubt, under no circumstances shall the Revolving Extension of Credit of any Lender be in excess of such Lender's Revolving Credit Commitment.

(v) Reallocation of Revolving Credit Percentages. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to fund Revolving Loans pursuant to Section 2.01, the "Revolving Credit Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Revolving Credit Commitment of that Defaulting Lender; provided that (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, the aggregate obligation of each non-Defaulting Lender to fund Revolving Loans shall not exceed the positive difference, if any, of (1) the Revolving Credit Commitment of that non-Defaulting Lender minus (2) the aggregate outstanding amount of the Revolving Extensions of Credit of that Lender. For the avoidance of doubt, under no circumstances shall the Revolving Extension of Credit of any Lender be in excess of such Lender's Revolving Credit Commitment.

(b) Defaulting Lender Cure. If the Parent Borrower, the Administrative Agent, Swing Line Lender and the Issuing Lender agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Credit Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.24(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

ARTICLE III

TAXES, YIELD PROTECTION AND ILLEGALITY

3.01. Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Taxes unless required by applicable Laws; provided that if any applicable withholding agent shall be required by applicable Laws to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable by the applicable Loan Party shall be increased as necessary so that after all required deductions with respect to such Indemnified Taxes or Other Taxes (including deductions applicable to additional sums payable under this Section 3.01) have been made, the Administrative Agent or any Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable withholding agent shall make such deductions and (iii) the applicable withholding agent shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by the Loan Parties. Without limiting or duplicating the provisions of subsection (a) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Loan Parties. The Loan Parties shall, jointly and severally, indemnify the Administrative Agent and each Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes imposed or asserted on or attributable to any payment by or on account of any obligation of any Loan Party under any Loan Document or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) paid or payable by the Administrative Agent or such Lender, as the case may be, 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 the Borrowers by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the applicable Loan Party to a Governmental Authority, the applicable Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. Each Lender shall, at such times as are reasonably requested by the Parent Borrower or the Administrative Agent, provide the Borrowers and the Administrative Agent with any documentation prescribed by Laws or reasonably requested by the Borrowers or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding tax with respect to any payments to be made to such Lender under the Loan Documents. Each such Lender shall, whenever a lapse in time or change in circumstances renders such documentation obsolete, expired or inaccurate in any material respect, deliver promptly to the Borrowers and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Parent Borrower or the Administrative Agent) or promptly notify the Borrowers and the Administrative Agent of its inability to do so. Unless the Borrowers or the Administrative Agent has received forms or other documents satisfactory to it indicating that payments under any Loan Document to or for a Lender are not subject to withholding tax or are subject to such Tax at a rate reduced by an applicable tax treaty, the Borrowers or the Administrative Agent (as applicable) shall withhold amounts required to be withheld by applicable Laws from such payments at the applicable statutory rate. Without limiting the foregoing:

(1) Each Lender that is a United States person (as defined in Section 7701(a)(30) of the Code) shall deliver to the Borrowers and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed original copies of Internal Revenue Service Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding.

(2) Each Foreign Lender shall deliver to the Parent Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrowers or the Administrative Agent) whichever of the following is applicable:

(A) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8ECI (or any successor forms),

(C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (A) two properly completed and duly signed certificates substantially in the form of Exhibit O (any such certificate, a "United States Tax Compliance Certificate") and (B) two properly completed and duly signed original copies of Internal Revenue Service Form W-8BEN (or any successor forms),

(D) to the extent a Foreign Lender is not the beneficial owner (for example, where the Foreign Lender is a partnership or a participating Lender), Internal Revenue Service Form W-8IMY (or any successor forms) of the Foreign Lender, accompanied by

a Form W-8ECI, W-8BEN, United States Tax Compliance Certificate, Form W-9, Form W-8IMY or any other required information (or any successor forms) from each beneficial owner that would be required under this Section 3.01(e) if such beneficial owner were a Lender, as applicable (provided that, if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Foreign Lender on behalf of such beneficial owner), or

(E) two properly completed and duly signed original copies of any other form prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, United States federal withholding tax on any payments to such Lender under the Loan Documents.

Each Lender shall deliver to the Borrowers and the Administrative Agent two further original copies of any previously delivered form or certification (or any applicable successor form) on or before the date that any such form or certification expires or becomes obsolete or inaccurate and promptly after the occurrence of any event requiring a change in the most recent form previously delivered by it to the Borrowers or the Administrative Agent, or promptly notify the Borrowers and the Administrative Agent that it is unable to do so. Each Lender shall promptly notify the Administrative Agent at any time it determines that it is no longer in a position to provide any previously delivered form or certification to the Borrowers or the Administrative Agent,

Notwithstanding any other provision of this clause (e), a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(f) Treatment of Certain Refunds. If the Borrowers reasonably believe that the Administrative Agent or a Lender is entitled to a refund (whether received in cash or as an offset against other cash tax obligations) of any Indemnified Taxes or Other Taxes as to which it has been indemnified by an applicable Loan Party or with respect to which an applicable Loan Party has paid additional amounts pursuant to this Section 3.01, the Parent Borrower may request that the Administrative Agent or relevant Lender pursue such refund with the relevant Governmental Authority at the Borrowers' expense (so long as such efforts would not, in the sole determination of the Administrative Agent or the Lender, result in any unreimbursed costs or expenses or be otherwise materially disadvantageous to it). If the Administrative Agent or the applicable Lender receives such refund, it shall pay to the Borrowers an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Loan Parties under this Section 3.01 with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender, as the case may be (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrowers, upon the request of the Administrative Agent or such Lender, agree to repay the amount paid over to the Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender if the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Loan Parties or any other Person.

(g) Lenders. For the avoidance of doubt, a "Lender" shall, for purposes of this Section 3.01, include an Issuing Lender and a Swing Line Lender.

3.02. Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurodollar Rate Loans, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrowers through the Administrative Agent, any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

3.03. Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan (any such Loans, "Impacted Loans"), (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrowers and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrowers may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (a) above, the Administrative Agent, in consultation with the Borrowers and the Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (a) of the first sentence of this section, (2) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Parent Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (3) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Parent Borrower written notice thereof.

3.04. Increased Costs; Reserves on Eurodollar Rate Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(ii) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(c)) or any Issuing Lender;

(iii) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 or any Excluded Tax); or

(iv) impose on any Lender or Issuing Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount), then, upon request of such Lender, the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section 3.04, in reasonable detail sufficient to allow the Borrowers to verify such calculation, and delivered to the Parent Borrower shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Eurodollar Rate Loans. The Borrowers shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets

consisting of or including Eurocurrency funds or deposits (currently known as “Eurocurrency liabilities”), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan; provided that the Borrowers shall have received at least 10 days’ prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

(f) Increased Amounts. No Lender shall demand any payment referred to herein if it shall not at the time be the general policy or practice of such Lender to demand such compensation in substantially similar circumstances under substantially comparable provisions of other credit agreements.

3.05. Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense actually incurred by it as a result of:

- (a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);
- (b) any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrowers; or
- (c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Parent Borrower pursuant to Section 11.13;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained, but excluding loss of anticipated profits. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

3.06. Mitigation Obligations: Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrowers is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the sole judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to

Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, or if any Lender is a Defaulting Lender, the Parent Borrower may replace such Lender in accordance with Section 11.13; provided, that prior to any such replacement, such Lender shall have taken no action under Section 3.06(a) so as to eliminate the continued need for payment of amounts owing pursuant to Section 3.01, and until such time as such replacement is consummated, the Borrowers shall pay all additional amounts pursuant to Section 3.01.

3.07. Survival. All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE IV

CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01. Conditions. The obligation of each Lender to make its initial Credit Extension hereunder is subject to satisfaction or waiver pursuant to Section 11.01 of the following conditions precedent:

(a) The Administrative Agent's receipt of the following:

(i) executed counterparts of this Agreement (including the related Lender Addenda), the Guarantee and Collateral Agreement and the Perfection Certificate by each of the parties thereto, together with:

(A) certificates representing the Pledged Equity accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank or with other instruments of transfer and all other documents or agreements required by the Guarantee and Collateral Agreement, and

(B) UCC financing statements relating to the Collateral in form appropriate for filing under the Uniform Commercial Code of each jurisdiction where any Loan Party is organized naming such Loan Party as debtor and the Administrative Agent as secured party.

(ii) a Note executed by the Borrowers in favor of each Lender that has requested a Note at least three Business Days prior to the Closing Date;

(iii) a certificate of each Loan Party, dated the Closing Date, substantially in the form of Exhibit I, with appropriate insertions and attachments;

(iv) "long form" good standing certificates of each Loan Party in its jurisdiction of organization and, to the extent reasonably requested by the Administrative Agent, bring-down good standing certificates of the Loan Parties;

-
- (v) a favorable opinion of Gibson, Dunn & Crutcher LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, as to the matters set forth in Exhibit G;
- (vi) a certificate signed by a Responsible Officer of the Parent Borrower certifying that the conditions specified in Sections 4.01(f) and 4.02 have been satisfied;
- (vii) a certificate from the chief financial officer of the Borrowers which shall certify to the Solvency of the Borrowers and its Subsidiaries considered as a whole;
- (viii) certificates of insurance, naming the Administrative Agent, on behalf of the Lenders, as an additional insured or loss payee, as the case may be, under all insurance policies maintained with respect to the assets and properties of the Loan Parties that constitute Collateral;
- (ix) the results of a recent lien search in each of the jurisdictions where assets of the Loan Parties are located, and such search shall reveal no liens on any of the assets of the Loan Parties except for liens permitted by Section 7.01 or discharged on or prior to the Closing Date pursuant to documentation satisfactory to the Administrative Agent;
- (x) evidence that the Existing Credit Agreement has been, or concurrently with the Closing Date is being, terminated and all amounts due and owing thereunder are being repaid in full and all Liens securing obligations under the Existing Credit Agreement have been, or concurrently with the Closing Date are being, released; and
- (xi) evidence that the Senior Notes and the Holdco Senior Notes have been amended on or concurrently with the Closing Date to, among other things, extend the final maturity of the Senior Notes to August 20, 2018.
- (b) All fees required to be paid to the Administrative Agent and the Joint Bookrunners on or before the Closing Date shall have been paid.
- (c) The Borrowers shall have paid the reasonable and documented fees and out-of-pocket disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date.
- (d) There shall be no material indebtedness of the Borrowers or the Guarantors (other than under the Loan Documents, the Term Loan Facility, the Holdco Senior Notes and the Senior Notes), except as set forth on Schedule 7.02.
- (e) If any Credit Extensions are to be made on the Closing Date, the Administrative Agent shall have received a Request for Credit Extension in accordance with the requirements hereof.
- (f) Since October 1, 2011, no Material Adverse Effect shall have occurred.
- (g) The Administrative Agent shall have received a Borrowing Base Certificate dated as of a recent date, related to the month ended August 25, 2012, and executed by a Responsible Officer of the Parent Borrower. After giving effect to (i) any funding of the Loans on the Closing Date and (ii) all Letters of Credit to be issued at, or immediately subsequent to, the Closing Date, Excess Availability shall be not less than \$75,000,000.

(h) The Administrative Agent shall have received and be satisfied with a field exam and inventory appraisal from an appraiser reasonably acceptable to the Administrative Agent.

4.02. Conditions to Each Extension of Credit The agreement of each Lender to make any extension of credit requested to be made by it hereunder on any date (including, without limitation, its initial extension of credit) is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. At the time of each extension of credit, as applicable, and also after giving effect thereto, each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on and as of the date of such extension of credit (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date and except to the extent that a particular representation or warranty is already qualified by materiality, in which case, such representation or warranty shall be true and correct).

(b) No Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the extensions of credit requested to be made on such date.

(c) Each borrowing by or issuance of a Letter of Credit on behalf of, the Borrowers hereunder (excluding any borrowing of Revolving Credit Loans pursuant to Section 2.07(b) and of any Loans pursuant to Section 2.20) shall constitute a representation and warranty by the Borrowers as of the date of such extension of credit that the conditions contained in this Section 4.02 have been satisfied.

(d) The Administrative Agent and, if applicable, the Issuing Lender or the Swing Line Lender shall have received a Request for Credit Extension in the form of Exhibit A-1 or A-2, as applicable, in accordance with the requirements hereof.

Without limiting the generality of the provisions of Section 9.07, for purposes of determining compliance with the conditions specified in this Article IV on the Closing Date, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

Each of the Borrowers and Holdings (where applicable below) represents and warrants to the Administrative Agent and the Lenders that:

5.01. Existence, Qualification and Power. Holdings and each Loan Party and each of its Subsidiaries (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in

good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. Schedule 5.01 annexed hereto sets forth, as of the Closing Date, Holdings' and each Loan Party's name as it appears in official filings in its state of incorporation or organization, its state of incorporation or organization, organization type, organization number, if any, issued by its state of incorporation or organization, its federal employer identification number.

5.02. Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any material Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law in any material respect. The execution, delivery and performance by Holdings of each Loan Document to which it is or is to be a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not contravene the terms of its Organization Documents.

5.03. Governmental Authorization; Other Consents. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) in the case of clause (d) above, authorizations, approvals, actions, notices and filings required in connection with enforcement of remedies against securities under securities laws or (ii) the authorizations, approvals, actions, notices and filings listed on Schedule 5.03, all of which have been duly obtained, taken, given or made and are in full force and effect.

5.04. Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto and Holdings, to the extent party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of Holdings or such Loan Party, enforceable against each such Person that is party thereto in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.05. Financial Statements; No Material Adverse Effect

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Parent Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Parent Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) Since October 1, 2011, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(c) The consolidated forecasted balance sheet, statements of income and cash flows of the Parent Borrower and its Subsidiaries delivered to the Lenders prior to the Closing Date or pursuant to Section 6.01(c) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were reasonable in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, a reasonable estimate of the Parent Borrower's future financial condition and performance.

5.06. Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrowers, threatened at law, in equity, in arbitration or before any Governmental Authority, by or against the Parent Borrower or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or (b) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

5.07. No Default. Neither any Loan Party nor any Subsidiary thereof is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing.

5.08. Ownership of Property; Liens; Investments

(a) Each Loan Party and each of its Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real property used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Loan Party and each of its Subsidiaries has good record and marketable title to, or valid leasehold interests in, all tangible personal property used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The properties of each Loan Party and each of its Subsidiaries are subject to no Liens, other than Permitted Liens.

(c) Schedule 5.08(c) sets forth, as of the Closing Date, a complete and accurate list of all real property owned as of such date by each Loan Party and each of its Subsidiaries showing as of such date the street address, county or other relevant jurisdiction, state, record owner and book and estimated fair value thereof. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the real property owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Liens created or permitted by the Loan Documents.

(d) (i) Schedule 5.08(d)(i) sets forth, as of the Closing Date, a complete and accurate list of all leases of real property under which any Loan Party or any Subsidiary of a Loan Party is the lessee as of such date, and which provide for annual rental payments in excess of \$250,000, showing as of such date the street address thereof. Each such lease is the legal, valid and binding obligation of the lessee thereof, enforceable in accordance with its terms, subject to applicable

bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(ii) Schedule 5.08(d)(ii) sets forth a complete and accurate list, as of the Closing Date, of all leases of real property under which any Loan Party or any Subsidiary of a Loan Party is the lessor as of such date, which provide for annual rental payments in excess of \$250,000, showing as of such date the street address thereof. Each such lease is the legal, valid and binding obligation of the lessor thereof, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(e) Schedule 5.08(e) sets forth a complete and accurate list, as of the Closing Date, of all Investments held by any Loan Party or any Subsidiary of a Loan Party as of such date, showing as of such date the amount, obligor or issuer and maturity, if any, thereof.

5.09. Environmental Compliance.

(a) None of the Loan Parties or any of their respective Subsidiaries: (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any Environmental Permit, (ii) has become subject to any Environmental Liability, (iii) has received written or, to the knowledge of any Loan Party, verbal notice of any pending or, to the knowledge of the Loan Parties, threatened claim or other proceeding with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability of any Loan Party or any of their respective Subsidiaries, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect, (i) none of the properties currently or, to the knowledge of the Loan Parties, formerly owned, leased or operated by any Loan Party or any of its Subsidiaries is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) to the knowledge of the Loan Parties, there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries; (iii) to the knowledge of the Loan Parties, there is no asbestos or asbestos-containing material on any property currently owned, leased or operated by any Loan Party or any of its Subsidiaries; and (iv) to the knowledge of the Loan Parties, Hazardous Materials have not been Released, discharged or disposed of and are not otherwise present on any property currently or formerly, owned, leased or operated by any Loan Party or any of its Subsidiaries.

(c) (i) Neither any Loan Party nor any of its Subsidiaries is undertaking, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened Release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law except as would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect; and (ii) to the knowledge of the Loan Parties, all generation, use, treatment, handling or storage of Hazardous Materials at, or transportation of Hazardous Materials to or from, any property currently or formerly owned, leased or operated by any Loan Party or any of its Subsidiaries, and all such activities by the Loan Parties and their Subsidiaries at any location, have been done in a manner which would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect.

5.10. Insurance. Schedule 5.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Closing Date. As of the Closing Date, each insurance policy listed on Schedule 5.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

5.11. Taxes. Holdings and each of its Subsidiaries has filed all material federal, state and other Tax returns and reports required to be filed, and has paid all material federal, state and other Taxes, assessments, fees and other governmental charges levied or imposed upon it or its properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP; provided such contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation. There is no outstanding or proposed tax assessment, deficiency or other claim known to a Responsible Officer of Holdings or any Borrower against Holdings or any Borrower or any Subsidiary that would, if made, have a Material Adverse Effect (individually or in the aggregate). Neither any Loan Party nor any Subsidiary thereof is party to any tax sharing agreement.

5.12. ERISA Compliance.

(a) Except as has not resulted or could not reasonably be expected to result in a Material Adverse Effect: (i) each Plan has been operated and maintained in compliance in all respects with the applicable provisions of ERISA, the Code and other Federal or state Laws; (ii) each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of the Loan Parties, nothing has occurred which could reasonably be expected to prevent, or cause the loss of, such qualification; (iii) each Loan Party and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code; and (iv) no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the best knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect. There has been no non- exempt prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) Except as would not reasonably be expected to result in a Material Adverse Effect: (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) no Loan Party nor any ERISA Affiliate has incurred any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) no Loan Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

5.13. Subsidiaries; Equity Interests; Loan Parties. As of the Closing Date, no Loan Party has any Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and all of

the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable (to the extent applicable) and are owned by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except those created under the Collateral Documents and other Permitted Liens. As of the Closing Date, no Loan Party has any equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13. As of the Closing Date, the copy of the charter of each Loan Party and each amendment thereto provided pursuant to Section 4.01(a)(iii) is a true and correct copy of each such document, each of which is valid and in full force and effect.

5.14. Margin Regulations; Investment Company Act.

(a) None of the proceeds of the Loans shall be used in any manner that would result in a violation of Regulations T, U or X of the FRB.

(b) None of Holdings, the Borrowers or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.15. Disclosure. The information (other than projections, other forward-looking information and information of a general economic or industry-specific nature) furnished (whether in writing or orally) by or on behalf of the Loan Parties to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case as modified or supplemented by other information so furnished), when so furnished and taken as a whole, does not contain any material misstatement of fact or omit 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, the Borrowers represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

5.16. Compliance with Laws. Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17. Intellectual Property; Licenses, Etc. Schedule 5.17 sets forth as of the Closing Date a complete and accurate list of all items of Intellectual Property owned by each Loan Party and each of its Subsidiaries that are registered with the United States Patent and Trademark Office and United States Copyright Office or have been filed for registration and have not been abandoned. To the knowledge of the Borrowers, each Loan Party and each of its Subsidiaries owns, or possesses the right to use, all of the Intellectual Property used in the operation of its respective businesses, it being understood that the foregoing is not to be construed as a representation or warranty with respect to infringement, which is the subject of the next following sentence. To the knowledge of the Borrowers, the conduct of the businesses of each Loan Party or any of its Subsidiaries does not infringe or misappropriate the Intellectual Property or dilute any trademark or service mark of any other Person. No written claim or litigation regarding any such infringement is pending or, to the knowledge of the Borrowers, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.18. Solvency. On a consolidated basis, the Loan Parties are Solvent. No transfer of property has been or will be made by any Loan Party and no obligation has been or will be incurred by

any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party.

5.19. Labor Matters. There are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party pending or, to the knowledge of any Loan Party, threatened that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. The hours worked by and payments made to employees of the Loan Parties comply in all material respects with the Fair Labor Standards Act and any other applicable federal, state, local or foreign Law dealing with such matters. No Loan Party or any of its Subsidiaries has incurred any material liability or obligation under the Worker Adjustment and Retraining Act or similar state Law. All payments due from any Loan Party, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in all material respects in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 5.19, as of the Closing Date, no Loan Party is a party to or bound by any collective bargaining agreement, management agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement. There are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan Party has made a pending demand for recognition except those that could not reasonably be expected to have a Material Adverse Effect. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party except those that could not reasonably be expected to have a Material Adverse Effect.

5.20. Collateral Documents. Except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, the provisions of the Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable First Priority Lien (subject to Liens permitted by Section 7.01), on all right, title and interest of the respective Loan Parties in the Collateral described therein, and (i) when all appropriate filings or recordings are made in the appropriate offices as may be required under applicable law and (ii) upon the taking of possession or control by the Administrative Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Administrative Agent to the extent required by any Collateral Document), such Collateral Document will constitute fully perfected Liens on, and security interests in, all right, title and interest of the Loan Parties in such Collateral. Except for filings completed prior to the Closing Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.

5.21. Indebtedness and Liens. The Borrowers and their respective Subsidiaries have no Indebtedness (other than Permitted Indebtedness) or Liens (other than Permitted Liens) outstanding as of the Closing Date.

5.22. Licenses and Permits. Each Loan Party and each of its Subsidiaries has all licenses, permits, authorizations, consents and approvals of a Governmental Authority required by Law to carry on its business as currently conducted, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.23. Status as Senior Debt. The Obligations are “Senior Debt” and “Designated Senior Debt” under, and as defined in, any Subordinated Indebtedness of any Loan Party which contains such designations.

5.24. Deposit Accounts; Credit Card Arrangements

(a) Annexed hereto as Schedule 5.24(a) is a list of all deposit accounts maintained by the Loan Parties as of the Closing Date, which Schedule includes, with respect to each deposit account (i) the name and address of the depository; and (ii) the account number(s) maintained with such depository.

(b) Annexed hereto as Schedule 5.24(b) is a list describing all material arrangements as of the Closing Date to which any Loan Party is a party with respect to the processing and/or payment to such Loan Party of the proceeds of any credit card charges for sales made by such Loan Party.

5.25. USA PATRIOT Act; FCPA; OFAC; Anti-Terrorism

(a) To the extent applicable, each of Holdings, the Borrowers and their respective Subsidiaries is in compliance, in all material respects, with the USA PATRIOT Act.

(b) No part of the proceeds of any Loans or any Letter of Credit will be used by Holdings, the Borrower or any of their respective Subsidiaries, directly or, to the knowledge of Holdings, the Borrower or any of their respective Subsidiaries, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977 (“FCPA”).

(c) None of Holdings, the Borrower or any of their respective Subsidiaries is any of the following:

(ii) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the “Executive Order”);

(iii) a Person owned or Controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iv) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any laws with respect to terrorism or money laundering;

(v) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(vi) a Person that is named as a “specially designated national and blocked Person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control (“OFAC”) at its official website or any replacement website or other replacement official publication of such list and none of the proceeds of the Loans or any Letter of Credit will be, directly or, to the knowledge of Holdings, the Borrower or any of their respective Subsidiaries, indirectly, offered, lent, contributed or otherwise made available to any Subsidiary, joint venture partner or other Person for the purpose of financing the activities of any Person currently the subject of sanctions administered by OFAC.

ARTICLE VI

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Letter of Credit remains outstanding, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than any indemnity obligation for unasserted claims that by its terms survives the termination of this Agreement, any Letter of Credit that has been Cash Collateralized or any obligation under a Specified Swap Contract or Cash Management Services) the Borrowers shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.11) cause each Subsidiary to:

6.01. Financial Statements. Deliver to the Administrative Agent in form and detail satisfactory to the Administrative Agent:

(a) as soon as available, but in any event within 105 days after the end of each Fiscal Year of the Parent Borrower (commencing with the Fiscal Year ending September 29, 2012) (i) a consolidated balance sheet of the Parent Borrower and its Subsidiaries as at the end of such Fiscal Year, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of Ernst & Young LLP or another Registered Public Accounting Firm of nationally recognized standing reasonably satisfactory to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit or with respect to the absence of any material misstatement (other than any such qualification or exception resulting solely from the maturity of the Indebtedness under this Agreement) and (ii) a management discussion and analysis of financial condition and results of operations, discussing and analyzing the results of operations for the Parent Borrower for such Fiscal Year;

(b) as soon as available, but in any event within 60 days after the end of each of the first three fiscal quarters of each fiscal year of the Parent Borrower (commencing with the fiscal quarter ended December 29, 2012) (i) a consolidated balance sheet of the Parent Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated statements of income or operations and cash flows for such fiscal quarter and for the portion of the Parent Borrower's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, certified by a Responsible Officer of the Parent Borrower as fairly presenting the financial condition, results of operations and cash flows of the Parent Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end adjustments and the absence of footnotes and (ii) a management discussion and analysis of financial condition and results of operations, discussing and analyzing the results of operations for the Parent Borrower for such fiscal quarter;

(c) as soon as available, but in any event within 45 days after the end of each Fiscal Month of each Fiscal Year of the Parent Borrower (commencing with the Fiscal Month ended October 27, 2012) a consolidated balance sheet of the Parent Borrower and its Subsidiaries as at the end of such Fiscal Month, and the related consolidated statements of income or operations for such Fiscal Month and for the portion of the Parent Borrower's Fiscal Year then ended, setting

forth in each case in comparative form the figures for the corresponding Fiscal Month of the previous Fiscal Year and the corresponding portion of the previous Fiscal Year, all in reasonable detail, certified by a Responsible Officer of the Parent Borrower as fairly presenting the financial condition, results of operations and cash flows of the Parent Borrower and its Subsidiaries in accordance with GAAP, subject only to normal quarter-end adjustments and the absence of footnotes; and

(d) as soon as available, but in any event no later than 105 days after the end of each Fiscal Year of the Parent Borrower commencing at the end of the Fiscal Year ended September 29, 2013, an annual budget of the Parent Borrower and its Subsidiaries on a consolidated basis, including forecasts and projections of Excess Availability prepared by management of the Parent Borrower, in form reasonably acceptable to the Administrative Agent, of consolidated balance sheets and statements of income or operations and cash flows of the Parent Borrower and its Subsidiaries for each Fiscal Month of the immediately following Fiscal Year.

As to any information contained in materials furnished pursuant to Section 6.02(c), the Borrowers shall not be separately required to furnish such information under Section 6.01(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrowers to furnish the information and materials described in Sections 6.01(a) and (b) above at the times specified therein.

6.02. Certificates; Other Information. Deliver to the Administrative Agent in form and detail satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), (i) commencing with the financial statements for the period ending December 29, 2012, a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Parent Borrower (including calculations of financial covenant ratios), (ii) commencing with the financial statements for the period ending December 29, 2012, a narrative prepared by management of the Parent Borrower with respect to such financial statements in form and substance reasonably satisfactory to the Administrative Agent and (iii) notice of any change in location of the Parent Borrower's principal executive office or any distribution facility (including the establishment of any such new office or facility);

(b) promptly after any request by the Administrative Agent, copies of any management letters submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of any Loan Party or any of its Subsidiaries, or any audit of any of them;

(c) promptly after the same are available, copies of all annual, regular, periodic and special reports and registration statements which Holdings or the Parent Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(d) promptly, and in any event within seven Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(e) promptly, after any Loan Party's obtaining knowledge thereof, notice of any Environmental Liability of any Loan Party (including any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit) and any action or proceeding affecting any Loan Party or any of its Subsidiaries with respect to any Environmental Liability that could in either case reasonably be expected to have a Material Adverse Effect;

(f) as soon as available, but in any event within 30 days after the end of each Fiscal Year of the Parent Borrower, (i) a report supplementing Schedules 5.08(c) and 5.08(d), including an identification of all owned and leased real property (but only to the extent that the annual rental payments with respect to such leased real property exceed \$500,000) disposed of by any Loan Party or any Subsidiary thereof during such Fiscal Year, a list and description (including the street address and the record owner and book value (if applicable) thereof) of all real property acquired or leased (but only to the extent that the annual rental payments with respect to such leased real property exceed \$500,000) during such Fiscal Year and a description of such other changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete; (ii) a report supplementing Schedules 5.08(e) and 5.13 containing a description of all changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete in all material respects, each such report to be signed by a Responsible Officer of the Parent Borrower and to be in a form reasonably satisfactory to the Administrative Agent and (iii) a duly completed supplement to the Perfection Certificate or a certificate of a Responsible Officer confirming that there has been no change in such information since the date of the Perfection Certificate or latest supplement thereto.

(g) at least five (5) Business Days prior written notice, or such shorter period as to which the Administrative Agent in its sole discretion consents to thereof, of any change in: (i) any Loan Party's name; (ii) any Loan Party's organizational structure or jurisdiction of incorporation or formation; (iii) any Loan Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization; or (iv) the location of any Loan Party's chief executive office or its principal place of business;

(h) promptly, such additional information regarding the business, financial, legal or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent may from time to time reasonably request;

(i) no later than the 20th Business Day after the end of each Fiscal Month, a certificate in the form of Exhibit L (a "Borrowing Base Certificate") showing the Borrowing Base as of the close of business on the last day of the immediately preceding Fiscal Month, each Borrowing Base Certificate to be certified as complete and correct in all material respects on behalf of the Borrowers by a Responsible Officer of the Parent Borrower; provided that (i) if Excess Availability has been less than the greater of (X) \$10,000,000 or (Y) fifteen percent (15%) of the Line Cap at any time since the delivery of the most recent Borrowing Base Certificate, or (ii) any Event of Default has occurred and is continuing, such Borrowing Base Certificate shall be furnished on Wednesday of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day); and

(j) the financial and collateral reports described on Schedule 6.02 hereto, at the times set forth in such Schedule.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on

which the Parent Borrower posts such documents, or provides a link thereto on the Parent Borrower's website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on the Parent Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) upon request, the Parent Borrower shall deliver paper or electronic copies of such documents to the Administrative Agent and (ii) the Parent Borrower shall notify the Administrative Agent (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrowers hereby acknowledge that (a) the Administrative Agent and/or the Joint Lead Arrangers will make available to the Lenders materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, SyndTrak or another similar electronic system (the "Platform") and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrowers or their securities) (each, a "Public Lender"). The Borrowers hereby agree that at any time that the Borrowers are the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrowers shall be deemed to have authorized the Administrative Agent, the Joint Lead Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrowers or their securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (z) the Administrative Agent and the Joint Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

6.03. Notices. Promptly notify the Administrative Agent:

- (a) of the occurrence of any Default;
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including as a result of (i) breach or non-performance of, or any default under, a Contractual Obligation of any Loan Party or any Subsidiary thereof; (ii) any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary thereof and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws;
- (c) of the occurrence of any ERISA Event;

(d) the occurrence of any of the following events, as soon as possible and in any event within 30 days after any Loan Party knows or has reason to know thereof: (i) the occurrence of any Reportable Event with respect to any Plan, a failure to make any required contribution to a Plan, the creation of any Lien in favor of the PBGC or a Plan or any withdrawal from, or the termination, reorganization (within the meaning of Section 4241 of ERISA) or insolvency (within the meaning of Section 4245 of ERISA) of, any Multiemployer Plan; or (ii) the institution of proceedings or the taking of any other action by the PBGC, any Loan Party or any ERISA Affiliate or any Multiemployer Plan with respect to the withdrawal from, or the termination, reorganization or insolvency of, any Plan;

(e) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;

(f) of the occurrence of any Disposition of property or assets or any Recovery Event with respect to the Borrowers' Inventory outside the ordinary course of business involving Inventory in excess of \$1,000,000;

(g) of (i) any casualty or other insured damage to any material portion of the Collateral or (ii) the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of eminent domain or (iii) by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed; provided, however, that with respect to each of clauses (i), (ii) and (iii), the amount of Collateral affected thereby shall have an aggregate fair market value in excess of \$15,000,000 (or \$1,000,000 in the case of Inventory);

(h) of any change in the Parent Borrower's chief executive officer or chief financial officer; and

(i) of any termination, withdrawal or resignation of its Registered Public Accounting Firm.

Each notice pursuant to Section 6.03(a) shall (i) be accompanied by a statement of a Responsible Officer of the Parent Borrower setting forth details of the occurrence referred to therein and stating what action the Parent Borrower has taken and proposes to take with respect thereto and (ii) in the case of a notice of Default, describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04. Payment of Obligations. Pay and discharge as the same shall become due and payable (a) all material Tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted, adequate reserves in accordance with GAAP are being maintained by Holdings or such Subsidiary and such contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation; and (b) all lawful claims which, if unpaid, would by law become a Lien upon its property (except as set forth in clause (a) above).

6.05. Preservation of Existence, Etc.(a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06. Maintenance of Properties. (a) Maintain, preserve and protect all of its material tangible personal and real properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear and obsolescence excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except, in each case, where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07. Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies not Affiliates of the Borrowers insurance with respect to its properties and business against loss or damage (i) of the kinds or customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons or (ii) substantially similar to insurance maintained by the Borrowers on the Closing Date, in each case, subject to such changes as the Borrowers may reasonably deem appropriate in their business judgment with respect to deductibles, self-insured amounts, coverage exclusions and maximum covered losses, and providing for not less than 30 days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance;

(b) [Reserved];

(c) Maintain fire and extended coverage policies with respect to any Collateral that are endorsed or otherwise amended to include a lenders' loss payable clause (regarding personal property), in form and substance satisfactory to the Administrative Agent. Commercial general liability policies shall be endorsed to name the Administrative Agent as an additional insured. Business interruption policies shall name the Administrative Agent as a loss payee and shall be so endorsed in form and substance reasonably satisfactory to the Administrative Agent. Each such policy referred to in this Section 6.07 shall also provide that it shall not be canceled or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Administrative Agent (giving the Administrative Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Administrative Agent. The Parent Borrower shall deliver to the Administrative Agent, prior to the cancellation or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Administrative Agent, including an insurance binder) together with evidence satisfactory to the Administrative Agent of payment of the premium therefor;

(d) None of the Administrative Agent, the Lenders and their Affiliates, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Administrative Agent, the Lenders and their Affiliates for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any of the Administrative Agent, the Lenders and their Affiliates or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Administrative Agent, the Lenders and their Affiliates and their agents and employees. The designation of any form, type or amount of insurance coverage by any of the Administrative Agent, the Lenders and their Affiliates under this Section 6.07 shall in no event be deemed a representation, warranty or advice by such Administrative Agent, Lender or Affiliate that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties; and

(e) The Borrowers will, upon reasonable advance notice and during normal business hours, permit any representatives that are designated by the Administrative Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby. The Loan Parties shall pay the reasonable fees and expenses of any representatives retained by the Administrative Agent to conduct any such inspection; provided, however, that unless an Event of Default has occurred and is continuing, only one such visit in any calendar year shall be at the Borrowers' expense.

6.08. Compliance. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property and all Contractual Obligations, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been set aside and maintained by the Loan Parties in accordance with GAAP; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09. Books and Records. Maintain proper books of record and account, in which entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of Holdings or such Subsidiary, as the case may be.

6.10. Inspection Rights.

(a) Permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; provided, however, that unless an Event of Default exists only one such visit in any calendar year shall be at the Borrower's expense.

(b) Upon the request of the Administrative Agent, after reasonable prior notice, permit the Administrative Agent or professionals (including investment bankers, consultants, accountants, lawyers and appraisers) retained by the Administrative Agent to conduct appraisals, commercial finance examinations and other evaluations, including, without limitation, of (i) the Borrowers' practices in the computation of the Borrowing Base, and (ii) the assets included in the Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves. The Loan Parties shall reasonably cooperate with the Administrative Agent in establishing the earliest reasonable date for the conduct of such examinations and evaluations, it being understood that, in establishing such date, the Administrative Agent will give due consideration to availability of the Loan Parties' personnel whose participation in the examinations and evaluations may be required (including, among other things, their lack of availability due to time deadlines for completion of certain specified tasks then required for the orderly operation of the Loan Parties' business, such as year-end audits). Subject to the following sentences, the Loan Parties shall pay the reasonable fees and expenses of the Administrative Agent or such professionals with respect to such evaluations and appraisals. The Loan Parties acknowledge that the Administrative Agent shall undertake up to one (1) inventory appraisal and one (1) commercial finance examination each Fiscal Year commencing with the Fiscal Year ended September 28, 2013 at the Loan Parties' expense; provided that if Excess Availability is at any time less than the greater of (X) 25% of the Line Cap and

(Y) \$17,500,000, the Administrative Agent shall conduct up to two (2) commercial finance examinations and two (2) inventory appraisals in such Fiscal Year at the Loan Parties' expense. Notwithstanding the foregoing, the Administrative Agent may cause additional appraisals and commercial finance examinations to be undertaken (x) as it in its discretion deems necessary or appropriate, at its own expense, or (y) if required by applicable Law or if a Default shall have occurred and be continuing, at the expense of the Loan Parties.

6.11. Use of Proceeds. Use the proceeds of the Revolving Credit Loans, Swing Line Loans and the Letters of Credit for general corporate purposes (including permitted acquisitions).

6.12. Covenant to Guarantee Obligations and Give Security.

(a) Upon (x) the formation or acquisition of any new direct or indirect wholly-owned domestic Subsidiary (other than any domestic Subsidiary that is held directly or indirectly by a CFC) by any Loan Party or (y) the addition of any Subsidiary of the Parent Borrower as a guarantor under any Indebtedness of any Loan Party, then the Borrowers shall, at the Borrowers' expense, within the time period specified below unless the Administrative Agent in its sole discretion consents to an extension thereof:

(i) within 20 Business Days after such formation, acquisition or addition, as the case may be, cause such Subsidiary, and cause the direct parent of such Subsidiary (if it has not already done so), to duly execute and deliver to the Administrative Agent (x) a supplement to the Guarantee and Collateral Agreement, in form and substance reasonably satisfactory to the Administrative Agent, guaranteeing the other Loan Parties' obligations under the Loan Documents and covering the personal property of such Subsidiaries as specified by and in form and substance reasonably satisfactory to the Administrative Agent (including delivery of all Pledged Debt and Pledged Equity in and of such Subsidiary, and other instruments of the type specified in Section 4.01(a)(i)), securing payment of all the Obligations of such Subsidiary or such parent, as the case may be, under the Loan Documents and constituting Liens on all such real and personal properties and (y) in the case of a Subsidiary that owns Inventory, a Joinder Agreement,

(ii) within 20 Business Days after such formation, acquisition or addition, as the case may be, cause such Subsidiary and the direct parent of such Subsidiary (if it has not already done so) to take whatever action (including the filing of Uniform Commercial Code financing statements, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the personal properties purported to be subject to the Guarantee and Collateral Agreement and supplements thereto delivered pursuant to this Section 6.12, enforceable against all third parties in accordance with their terms, and

(iii) within 20 Business Days after such formation, acquisition or addition, deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to the matters contained in clause (i) above, and as to such other matters as the Administrative Agent may reasonably request.

(b) [Reserved].

(c) At any time upon request of the Administrative Agent, promptly execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem necessary or desirable in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, such guaranties and supplements to the Guarantee and Collateral Agreement and any supplements thereto.

6.13. Compliance with Environmental Laws.

(a) Except as would not reasonably be expected to give rise to a Material Adverse Effect, comply (including through the reasonable enforcement of applicable lease provisions and any other reasonable efforts to ensure compliance by all tenants, subtenants, contractors, subcontractors and invitees) with all applicable Environmental Laws and Environmental Permits; and obtain and renew all Environmental Permits necessary for its operations and properties.

(b) Conduct all material investigations, studies, sampling and testing, and undertake all material cleanup, removal, remedial or other actions required by any Governmental Authority pursuant to Environmental Law or any other Law to remove and clean up all Hazardous Materials from any of its properties; provided, however, that neither Holdings nor any of its Subsidiaries shall be required to undertake any such investigation, study, sampling, testing, cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by timely and proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP; and provided, further, that the pendency of any and all such proceedings could not reasonably be expected to give rise to a Material Adverse Effect.

6.14. Preparation of Environmental Reports. At any time during the continuance of an Event of Default, provide to the Lenders within 60 days after reasonable request from the Administrative Agent or the Required Lenders, at the expense of the Borrowers, an environmental site assessment report for any of its Real Properties described in such request, prepared by an environmental consulting firm reasonably acceptable to the Administrative Agent, indicating the presence or absence of Hazardous Materials at such property and the estimated cost of any compliance, including, if applicable, the estimated costs of legally required removal or remedial actions in connection with any such Hazardous Materials on such Real Property; without limiting the generality of the foregoing, if the Administrative Agent reasonably determines at any time following 30 days after its initial request that a material risk exists that any such report will not be provided within the time referred to above, the Administrative Agent may retain an environmental consulting firm to prepare such report at the expense of the Borrowers, and Holdings hereby grants and agrees to cause any Subsidiary that maintains an interest in any Real Property described in such request to grant at the time of such request to the Administrative Agent, the Lenders, such firm and any agents or representatives thereof an irrevocable non-exclusive license, after reasonable advance notice subject to the reasonable rights of tenants or any limitation contained in applicable leases, to enter onto their respective properties to undertake such an assessment. Any such assessment shall be conducted during normal business hours and in a manner reasonably designed to mitigate any material interference with the ongoing operations of the Loan Party's business. The Loan Parties may require that, prior to entry onto the Real Property, any such engineer or consultant shall present evidence of reasonable and customary insurance coverage, including general liability and professional liability policies. Unless there exists a reasonable belief that there has been a material Release of Hazardous Materials at the Real Property any such assessment shall be limited to a visual inspection of the property and shall not include the taking of any samples of soil, groundwater, surface water, building materials or other environmental media.

6.15. Further Assurances. Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent,

(a) correct any material defect or error that may be discovered

in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances, agreements and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

6.16. Designation as Senior Debt. Designate all Obligations as "Designated Senior Indebtedness" (or any similar term) under, and defined in, any Subordinated Indebtedness of any Loan Party which contains such designations.

6.17. Cash Management.

(a) On or prior to the date 90 days (which amount of time may be extended by the Administrative Agent in its sole discretion) after the Closing Date (or, in the case of Cortz, Inc., the Amendment No. 1 Effective Date):

(i) deliver to the Administrative Agent copies of notifications (each, a "Credit Card Notification") substantially in the form attached hereto as Exhibit M which have been executed on behalf of such Loan Party and delivered to such Loan Party's credit card clearinghouses and processors listed on Schedule 5.24(b); and

(ii) enter into a blocked account agreement (each, a "Blocked Account Agreement"), in form and substance reasonably satisfactory to the Administrative Agent, with each Blocked Account Bank (collectively, the "Blocked Accounts").

(b) Each Credit Card Notification shall require the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) of all proceeds therefrom to a Blocked Account. Each Blocked Account Agreement shall require, after notice from the Administrative Agent to a Blocked Account Bank of the occurrence of a Cash Dominion Event (and until the Administrative Agent notifies such Blocked Account Bank that such Cash Dominion Event has terminated), the ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to the concentration account maintained by the Administrative Agent at Bank of America, N.A. (the "Concentration Account"), of all cash receipts and collections of the Loan Parties, including, without limitation, the following:

- (i) all available cash receipts from the sale of Inventory and other assets;
- (ii) all proceeds of collections of Accounts;
- (iii) the then contents of each DDA;
- (iv) the then entire ledger balance of each Blocked Account; and

(v) the net proceeds of all credit card charges.

(c) During the continuance of a Cash Dominion Event, the Loan Parties shall provide the Administrative Agent with an accounting of the contents of the Blocked Accounts and the Concentration Account, which shall identify, to the satisfaction of the Administrative Agent, the proceeds from the Term Loan Priority Collateral which were deposited into a Blocked Account and swept to the Concentration Account. Upon the receipt of (x) the contents of the Blocked Accounts, and (y) such accounting, the Administrative Agent agrees to promptly remit to the agent under the Term Facility the proceeds of the Term Loan Priority Collateral received by the Administrative Agent.

(d) The Concentration Account shall at all times be under the sole dominion and control of the Administrative Agent. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from the Concentration Account, (ii) the funds on deposit in the Concentration Account shall at all times be collateral security for all of the Obligations and (iii) the funds on deposit in the Concentration Account shall be first, applied ratably to the L/C Borrowings and the Swing Line Loans, second, applied ratably to the outstanding Revolving Credit Loans, and, third, if an Event of Default shall have occurred and be continuing, used to Cash Collateralize the remaining L/C Obligations and fourth, (to the extent any amount is remaining) used in the operations of the Loan Parties; provided, that after an acceleration of the Obligations such proceeds shall be applied as provided in Section 8.03. In the event that, notwithstanding the provisions of this Section 6.17, any Loan Party receives or otherwise has dominion and control of any such proceeds or collections, such proceeds and collections shall be held in trust by such Loan Party for the Administrative Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into the Concentration Account or dealt with in such other fashion as such Loan Party may be instructed by the Administrative Agent.

(e) The Borrowers shall not be required to enter into Blocked Account Agreements or other control agreements in respect of any DDA that does not at any time have an average daily balance for any 30 day period in excess of \$250,000; provided that the aggregate average daily balance for any 30 day period in all DDAs of the Borrowers that are excluded pursuant to this clause (e) shall not exceed \$2,500,000 at any time.

6.18. Physical Inventories. At the Administrative Agent's request, cause at least one (1) physical inventory at each of the Borrowers' locations to be undertaken in each twelve (12) month period conducted by such inventory takers as are satisfactory to the Administrative Agent and following such methodology as is consistent with the methodology used in the immediately preceding inventory or as otherwise may be reasonably acceptable to the Administrative Agent. The Borrowers, within thirty (30) days following the completion of such inventory, shall provide the Administrative Agent with a reconciliation of the results of such inventory (as well as of any other physical inventory undertaken by a Loan Party).

6.19. Compliance with Terms of Leaseholds. Except as set forth in Section 7.05(c), make all payments and otherwise perform all obligations in respect of all leases of Real Property to which the Parent Borrower or any of its Subsidiaries is a party, keep such leases in full force and effect and not allow such leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled except, in any case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

ARTICLE VII

NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Letter of Credit remains outstanding, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than any indemnity obligation for unasserted claims that by its terms survives the termination of this Agreement, any Letter of Credit that has been Cash Collateralized or any Other Obligations), the Borrowers shall not, nor shall it permit any Subsidiary to:

7.01. Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, other than the following Liens (Liens described below are herein referred to as "Permitted Liens"):

- (a) Liens securing Obligations pursuant to any Loan Document;
- (b) Liens existing on the date hereof and listed on Schedule 7.01(b) and any renewals or extensions thereof; provided that (i) the property covered thereby is not changed in any material manner, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.02(d), (iii) the direct or any contingent obligor with respect thereto is not changed (other than to decrease the number of obligors), and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.02(d);
- (c) Liens for Taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted; provided reserves required by GAAP, if any, are maintained on the books of the applicable Person in accordance with GAAP and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation;
- (d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if reserves required by GAAP, if any, are maintained on the books of the applicable Person and which contest effectively suspends the collection of the contested obligation and the enforcement of any Lien securing such obligation;
- (e) Liens (including pledges or deposits) in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;
- (f) Liens (including pledges or deposits) to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds, letters of credit and other obligations of a like nature incurred in the ordinary course of business;
- (g) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) Liens securing judgments not constituting an Event of Default under Section 8.01(h) and notices of *lis pendens* and associated rights related to litigation not constituting an Event of Default;

(i) Liens securing Indebtedness permitted under Section 7.02(f); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness, (ii) the Indebtedness secured thereby does not exceed the cost of the property being acquired on the date of acquisition, and (iii) such Lien and the Indebtedness secured thereby are incurred prior to or within 180 days after the acquisition of such property;

(j) Landlords' and lessors' Liens in respect of rent and other lease obligations that are not past due by 60 days or that are being contested in good faith by appropriate proceedings diligently conducted for which reserves required by GAAP, if any, are maintained on the books of the applicable Person;

(k) possessory Liens in favor of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the date hereof and Investments permitted by Section 7.03; provided that such liens (a) attach only to such Investments and (b) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;

(l) banker's liens, liens in favor of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by any Loan Party or any Subsidiary, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; provided that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(m) Liens arising from precautionary UCC filings regarding "true" operating leases or the consignment of goods to a Loan Party;

(n) Liens in favor of customs and revenues authorities imposed by applicable Law arising in the ordinary course of business in connection with the importation of goods and securing obligations (i) that are not overdue by more than thirty (30) days, or (ii)(A) that are being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(o) Liens on specific existing assets (and proceeds thereof) of a Person acquired following the Closing Date in existence on the date such Person became a Subsidiary (including any Liens securing Permitted Refinancing Indebtedness of the obligations secured thereby that is secured only by the same assets); provided that such Liens were not created in anticipation of the transaction pursuant to which such Person became a Subsidiary;

(p) other Liens securing obligations outstanding in an aggregate principal amount not to exceed ~~\$25,000,000~~ the greater of (a) \$35,000,000 and (b) 9.00% of Consolidated Total

Assets; provided that if any such Lien attached to any or all of the ABL Priority Collateral, the Administrative Agent shall have entered into an intercreditor agreement with the holder of such Lien on terms reasonably satisfactory to the Administrative Agent pursuant to which the holder of such Lien agrees, among other things, that such Liens are junior to the Liens securing the Obligations;

(q) [Reserved];

(r) Liens pursuant to any Swap Contract (other than Specified Swap Contracts) in an amount not to exceed \$1,000,000 at any time outstanding;

(s) Liens incurred in connection with sale leaseback transactions of fixed or capital assets as long as the proceeds are applied in accordance with Section 7.18;

(t) to the extent constituting Liens, (i) leases, subleases, licenses and rights-of use granted to others not interfering in any material respect with the ordinary conduct of business of the Parent Borrower or any of its Subsidiaries and (ii) any interest or title of a lessor, licensor or sublicensor in any property subject to any lease, license or sublicense;

(u) Liens in favor of a trustee in an indenture relating to the Borrowers' public Indebtedness to the extent such Liens secure only customary compensation and reimbursement obligations of such trustee under such indenture;

(v) assignments to landlords or mortgagees of insurance or condemnation proceeds; ~~and~~

(w) Liens on the Collateral and Real Property securing Indebtedness incurred under Section 7.02(r), subject to the terms of the Intercreditor Agreement;

(ff) Liens on the Collateral that rank pari passu with the Liens securing the Term Loan Obligations if the Senior Secured First Lien Net Leverage Ratio (as defined in the Term Loan Facility as in effect on the Amendment No. 2 Effective Date) as of the date on which such Liens are first created is less than or equal to 4.50 to 1.00, subject to appropriate reserves being taken by the Administrative Agent in its reasonable discretion; provided (x) that a Debt Representative acting on behalf of the holders of such Indebtedness will become party to or otherwise subject to the provisions of the Intercreditor Agreement and a First Lien Intercreditor Agreement (as defined in the Term Loan Facility) and (y) the pricing of such Indebtedness complies with Section 2.18(8) of the Term Loan Facility as in effect on the Amendment No. 2 Effective Date; and

(gg) Liens on the Collateral that rank junior to the Liens securing both the Obligations and the Term Loan Obligations, if the Total Net Leverage Ratio (as defined in the Term Loan Facility as in effect on the Amendment No. 2 Effective Date) as of the date on which such Liens are first created is less than or equal to 7.25 to 1.00; provided that a Debt Representative acting on behalf of the holders of such Indebtedness will become party to or otherwise subject to the provisions of (x) the Intercreditor Agreement and a Junior Lien Intercreditor Agreement (as defined in the Term Loan Facility) or (y) an intercreditor agreement in form and substance satisfactory to the Administrative Agent.

7.02. Indebtedness. Create, incur, assume, guarantee, suffer to exist or otherwise become liable with respect to any Indebtedness ~~except~~ provided that the Borrowers and their

Subsidiaries may issue, incur or assume Indebtedness so long as immediately after giving effect to the issuance, incurrence or assumption of such Indebtedness, the Interest Coverage Ratio is 2.00 to 1.00 or greater ("Ratio Debt"); and provided, further, that (i) the aggregate principal amount of Ratio Debt incurred by Subsidiaries that are not Guarantors, when aggregated with the amount of Permitted Refinancing Indebtedness incurred by Subsidiaries that are not Guarantors in respect of Ratio Debt, may not exceed \$25.0 million at any time outstanding and (ii) such Ratio Debt shall comply with the maturity requirements applicable to Incremental Equivalent Term Debt under and as defined in the Term Loan Facility as in effect on the Amendment No. 1 Effective Date.

The foregoing limitation will not apply to Indebtedness described below ~~is~~ (herein referred to together with any Ratio Debt, collectively, as "Permitted Indebtedness"):

(a) obligations (contingent or otherwise) of the Parent Borrower or any of its Subsidiaries existing or arising under any Swap Contract; provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates or otherwise to mitigate risks associated with its assets or liabilities or business operations, and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(b) Indebtedness of a Borrowers or a Subsidiary of a Borrower owed to a Borrower or a Subsidiary of a Borrower, which Indebtedness shall (A) in the case of Indebtedness owed to a Loan Party, constitute "Pledged Debt" under the Guarantee and Collateral Agreement, (B) in the case of Indebtedness owed by a Loan Party to a Subsidiary that is not a Loan Party, be on terms (including subordination terms) reasonably acceptable to the Administrative Agent and (C) be otherwise permitted under the provisions of Section 7.03;

(c) Indebtedness under the Loan Documents;

(d) Indebtedness outstanding on the date hereof and listed on Schedule 7.02 and any Permitted Refinancing Indebtedness in respect thereof;

(e) Guarantees of the Borrowers or any Guarantor in respect of Indebtedness otherwise permitted hereunder of the Borrowers or any other Guarantor;

(f) Indebtedness of the Parent Borrower or any of its Subsidiaries in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(i) and Permitted Refinancing Indebtedness in respect thereof; provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed ~~\$25,000,000~~ the greater of (a) \$35,000,000 and (b) 9.00% of Consolidated Total Assets;

(g) (1) Indebtedness of any Person that becomes a Subsidiary of the Parent Borrower after the date hereof in accordance with the terms of Section 7.03(b); Amendment No. 2 Effective Date pursuant to an Investment permitted under Section 7.03, which Indebtedness is existing at the time such Person becomes a Subsidiary of the Parent Borrower (other than Indebtedness incurred solely in contemplation of such Person's becoming a Subsidiary of the Parent Borrower) and Permitted Refinancing Indebtedness in respect thereof and (2) Indebtedness incurred or assumed in anticipation or contemplation of any Person becoming a Subsidiary of the Parent Borrower after the Amendment No. 2 Effective Date pursuant to an Investment permitted under Section 7.03; provided that (i) no Event of Default is continuing

immediately before such transaction or would result therefrom; (ii) immediately after giving effect to such transaction, on a Pro Forma Basis, either (A) the Parent Borrower would be permitted to incur at least \$1 of Ratio Debt or (B) the Interest Coverage Ratio would increase; (iii) other than in respect of an aggregate outstanding amount of all such Indebtedness assumed pursuant to clause (g)(1) not in excess of \$35,000,000 at any time outstanding, such Indebtedness shall comply with the maturity requirements applicable to Incremental Equivalent Term Debt under and as defined in the Term Loan Facility as in effect on the Amendment No. 1 Effective Date; and (iv) the aggregate principal amount of any such Indebtedness incurred pursuant to clause (g)(2) by Subsidiaries that are not Guarantors, together with any Permitted Refinancing Indebtedness incurred by Subsidiaries that are not Guarantors to Refinance any Indebtedness originally incurred pursuant to this clause (2) (and any successive Permitted Refinancing Indebtedness), may not exceed \$25.0 million at any one time outstanding as of the date such Indebtedness is incurred;

(h) Indebtedness of the Parent Borrower and the Guarantors, and any Permitted Refinancing Indebtedness with respect thereto; provided that such Indebtedness or Permitted Refinancing Indebtedness (w) is unsecured (except to the extent permitted by Section 7.01(p)) and (x) both immediately prior and after giving effect thereto, (1) no Default or Event of Default shall exist or result therefrom and (2) the Consolidated Total Leverage Ratio for the most recent Measurement Period, determined on a Pro Forma Basis, shall be less than or equal to 5.75 to 1.00 and (y) matures after, and does not require any scheduled amortization or other scheduled payments of principal prior to, the date that is 91 days after the Revolving Credit Termination Date (it being understood that such Indebtedness may have customary mandatory prepayment, repurchase or redemption provisions);

(i) Indebtedness of the Parent Borrower or any of its Subsidiaries in an aggregate principal amount not to exceed ~~\$30,000,000~~ the greater of (a) \$40,000,000 and (b) 10.25% of Consolidated Total Assets at any time outstanding;

(j) Indebtedness of the Parent Borrower or any of its Subsidiaries in respect of netting services, overdraft protections and otherwise in connection with deposit accounts;

(k) Indebtedness of the Parent Borrower or any of its Subsidiaries in the form of customary earn-out agreements entered into in connection with any acquisition permitted hereunder; provided that the agreement creating such earn-out obligations expressly provides that such earn-out payments may not be made at any time there is a Default or Event of Default under this Agreement or a Default or Event of Default would result therefrom;

(l) Indebtedness incurred by the Parent Borrower or any of its Subsidiaries arising from agreements providing for indemnification, adjustment of purchase price or similar obligations, or from guaranties or letters of credit, surety bonds or performance bonds securing the performance of the Parent Borrower or any such Subsidiary pursuant to such agreements, in connection with acquisitions permitted hereunder or permitted dispositions of any business, assets or Subsidiary of the Parent Borrower or any of its Subsidiaries;

(m) Indebtedness which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal or similar obligations incurred in the ordinary course of business, consistent with past practice;

(n) guaranties in the ordinary course of business consistent with past practice of the obligations of suppliers, customers, franchisees and licensees of the Parent Borrower and its Subsidiaries;

(o) unsecured Indebtedness of the Borrowers owing to the Equity Investors, so long as such Indebtedness is (1) subordinated in right of payment to the Obligations on terms reasonably satisfactory to the Administrative Agent and (2) neither due nor payable (nor is any interest thereon payable) in each case until at least ninety-one (91) days after the maturity date of the Revolving Credit Termination Date and provided that the documentation with respect thereto contains no mandatory prepayments and no operative or financial covenants;

(p) Indebtedness incurred pursuant to Section 7.18 so long as the proceeds are applied in accordance therewith;

(q) the Senior Notes and any Permitted Refinancing Indebtedness in respect thereof and, in each case, any pay-in-kind interest thereon; and

(r) (i) Indebtedness under the Term Loan Facility and any Incremental Equivalent Term Debt (as defined in the Term Loan Facility) in an aggregate amount outstanding at any one time not to exceed \$810,000,000 plus the maximum aggregate principal amount of Incremental Term Loans (as defined in the Term Loan Facility) and Incremental Equivalent Term Debt permitted to be incurred under the Term Loan Facility as in effect on the Amendment No. 1 Effective Date and (ii) any Permitted Refinancing Indebtedness in respect of Indebtedness incurred pursuant to this clause (r).

7.03. Investments. Make or hold any Investments, except:

(a) Investments held by the Parent Borrower and its Subsidiaries in the form of Cash Equivalents;

(b) advances to officers, directors and employees of the Parent Borrower and its Subsidiaries in an aggregate amount not to exceed \$5,000,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(c) (i) Investments by the Parent Borrower and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by the Parent Borrower and its Subsidiaries in Loan Parties ~~and~~, (iii) additional Investments by Subsidiaries of the Parent Borrower that are not Loan Parties in other Subsidiaries that are not Loan Parties; and (iv) additional Investments by Loan Parties in Subsidiaries that are not Loan Parties in an aggregate principal amount not to exceed the greater of (a) \$15,000,000 and (b) 3.75% of Consolidated Total Assets;

(d) Investments of the Parent Borrower or any of its Subsidiaries consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments of the Parent Borrower or any of its Subsidiaries received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees permitted by Section 7.02;

(f) Investments existing on the date hereof and set forth on Schedule 5.08(e);

-
- (g) Investments in Swap Contracts permitted under Section 7.02(a);
- (h) ~~[Reserved]~~; additional Investments; provided that the aggregate fair market value of such Investments made since the Closing Date that remain outstanding (with all such Investments being valued at their original fair market value and without taking into account subsequent increases or decreases in value), when taken together with the aggregate amount of payments made with respect to Subordinated Indebtedness pursuant to Section 7.12(e) and Restricted Payments pursuant to Section 7.06(f), does not exceed the greater of (a) \$40,000,000 and (b) 10.25% of Consolidated Total Assets as of the date any such Investment is made, in each case, plus any returns of capital actually received by the Parent Borrower or any Subsidiary in respect of such Investments;
- (i) Investments by Parent Borrower or any of its Subsidiaries; provided that after giving effect thereto on a Pro Forma Basis, the Payment Conditions are satisfied;
- (j) loans and advances to employees of the Parent Borrower and its Subsidiaries (i) made in the ordinary course of business in an aggregate principal amount not to exceed \$1,000,000 in the aggregate at any time outstanding and (ii) to enable such employees to purchase stock of the Parent Borrower or its direct or indirect parent so long as the net proceeds of such loans and advances are contributed to the Parent Borrower;
- (k) in lieu of making any Restricted Payment from the Parent Borrower to Holdings permitted pursuant to Section 7.06, the Parent Borrower may make loans and advances to Holdings, the proceeds of which are applied to the purpose for which the Restricted Payment would be permitted pursuant to Section 7.06; and for purposes of Section 7.06, such loan or advance shall be treated as if it were the applicable Restricted Payment;
- (l) Investments of any Person in existence at the time such Person becomes a Subsidiary pursuant to Section 7.03(b) (other than Investments incurred solely in contemplation of such Person's becoming a Subsidiary of the Parent Borrower);
- (m) [Reserved];
- (n) endorsements of negotiable instruments held for collection in the ordinary course of business;
- (o) deposits, prepayments and other credits to suppliers and lessors made in the ordinary course of business; and
- (p) Investments made by any Loan Party arising from the receipt of non-cash consideration received in connection with a Disposition made in compliance with Section 7.05.

7.04. Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

- (a) any Subsidiary of the Parent Borrower (i) may merge with the Parent Borrower; provided that a Borrower shall be the continuing or surviving Person, (ii) may merge with or into any one or more other Subsidiaries; provided that when any Loan Party is merging with another Subsidiary that is not a Loan Party, such Loan Party shall be the continuing or surviving Person

or (iii) may be converted into a limited liability company or limited partnership; provided that if the Subsidiary is a Loan Party, the limited liability company or limited partnership shall be organized under the laws of the United States of America or any State thereof;

(b) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to a Borrower or, except in the case of ABL Priority Collateral, to another Loan Party;

(c) any Subsidiary that is not a Loan Party may dispose of all or substantially all its assets (including any Disposition that is in the nature of a liquidation) to the Parent Borrower or any Subsidiary;

(d) in connection with any acquisition permitted under Section 7.03, any Subsidiary of a Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided that (i) the Person surviving such merger shall be a wholly-owned Subsidiary of a Borrower and (ii) in the case of any such merger to which any Loan Party (other than the Borrowers) is a party, such Loan Party is the surviving Person;

(e) so long as no Default has occurred and is continuing or would result therefrom, each of the Borrowers and any of their respective Subsidiaries may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided, however, that in each case, immediately after giving effect thereto (i) in the case of any such merger to which a Borrower is a party, a Borrower is the surviving corporation and (ii) in the case of any such merger to which any Loan Party (other than a Borrower) is a party, such Loan Party is the surviving corporation;

(f) any Disposition permitted by Section 7.05 may be structured as a sale of all or substantially all of the Equity Interests of a Subsidiary; and

(g) any Subsidiary which has no assets to distribute to its equityholders may be dissolved.

7.05. Dispositions. Make any Disposition, except:

(a) Dispositions of obsolete or worn out property, or property that is no longer used or useful in the business of the Parent Borrower and its Subsidiaries whether now owned or hereafter acquired, in each case, in the ordinary course of business;

(b) Dispositions of inventory, equipment or cash and Cash Equivalents in the ordinary course of business;

(c) Dispositions of equipment or real property to the extent that such property is exchanged for credit against all or a portion of the purchase price of similar replacement property;

(d) Dispositions of property by any Subsidiary to a Borrower or to a wholly-owned Subsidiary; provided that if the transferor of such property is a Guarantor, the transferee thereof must either be a Borrower or a Guarantor;

(e) Dispositions permitted by Section 7.04 and transactions permitted by Section 7.18;

- (f) casualty, condemnation or any other event giving rise to a Recovery Event;
- (g) the cross-licensing or licensing of intellectual property, in the ordinary course of business;
- (h) the leasing, occupancy or sub-leasing of real property in the ordinary course of business that would not materially interfere with the required use of such real property by any Loan Party;
- (i) the sale or discount, in the ordinary course of business, of overdue accounts receivable arising in the ordinary course of business, in connection with the compromise or collection thereof;
- (j) Dispositions of ABL Priority Collateral; provided that such Disposition is in connection with (i) a bulk sale of Inventory or (ii) another non-ordinary course disposition in connection with Store closing; provided, further that the aggregate amount of Dispositions pursuant to this Section 7.05(j) shall not exceed 10% of the Stores of the Parent Borrower and its Subsidiaries in any Fiscal Year (measured on the basis of the Stores of the Parent Borrower and its Subsidiaries at the beginning of such Fiscal Year) or 25% of the Stores of the Parent Borrower and its Subsidiaries during the term of the Revolving Credit Facility (measured on the basis of the Stores of the Parent Borrower and its Subsidiaries on the Closing Date);
- (k) Dispositions by the Parent Borrower and its Subsidiaries not otherwise permitted under this Section 7.05 (other than Disposition of ABL Priority Collateral); provided that (i) at the time of such Disposition, no Default shall exist or would result from such Disposition (ii) ~~the aggregate fair market value of all property~~ such Disposition is made for fair market value (as determined by a Responsible Officer of the Parent Borrower in good faith), (iii) in respect of any Disposition of assets included in the Borrowing Base, if the assets Disposed of in reliance on this clause (j) ~~shall not exceed \$75,000,000 during the term of this Agreement and (iii) accounted for in excess of ten percent (10%) of the Borrowing Base then in effect,~~ (A) concurrently with such Disposition, the Parent Borrower shall deliver a Borrowing Base Certificate showing the Borrowing Base as of the date of such Disposition after giving effect thereto, with such Borrowing Base Certificate to be certified as complete and correct in all material respects on behalf of the Borrowers by a Responsible Officer of the Parent Borrower, (B) for purposes of Pro Forma Basis calculations hereunder, such Disposition shall be deemed a Disposition of a line of business for purposes of clause (b)(ii) of the definition of "Pro Forma Basis" and (C) the purchase price for such assets shall equal or be greater than the portion(s) of the Credit Card Receivables Component, the Inventory Component and/or the Letter of Credit Component, as the case may be, applicable to such assets immediately prior to such Disposition, and (iv) at least 75% of the purchase price for such asset shall be paid to Parent Borrower or such Subsidiary in cash;
- (l) Dispositions consisting of Liens permitted by Section 7.02, Investments permitted by Section 7.03 and Restricted Payments permitted by Section 7.06; and
- (m) the surrender, settlement or release of claims in the ordinary course of business;

provided, however, that any Disposition pursuant to Section 7.05(a) through Section 7.05(c), Section 7.05(j) or Section 7.05(k) shall be for fair market value.

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

(a) each Subsidiary may make Restricted Payments to the Borrowers, any Subsidiaries of the Parent Borrower that are Guarantors and any other Person that owns a direct Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) the Parent Borrower and each of its Subsidiaries may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) the Parent Borrower may purchase, redeem or otherwise acquire its Equity Interests with the proceeds received from the substantially concurrent issue of new Equity Interests;

(d) the Borrowers may declare and pay cash dividends to Holdings or any other direct parent of the Borrowers in amounts not to exceed amounts necessary to permit Holdings or any other direct parent of the Borrowers, as the case may be, to pay (i) reasonable and customary corporate or limited liability company expenses and operating expenses relating to maintaining their ownership interest in the Borrowers (including reasonable out-of-pocket expenses for legal, administrative and accounting services provided by third parties, and compensation, benefits and other amounts payable to officers and employees in connection with their employment in the ordinary course of business and to board of director observers), (ii) franchise fees or similar taxes and fees required to maintain their corporate or limited liability company existence and (iii) for any taxable period during which the Borrowers are a member of a consolidated, combined, unitary or similar tax group of which Holdings is the common parent, the amount of any Taxes that the Borrowers and their Subsidiaries would have been required to pay for such year had the Borrowers and their Subsidiaries paid such taxes as a stand-alone taxpayer (or stand-alone group) (reduced by any such taxes paid directly by the Parent Borrower or any of its Subsidiaries);

(e) so long as no Default shall have occurred and be continuing (or would result therefrom) the Borrowers may pay dividends to Holdings and Holdings may use the proceeds thereof to, in each case, repurchase, redeem or otherwise acquire or retire Equity Interests of Holdings held by officers, directors or employees of such Persons, as the case may be, and its Subsidiaries (or their estates or trusts) upon the death, disability, retirement or termination of employment of any such officer, director or employee; provided that the aggregate amount of payments to Holdings by the Borrowers under this clause (e) will not exceed ~~\$10,000,000~~ 15,000,000 in any Fiscal Year of the Borrowers (with the unused portion of such scheduled amount available for use in ~~any~~ the succeeding Fiscal Year);

(f) so long as no Default shall have occurred and be continuing (or would result therefrom), other Restricted Payments in an amount not to exceed ~~(x) \$5,000,000 in any Fiscal Year (with the unused portion of such scheduled amount available for use in any succeeding Fiscal Year) or (y) \$20,000,000 in the aggregate;~~

(g) other Restricted Payments so long as the RP Conditions are satisfied;

(h) the Borrowers shall be permitted to make other Restricted Payments in an aggregate amount not to exceed \$7,000,000 in order to allow Holdings to purchase, redeem or otherwise acquire its Equity Interests from stockholders of Holdings other than the Sponsors; and

- (i) Restricted Payments on or about the Amendment No. 1 Effective Date in connection with the Transactions.

7.07. Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Parent Borrower and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

7.08. Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of the Borrowers, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Borrowers or such Subsidiary as would be obtainable by the Borrowers or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate; provided that the foregoing restriction shall not apply to:

(a) transactions among (i) the Borrowers and any Subsidiary that is a Guarantor (ii) any Subsidiaries that are not Guarantors or (iii) the Borrowers or any Subsidiary that is a Guarantor, on the one hand, and any Subsidiary that is not a Guarantor, on the other hand, that are at least as favorable to the Borrowers or the applicable Guarantor as could be obtained in an arms-length transaction from an unaffiliated party;

(b) any Restricted Payment permitted by Section 7.06, Indebtedness permitted by Section 7.02(c) and Investments permitted by Section 7.03 (other than clause (h) thereof and other than Investments in an Equity Investor or a portfolio company controlled by an Equity Investor (other than the Borrowers and their Subsidiaries));

(c) so long as no Event of Default has occurred and is continuing or would result therefrom, the payment of (i) Management Fees provided that fees and other amounts paid under the Management Agreement (other than the closing fee and expense reimbursements) shall not exceed \$3,000,000 in any Fiscal Year (plus any unused amount of such annual limit not paid in the previous Fiscal Year) and (ii) Transaction Expenses;

(d) transactions pursuant to the agreements set forth on Schedule 7.08(d);

(e) employment and severance agreements approved by the board of directors of the Borrowers and their Subsidiaries; and

(f) director fees and reimbursements of out-of-pocket expenses to, and other reasonable and customary indemnification of, board members of any Loan Party with respect to activities related to board membership.

7.09. Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments to a Borrower or any Guarantor or to otherwise transfer property to or invest in a Borrower or any Guarantor, (ii) of any Subsidiary to Guarantee the Indebtedness of a Borrower, (iii) of any Subsidiary to make or repay loans to a Loan Party or (iv) of a Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person. The foregoing restrictions shall not be violated by reason of (i) applicable Laws, (ii) this Agreement and the other Loan Documents and the Term Loan Facility and the Term Loan Documents, (iii) customary non-assignment provisions of any contract, lease or license of a Borrower or any Subsidiary of a Borrower entered into in the ordinary course of business and consistent with past practice, (iv) any term of the Senior Notes or the Holdco Senior Notes and any Permitted Refinancing Indebtedness thereof so long as in each case any restriction contained therein and described in the previous sentence is not materially more restrictive than

the corresponding provisions of this Agreement and does not restrict the Loan Parties' ability to grant Liens to the Administrative Agent for the benefit of the Secured Parties, (v) restrictions limited solely to cash or other deposits imposed under contracts evidencing Permitted Liens entered into in the ordinary course of business, (vi) restrictions with respect to property of a Borrower or any Subsidiary that is to be sold pursuant to any Disposition permitted by [Section 7.05](#), (vii) any agreement in effect on the Closing Date and set forth on [Schedule 7.09](#) (or any replacement thereof so long as the terms are not, taken as a whole, materially less favorable to the Loan Parties), (viii) any agreement in effect at the time any Subsidiary becomes a Subsidiary of a Borrower, so long as such agreement was not entered into in contemplation of such Person becoming a Subsidiary of a Borrower and applies only to such acquired Subsidiary, (ix) any Indebtedness permitted under [Sections 7.02\(f\)](#) and [\(p\)](#) and any Permitted Refinancing Indebtedness thereof, so long as in each case any such restrictions described in the previous sentence relate only to the asset that is subject to the Capitalized Lease, Synthetic Lease Obligation, purchase money obligation or sale and leaseback transaction permitted by [Sections 7.02\(f\)](#) and [\(p\)](#) or Permitted Refinancing Indebtedness in respect thereof, (x) any Indebtedness permitted under [Sections 7.02\(h\)](#), [\(i\)](#) and [\(o\)](#) and any Permitted Refinancing Indebtedness thereof so long as in each case any restriction contained therein and described in the previous sentence is not materially more restrictive than the corresponding provisions of this Agreement (as reasonably determined in good faith by the Borrowers) and does not restrict the Loan Parties' ability to grant Liens to the Administrative Agent for the benefit of the Secured Parties and (xi) customary provisions in partnership agreements and limited liability company organizational documents with respect to any Person that is not a wholly-owned Subsidiary that restrict the transfer of ownership interests in such partnership, limited liability company or similar Person.

7.10. Use of Proceeds. Use the proceeds of any Loan or Letter of Credit in any manner that would violate Regulations T, U or X of the FRB.

7.11. Change in Fiscal Year. Make any change in Fiscal Year.

7.12. Prepayments, Etc. of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner any Indebtedness (other than the Obligations), except (a) as long as no Event of Default then exists, regularly scheduled or mandatory repayments or redemptions of Indebtedness set forth in [Schedule 7.02](#); (b) prepayments, redemptions, repurchases, defeasances and other satisfactions of Permitted Indebtedness ~~(but excluding on account of any Subordinated Indebtedness)~~ as long as the Payment Conditions are satisfied; (c) prepayments of such Indebtedness with the proceeds of Permitted Refinancing Indebtedness, capital contributions or issuances of equity of the Parent Borrower, in each case so long as no Event of Default then exists ~~and~~; (d) prepayments of the Existing Holdco Senior Notes, Existing Senior Notes and the Existing Term Facility on the Amendment No. 1 Effective Date; and (e) aggregate payments in respect of Subordinated Indebtedness which when taken together with the aggregate amount of payments made with respect to Investments pursuant to [Section 7.03\(h\)](#) and the aggregate Restricted Payments pursuant to [Section 7.06\(f\)](#), do not exceed the greater of (i) \$20,000,000 and (ii) 5.00% of Consolidated Total Assets.

-

7.13. Amendment, Etc. of Term Loan Documents and Indebtedness. Amend, modify or change in any manner any term or condition of any Term Loan ~~Document~~Documents which (i) shortens the final maturity, (ii) increases the amount of any mandatory prepayment of principal, (iii) adds additional obligors unless such additional obligors contemporaneously therewith become Loan Parties hereunder, or (iv) grants additional collateral for the obligations thereunder, unless contemporaneously therewith, the Administrative Agent obtains a Lien on such additional collateral, with the priority and subject to the terms of the Intercreditor Agreement.

7.14. Holding Company. In the case of Holdings, engage in any business or activity other than (a) the ownership of all outstanding Equity Interests in the Parent Borrower, (b) maintaining its organizational existence and performing its obligations under agreements set forth on Schedule 7.08(d), (c) participating in tax, accounting and other administrative activities as the parent of the consolidated group of companies, including the Loan Parties, (d) the execution and delivery of the Loan Documents and agreements governing other Indebtedness, in each case, to which it is a party and the performance of its obligations thereunder, (e) the making and receiving of Restricted Payments and Investments to the extent permitted under this Agreement, (f) the borrowing of funds or the making of loans or advances, (g) the issuance of (i) Equity Interests and (ii) profit interests to employees in connection with the performance of services, (h) activities incidental to the businesses or activities described in clauses (a) through (g) of this Section 7.14, and (i) the incurrance of nonconsensual obligations imposed by operation of law.

7.15. Swap Contracts. Enter into any Swap Contract, other than (a) Swap Contracts required by Section 6.16, (b) Swap Contracts entered into to hedge or mitigate risks to which the Borrowers or any Subsidiary is exposed in the conduct of its business or the management of its liabilities and (c) Swap Contracts entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates or otherwise to mitigate risks associated with its assets or liabilities or business operations.

7.16. Designation as Designated Senior Debt. Designate any Indebtedness (or any similar term) (other than the Indebtedness under the Loan Documents of the Parent Borrowers or any of its Subsidiaries) as "Designated Senior Debt" (or any similar term) under, and as defined in any Subordinated Indebtedness of any Loan Party which contains such designations (except that other senior Indebtedness may be designated as "Designated Senior Debt" so long as it has no rights as such until after the retirement in full of the Obligations under the Loan Documents).

7.17. Deposit Accounts. Open new DDAs or Blocked Accounts unless the Loan Parties shall have delivered to the Administrative Agent appropriate Blocked Account Agreements consistent with the provisions of Section 6.17 and otherwise satisfactory to the Administrative Agent. No Loan Party shall maintain any bank accounts or enter into any agreements with credit card processors other than the ones expressly contemplated herein or in Section 6.17 hereof.

7.18. Limitations on Sales and Leasebacks. Enter into any arrangement with any Person providing for the leasing by the Borrowers or any Subsidiary of real or personal property which has been or is to be sold or transferred by the Borrowers or such Subsidiary to such Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of the Borrowers or such Subsidiary excluding (i) any such sales as occur within 180 days after acquiring the applicable property and (ii) sales and leasebacks involving Attributable Indebtedness in respect of an aggregate amount not to exceed ~~\$25,000,000~~ 50,000,000 at any one time outstanding.

7.19. Minimum Consolidated Fixed Charge Coverage Ratio. During the continuance of a Covenant Compliance Event, permit the Consolidated Fixed Charge Coverage Ratio, calculated as of the last day of each Measurement Period, commencing with the Measurement Period ended on or immediately prior to the date that the Covenant Compliance Event occurs, to be less than 1.0 to 1.0.

7.20. Clean Down. If as of the last day of any Fiscal Quarter, any Revolving Credit Loans or Swing Line Loans are outstanding and Consolidated EBITDA for the most recently ended Measurement Period is less than \$ 110,000,000, the Borrowers shall (i) not borrow any additional Revolving Credit Loans or Swing Line Loans during the next succeeding Fiscal Month of July and (ii) repay all outstanding Revolving Credit Loans and Swing Line Loans for a period of not less than 30 consecutive calendar days between the following September 1 and November 30.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

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

(a) Non-Payment. Holdings, a Borrower or any other Loan Party fails to (i) pay when and as required to be paid herein, any amount of principal of any Loan or Reimbursement Obligation, or (ii) pay within three days after the same becomes due, any interest on any Loan or any Reimbursement Obligation or any fee due hereunder, or (iii) pay within five days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Loan Party or any of its Subsidiaries fails to perform or observe any term, covenant or agreement applicable to it that is contained in any of Section 6.01, 6.02 (subject to a five (5) day grace period for any clause in Section 6.02 other than clause (a), (g), (i) or (j)), 6.03(a), (b) or (g), 6.05, 6.07, 6.10, 6.17 or Article VII; or

(c) Other Defaults. Holdings or any Loan Party fails to perform or observe any other covenant or agreement (not specified in Section 8.01(a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days, or such longer period if the Administrative Agent in its sole discretion consents to an extension thereof; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of Holdings, a Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith (including, without limitation, any Borrowing Base Certificate) shall be incorrect or misleading in any material respect when made or deemed made (except to the extent that a particular representation or warranty is already qualified by materiality, in which case such representation or warranty shall be true and correct); or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; provided that this paragraph (e) shall not apply

to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness and such Indebtedness is actually discharged in accordance with its terms; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. Holdings, a Borrower or any Material Subsidiary institutes or consents to the institution of any proceeding under any Debtor Relief Law; or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts: Attachment. (i) Holdings, a Borrower or any Material Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) Judgments. There is entered against a Borrower or any Material Subsidiary and remains unpaid one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage) and, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect; or (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect; or

(j) Invalidity of Loan Documents. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect against the Borrowers or any Material Subsidiary; or any Loan Party contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any provision of any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

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

(l) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Article IV or Section 6.12 shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected First Priority Lien (subject to Liens permitted by Section 7.01), on Collateral purported to be covered thereby, with an aggregate fair market value for such Collateral of \$5,000,000, for any reason other than the failure of Administrative Agent to maintain control over any Collateral in its possession; or

(m) Subordination. (i) The subordination provisions of the documents evidencing or governing any Subordinated Indebtedness (the “Subordinated Provisions”) shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness; or (ii) a Borrower or any other Loan Party shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Administrative Agent and the Lenders or (C) that all payments of principal of or premium and interest on the applicable Subordinated Indebtedness, or realized from the liquidation of any property of any Loan Party, shall be subject to any of the Subordination Provisions; or

(n) Suspension of Business. Any Loan Party shall take, or there shall be involuntarily taken (including without limitation as a result of any judgment or injunction against any Loan Party), any action to suspend the operation of the business of the Loan Parties, taken as a whole, in the ordinary course, including, without limitation, the liquidation of all or substantially all of the assets of the Loan Parties.

8.02. Right to Cure. Notwithstanding anything to the contrary contained in Section 8.01, in the event that the Parent Borrower fails (or, but for the operation of this Section 8.02, would fail) to comply with the Financial Performance Covenant, as of the last day of any Fiscal Quarter, at any time after such last day until the day that is 10 days after the date the certificate calculating the Financial Performance Covenant for such Fiscal Quarter is required to be delivered pursuant to Section 6.02, Holdings or the Parent Borrower shall have the right to issue Permitted Cure Securities for cash or otherwise receive cash contributions to the capital of the Parent Borrower (collectively, the “Cure Right”), which cash shall be contributed as common equity to the Parent Borrower (such contributed amount, the “Cure Amount”), such Financial Performance Covenant shall be recalculated by increasing Consolidated EBITDA with respect to such Fiscal Quarter and any four-quarter period that contains such Fiscal Quarter, solely for the purpose of measuring the Financial Performance Covenant and not for any other purpose under this Agreement by an amount equal to the Cure Amount; provided, that, (i) in each four-Fiscal Quarter period there shall be no more than two Fiscal Quarters in which the Cure Right is exercised, (ii) no more than four Cure Rights will be exercised in the aggregate during the term of this Agreement, (iii) for purposes of this Section 8.02, the Cure Amount that is given effect shall be no greater than the amount required for purposes of complying with the Financial Performance Covenant and (iv) for the avoidance of doubt, in recalculating the Financial Performance Covenant by increasing Consolidated EBITDA as set forth above, there shall be no pro forma effect given to any reduction of Indebtedness with the Cure Amount in such recalculation of the Financial Performance Covenant. If, after giving effect to the adjustments in this paragraph, the Borrowers shall then be in compliance with the requirements of the Financial Performance Covenant, the Borrowers shall be deemed to have satisfied the requirements of the Financial Performance Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of the Financial Performance Covenant that had occurred shall be deemed cured for the purposes of this Agreement.

8.03. Remedies upon Event of Default

(a) If any Event of Default occurs and is continuing, (i) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Parent Borrower declare the Revolving Credit Commitments to be terminated forthwith, whereupon the Revolving Credit Commitments shall immediately terminate; and (ii) with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Parent Borrower, declare the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement and the other Loan Documents (including, without limitation, all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) to be due and payable forthwith, whereupon the same shall immediately become due and payable. In the case of all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to this paragraph, the Borrowers shall at such time deposit in a Cash Collateral Account opened by the Administrative Agent an amount equal to the aggregate then undrawn and unexpired face amount of such Letters of Credit. Amounts held in such Cash Collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations of the Borrowers hereunder and under the other Loan Documents. After all such Letters of Credit shall have expired or been fully drawn upon, all Reimbursement Obligations shall have been satisfied and all other obligations of the Borrowers hereunder (other than any indemnity obligation for unasserted claims that by its terms survives the termination of this Agreement, any Letter of Credit that has been Cash Collateralized or any obligation under a Specified Swap Contract or Cash Management Services) and under the other Loan Documents shall have been paid in full (other than any indemnity obligation for unasserted claims that by its terms survives the termination of this Agreement, any Letter of Credit that has been Cash Collateralized or any obligation under a Specified Swap Contract or Cash Management Services), the balance, if any, in such Cash Collateral Account shall be returned to the Borrowers (or such other Person as may be lawfully entitled thereto).

(b) Whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies under this Agreement, any of the other Loan Documents or applicable Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Administrative Agent, the Lenders or their Affiliates;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to a Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and each Lender's Commitments shall automatically terminate and the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable without further act of the Administrative Agent or any Lender.

8.04. Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the proviso to Section 8.02), or after the commencement of any Liquidation any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations (excluding the Other Liabilities) constituting indemnities, Secured Party Expenses, and other amounts (other than principal, interest and fees) payable to the Lenders and the Issuing Bank (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III), ratably among them in proportion to the amounts described in this clause Second payable to them;

Third, to the payment to the Swing Line Lender of that portion of the obligations constituting accrued and unpaid interest on the Swing Line Loans;

Fourth, to the payment of that portion of the Obligations constituting interest on the Loans and other Obligations, ratably among the Lenders and the Issuing Bank in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to the payment to the Swing Line Lender of that portion of the obligations constituting unpaid principal on the Swing Line Loans;

Sixth, to payment of that portion of the Obligations constituting unpaid principal of the Loans ratably among the Lenders in proportion to the respective amounts described in this clause Sixth held by them;

Seventh, to the Administrative Agent for the account of the Issuing Bank, to Cash Collateralize that portion of the L/C Obligations comprising the aggregate undrawn amount of Letters of Credit;

Eighth, to payment of that portion of the Obligations arising from Specified Swap Contracts, Bank Products and Cash Management Services, ratably among the Secured Parties in proportion to the respective amounts described in this clause Eighth held by them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by Law.

ARTICLE IX

AGENTS

9.01. Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints Bank of America, N.A. to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each of the Lenders hereby irrevocably appoints U.S. Bank National Association to act on its behalf as the Co-Collateral Agent hereunder and under the other Loan Documents and authorizes the Co-Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Co-Collateral Agent by the terms hereof or thereof, together with

such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Co-Collateral Agent and the Lenders, and none of the Borrowers and the other Loan Party shall have rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (in its capacities as a Lender) and the Co-Collateral Agent hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and Co-Collateral Agent for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

9.02. Rights as a Lender. The Persons serving as the Administrative Agent and the Co-Collateral Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent or Co-Collateral Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Persons serving as the Administrative Agent and Co-Collateral Agent hereunder in their individual capacity. Such Persons and their Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Parent Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03. Exculpatory Provisions. The Administrative Agent and Co-Collateral Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent and the Co-Collateral Agent:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except, in the case of the Administrative Agent, discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and
- (c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrowers or any of their Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent, the Co-Collateral Agent or any of their Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Parent Borrower or a Lender. In the event that the Administrative Agent shall receive such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders or any other instructing group of Lenders specified by this Agreement); provided that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders.

The Administrative Agent and the Co-Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than, in the case of the Administrative Agent, to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05. Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facility provided for herein as well as activities as Administrative Agent.

9.06. Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders and the Parent Borrower or, if the Administrative Agent is a Defaulting Lender, may be required to resign upon receipt of a notice of termination from the Required Lenders. Upon receipt of any such notice of resignation or termination, the Required Lenders shall have the right, in consultation with the Parent Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Parent Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Parent Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

In addition to the foregoing, the Administrative Agent may resign as the "collateral agent" at any time by giving thirty (30) days' prior written notice thereof to Lenders and the Parent Borrower. The Administrative Agent shall have the right to appoint a financial institution as the "collateral agent" hereunder, subject to the reasonable satisfaction of the Borrowers and the Required Lenders and the "collateral agent's" resignation shall become effective on the earlier of (i) the acceptance of such successor "collateral agent" by the Borrowers and the Required Lenders or (ii) the thirtieth day after such notice of resignation. Upon any such notice of resignation, the Required Lenders shall have the right, upon five (5) Business Days' notice to the Administrative Agent, to appoint a successor "collateral agent". Upon the acceptance of any appointment as the "collateral agent" hereunder by a successor "collateral agent", that the successor "collateral agent" shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring "collateral agent" under this Agreement and the Collateral Documents, and the retiring "collateral agent" under this Agreement shall promptly (i) transfer to such successor "collateral agent" all sums, securities and other items of Collateral held hereunder or under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor "collateral agent" under this Agreement and the Collateral Documents, and (ii) execute and deliver to such successor "collateral agent" or otherwise authorize the filing of such amendments to financing

statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor "collateral agent" of the security interests created under the Collateral Documents, whereupon such retiring "collateral agent" shall be discharged from its duties and obligations under this Agreement and the Collateral Documents. After any retiring "collateral agent's" resignation hereunder as the "collateral agent", the provisions of this Agreement and the Collateral Documents shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement or the Collateral Documents while it was the "collateral agent" hereunder.

Any resignation of Bank of America, N.A. or its successor as the Administrative Agent pursuant to this Section 9.06 shall also constitute the resignation of Bank of America, N.A. or its successor as the Swing Line Lender, and any successor the Administrative Agent appointed pursuant to this Section 9.06 shall, upon its acceptance of such appointment, become the successor the Swing Line Lender for all purposes hereunder. In such event (a) the Borrowers shall prepay any outstanding Swing Line Loans made by the retiring the Administrative Agent in its capacity as Swing Line Lender, (b) upon such prepayment, the retiring the Administrative Agent and Swing Line Lender shall surrender any Swing Line Note held by it to the Parent Borrower for cancellation and (c) the Borrowers shall issue, if so requested by successor the Administrative Agent and the Swing Line Loan Lender, a new Swing Line Note to the successor the Administrative Agent and the Swing Line Lender, in the principal amount of the Swing Line Loan Sublimit then in effect and with other appropriate insertions.

U.S. Bank National Association may at any time give notice of its resignation to the Lenders and the Parent Borrower or, if U.S. Bank National Association is a Defaulting Lender, may be required to resign upon receipt of a notice of termination from the Required Lenders and such resignation shall become effective on the date set forth in any such notice. Upon any such resignation, U.S. Bank National Association shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents as Co-Collateral Agent and any reference herein to the Co-Collateral Agent shall refer to the Administrative Agent.

9.07. Non-Reliance on Administrative Agent, Co-Collateral Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, the Co-Collateral Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Co-Collateral Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder. The Administrative Agent and the Co-Collateral Agent shall not have any duty or responsibility to provide any Lender with any other credit or other information concerning the affairs, financial condition or business of any Loan Party that may come into the possession of the Administrative Agent or the Co-Collateral Agent.

9.08. No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Joint Bookrunners, Joint Lead Arrangers and Syndication Agent listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, Co-Collateral Agent or a Lender hereunder. The use of the term "agent" in this Agreement and in the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under the agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

9.09. Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.11 and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.11 and 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding.

9.10. Collateral and Guaranty Matters. The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations, any Letter of Credit that has been Cash Collateralized or any obligation under Other Liabilities), (ii) that is disposed of, sold or to be sold (other than to another Loan Party) as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) if approved, authorized or ratified in writing in accordance with Section 11.01;

(b) to release any Guarantor from its obligations under the Guarantee and Collateral Agreement if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder; and

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(i).

The Lenders agree to be bound by the terms of the Intercreditor Agreement and authorize the Administrative Agent to enter into the Intercreditor Agreement on behalf of the Lenders. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guarantee and Collateral Agreement pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrowers' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guarantee and Collateral Agreement, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrowers, the Administrative Agent and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by the Administrative Agent, on behalf of the Secured Parties in accordance with the terms hereof and all powers, rights and remedies under the Security Documents may be exercised solely by the Administrative Agent in its capacity as the "collateral agent" and (ii) in the event of a foreclosure by the Administrative Agent in its capacity as the "collateral agent" on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent (in its capacity as the "collateral agent") or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Administrative Agent, as "collateral agent" for and representative of Secured Parties (but not any Lender or Lenders in its or their respective individual capacities unless Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent at such sale or other disposition.

No Specified Swap Contract or Cash Management Services shall create (or be deemed to create) in favor of any Lender counterparty that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Guarantor under the Loan Documents except as expressly provided this Agreement and the Guaranty and Collateral Agreement. By accepting the benefits of the Collateral, such Lender counterparty shall be deemed to have appointed the Administrative Agent as the "collateral agent" as its agent and agreed to be bound by the Loan Documents as a Secured Party, subject to the limitations set forth in this clause.

9.11. Indemnification. The Lenders agree to indemnify the Administrative Agent in its capacity as such (to the extent not reimbursed by the Borrowers and without limiting the obligation of the Borrowers to do so), ratably according to their respective Applicable Percentages in effect on the date on which indemnification is sought under this Section 9.11 (or, if indemnification is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Applicable Percentages immediately prior to such date), for, and to save the Administrative Agent harmless from and against, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever that may at any time (including, without limitation, at any time following the payment of the Loans) be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or

omitted by such Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from the Administrative Agent's gross negligence or willful misconduct. The agreements in this Section 9.11 shall survive the payment of the Loans and all other amounts payable hereunder.

9.12. Withholding Taxes. To the extent required by any applicable Laws, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 3.01, each Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within 30 days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts paid to or for the account of such Lender for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.12. The agreements in this Section 9.12 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations. For the avoidance of doubt, a "Lender" shall, for purposes of this Section 9.12, include an Issuing Lender and a Swing Line Lender.

9.13. Reports and Financial Statements. By signing this Agreement, each Lender:

- (a) agrees to furnish the Administrative Agent on the first day of each month with a summary of all Other Liabilities, if any, due or to become due to such Lender;
- (b) is deemed to have requested that the Administrative Agent furnish such Lender, promptly after they become available, copies of all financial statements required to be delivered by the Borrowers hereunder and all commercial finance examinations and appraisals of the Collateral received by the Administrative Agent (collectively, the "Reports");
- (c) expressly agrees and acknowledges that the Administrative Agent (i) makes no representation or warranty as to the accuracy of the Reports, and (ii) shall not be liable for any information contained in any Report;
- (d) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Administrative Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;
- (e) agrees to keep all Reports confidential and strictly for its internal use, and not to distribute except to its participants, or use any Report in any other manner, except that such Reports may be disclosed to the extent permitted under Section 11.07 hereof; and

(f) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Administrative Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any Credit Extensions that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, any Loans of the Borrowers; and (ii) to pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Administrative Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through a breach by the indemnifying Lender of its obligations under Section 11.07.

ARTICLE X

CONTINUING GUARANTY

10.01. Guaranty. Holdings hereby absolutely and unconditionally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations, whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Borrowers to the Secured Parties, arising hereunder and under the other Loan Documents (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof). The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon Holdings, and conclusive for the purpose of establishing the amount of the Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of Holdings under this Guaranty, and Holdings hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

10.02. Rights of Lenders. Holdings consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Obligations. Without limiting the generality of the foregoing, Holdings consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of Holdings under this Guaranty or which, but for this provision, might operate as a discharge of Holdings.

10.03. Certain Waivers. Holdings waives (a) any defense arising by reason of any disability or other defense of the Borrowers or any other Guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrowers; (b) any defense based on any claim that Holdings' obligations exceed or are more burdensome than those of the Borrowers; (c) the benefit of any statute of limitations affecting Holdings' liability hereunder; (d) any

right to proceed against the Borrowers, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties. Holdings expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Obligations. As provided below, this Guaranty shall be governed by, and construed in accordance with, the laws of the State of New York.

10.04. Obligations Independent. The obligations of Holdings hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor, and a separate action may be brought against Holdings to enforce this Guaranty whether or not the Borrowers or any other person or entity is joined as a party.

10.05. Subrogation. Holdings shall not exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Obligations and any amounts payable under this Guaranty have been indefeasibly paid and performed in full and the Commitments and the Revolving Credit Facility is terminated. If any amounts are paid to Holdings in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Obligations, whether matured or unmatured.

10.06. Termination; Reinstatement. This Guaranty is a continuing and irrevocable guaranty of all Obligations now or hereafter existing and shall remain in full force and effect until all Obligations and any other amounts payable under this Guaranty are indefeasibly paid in full in cash and the Commitments and the Revolving Credit Facility with respect to the Obligations are terminated. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrowers or Holdings is made, or any of the Secured Parties exercises its right of setoff, in respect of the Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of Holdings under this paragraph shall survive termination of this Guaranty.

10.07. Subordination. Holdings hereby subordinates the payment of all obligations and indebtedness of the Borrowers owing to Holdings, whether now existing or hereafter arising, including but not limited to any obligation of the Borrowers to Holdings as subrogee of the Secured Parties or resulting from Holdings' performance under this Guaranty, to the indefeasible payment in full in cash of all Obligations. If the Secured Parties so request, any such obligation or indebtedness of the Borrowers to Holdings shall be enforced and performance received by Holdings as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Obligations, but without reducing or affecting in any manner the liability of Holdings under this Guaranty.

10.08. Stay of Acceleration. If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against Holdings or the Borrowers under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by Holdings immediately upon demand by the Secured Parties.

10.09. Condition of the Borrowers. Holdings acknowledges and agrees that it has the responsibility for, and has adequate means of, obtaining from the Borrowers and any other guarantor such information concerning the financial condition, business and operations of the Borrowers and any such other guarantor as Holdings requires, and that none of the Secured Parties has any duty, and Holdings is not relying on the Secured Parties at any time, to disclose to Holdings any information relating to the business, operations or financial condition of the Borrowers or any other guarantor (Holdings waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

ARTICLE XI

MISCELLANEOUS

11.01. Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrowers or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrowers or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

- (a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;
- (b) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment;
- (c) reduce the principal of, or the rate of interest (other than a waiver of default interest) specified herein on, any Loan, or (subject to clause (ii) of the second proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate";
- (d) change Section 2.15 or Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender adversely affected thereby;
- (e) change any provision of this Section 11.01 or the definition of "Required Lenders," without the written consent of each Lender;
- (f) change the definition of the term "Borrowing Base" or any component definition thereof is as a result thereof the amounts available to be borrowed by the Borrowers would be increased; provided that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate eligibility criteria or Reserves;

(g) modify the definition of Permitted Overadvances so as to increase the amount thereof or, except as provided in such definition, the time period for a Permitted Overadvance without the written consent of each Lender;

(h) subordinate the Obligations hereunder or, except pursuant to the Intercreditor Agreement and Section 9.10(c), the Liens granted hereunder or under the other Loan Documents, to any other Indebtedness or Liens, as the case may be, without the written consent of each Lender.

(i) except for releases of Collateral in accordance with the provisions of Section 9.10 hereof, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(j) except for releases of a Guarantor in accordance with the provisions of Section 9.10 hereof, release all or substantially all of the Guarantors, without the written consent of each Lender; or

(k) waive any condition set forth in Section 4.01, without the written consent of each Lender;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent, the Co-Collateral Agent, the Issuing Lender and/or the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Administrative Agent, the Co-Collateral Agent, the Issuing Lender and/or the Swing Line Lender in their capacities as such under this Agreement or any other Loan Document, (ii) the Administrative Agent Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto and (iii) notwithstanding anything to the contrary, any amendment, waiver or modification of Section 7.19 or Section 8.02 (or terms or definitions that as amended, waived or modified only affect Section 7.19 or Section 8.02) shall require the consent of the Required Lenders and shall not require the consent of any other Lender.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender and any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Parent Borrower may replace such non-consenting Lender in accordance with Section 11.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Parent Borrower to be made pursuant to this paragraph).

Notwithstanding the foregoing, (i) this Agreement, including this Section 11.01, and the other Loan Documents may be amended (or amended and restated) pursuant to Section 2.08 in order to add Revolving Credit Commitment Increases to this Agreement and (a) to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the Revolving Credit Loans and the accrued interest and fees in respect thereof, (b) to include appropriately the Lenders holding such

credit Facility in any determination of the required consent of the Lenders pursuant to this Section 11.01, and (c) to amend any other provision of the Loan Documents so that the terms of any Incremental Amendment are appropriately incorporated (including this Section 11.01) and (ii) this Agreement may be amended with the consent of only the Issuing Lender and the Borrowers in order to add an additional initial Issuing Lender to issue Letters of Credit on the terms set forth herein.

11.02. Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. (i) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(ii) if to Holdings, any Borrower or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(iii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Lender Addendum.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail, FpML and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Swing Line Lender, any Issuing Lender or the Parent Borrower (on behalf of the Borrowers) may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to Holdings, the Borrowers, any Loan Parties, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Platform, any other electronic messaging service or through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to Holdings, the Borrowers, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of Holdings, the Borrowers and the Administrative Agent may change their addresses, facsimile or telephone numbers for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Parent Borrower, and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices, Conversion/Continuation Notices and Applications) purportedly given by or on behalf of the Borrowers even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrowers shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrowers. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03. No Waiver; Cumulative Remedies. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

11.04. Expenses: Indemnity: Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay (i) all reasonable out-of-pocket and documented expenses incurred by the Administrative Agent, the Co-Collateral Agent and their respective Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, the Co-Collateral Agent and the charges of SyndTrak), in connection with the syndication of the credit facility provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all out-of-pocket and documented expenses incurred by the Administrative Agent, the Co-Collateral Agent or any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent, Co-Collateral Agent or any Lender), in connection with the enforcement or, in the case of the Administrative Agent, protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 11.04, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by the Borrower. The Borrowers shall indemnify the Administrative Agent (and any sub-agent thereof), the Co-Collateral Agent, the Joint Lead Arrangers, the Issuing Lender, the Swing Line Lender, each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee) incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrowers or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof), the Co-Collateral Agent and their respective Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit, or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or Release of Hazardous Materials on, at, under or from any property owned, leased or operated by the Parent Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Parent Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrowers or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrowers or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrowers or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that the Borrowers for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section 11.04 to be paid by it to the Administrative Agent (or any sub-agent thereof), any Issuing Lender or the Swing Line Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such Issuing Lender, the Swing Line Lender or such

Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), Issuing Lender or the Swing Line Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.14(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrowers shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section 11.04 shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section 11.04 and the indemnity provisions of Section 11.02(e) shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.05. Payments Set Aside. To the extent that any payment by or on behalf of the Borrowers is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06. Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any affiliate of the Issuing Lender that issues any Letter of Credit or that causes any Letter of Credit to be issued), except that none of the Borrowers and the other Loan Parties

may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 11.06(b), (ii) by way of participation in accordance with the provisions of Section 11.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 11.06(d) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

in any case not described in Section 11.06(b)(i)(A), the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 for Revolving Credit Facility assignments, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Parent Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 11.06(b)(i)(B) and, in addition:

the consent of the Parent Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Parent Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof;

the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) any Commitment if such assignment is to a Person that is not a Lender with a Commitment, an Affiliate of Lender or an Approved Fund with respect to such Lender or (ii) any Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

the consent of the Issuing Lender and the Swing Line Lender shall be required for assignments in respect of any Revolving Credit Commitments.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a registration and processing fee of \$3,500 (treating multiple, simultaneous assignments by or to two or more Approved Funds as a single assignment); provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Administrative Agent a Lender Addendum.

(v) No Assignment to Natural Persons. No such assignment shall be made to a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person).

(vi) No Assignment to Parent Borrower, etc. No such assignment shall be made to the Parent Borrower or any of the Parent Borrower's Affiliates or Subsidiaries.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section 11.06, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Parent Borrower (at its expense) shall execute and deliver a Note or Notes to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.06(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption (or the equivalent thereof delivered in electronic form) delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal and interest amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive (absent manifest error), and the Borrower, the Administrative Agent, the Issuing Lender and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Lender and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Parent Borrower or the Administrative Agent, sell participations to any Person (other than a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person) or the Borrowers or any of the Borrowers' Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent, the Issuing Lender and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. Subject to subsection (e) of this Section 11.06, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 (subject to the limitations and requirements of such sections, including Section 3.01(e)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.06(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.15 as though it were a Lender. Each Lender that sells participations to a Participant, acting solely for this purpose as a non-fiduciary agent of the Borrowers, shall maintain a register of all such Participants. The entries in the Participant register shall be conclusive (absent manifest error), and the Borrowers and the Lenders shall treat each Person whose name is recorded in the Participant register pursuant to the terms hereof as a Participant for all purposes of this Agreement, notwithstanding notice to the contrary. If requested by the Borrowers, each Lender shall, upon reasonable notice, permit a bona fide external tax advisor selected by the Parent Borrower (the "Advisor") to periodically review its Participant Register to confirm that such register is being maintained in accordance with the applicable Treasury Regulations; provided that the Advisor shall maintain the confidentiality of all information contained in the Participant Registers and shall not share any such information with the Borrowers except as may be required by the Borrowers in connection with any income tax audit or other income tax proceeding of the Borrowers or to comply with any tax withholding or reporting obligations. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participation.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, except to the extent such entitlement to a greater payment resulted from a Change in Law occurring after the Participant became a Participant.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note(s), if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based

recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

11.07. Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (so long as the Persons to whom such disclosure is made are informed of the confidential nature of such Information and agree in writing or are otherwise obligated to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 11.07, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement (provided that any such assignee or Participant is advised of and agrees to be bound by the provisions of this Section 11.07) or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrowers and their obligations, (g) with the written consent of the Parent Borrower, (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 11.07 or (ii) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrowers, or (i) on a confidential basis to any rating agency.

For purposes of this Section 11.07, "Information" means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; provided that, in the case of information received from a Loan Party or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 11.07 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Lenders acknowledges that (a) the Information may include material non-public information concerning the Parent Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including Federal and state securities Laws.

11.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrowers or any other Loan Party against any and all of the obligations of the Borrowers or such Loan Party now or hereafter existing under this Agreement or any other Loan

Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.24 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and its respective Affiliates under this Section 11.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender or its respective Affiliates may have. Each Lender agrees to notify the Parent Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

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

11.10. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. 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. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement or of a Lender Addendum by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

11.11. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

11.12. Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11.13. Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, if any Lender is a Defaulting Lender or if any other circumstance exists hereunder that gives the Borrowers the right to replace a Lender as a party hereto, then the Parent Borrower may, at the Borrowers' sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

- (a) the Borrowers shall have paid to the Administrative Agent the assignment fee specified in Section 11.06(b);
- (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);
- (c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and
- (d) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

11.14. Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR

OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST A BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

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

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW

11.15. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.16. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby, the Borrowers and Holdings each acknowledge and agree, and acknowledge their respective Affiliates' understanding, that: (i) the credit Facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrowers, Holdings and their respective Affiliates, on the one hand, and the Administrative Agent, the Co-Collateral Agent, the Joint Bookrunners, the Joint Lead Arrangers and the Lenders, on the other hand, and each of the Borrowers and Holdings is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, the Administrative Agent, the Co-Collateral Agent, the Joint Bookrunners, the Joint Lead Arrangers and the Lenders each are and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrowers, Holdings or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Administrative Agent, the Co-Collateral Agent, the Joint Bookrunners, the Joint Lead Arrangers or the Lenders have assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrowers or Holdings with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether the Administrative Agent, the Co-Collateral Agent, the Joint Bookrunners, the Joint Lead Arrangers or the Lenders have advised or is currently advising the Borrowers, Holdings or any of their respective Affiliates on other matters) and none of the Administrative Agent, the Co-Collateral Agent, the Joint Bookrunners, the Joint Lead Arrangers or the Lenders have any obligation to the Borrowers, Holdings or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Administrative Agent, the Co-Collateral Agent, the Joint Bookrunners, the Joint Lead Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers, Holdings and their respective Affiliates, and none of the Administrative Agent, the Co-Collateral Agent, the Joint Bookrunners, the Joint Lead Arrangers and the Lenders have any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Administrative Agent, the Co-Collateral Agent, the Joint Bookrunners, the Joint Lead Arrangers and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Borrowers and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Borrowers and Holdings hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent, the Co-Collateral Agent, the Joint Bookrunners, the Joint Lead Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty.

11.17. USA PATRIOT Act Notice. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act. No part of the proceeds of the Loans or any Letter of Credit will be used by the Loan Parties, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

11.18. Electronic Execution of Assignments and Certain Other Documents

The words “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other Committed Loan Notices, Continuation/Conversion Notices, Swing Line loan notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

11.19. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

11.20. Attachments. The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

11.21. Acknowledgement and Consent to Bail-In of EEA Financial Institutions Solely to the extent any Lender or Issuing Lender that is an EEA Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or Issuing Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or L/C Issuer that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

- (i) a reduction in full or in part or cancellation of any such liability;
- (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
- (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

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

LESLIE'S POOLMART, INC.

By: _____
Name:
Title:

LPM MANUFACTURING, INC.

By: _____
Name:
Title:

LESLIE'S HOLDINGS, INC.

By: _____
Name:
Title:

BANK OF AMERICA, N.A., as Administrative Agent

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, as Co-Collateral Agent

By: _____
Name:
Title:

Schedule 1.01

Revolving Credit Commitments

Lender	Revolving Credit Commitment
Bank of America, N.A.	\$ 90,000,000
U.S. Bank National Association	\$ 60,000,000
TOTAL	\$ 150,000,000

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption “Experts” and to the use of our report dated August 26, 2020 (except for the third paragraph of Note 2, as to which the date is October 24, 2020), in Amendment No. 2 to the Registration Statement (Form S-1 333-249372) and related Prospectus of Leslie’s, Inc. for the registration of its common stock.

/s/ Ernst & Young LLP
Phoenix, Arizona
October 26, 2020