

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

FORM S-1  
REGISTRATION STATEMENT  
UNDER THE SECURITIES ACT OF 1933

**PET Acquisition LLC**

to be converted as described herein into a corporation named

**Petco Health and Wellness Company, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**5990**  
(Primary Standard Industrial  
Classification Code Number)

**81-1005932**  
(I.R.S. Employer  
Identification Number)

**10850 Via Frontera  
San Diego, California 92127  
(858) 453-7845**

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

**Ronald Coughlin, Jr.  
Chief Executive Officer  
PET Acquisition LLC  
10850 Via Frontera  
San Diego, California 92127  
(858) 453-7845**

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

**Copies to:**

**Andrew L. Fabens  
Sean P. Griffiths  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166  
(212) 351-4000**

**Michael Nuzzo  
Ilene Eskenazi  
Marty Lorenzo  
PET Acquisition LLC  
10850 Via Frontera  
San Diego, California 92127  
(858) 453-7845**

**Michael Benjamin  
Brian D. Paulson  
Tad J. Freese  
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 of the Exchange Act.

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee
Class A Common Stock, par value \$0.001 per share	\$100,000,000	\$10,910

(1) Includes shares of Class A common stock issuable upon the exercise of the underwriters' option to purchase additional shares.  
(2) Estimated solely for the purpose of calculating the amount of registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended.

**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 of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

## EXPLANATORY NOTE

PET Acquisition LLC, the registrant whose name appears on the cover of this registration statement, is a Delaware limited liability company. Prior to the effectiveness of this registration statement, PET Acquisition LLC will convert into a Delaware corporation pursuant to a statutory conversion and change its name to Petco Health and Wellness Company, Inc. as described in the section captioned "Recapitalization and Corporate Conversion" of the accompanying prospectus. As a result of the Corporate Conversion, the members of PET Acquisition LLC will become holders of the common stock of Petco Health and Wellness Company, Inc. Except as disclosed in the prospectus, the historical consolidated financial statements and selected historical consolidated financial data and other financial information included in this registration statement are those of PET Acquisition LLC, and do not give effect to the Corporate Conversion. Shares of the Class A common stock of Petco Health and Wellness Company, Inc. are being offered by the prospectus included in this registration statement.

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 state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED DECEMBER 3, 2020

Preliminary Prospectus

Shares  
**petco.**  
THE HEALTH +  
WELLNESS CO.  
Class A Common Stock

This is the initial public offering of the Class A common stock, par value \$0.001 per share, of Petco Health and Wellness Company, Inc. We are offering \_\_\_\_\_ shares of our Class A common stock.

Currently, no public market exists for our Class A common stock. We expect the initial public offering price will be between \$ \_\_\_\_\_ and \$ \_\_\_\_\_ per share. We have applied to list our Class A common stock on the Nasdaq Global Select Market ("Nasdaq") under the symbol "WOOF."

After giving effect to the Corporate Conversion (as defined herein) and the completion of this offering, we will have three classes of common stock: Class A common stock; Class B-1 common stock; and Class B-2 common stock. The rights of the holders of our Class A common stock and our Class B-1 common stock are identical in all respects, except that our Class B-1 common stock does not vote on the election or removal of our directors. The rights of the holders of our Class B-2 common stock differ from the rights of the holders of our Class A common stock and Class B-1 common stock in that holders of our Class B-2 common stock only possess the right to vote on the election or removal of our directors. Following the completion of this offering, we will be a "controlled company" as defined under the corporate governance rules of Nasdaq because our Sponsors (as defined herein) will continue to collectively control approximately \_\_\_\_\_ % of the voting power of our common stock with respect to director elections (or approximately \_\_\_\_\_ % of the voting power with respect to director elections if the underwriters exercise in full their option to purchase additional shares of our Class A common stock). Please read "Management—Status as a Controlled Company."

*INVESTING IN OUR CLASS A COMMON STOCK INVOLVES RISKS, INCLUDING THOSE DESCRIBED IN THE "[RISK FACTORS](#)" SECTION BEGINNING ON PAGE 21 OF THIS PROSPECTUS.*

	Per Share	Total
Initial public offering price	\$ _____	\$ _____
Underwriting discounts and commissions(1)	\$ _____	\$ _____
Proceeds, before expenses, to us	\$ _____	\$ _____

(1) Please read "Underwriting (Conflicts of Interest)" for a description of all underwriting compensation payable in connection with this offering.

At our request, BofA Securities, Inc., a participating underwriter, has reserved for sale, at the initial public offering price, up to 5% of the shares offered by this prospectus for sale to certain of our directors, officers, and employees. If these persons purchase reserved shares it will reduce the number of shares available for sale to the general public. Any reserved shares that are not so purchased will be offered by the underwriters to the general public on the same terms as the other shares offered by this prospectus. For more information regarding the directed share program, please read "Underwriting (Conflicts of Interest)—Directed Share Program."

The underwriters have a 30-day option to purchase up to an additional \_\_\_\_\_ shares of our Class A common stock at the public offering price, less the underwriting discounts.

**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.**

Delivery of our Class A common stock is expected to be made on or about \_\_\_\_\_, 2020 through the book-entry facilities of The Depository Trust Company.

Goldman Sachs & Co. LLC

Citigroup

Evercore ISI

Credit Suisse

UBS Investment Bank

Baird

BofA Securities

Wells Fargo Securities

Guggenheim Securities

Prospectus dated \_\_\_\_\_, 2020

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We have not, and the underwriters have not, authorized any other person to provide you with information different from that contained in this prospectus and any free writing prospectus authorized by us. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where an offer or sale is not permitted. The information in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of our Class A common stock. Our business, financial condition, results of operations, and prospects may have changed since that date.

This prospectus contains forward-looking statements that are subject to a number of risks and uncertainties, many of which are beyond our control. Please read "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements."

## **NOTE ON THE PRESENTATION**

Unless otherwise indicated, (i) references in this prospectus to “Petco,” “our company,” “we,” “our,” and “us,” or like terms, refer, prior to the Corporate Conversion discussed elsewhere in this prospectus, to PET Acquisition LLC and our subsidiaries, and after the Corporate Conversion, to Petco Health and Wellness Company, Inc. and its subsidiaries taken as a whole, and (ii) “Petco Animal Supplies” refers to Petco Animal Supplies, Inc., our wholly owned subsidiary. Unless the context otherwise requires, references to “common stock” refer to our Class A common stock, our Class B-1 common stock and our Class B-2 common stock, collectively. References to our certificate of incorporation and bylaws are to our second amended and restated certificate of incorporation and our second amended and restated bylaws, respectively, each of which will become effective upon completion of this offering.

We report on the basis of a 52- or 53-week fiscal year, which ends on the Saturday closest to January 31. References to “fiscal year” mean the year in which that fiscal year began. For example, references to Fiscal 2019 refer to the fiscal year beginning February 3, 2019 and ending February 1, 2020. Please read “Selected Historical Consolidated Financial Data” for more information regarding the presentation of our fiscal years.

## **TRADEMARKS AND SERVICE MARKS**

We own or have rights to various trademarks, service marks, and trade names that we use in connection with the operation of our business. The following trademarks are registered or pending registration: Bond & Co., Good 2 Go, Good Lovin’, Harmony, Imagitarium, Leaps & Bounds, Pals Rewards, Petco, PetCoach, PupBox, Reddy, Ruff & Mews, So Phresh, Vetco, Well & Good, WholeHearted, and You & Me. This prospectus may also contain trademarks, service marks, and trade names of third parties, which are the property of their respective owners. Our use or display of a third party’s trademarks, service marks, trade names, or products in this prospectus is not intended to, and does not imply, a relationship with, or endorsement or sponsorship by, us. Solely for convenience, the trademarks, service marks, and trade names referred to in this prospectus may appear without the ®, TM, or SM symbols, but such 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 right of the applicable licensor to these trademarks, service marks, and trade names.

## **INDUSTRY AND MARKET DATA**

This prospectus includes market data and forecasts with respect to the pet care industry. Although we are responsible for all of the disclosure contained in this prospectus, in some cases we rely on and refer to market data and certain industry forecasts that were obtained from third-party surveys, market research, consultant surveys, publicly available information and industry publications and surveys that we believe to be reliable. Unless otherwise indicated, all market and industry data and other statistical information and forecasts contained in this prospectus are based on independent industry publications, government publications, reports by market research firms or other published independent sources, such as the American Pet Products Association (study entitled “Pet Industry Market Size and Ownership Statistics” published in August 2015), Bureau of Economic Analysis, Lippincott, Nielsen, and Packaged Facts, and other externally obtained data that we believe to be reliable. Some market and industry data, and statistical information and forecasts, are also based on management’s estimates, which are derived from our review of internal surveys as well as the independent sources referred to above. Any such market data, information or forecast may prove to be inaccurate because of the method by which we obtain it or because it cannot always be verified with complete certainty given the limits on the availability and reliability of raw data, the voluntary nature of the data gathering process, and other limitations and uncertainties, including those discussed under the caption “Risk Factors.” As a result, although we believe that these sources are reliable, we have not independently verified the information.

## A LETTER FROM PETCO CHIEF EXECUTIVE OFFICER, RON COUGHLIN

I am pleased to introduce you to a profoundly new Petco that's redefining the pet care industry and generating a compelling growth trajectory.

Over time, family pets have become a more meaningful and valued part of our lives, and have made their way from the backyard, to inside our homes, to their own and in many cases *our own* beds. Today, pets are considered family members by 94 percent of pet parents. Similarly, since our founding in 1965, Petco has grown from a local veterinary supplies shop to a disruptive, fully integrated, digital-led, comprehensive pet care *ecosystem* that puts the health and wellness of pets first. Today, we are a complete partner to pet parents, providing expertise, some of the world's most nutritious pet foods, and the supplies, services, and healthcare our pets need to thrive. Unlike our competitors, we literally provide it all in an integrated fashion: premium food, supplies, grooming, training, and a full-service veterinary platform. Additionally, we do it all seamlessly across digital and physical worlds.

**Today, Petco is the ONLY complete health and wellness company for pets.**

With a world-class management team filled with some of the best minds from digital, retail, and consumer brands, a unified corporate strategy, and renewed clarity in our mission – we set out on a journey to reignite the passion for pet wellness that's been in our DNA for more than 55 years. With this as our foundation, our business transformation has focused on driving a differentiated merchandise strategy, building sticky services, and completely revamping our digital offerings underpinned by data, analytics, marketing prowess and fired up Petco partners. These focus areas have generated attractive top- and bottom-line growth that generates the momentum for compelling long-term growth and profitability.

We are aggressively acquiring customers, as well as building and retaining these relationships. Our digital business has been growing at a strong rate since 2019 and is gaining share with millions of new customers flocking to our unique digital capabilities on both Petco.com and the Petco mobile app. We have formidable Owned Brands, such as the premium nutrition at value *WholeHearted* brand and fashion-forward *Reddy* brand, as well as premium partner brands such as Orijen, Acana, and Taste of the Wild. Our 1,470 brick and mortar pet care centers – which serve as hubs for BOPUS, Curbside Pickup, and sticky services like grooming and training – are growing too. And our ability to leverage these locations as mini distribution centers staffed by passionate and knowledgeable partners gives us a powerful competitive advantage. Add to that an aggressive veterinary hospital build out, mobile vaccination clinics and tele-vet, as well as recurring revenue from membership and insurance offerings, and Petco is firing on all cylinders.

**Together, the Petco team is on a mission to improve lives. For pets, their parents, and for the over 26,000 partners who work here. And, to create a fast-growing, profitable company differentiated from its brick & mortar, online, and mass competitors.**

In 2018, we announced a commitment to stop selling all dog and cat food and treats that contain artificial ingredients, a move that solidified our nutrition leadership in the industry and opened the door to partnerships with premium, exclusive brands that are typically only found in specialty channels. In October 2020, we upended the industry again by removing shock collars from our shelves and broadly advocating for and expanding access to Positive Training. During the pandemic, we've prioritized safety above all else, and we remain committed to serving the growing number of pets and pet parents who count on us to deliver for them in more safe and convenient ways than ever. We've seen the total addressable market grow significantly this year, and demand for new pets shows no sign of waning. Suffice it to say, our business was strong before the pandemic, accelerated during the pandemic, and we expect it to continue to grow at an accelerated rate long after the pandemic passes.

**At every turn, we've stayed true to our shared belief that what's best for pets is always best for Petco.**

Particularly during these challenging times, pets are an important source of comfort and joy. Studies show that over 3.3 million pets entered U.S. households this year alone and we look forward to feeding, training, grooming, equipping, and providing world-class veterinary care for many of these new family members for years to come. Together, we're making massive, positive impacts on pets, pet parents, our partners, and the communities we serve – and our strategy is delivering results. This combination of contribution to life betterment and drive for world class results epitomizes what we call “Purpose-Driven Performance.”

I'm incredibly proud of the journey Petco is on, and I'm grateful and humbled to be part of the family that's orchestrated Petco's resurgence as the only comprehensive health and wellness company for pets. As you dig in here, you'll learn why I'm confident this is just the beginning, and why I believe our future is brighter than ever. And I hope you'll join us.

Ron Coughlin, Chief Executive Officer

## SUMMARY

*This summary provides a brief overview of information contained elsewhere in this prospectus. The following summary is qualified in its entirety by, and should be read in conjunction with, the more detailed information and financial statements appearing elsewhere in this prospectus. This summary does not contain all of the information that you should consider before investing in our Class A common stock. In addition to this summary, we urge you to read the entire prospectus carefully, including the information set forth under “Risk Factors,” “Cautionary Note Regarding Forward-Looking Statements,” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and the historical consolidated financial statements and the accompanying notes included elsewhere in this prospectus.*

### **Our Mission**

We love pets. We are a purpose-driven company dedicated to improving the lives of pets, their parents, and the partners who work for us. We are committed to being the leading, most trusted resource in pet care, providing a comprehensive portfolio of essential products and services with expert advice that addresses all aspects of pet health and wellness.

### **Our Company**

We are a beloved brand in the U.S. pet care industry with more than 55 years of service to pets and the people who love and care for them. Since our founding in 1965, we have been developing new standards in pet care, delivering comprehensive wellness solutions through our products and services, and creating communities that deepen the pet-parent bond. Over the last three years, we have transformed the business from a successful traditional retailer to a disruptive, fully-integrated, digital-focused provider of pet health and wellness offerings. We revamped our leadership team and invested over \$300 million to build out leading capabilities across e-commerce and digital, owned brands, data analytics, and a full suite of on-site services including veterinary care. Our investments have delivered a comprehensive, integrated, and technology-enabled ecosystem of channels and offerings, complemented by a rapid innovation capability that is disrupting the pet market and providing pet parents with a differentiated holistic solution for all their pet care needs. For more information regarding our transformation investments, please read “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Innovation and Transformation.”

Our go-to-market strategy is powered by a multi-channel platform that integrates our strong digital presence with our nationwide physical network. Our data-driven digital footprint, consisting of an entirely redesigned e-commerce site and personalized mobile app, delivers an exceptional customer experience and serves as a hub for pet parents to manage their pets’ health, wellness, and merchandise needs, while enabling them to shop wherever, whenever, and however they want. By strategically leveraging our extensive physical network consisting of approximately 1,470 pet care centers located within three miles of 54% of our customers, we are able to offer our comprehensive product and service offering in a localized manner with a meaningful last-mile advantage over our competition. Through our connected platform, we serve our customers in a differentiated manner by offering the convenience of ship-from-store, buy-online, pick-up in-store (“BOPUS”), and curbside pick-up. This integrated, multi-channel approach clearly resonates with our customers, as the number of customers who engage with us across multiple channels has grown by 20% over the last three years. Further, these multi-channel customers spend between 3x to 6x more with us compared to single-channel customers. In the last 12 months ended October 31, 2020, we achieved approximately 80% retention of our multi-channel customers.

Through our multi-channel platform, we provide a comprehensive offering of differentiated products and services that fulfill all the needs of pet parents and their pets. Our product offering leverages our owned brand portfolio and partnerships with premium third-party brands to deliver high

quality food that avoids artificial ingredients, complemented by a wide variety of premium pet care supplies. We augment this premier product offering with a broad suite of professional services, including grooming as well as in-store and online training. Our service offering is further enhanced by a rapidly expanding, affordable veterinary service platform, which includes full-service, outpatient veterinary care service locations (“veterinary hospitals”), Vetco clinics, and tele-veterinarian services. In addition, we are increasingly linking our offerings with subscription programs such as membership and pet health insurance that create deeper engagement with our over 21 million Active Customers (as defined in “Management’s Discussion and Analysis of Financial Condition and Results of Operations—How We Assess the Performance of Our Business”) as of October 31, 2020, with our Pals loyalty program members accounting for approximately 80% of transactions in the thirty-nine weeks ended October 31, 2020. In addition to providing differentiated products and services, our over 23,000 knowledgeable, passionate partners provide important high-quality advice to our customers in our pet care centers. With our integrated platform and comprehensive offering, we provide a complete pet health and wellness ecosystem that drives engagement across our enterprise and creates life-long customer relationships.

**Only Fully-Integrated and Comprehensive Pet Care Ecosystem**



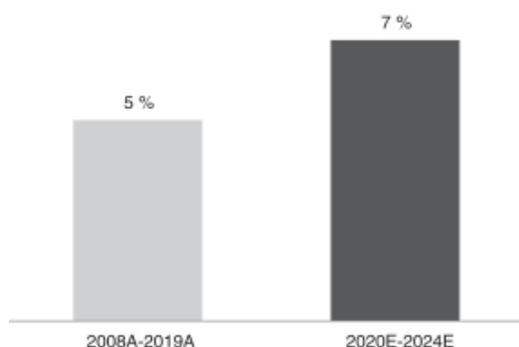
**Industry Dynamics**

The U.S. pet care industry is a large, attractive growth market experiencing a significant acceleration in response to multiple secular themes. The industry serves more than 72 million households with pets and represents a total addressable market of \$97 billion in 2020. Since 2008, the industry has grown at a 5% compound annual growth rate (“CAGR”), driven by steady, predictable growth in the underlying pet population coupled with strong tailwinds associated with pet humanization. Due to the essential, consumable nature of pet care, the industry has demonstrated resilience across economic cycles. During the Great Recession, the industry delivered strong performance, growing at a CAGR of 6% from 2008 to 2010. With respect to our business, we are strategically focused on growing our presence in three of the fastest-growing areas of the market: services, e-commerce, and veterinary, which are projected to grow at 11%, 14%, and 9% CAGRs, respectively, from 2020 to 2024.

As a result of the COVID-19 pandemic, the industry is experiencing a significant increase in demand that is expected to be a tailwind for years to come. According to Packaged Facts, the number

of households with pets in the United States is expected to increase by 4% in 2020, creating an estimated \$4 billion in incremental annual demand for pet care products. Given the long-term, recurring demand for pet care products and services, which is expected to continue to grow in response to the pet humanization trend, this step function increase in the pet population represents a meaningful acceleration in total industry growth from 5% historically to 7% through 2024, according to Packaged Facts and company internal estimates. As pet care demand continues to grow, we believe we are well-positioned to capture an outsized portion of the growing market as the only fully-integrated, comprehensive pet care provider in the industry.

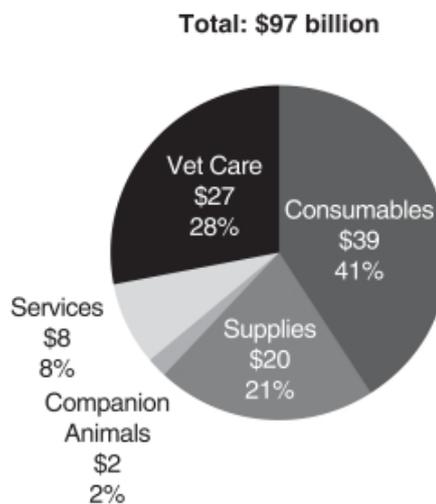
**U.S. Pet Care Industry CAGR**



Source: Packaged Facts and company internal estimates.

**U.S. Pet Care Industry by Category**

(\$ in billions, 2020 )



Source: Packaged Facts and company internal estimates.

***Our Transformation***

Three years ago, we saw several major opportunities to accelerate our business. First, customers were shifting online and we saw a meaningful opportunity to better leverage our differentiated strengths and physical network to benefit from this shift. Second, research showed that pet parents had multiple care needs across products and services, but they were confused and looking for a partner to help them navigate to the right health and wellness decisions. Third, we recognized a need to become much more analytical and operationally rigorous. Lastly, the organization required clear strategic direction following a period of transition and cost cutting. Over the past three years we have invested over \$300 million to support our innovation and business transformation strategies. These investments include: digital and e-commerce integration and expansion; data analytical capabilities; veterinary services; marketing and advertising; and our owned brands. Our transformation actions were focused on the following major initiatives and investments:

- assembled a next generation leadership team to drive transformation;
- built leading e-commerce and digital capabilities that leverage our physical network;
- reinvented grooming and training, and launched a full-service veterinary hospital network;
- created a highly differentiated owned and exclusive product offering;
- implemented a performance culture led by data analytics; and
- attracted exceptional talent in key growth areas.

For more information regarding our transformation investments, please read “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Innovation and Transformation.”

**Recent Financial Performance**

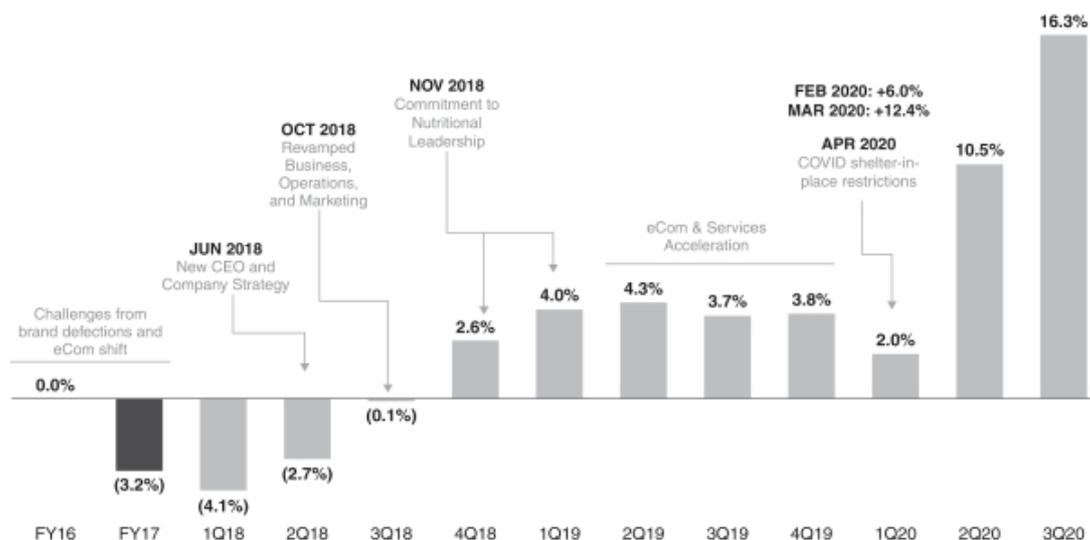
Our business transformation initiatives, accelerated by an increase in pet ownership and a shift in customer discretionary spend on pets, have driven strong top- and bottom-line growth in our business. Comparing the first thirty-nine weeks of Fiscal 2020 and Fiscal 2019, we achieved the following results:

- increase in net sales from \$3.29 billion to \$3.58 billion, representing period-over-period growth of 9.0%;
- comparable sales growth of 9.6%;
- increase in operating income from \$69.5 million to \$127.4 million, representing period-over-period growth of 83.5%;
- a decrease in net loss attributable to members from \$(88.7) million to \$(20.3) million, representing a period-over-period improvement of 77.1%; and
- an increase in Adjusted EBITDA from \$292.6 million to \$335.7 million, representing period-over-period growth of 14.7%.

For a description of our non-GAAP measures and reconciliations to their most comparable U.S. GAAP measures, please read the section titled “Selected Historical Consolidated Financial Data—Non-GAAP Financial Measures.”

We consecutively grew net sales from \$2.0 billion in Fiscal 2005 to \$4.5 billion in Fiscal 2016. Following a period of decline from Fiscal 2016 through the third quarter of Fiscal 2018, our comparable sales growth has accelerated in the last eight quarters, during which we achieved the following results:

**Quarterly Comparable Sales Growth**



## ***Our Competitive Strengths***

### ***Category-Defining Brand with Long-Term Customer Relationships Built on Trust***

Since our founding in 1965, we have focused on building long-term relationships with pet parents by providing an exceptional customer experience. Our top-of-mind awareness is among the highest in the industry, cited by 28% of customers as the first brand that comes to mind when asked to name a brand in pet products. Across our platform, we have a team of over 23,000 highly trained pet care experts who love animals and are passionate about sharing their expertise with pet parents. Through our people—such as digital experts, sales and engagement partners, groomers, trainers, companion animal experts, and veterinarians—we are able to build and maintain long-term, high-touch relationships with pet parents.

Our brand is consistently strengthened by the touchpoints we have with our customers across channels, products, and services. As of October 31, 2020, we served over 21 million Active Customers, with members of our Pals loyalty program representing approximately 80% of our transactions in the thirty-nine weeks ended October 31, 2020 and ranking among the largest loyalty programs in the industry. We leverage the data from our Pals program via in-store technology (including hand-held devices that our partners use to assist customers with shopping), content, and recommendations in a highly personalized manner. Our customer relationships are built on trust and supported by high customer affinity, as demonstrated by our average nine-out-of-ten Voice of Consumer rating in the first three quarters of Fiscal 2020.

### ***The Only Fully-Integrated Comprehensive Offering of Pet Products and Services Nationwide***

We provide the only fully-integrated comprehensive offering of pet care products and services that meet the needs of pet parents everywhere—something that none of our competitors currently offer.

Our product strategy is built around an extensive offering that features premium owned and partner brands known for quality and innovation. We offer leading varieties of wholesome, premium food that build upon our expertise in pet nutrition. For example, we proudly offer premium brands such as human-grade Just Food For Dogs, which are not widely available in other national pet specialty stores. In addition to food, we offer a wide range of pet supplies to meet the needs of pet parents. The combination of our differentiated food and supplies strategy, including owned and exclusive brands, has enabled us to offer a premium product offering, with more than 50% of our offering not available via online or mass competitors.

Our service offering consists of professional grooming, training, and veterinary services. In addition to acting as a profitable driver of new customer acquisition, our service platform helps retain and expand the yearly spend of existing customers, drive visit frequency and digital engagement, and build long-term loyalty.

Through our connected multi-channel ecosystem, we are able to offer our comprehensive product and service offering across all channels to meet our customer wherever, whenever, and however they want to shop. During the nine months ended October 31, 2020, customers who shopped across the four channels we track for these purposes (pet care center merchandise, e-commerce and digital, grooming and training services, and veterinary services including veterinary hospitals and Vetco clinics) spent on average 6x with us versus customers who only shopped one of these channels. Demonstrating the impact of our comprehensive ecosystem on our pet care centers, our 90 pet care centers that offer grooming, training veterinary services, ship-from-store, and BOPUS generate on average 91% higher revenue, as measured over the last 12 months ended October 31, 2020, than that of our average pet care center in Fiscal 2017.

### ***Connected Ecosystem Combining Leading Digital Capabilities and a Strategic Physical Network***

We have built a connected ecosystem comprising leading digital capabilities and a national physical network. Through our Petco.com website and Petco app, we offer premier digital navigation, speed, assortment, market-based pricing, content, and personalization features. Through our physical network, we have the ability to consistently fulfill and deliver a growing assortment of products directly to consumers in addition to convenient offerings such as BOPUS and curbside pick-up. Our physical proximity to our customers also provides us a significant last-mile cost advantage relative to competitors. In the thirty-nine weeks ended October 31, 2020, approximately 80% of Petco.com orders were fulfilled by our pet care centers, either as ship-from-store, BOPUS, or curbside pick-up. Additionally, we have experienced increasing pet care center sales through our Petco app since its launch, with many pet parents electing to take advantage of BOPUS and curbside pick-up for their orders. For customers seeking even greater convenience, we offer repeat delivery options that facilitate recurring purchases. Our repeat delivery revenue stream increased 13% in Fiscal 2019, and for the thirty-nine weeks ended October 31, 2020, BOPUS purchases and repeat deliveries of products accounted for 61% of Petco.com sales. Finally, we continually leverage our digital capabilities to innovate, such as online booking of grooming appointments, convenient at-home services like on-line training, and mobile grooming. Our connected ecosystem provides us with a singular view of our customer, which fuels our highly effective performance marketing function to drive repeat visits and grow customer lifetime value. For the thirty-nine weeks ended October 31, 2020, we achieved a Petco.com customer retention rate that was 12% higher than that of the prior year period.

### ***Rapidly Growing Veterinary Services Offering Stack***

According to Packaged Facts, more than 70% of pet owners have concerns about the affordability of veterinary healthcare. In response, we have established a differentiated and highly scalable, affordable veterinary healthcare service platform that consists of our full-service veterinary hospitals, Vetco clinics, and tele-veterinary services. In Fiscal 2019, we serviced over 400,000 customers through our veterinary offering platform.

We are rapidly expanding our full-service veterinary hospitals across the country to provide expanded service coverage. By integrating these veterinary hospitals into existing pet care centers, we benefit from significant structural advantages compared to existing veterinary care providers, positioning us to deliver a more affordable solution to our customers. Through our digitally enabled approach, we offer competitive and affordable exam fees, supported by convenient online appointment scheduling, text reminders and weekend booking availability. We have experienced strong early success from our veterinary hospital strategy driven by highly compelling unit economics. Our veterinary hospitals have historically required approximately \$600,000 in build-out costs and generate four-wall profitability by year two. We target sales and four-wall EBITDA margins at maturity of approximately \$1.5 million and 20%, respectively. The ability for customers to conveniently purchase health-related products, including prescription food, at the time of a veterinary appointment creates a strong complementary relationship in an under-penetrated category for Petco. Despite reducing the total selling square footage of an existing pet center when we add a veterinary hospital, we experience a sales uplift in merchandise and non-veterinary services. Average non-veterinary sales increased by approximately 600 basis points in the first year of veterinary hospital operations. Additionally, sales of prescription food, which require an on-site veterinary hospital, are currently averaging an incremental \$1,000 of sales per week per pet care center. Our recent introduction of Petco Vital Care Membership, a subscription program that provides access to our holistic health and wellness offering, and Petco Insurance leverage our growing veterinary services network to provide incremental benefits and convenience for customers.

### ***Industry-Leading Grooming and Training Business Driving Recurring Trip Frequency***

Leveraging our strategic physical network, we have built one of the largest grooming and training businesses in the pet care industry. These essential services drive recurring visits into our pet care centers, allowing us to earn a greater share of wallet from our customers, as demonstrated by the fact that over the past three years our service customers tend to spend 2x as much with us compared to our non-service customers.

In our grooming business, we served over 2 million pets across approximately 1,350 of our pet care centers during Fiscal 2019. We are building on the success of our investment strategy with the addition of new elements such as our “Spa Club” grooming loyalty program, breed-specific marketing, and mobile grooming. Spa Club has helped drive a 14% improvement in customer retention rate between the fourth quarter of Fiscal 2018 and the fourth quarter of Fiscal 2019.

In our training business, we served over 180,000 pets across approximately 1,470 pet care centers during Fiscal 2019. Because training is generally conducted at an early stage in a pet’s life, this offering is a strategic customer acquisition tool to engender long-term loyalty with new pet parents. We continue to focus on augmenting our core in-store training offering with the launch of at-home and online training classes. In Fiscal 2019, on average, our training customers spent 3.3x more with us than our non-training customers.

### ***Premier Owned Brand Product Development and Innovation Platform***

We operate a leading, owned brand portfolio that has grown rapidly and is highly accretive to our product gross margins, typically driving a margin rate that is between 1,500 and 2,000 basis points higher than comparable third-party brands. Our extensive direct customer relationships provide us with insights that allow us to identify unmet customer needs and trends and rapidly build products and services around those needs. We have an established infrastructure for developing, launching, and fostering growth in owned brand products, including an in-house packaged goods insights function, experienced fashion leadership, and a dedicated sourcing office in Asia.

Over the last three years, we have demonstrated the speed and depth of our innovation platform through the launch of 89 new brands and 5,000 new products. In 2016, we launched our first major proprietary pet food brand, WholeHearted, which features a premium ingredient panel, an attractive price point, quality packaging, and authentic branding that effectively targets millennial pet parents. In Fiscal 2019, we launched Reddy, our proprietary supplies brand that features premium fabrics and urban contemporary styling appealing to fashion-focused pet parents. We also believe our Well & Good brand has similar potential to tap into customer demand for premium wellness products. Sales of our owned brand portfolio have grown at a 14% CAGR between Fiscal 2017 and Fiscal 2019, and for Fiscal 2019, our owned brands generated sales of \$1.1 billion, or approximately 27% of total product sales, up from 17% of product sales in Fiscal 2015.

### ***Best-in-Pet Technology Capabilities***

We have developed the ability to compete with the best-in-class innovation capabilities of our competitors. We invested over \$150 million over the past three years in our digital systems and recruited leading digital talent, employing over 100 technology and analytics experts organized in rapid deployment “squad” structures linked to major areas like e-commerce, services, and customer relationship management (“CRM”). Our operating experience and insights enable us to develop, test, and scale solutions in a rapid innovation cycle. We also seek to leverage our existing assets and advantages in the market to ensure our innovation implementations are not easily replicable by the competition. In the last 24 months, we have launched new programs, such as curbside pick-up, online dog training, an online food coach, our complete pet wellness app, pet medical record consolidation,

and Petco Vital Care Membership. Our ability to leverage our physical network has been a distinct competitive advantage. We believe our advanced innovation capabilities provide us with insights and opportunities to continue to enhance customer engagement, rapidly improve our offerings, and expand into new product and service lines faster and better than competitors.

### ***Highly Experienced and Proven Management Team***

We have an experienced and proven management team of successful retail, consumer, and technology industry veterans and a deep bench of talent supporting our emerging services, e-commerce, and omni-channel competencies.

- Our Chief Executive Officer, Ron Coughlin, who has been with Petco for over two years, brings 11 years of experience at HP, including eight as Division President, and 13 years of marketing experience at PepsiCo where he left as a Chief Marketing Officer
- Our Chief Financial and Operating Officer, Michael Nuzzo, actively oversees our supply chain and our services and veterinary businesses, after joining us in 2015, and has over 20 years of experience managing financial and operational strategy at leading public and private retail companies, including GNC and Abercrombie & Fitch
- Our Chief Digital & Innovation Officer, Darren MacDonald, brings critical e-commerce experience, having built one of the leading global e-commerce platforms during his prior roles at Walmart and Jet.com, and having developed one of the most trafficked online shopping comparison engines as CEO of Pronto Network, an IAC company
- Our Chief Pet Care Center Officer, Justin Tichy, offers deep field experience with leading store teams at public retail companies, including Best Buy, Target, and Walmart
- Our Chief Merchandising Officer, Nick Konat, brings leading consumer and retail expertise from managing merchandising strategies at Target as well as from his experience as a consultant at Accenture
- Our Chief Human Resources Officer, Michelle Bonfilio, has prior experience in the pet industry and senior human resources roles with leading public retailers, including The Gap and Williams Sonoma
- Our Chief Information and Administrative Officer, John Zavada, brings valuable information technology experience, formerly serving as CIO of Restoration Hardware and L Brands, among others
- Our Chief Legal Officer and Secretary, Ilene Eskenazi, brings over 20 years of legal experience from leading retail, apparel, and consumer packaged goods companies, having served as general counsel for other leading global brands such as Red Bull and True Religion
- Our Chief Marketing Officer, Tariq Hassan, brings significant marketing, brand management and communications experience, having served in leadership roles at Bank of America and Hewlett-Packard Company (now HP Inc.)

The balance of the senior team has experience from a host of high caliber companies.

### ***Our Growth Strategies***

Building upon our success to date, we see a significant opportunity to drive long-term growth across our business by executing on the following growth strategies:

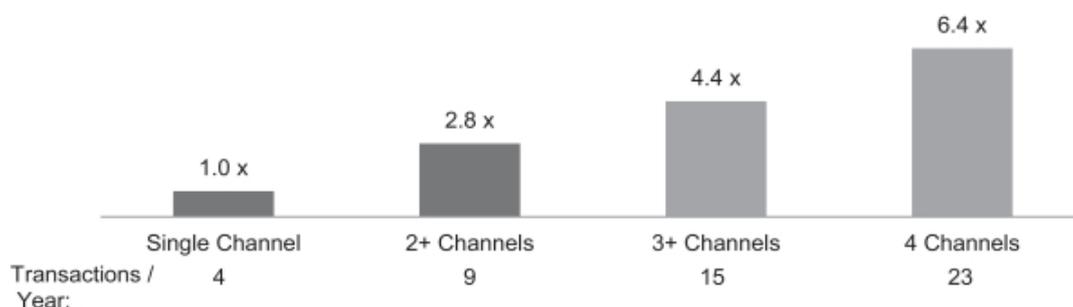
#### ***Continue to Acquire New Customers and Drive Engagement Across All our Channels.***

- **Acquire New Customers:** Strong secular trends in the industry are introducing new pet parents to the category. We are distinctively positioned to acquire new customers through our

effective marketing, e-commerce engagement, new pet programs, Pals loyalty program, Petco app, and sticky services offerings, as well as our strategic physical network, which provides a low-cost acquisition and powerful brand awareness vehicle. As one of the most recognizable brands in the industry and the only fully-integrated complete solution for all pet health and wellness needs, we are distinctively positioned to successfully acquire new customers looking for the best first stop as new pet parents.

- **Increase Engagement and Monetization Across All Channels and Offerings:** Our multi-channel and multi-category customers represent our highest yearly and lifetime value spend levels and will be a meaningful contributor to our future growth. During the 12 months ended October 31, 2020, we achieved approximately 80% retention of our multi-channel customers. Over that same period, customers who engage with us across two or more channels spend on average 2.8x as much as our single-channel customers spend, and those who engage with us across three or more channels and all four channels spend on average 4.4x to 6.4x as much, respectively. We plan to drive these spend levels higher as we scale our e-commerce platform and full-service veterinary hospitals. Further, we believe we have an embedded opportunity to significantly grow the value of our active customer base by attracting customers to additional channels, leveraging our comprehensive health and wellness offering, in-store cross-selling, Petco app, advanced CRM capabilities, and subscription programs like repeat delivery, which directly facilitate multi-channel purchases.

**Relative Spend by Customer Type (Indexed to Single-Channel Customer)**



Source: Company data; customer spend data are as of the 12 months ended October 31, 2020; during the 12 months ended October 31, 2020, our average single-channel customer spent approximately \$150.

*Note: Channels consist of pet care center merchandise, e-commerce and digital, grooming and training services, and veterinary services.*

- **Maximize Customer Engagement and Loyalty with Subscription Programs:** Beyond our repeat delivery program, we have only begun to capitalize on subscription revenue opportunities, including through the recent launches of additional value-add subscription programs:
  - **Petco Vital Care Membership:** an annual fee-based membership program that provides preferred access to our holistic health and wellness offering across products, grooming, and veterinary care;
  - **PupBox:** a service that provides monthly shipments of premium food, treats, and merchandise to puppy parents; and
  - **Petco Insurance:** an annual service that provides affordable, full-service pet health coverage with added pet product and services perquisites not offered by traditional insurance company plans.

All three programs have experienced strong initial customer reception to date. While these programs are relatively nascent, we are excited by the opportunity to bring together our product and service offerings under subscription programs that we believe will positively impact the customer experience while providing us with an attractive revenue stream from subscription businesses.

***Continue to Grow Our Digital Business.***

We intend to leverage our fully-integrated ecosystem, high-performance website and mobile app experience, fulfillment cost advantages, and differentiated services offerings to capitalize on the continued strong growth of e-commerce in the pet industry. In particular, we expect the continued expansion of BOPUS and curbside pick-up, which we are able to offer profitably given our strategic physical network, to allow us to substantially grow e-commerce sales while maintaining a leading customer fulfillment proposition. Our ability to connect our online platform with our in-person offerings, such as grooming, training, and veterinary care, creates a “flywheel” that drives greater online visits, which in turn create more opportunities for cross-selling other products and services. By leveraging our technology and operational assets, we plan to continue delivering innovation and new multi-channel offerings with a goal of meeting or exceeding overall pet e-commerce industry growth, as well as increasing our e-commerce penetration.

***Expand Our Health & Wellness Services.***

- **Rapid Expansion of our Differentiated Veterinary Services:** Veterinary care is one of the fastest-growing categories in the pet industry and one of our key strategic priorities. Through our comprehensive veterinary offering stack and affordable care positioning, we are disrupting the industry and intend to gain market share by expanding on our proven, replicable model of offering affordable, high-quality veterinary services to pet parents everywhere. We have experienced strong results from the 105 full-service veterinary hospitals currently open and plan to continue to add 60 to 70 hospitals per year to new, relocated, and remodeled pet care centers as we execute on a 900+ location white space. We also have the opportunity to utilize tele-veterinary services to grow the revenue base of our hospitals through convenient online appointments. Outside of our full-service veterinary hospitals, we are expanding our Vetco clinic business both within Petco and through partnerships with other retail partners. We believe that through our affordable, convenient, and tech-enabled veterinary proposition, we are well-positioned to capture increasing share in the attractive veterinary services market while driving overall share of customer wallet by marketing and cross-selling our non-veterinary offerings.
- **Continue to Grow Our Core Grooming and Training Businesses:** The grooming and training markets are highly fragmented and offer us an opportunity to meaningfully grow our market share. Grooming is a large addressable market in the United States, representing approximately \$3 billion in 2020, according to Packaged Facts. Relative to our competitors, our scale and digital capabilities, such as convenient online scheduling, provide us with a compelling advantage. In our grooming business, we have an opportunity to increase productivity by adding staff to meet elevated customer demand, selling higher priced service packages, and adding mobile grooming capabilities to capture demand for at-home services. In our training business, we have a multi-year growth opportunity with our recently expanded offerings beyond our standard in-store group classes, including private, one-on-one classes both in-store and at-home, as well as online training classes taught by our elite trainers.

***Drive Product Sales with Emphasis on Owned Brand Innovation and Exclusive Brands.***

We have a significant opportunity to leverage our differentiated owned brand development and innovation capabilities to accelerate growth of our leading owned brand portfolio, which has

experienced growth at a CAGR of 14% between Fiscal 2017 and Fiscal 2019. During Fiscal 2019, our owned brand business accounted for \$1.1 billion of sales, or 27% of total product sales, driven by the success of our WholeHearted and recently launched Reddy brands, and our exclusive and differentiated product offerings accounted for \$1.7 billion of sales, or 43%, of total product sales. Looking ahead, owned brands are a key strategic priority for us as we will leverage consumer insights to drive continued innovation in our offerings across food and supplies in a manner that is differentiated relative to our competitors. Additionally, we intend to grow our brand portfolio through new partnerships with premium brands in the industry, as well as expanding existing partnerships, such as a broader rollout of Just Food For Dogs pantries and on-site kitchens. Our differentiated food and supplies offering is a key driver of customer loyalty and stickiness, with more than 50% of our offering not available in online or mass competitors.

***Leverage Category Capabilities to Expand Our Offerings and Geographies.***

Our journey is just beginning. Our fully-integrated multi-channel ecosystem provides us with tremendous data and insights, as well as the ability to continually innovate and add new capabilities and offerings. We plan to continue to add to our service offerings with new elements of our breed-specific at-home and online training classes. In the subscription offering area, we are planning initiatives in proprietary credit card, membership, and wellness programs. Within our technology platform, we plan to build upon our strong momentum to rapidly innovate and roll out new capabilities.

Internationally, we see significant opportunity to deploy our comprehensive model to expand our presence in new markets. We will leverage the success of our joint venture with Grupo Gigante in Mexico, where we have over 80 locations, and our wholesale partnership with Canadian Tire in Canada, where we have Petco products in approximately 450 locations, including the initial launch and build-out of dedicated Petco shop-in-shops, to continue to grow in these geographies. Looking ahead, we also see a meaningful opportunity to pursue a wholesale distribution approach like with Canadian Tire in new international geographies in Central and South America, Europe, and Asia.

***Impact of COVID-19 Pandemic on Our Business***

The ongoing COVID-19 pandemic has impacted every aspect of the economy including employment, consumer spending patterns, living and working conditions, and the viability of certain business sectors. Market data indicates that with more of the working population staying home, there has been an increase in pet ownership and the percentage of disposable income spent on home-related goods and services, including pet care. This macroeconomic trend is favorably impacting our business results to date, but the possible sustained spread or resurgence of the pandemic, and any government response thereto, increases the uncertainty regarding future economic conditions that will impact our business in the future. For more information on the impact of the COVID-19 pandemic on our business, please read “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Impact of the COVID-19 Pandemic on Our Business.”

***Summary of Risks Related to Our Business***

An investment in our Class A common stock involves a high degree of risk. Among these important risks are the following:

- A decline in consumer spending or a change in consumer preferences or demographics could reduce our sales or profitability and adversely affect our business.
- The growth of our business depends in part on our ability to accurately predict consumer trends, successfully introduce new products and services, improve existing products and services, and expand into new offerings.

- Our continued success is substantially dependent on positive perceptions of Petco, including our owned or exclusive brands.
- Competition in the markets in which we operate, including internet-based competition, is strong and if we are unable to compete effectively, our ability to generate sales may suffer and our operating income and net income could decline.
- We may be unable to execute our growth strategies successfully or manage and sustain our growth and, as a result, our business may be adversely affected.
- We may experience difficulties recruiting and retaining skilled veterinarians due to shortages that could disrupt our business.
- We face various risks as an e-commerce retailer.
- If we fail to generate or obtain sufficient capital to finance our growth strategies, we may be unable to sustain our growth and our business may be adversely affected.
- We depend on key personnel, and if we lose the services of any of our principal executive officers, we may not be able to run our business effectively.
- The loss of any of our key merchandise vendors, or of any of our exclusive distribution arrangements with certain of our vendors, would negatively impact our business.
- We face various risks related to health epidemics, pandemics, and similar outbreaks, such as the recent outbreak of COVID-19, which may materially and adversely affect our business, financial position, results of operations, and cash flows.
- A disruption, malfunction, or increased costs in the operation, expansion, or replenishment of our distribution centers or our supply chain would affect our ability to deliver to our locations and e-commerce customers or increase our expenses, which could harm our sales and profitability.
- Our reputation and business may be harmed if our or our vendors' computer network security or any of the databases containing customer, employee, or other personal information maintained by us or our third-party providers is compromised, which could materially adversely affect our results of operations.
- If our information systems or infrastructure fail to perform as designed or are interrupted for a significant period of time, our business could be adversely affected.
- Pet food safety, quality, and health concerns could adversely affect our business.
- Our substantial indebtedness could adversely affect our cash flows and prevent us from fulfilling our obligations under existing debt agreements.
- Our Sponsors will continue to have significant influence over us after this offering, including control over decisions that require the approval of stockholders, which could limit your ability to influence the outcome of matters submitted to stockholders for a vote.
- We are a "controlled company" within the meaning of the Nasdaq rules and, as a result, expect to qualify for, and intend to rely on, exemptions from certain corporate governance requirements. You will not have the same protections as those afforded to stockholders of companies that are subject to such governance requirements.

You should carefully read and consider the information set forth under the heading "Risk Factors" beginning on page 21 and the other information in this prospectus for an explanation of these risks before investing in our Class A common stock.

#### ***Our Sponsors***

We are currently controlled by Scooby LP, which is directly and/or indirectly owned by certain funds (the "CVC Funds") that are advised and/or managed by CVC Capital Partners ("CVC"), CPP

Investments, a Canadian company (together with its affiliates, “CPP Investments” and together with the CVC Funds, our “Sponsors”), and certain co-investors. Prior to the completion of this offering, Scooby LP will transfer our equity that it holds to a newly formed and wholly owned subsidiary (our “Principal Stockholder”).

Our Sponsors acquired their direct and indirect interests in us in connection with our formation and as contemplated by that certain Agreement and Plan of Merger, executed in November 2015 (the “Merger Agreement”). Pursuant to the Merger Agreement, in January 2016, a wholly owned subsidiary of ours (“Merger Sub”) was merged with and into Petco Holdings, Inc. with Petco Holdings, Inc. surviving as a wholly owned subsidiary of ours and converting from a Delaware corporation to a Delaware limited liability company. Following the closing of the transactions contemplated by the Merger Agreement, we directly owned and controlled Petco Holdings, Inc. LLC. The transactions contemplated by the Merger Agreement were partially financed by the Floating Rate Senior Notes (as defined herein) issued by Merger Sub in a private placement offering. Petco Animal Supplies, Inc. subsequently assumed the obligations of Merger Sub under the Floating Rate Senior Notes. Further, in connection with the merger, we issued the 3.00% Senior Notes (as defined herein) to certain equityholders, including Scooby LP, as a means of facilitating a potential distribution of cash to such equityholders. To facilitate this offering, as described below, our equityholders have elected to contribute such notes to us in exchange for additional equity.

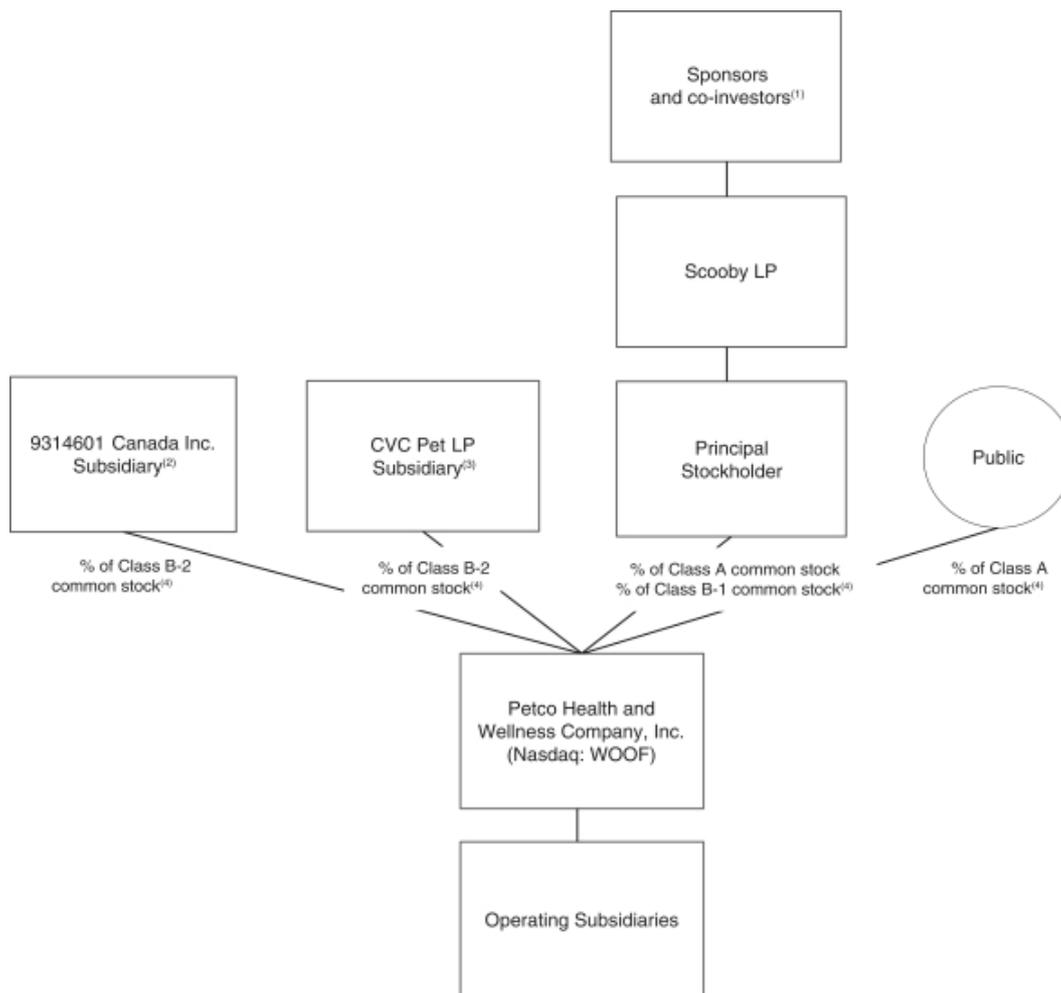
After giving effect to the Corporate Conversion and the completion of this offering, our Sponsors will control % of the outstanding voting power of our company. For more information on our ownership of our common stock by our principal stockholders and the voting and economic rights associated with each class of our common stock, please read “Principal Stockholders” and “Description of Capital Stock,” respectively.

### ***Recapitalization and Corporate Conversion***

Prior to the completion of this offering, all of the 3.00% Senior Notes will be contributed to us and canceled, and substantially contemporaneously with the completion of this offering a portion of the Floating Rate Senior Notes of Petco Animal Supplies will be partially exchanged for indebtedness of our Principal Stockholder, with such Floating Rate Senior Notes contributed to us by our Principal Stockholder and canceled. These transactions, which we refer to collectively as the “Recapitalization,” will have the net effect of reducing our indebtedness and increasing our stockholders’ equity. For more information regarding this indebtedness, please read “Recapitalization and Corporate Conversion” and Note 9 to the historical consolidated financial statements included elsewhere in this prospectus.

We currently operate as a Delaware limited liability company under the name PET Acquisition LLC. Prior to the effectiveness of the registration statement of which this prospectus forms a part, PET Acquisition LLC will convert into a Delaware corporation pursuant to a statutory conversion and change its name to Petco Health and Wellness Company, Inc. In this prospectus, we refer to all of the transactions related to our conversion to a corporation described above as the “Corporate Conversion.” For more information regarding our conversion to a corporation, please read “Recapitalization and Corporate Conversion.”

The following diagram indicates our simplified ownership structure immediately following this offering and the transactions related thereto (assuming that the underwriters' option to purchase additional shares is not exercised):



- (1) Scooby LP is directly and/or indirectly owned by our Sponsors and certain co-investors and is controlled by our Sponsors.
- (2) Prior to the completion of this offering, 9314601 Canada Inc. will transfer all of its shares of Class B-2 common stock to a wholly owned subsidiary. For more information, please read footnote (6) to the table in "Principal Stockholders."
- (3) Prior to the completion of this offering, CVC Pet LP will transfer all of its shares of Class B-2 common stock to a wholly owned subsidiary. For more information, please read footnote (5) to the table in "Principal Stockholders."
- (4) For more information on the percentage ownership of our common stock and the voting and economic rights associated with each class of our common stock, please read "Principal Stockholders" and "Description of Capital Stock," respectively.

**Corporate Information and Structure**

PET Acquisition LLC is a Delaware limited liability company. Prior to the effectiveness of the registration of which this prospectus forms a part, we will convert into a Delaware corporation pursuant to a statutory conversion and be renamed Petco Health and Wellness Company, Inc. Please read the section captioned "Recapitalization and Corporate Conversion." Our principal executive offices are

located at 10850 Via Frontera, San Diego, California 92127, and our telephone number at that address is (858) 453-7845. Our only material asset is the indirect ownership of 100% of the equity of Petco Animal Supplies Stores, Inc., a Delaware corporation, through which we conduct all of our business. Our website is [www.petco.com](http://www.petco.com). We expect to make our periodic reports and other information filed with or furnished to the Securities and Exchange Commission, or the SEC, available, free of charge, through our website, as soon as reasonably practicable after those reports and other information are electronically filed with or furnished to the SEC. Information on our website or any other website is not incorporated by reference into this prospectus and does not constitute a part of this prospectus.

#### ***Our Controlled Company Status***

Because our Sponsors will control \_\_\_\_\_ shares of Class A common stock and \_\_\_\_\_ shares of Class B-2 common stock, which are the only classes of our common stock entitled to vote on director elections and which represent in the aggregate approximately \_\_\_\_\_ % of the voting power with respect to director elections, we expect to be a controlled company as of the completion of this offering under the Nasdaq rules. A controlled company is not required to have a majority of independent directors or form an independent compensation or nominating and corporate governance committee. As a controlled company, we will remain subject to rules that require us to have an audit committee composed entirely of independent directors, subject to the “phase-in” rules applicable to newly public companies. Under the “phase-in” rules, we are required to have at least three independent directors on our audit committee within one year of the effectiveness of the registration statement of which this prospectus forms a part. We expect to have \_\_\_\_\_ independent directors upon the completion of this offering. Please read “Management—Status as a Controlled Company.”

**The Offering**

Class A common stock offered by us	shares ( shares if the underwriters' option to purchase additional shares is exercised in full)
Class A common stock to be outstanding after this offering	shares ( shares if the underwriters' option to purchase additional shares is exercised in full)
Voting rights	Shares of our Class A common stock will be entitled to one vote per share on all matters presented to our stockholders generally. Holders of our Class B-1 common stock will not be entitled to vote in the election or removal of directors. Holders of our Class B-2 common stock will only have the right to vote in the election or removal of directors. Our Sponsors will beneficially own all outstanding shares of Class B-1 common stock and Class B-2 common stock.
Conversion rights	Each share of Class A common stock will be convertible into one share of Class B-1 common stock and one share of Class B-2 common stock at any time and from time to time, at the option of the holder, so long as such holder holds one or more shares of Class B-1 common stock or Class B-2 common stock at the time of conversion. Each share of our Class B-1 common stock will be convertible into one share of Class A common stock at the option of the holder. As a condition to such conversion, the holder of the shares of Class B-1 common stock to be converted must direct a holder of Class B-2 common stock to transfer an equal number of shares to our company. No public stockholders will have conversion rights because they will not be eligible to hold shares of Class B-1 common stock or Class B-2 common stock.
Use of proceeds	We expect to receive approximately \$ million of net proceeds from this offering (or \$ million if the underwriters exercise in full their option to purchase additional shares of our Class A common stock), based upon the assumed initial public offering price of \$ 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. We intend to use a portion of the net proceeds from this offering to pay the accrued but unpaid interest on the exchanged Floating Rate Senior Notes and to redeem in full the remaining \$300 million aggregate principal amount, plus accrued but

Conflicts of interest	<p>unpaid interest, of the Floating Rate Senior Notes that remain outstanding after the Recapitalization and the remainder of the proceeds, plus cash on hand, to repay a portion of the term loan facility (as defined herein).</p> <p>Certain affiliates of Goldman, Sachs &amp; Co. LLC (the “GS Noteholders”) hold a portion of the Floating Rate Senior Notes. The GS Noteholders receive interest payments and, upon the redemption of the Floating Rate Notes, will receive a pro rata portion of the redemption payment. Because the GS Noteholders will receive 5% or more of the net proceeds of this offering, Goldman, Sachs &amp; Co. LLC is deemed to have a conflict of interest within the meaning of Rule 5121 of the Financial Industry Regulatory Authority, Inc. (“FINRA”). Accordingly, this offering will be conducted in compliance 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. BofA Securities, Inc. (“BofA”) 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, as amended (the “Securities Act”), specifically including those inherent in Section 11 thereof. BofA will not receive any additional fees for serving as a qualified independent underwriter in connection with this offering. We have agreed to indemnify BofA against liabilities incurred in connection with acting as a qualified independent underwriter, including liabilities under the Securities Act. Please read “Underwriting (Conflicts of Interest)—Conflicts of Interest.”</p>
Dividend policy	<p>We do not anticipate paying any cash dividends on our Class A common stock in the near future. In addition, our credit facilities place certain restrictions on our ability to pay cash dividends. Please read “Dividend Policy.”</p>
Listing and trading symbol	<p>We have applied to list our Class A common stock on Nasdaq under the symbol “WOOF.”</p>
Risk factors	<p>You should carefully read and consider the information set forth under the heading “Risk Factors” and all other information set forth in this prospectus before deciding to invest in our Class A common stock.</p>
Directed Share Program	<p>At our request, BofA Securities, Inc., a participating underwriter, has reserved for sale,</p>

at the initial public offering price, up to 5% of the shares offered by this prospectus for sale to certain of our directors, officers, and employees. If these persons purchase reserved shares it will reduce the number of shares available for sale to the general public. Any reserved shares that are not so purchased will be offered by the underwriters to the general public on the same terms as the other shares offered by this prospectus. For more information regarding the directed share program, please read “Underwriting (Conflicts of Interest)—Directed Share Program.”

Unless the context requires otherwise, references to the number and percentage of shares of our common stock to be outstanding immediately after this offering are based on \_\_\_\_\_ shares of our Class A common stock outstanding as of 2020 and assume the underwriters’ option to purchase additional shares of our Class A common stock will not be exercised.

Unless otherwise indicated, the information presented in this prospectus:

- gives effect to our certificate of incorporation and bylaws, which will be in effect prior to the completion of this offering;
- assumes an initial public offering price of \$ \_\_\_\_\_ per share of our Class A common stock, the midpoint of the estimated public offering price range set forth on the cover page of this prospectus; and
- excludes \_\_\_\_\_ shares of our Class A common stock reserved for future issuance under the 2020 Plan (as defined herein), as further described in “Executive Compensation—2020 Equity Incentive Plan,” and \_\_\_\_\_ shares of our Class A common stock reserved for future issuance under the ESPP (as defined herein), as further described in “Executive Compensation—2020 Employee Stock Purchase Plan.”

### Summary Historical Consolidated Financial Data

The following table presents our summary historical consolidated financial data as of the dates and for the periods indicated. The summary historical consolidated financial data as of and for the fiscal years ended 2019 and 2018, and for the thirty-nine weeks ended October 31, 2020, are derived from the audited historical consolidated financial statements included elsewhere in this prospectus. The summary historical consolidated financial data as of and for the thirty-nine weeks ended November 2, 2019 are derived from the unaudited consolidated financial statements included elsewhere in this prospectus.

Historical results are not necessarily indicative of the results to be expected for future periods. We refer you to the notes to our historical consolidated financial statements for a discussion of the basis on which our historical consolidated financial statements are prepared.

Our fiscal year ends on the Saturday closest to January 31, resulting in fiscal years of either 52 or 53 weeks. All references to a fiscal year refer to the fiscal year ending on the Saturday closest to January 31 of the following year. For example, references to Fiscal 2019 refer to the fiscal year beginning February 3, 2019 and ending February 1, 2020. Fiscal 2019 and Fiscal 2018 each include 52 weeks.

This table should be read in conjunction with the sections entitled "Capitalization" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our historical consolidated financial statements and the accompanying notes included elsewhere in this prospectus.

	Fiscal Year		Thirty-Nine Weeks Ended	
	2019 (52 weeks ended February 1, 2020)	2018 (52 weeks ended February 2, 2019)	October 31, 2020	November 2, 2019
<b>(dollars in thousands)</b>				
<b>Statement of operations data:</b>				
Net sales	\$ 4,434,514	\$ 4,392,173	\$ 3,582,489	\$ 3,285,858
Cost of sales	2,527,995	2,487,334	2,045,016	1,877,237
Gross profit	1,906,519	1,904,839	1,537,473	1,408,621
SG&A expenses	1,776,919	1,746,387	1,410,024	1,339,154
Goodwill & indefinite-lived intangible impairment	19,000	373,172	—	—
Operating income (loss)	110,600	(214,720)	127,449	69,467
Interest income	(335)	(420)	(332)	(201)
Interest expense	253,018	243,744	169,096	192,222
Loss on extinguishment of debt	—	460	—	—
Loss before income taxes and (income) loss from equity method investees	(142,083)	(458,504)	(41,315)	(122,554)
Income tax benefit	(35,658)	(45,840)	(13,537)	(28,263)
(Income) loss from equity method investees	(2,441)	1,124	(2,952)	(326)
Net loss	(103,984)	(413,788)	(24,826)	(93,965)
Net loss attributable to noncontrolling interest(1)	(8,111)	—	(4,502)	(5,263)
Net loss income attributable to members	\$ (95,873)	\$ (413,788)	\$ (20,324)	\$ (88,702)
<b>Per unit data:</b>				
Loss per unit attributable to Common Series A and Common Series B members, basic and diluted	\$ (0.07)	\$ (0.28)	\$ (0.01)	\$ (0.06)
Weighted average units used in computing loss per unit attributable to Common Series A and Common Series B members	1,457,985	1,457,164	1,458,558	1,457,794
Cash dividends declared per common unit	\$ —	\$ —	\$ —	\$ —
Pro forma net loss per Class A common stock and Class B-1 common stock attributable to stockholder(2)				
Basic				
Diluted				

	Fiscal Year		Thirty-Nine Weeks Ended	
	2019 (52 weeks ended February 1, 2020)	2018 (52 weeks ended February 2, 2019)	October 31, 2020	November 2, 2019
<b>(dollars in thousands)</b>				
<b>Statement of cash flow data:</b>				
Net cash provided by (used in)				
Operating activities	\$ 110,337	\$ 203,202	\$ 201,480	\$ (34,248)
Investing activities	(139,041)	(142,682)	(95,920)	(119,220)
Financing activities	(3,071)	(32,099)	(51,124)	117,595
Net (decrease) increase in cash, cash equivalents and restricted cash	\$ (31,775)	\$ 28,421	\$ 54,436	\$ (35,873)
<b>Balance Sheet data (end of period):</b>				
Cash and cash equivalents	\$ 148,785	\$ 180,649	\$ 195,832	\$ 145,815
Merchandise inventories, net	478,968	470,144	541,352	519,212
Working (deficit) capital(3)	(130,936)	218,138	(59,702)	(40,313)
Fixed assets, net	656,256	683,547	618,930	683,870
Total assets(4)	6,155,118	4,924,379	6,203,814	6,276,342
Total debt(5)	3,270,131	3,239,167	3,237,664	3,381,217
Total equity	561,061	637,909	545,617	566,192
<b>Other Financial and Operational Data:</b>				
Comparable sales increase (decrease)(6)	3.9%	(1.1)%	9.6%	4.0%
Total pet care centers at end of period	1,478	1,490	1,468	1,488
Total pet care centers with veterinarian practices at end of period	81	39	105	70
Total Active Customers (in thousands)(7)	19,651	19,075	21,462	19,727
Total Active Multi-Channel Customers (in thousands)(8)	3,024	2,786	3,531	3,000
Net loss margin(9)	(2.3)%	(9.4)%	(0.7)%	(2.9)%
Adjusted EBITDA(10)	\$ 424,547	\$ 437,836	\$ 335,749	\$ 292,628
Adjusted EBITDA margin(10)	9.6%	10.0%	9.4%	8.9%
(1)	The non-controlling interest represents 50% of the net loss of our veterinary joint venture, which is a variable interest entity for which we were deemed to be the primary beneficiary beginning in Fiscal 2019 due to revisions made in the joint operating agreement. Prior to Fiscal 2019, the joint venture was accounted for as an equity method investment.			
(2)	Assumes conversion of PET Acquisition LLC units into shares of our common stock in the Corporate Conversion. Class B-2 common stock is not allocated earnings on a pro forma, per share basis because it only has nominal economic rights.			
(3)	Working (deficit) capital is defined as current assets minus current liabilities.			
(4)	We adopted Accounting Standards Update ("ASU") 2016-02, "Leases (Topic 842)," and related amendments as of February 3, 2019, the beginning of Fiscal 2019 on a prospective basis and therefore, fiscal years prior to 2019 have not been revised.			
(5)	Total debt includes obligations under the senior secured credit facilities (as defined herein), the Floating Rate Senior Notes, the 3.00% Senior Notes, and finance leases. Amounts are reflected net of unamortized discounts and debt issuance costs.			
(6)	Comparable sales growth is for our total enterprise. A new location or digital site is included in comparable sales beginning on the first day of the fiscal month following 12 full fiscal months of operation and is subsequently compared to like time periods from the previous year. Relocated stores become comparable stores on the first day of operation if the original store was open longer than 12 full fiscal months. If, during the period presented, a store was closed, sales from that store are included up to the first day of the month of closing. Additionally, our comparable sales exclude the impact of the wind-down and migration of our Drs. Foster & Smith digital site to Petco.com in Fiscal 2018 and Fiscal 2019. Please read "Management's Discussion and Analysis of Financial Condition and Results of Operations—How We Assess the Performance of Our Business."			
(7)	As of the last date of a reporting period, Total Active Customers is defined as the total number of trackable unique customers (including Pals Loyalty members) that have made at least one transaction with us, across any of our channels, during the prior 12-month period.			
(8)	As of the last date of a reporting period, Total Active Multi-Channel Customers is defined as the total number of trackable unique customers that have transacted with us across at least two of our channels during the prior 12-month period.			
(9)	Net loss margin is defined as net loss divided by net sales.			
(10)	Adjusted EBITDA and Adjusted EBITDA Margin are non-GAAP financial measures. Please read "Selected Historical Consolidated Financial Data—Non-GAAP Financial Measures" for additional information regarding these non-GAAP financial measures and a reconciliation to the most comparable GAAP measures of each.			

## RISK FACTORS

*Investing in our Class A common stock involves uncertainty and risk due to a variety of factors. You should carefully consider the risks described below with all of the other information included in this prospectus before deciding to invest in our Class A common stock. Further, the risks and uncertainties described below are not the only ones we face. Additional risks not presently known to us or that we currently deem immaterial may also materially affect our business. If any of the following risks were to occur, our business, financial condition, and results of operations could be materially adversely affected. In that case, the trading price of our Class A common stock could decline, and you could lose all or part of your investment. For a summary of these risks, please read “Summary—Summary of Risks Related to Our Business.”*

### Risks Related to Our Business

***A decline in consumer spending or a change in consumer preferences or demographics could reduce our sales or profitability and adversely affect our business.***

Our sales depend on consumer spending, which is influenced by factors beyond our control, including general economic conditions, disruption or volatility in global financial markets, changes in interest rates, the availability of discretionary income and credit, weather, consumer confidence, unemployment levels and government orders restricting freedom of movement. We may experience declines in sales or changes in the types of products and services sold during economic downturns. Our business could be harmed by any material decline in the amount of consumer spending, which could reduce our sales, or a decrease in the sales of higher-margin products, which could reduce our profitability and adversely affect our business.

We have also benefited from increasing pet ownership, discretionary spending on pets and current trends in humanization and premiumization in the pet industry, as well as favorable pet ownership demographics. To the extent these trends slow or reverse, our sales and profitability would be adversely affected. In particular, COVID-19 has driven an increase in pet ownership and consumer demand for our products that may not be sustained or may reverse at any time. The success of our business depends in part on our ability to identify and respond to evolving trends in demographics and consumer preferences. Failure to timely identify or effectively respond to changing consumer tastes, preferences, spending patterns and pet care needs could adversely affect our relationship with our customers, the demand for our products and services, our market share and our profitability.

***The growth of our business depends in part on our ability to accurately predict consumer trends, successfully introduce new products and services, improve existing products and services, and expand into new offerings.***

Our growth depends, in part, on our ability to successfully introduce, improve, and reposition our products and services to meet the requirements of pet parents. This, in turn, depends on our ability to predict and respond to evolving consumer trends, demands and preferences. Our ability to innovate is affected by the technical capability of our product development staff and third-party consultants in developing and testing new products, including complying with governmental regulations, our attractiveness as a partner for outside research and development scientists and entrepreneurs, the success of our management and sales team in introducing and marketing new products and service offerings, and our ability to leverage our digital and data capabilities to gather and respond to consumer feedback.

We may be unable to determine with accuracy when or whether any of our products or services now under development will be launched, and we may be unable to develop or otherwise acquire product candidates or products. Additionally, we cannot predict whether any such products or services, once launched, will be commercially successful. If we are unable to successfully develop or otherwise acquire new products or services, our business, financial condition and results of operations may be materially adversely affected.

***Our continued success is substantially dependent on positive perceptions of Petco, including our owned or exclusive brands.***

We believe that one of the reasons our customers prefer to shop at Petco, and that our partners choose Petco as a place of employment, is the reputation we have built over many years of serving our primary constituencies: customers, partners, and the communities in which we operate. These are core elements of the Petco mission and brand. To be successful in the future, we must continue to preserve, grow, and leverage the value of our reputation and our brand. Reputational value is based in large part on perceptions of subjective qualities, and even isolated incidents that erode trust and confidence, particularly if they result in adverse publicity or widespread reaction on social media, governmental investigations, or litigation, can have an adverse impact on these perceptions and lead to adverse effects on our business, including decreased comparable sales, consumer boycotts, loss of new pet care center development opportunities, lower partner morale and productivity, or partner recruiting difficulties.

In addition, we sell many products under our owned or private label brands. Maintaining consistent product quality, competitive pricing, and availability of our branded products for our customers is essential to developing and maintaining customer loyalty and brand awareness. These products often have higher margins than national brand products. If one or more of these brands experience a loss of consumer acceptance or confidence, our sales and gross margin could be adversely affected.

***Competition in the markets in which we operate, including internet-based competition, is strong and if we are unable to compete effectively, our ability to generate sales may suffer and our operating income and net income could decline.***

The pet care industry is highly competitive. We compete with a number of specialty pet store chains and independent pet stores. We also compete with online retailers, supermarkets, warehouse clubs and mass merchants. The pet care industry has become increasingly competitive due to the expansion of pet-related product offerings by certain supermarkets, warehouse clubs, other retail merchandisers, and online retailers, and the entrance of additional independent pet stores with unique product offerings and other pet specialty retailers into the pet food and pet supply market, some of which have developed store formats similar to ours. Some competitors are larger and have access to greater capital and the ability to invest in more resources than we do.

We may face greater competition from national, regional, local and online retailers in the future. In particular, if any of our major competitors seeks to gain or retain market share by reducing prices or by introducing additional products or services, we may be required to reduce prices on our key products or services or introduce new offerings in order to remain competitive, which may negatively affect our profitability and require a change in our operating strategies.

If consumer preferences change and thereby decrease the attractiveness of what we believe to be our competitive advantages, including our extensive product assortment, premium product offerings, competitive pricing, high-quality service offerings, and a unique customer experience, or if we fail to otherwise positively differentiate our customer experience from that of our competitors, our business and results of operations could be adversely affected.

***We may be unable to execute our growth strategies successfully or manage and sustain our growth, and as a result, our business may be adversely affected.***

Our strategies include expanding our veterinary service offerings and building out our digital and data capabilities, growing our market share in services like grooming and training, enhancing our owned brand portfolio, and introducing new offerings to better connect with our customers. However, we may not be able to execute on these strategies as effectively as anticipated. Our ability to execute on these strategies depends on a number of factors, including:

- whether we have adequate capital resources to expand our offerings and build out our digital and data capabilities;

- our ability to include veterinary services in our existing pet care centers or in our remodeled or relocated pet care centers;
- our ability to relocate our pet care centers and obtain favorable sites and negotiate acceptable lease terms;
- our ability to hire, train and retain skilled managers and personnel, including veterinarians, information technology professionals, owned brand merchants, and groomers and trainers; and
- our ability to continue to upgrade our information and other operating systems and to make use of the data that we collect through these systems to offer better products and services to our customers.

Our existing locations may not maintain their current levels of sales and profitability, and our growth strategies may not generate sales levels necessary to achieve pet care center level profitability comparable to that of our existing locations. To the extent that we are unable to execute on our growth strategies in accordance with our expectations, our sales growth would come primarily from the organic growth of existing product and service offerings.

***We may experience difficulties recruiting and retaining skilled veterinarians due to shortages that could disrupt our business.***

The successful growth of our veterinary services business depends on our ability to recruit and retain skilled veterinarians and other veterinary technical staff. We face competition from other veterinary service providers in the labor market for veterinarians, and from time to time, we may experience shortages of skilled veterinarians in markets in which we operate our veterinary service businesses, which may require us or our affiliated veterinary practices to increase wages and enhance benefits to recruit and retain enough qualified veterinarians to adequately staff our veterinary services operations. If we are unable to recruit and retain qualified veterinarians, or to control our labor costs, our business, financial condition, and results of operations may be materially adversely affected.

***We face various risks as an e-commerce retailer.***

As part of our growth strategy, we seek to further integrate our in-store and online operations and have made significant investments to integrate and grow our e-commerce business. We may require additional capital in the future to sustain or grow our e-commerce business. Business risks related to our e-commerce business include our inability to keep pace with rapid technological change, failure in our security procedures or operational controls, failure or inadequacy in our systems or labor resource levels to effectively process customer orders in a timely manner, government regulation and legal uncertainties with respect to e-commerce, and collection of sales or other taxes by one or more states or foreign jurisdictions. If any of these risks materialize, it could have an adverse effect on our business.

In some circumstances, increased transactions through our website may result in reduced customer traffic in our pet care centers, particularly as customers take advantage of home delivery services available for online orders when making certain types of purchases, such as for bulk orders or heavy pet products. There is a risk that any such reduced customer traffic may reduce the sales of certain products and services in our pet care centers. The availability of free shipping of online and “extended aisle” orders increases our costs and could adversely affect our profitability.

In addition, as other internet retailers have increased market share in recent years, we have faced increased competition, and may continue to face increased competition in the future, from internet retailers who enter the market. Our failure to positively differentiate our product and services offerings or customer experience from these internet retailers could have a material adverse effect on our business, financial condition and results of operations.

***If we fail to generate or obtain sufficient capital to finance our growth strategies, we may be unable to sustain our growth and our business may be adversely affected.***

Our growth rate depends, to a large degree, on the availability of adequate capital to fund the expansion of our offerings, including veterinary services and digital capabilities, which in turn will depend in large part on cash flow generated by our business and the availability of equity and debt capital. We cannot assure you that we will be able to maintain sufficient cash flow or obtain sufficient equity or debt capital on acceptable terms, or at all, to support our expansion plans.

Moreover, the credit agreements governing the senior secured credit facilities contain provisions that restrict the amount of debt we may incur in the future, and certain other covenants that may restrict or impair our growth plans. If we are not successful in generating or obtaining sufficient capital, we may be unable to invest in our growth, which may adversely affect our results of operations.

***We depend on key personnel, and if we lose the services of any of our principal executive officers, we may not be able to run our business effectively.***

We are dependent upon the efforts of our principal executive officers. The loss of any of our principal executive officers could affect our ability to run our business effectively. Our success will depend on our ability to retain our current management and to attract and retain qualified personnel in the future. Competition for senior management personnel is intense, and we cannot assure you that we can retain our personnel. The loss of a member of senior management requires the remaining executive officers to divert immediate and substantial attention to seeking a replacement. The inability to fill vacancies in our senior executive positions on a timely basis could adversely affect our ability to implement our business strategy, which would negatively impact our results of operations.

***The loss of any of our key merchandise vendors, or of any of our exclusive distribution arrangements with certain of our vendors, would negatively impact our business.***

We purchase significant amounts of products from a number of vendors with limited supply capabilities. There can be no assurance that our current pet food or supply vendors will be able to accommodate our anticipated growth and expansion of our locations and e-commerce business. As a result of the disruptions resulting from COVID-19, some of our existing vendors have not been able to supply us with products in a timely or cost-effective manner. While we believe these disruptions to be temporary, a continued inability of our existing vendors to provide products or other product supply disruptions that may occur in the future could impair our business, financial condition, and results of operations. To date, vendor-related supply challenges have not had a material effect on our business or our sales and profitability. We do not maintain long-term supply contracts with any of our merchandise vendors. Any vendor could discontinue selling to us at any time. Although we do not materially rely on any particular vendor, the loss of any of our significant vendors of pet food, particularly premium pet food, or pet supplies that we offer could have a negative impact on our business, financial condition, and results of operations.

We continually seek to expand our base of pet food and supply vendors and to identify new pet products. If we are unable to identify or enter into distribution relationships with new vendors or to replace the loss of any of our existing vendors, we may experience a competitive disadvantage, our business may be disrupted, and our results of operations may be adversely affected.

Most of the premium pet food brands that we purchase are not widely carried in supermarkets, warehouse clubs, or mass merchants. If any premium pet food manufacturers were to make premium pet food products widely available in supermarkets or through mass merchants, or if the premium brands currently available to supermarkets and mass merchants were to increase their market share at the expense of the premium brands sold only through specialty pet food and supplies retailers, our ability to attract and retain customers or our competitive position may suffer. Further, if supermarkets, warehouse clubs, or mass merchants begin offering any of these premium pet food brands at lower prices, our sales and gross margin could be adversely affected.

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Several of the pet food brands and product lines we currently purchase and offer for sale to our customers are not offered by our closest pet specialty competitor. However, in most cases, we have not entered into formal exclusivity agreements with the vendors for such brands. In the event these vendors choose to enter into distribution arrangements with other specialty pet retailers or other competitors our sales could suffer and our business could be adversely affected.

Our principal vendors currently provide us with certain incentives such as volume purchasing, trade discounts, cooperative advertising and market development funds. A reduction or discontinuance of these incentives would increase our costs and could reduce our profitability.

***We face various risks related to health epidemics, pandemics, and similar outbreaks, such as the recent outbreak of COVID-19, which may materially and adversely affect our business, financial position, results of operations, and cash flows.***

Our business and financial results have been, and could be in the future, adversely affected by health epidemics, pandemics, and similar outbreaks. The COVID-19 outbreak has been declared a pandemic by the World Health Organization and continues to spread in the United States and in many other countries globally. As a result of the COVID-19 pandemic, we have reduced operations in many of our pet care centers, which has decreased our pet care center revenues and may continue to adversely affect such revenues for an uncertain period of time. Despite our efforts to manage these matters, their ultimate effects also depend on factors beyond our knowledge or control, including the duration, severity, and recurrence of any outbreak and actions taken to contain its spread and mitigate its public health effects. The pandemic may continue to adversely affect our business, financial position, results of operations, and cash flows, including by resulting in (i) significant volatility in demand for our products and services, (ii) changes in consumer behavior and preferences, (iii) disruptions of our manufacturing and supply chain operations, (iv) disruption of our cost saving programs and restructuring initiatives, (v) limitations on our employees' ability to work and travel, and (vi) changes to economic or political conditions in markets in which we operate.

As a result of COVID-19, many of our personnel are working remotely, and it is possible that this could have a negative impact on the execution of our business plans and operations. If a natural disaster, power outage, connectivity issue, or other event occurred that impacted our employees' ability to work remotely, it may be difficult or, in certain cases, impossible, for us to continue our business for a substantial period of time. The increase in remote working may also result in consumer privacy, IT security and fraud concerns as well as increase our exposure to potential wage and hour issues.

Further, as a result of COVID-19, the operations of our pet care centers and distribution centers have been, and could be in the future, substantially disrupted by federal or state mandates ordering shutdowns of non-essential services or by the inability of our employees to travel to work. Our expansion plans for pet care centers, veterinary services, and distribution centers may also be delayed by or become costlier due to the continuing spread of COVID-19. Disruptions to the operations of our pet care centers and distribution centers and delays or increased costs in the expansion of our pet care center or distribution center capacity may negatively impact our financial performance and slow our future growth.

The uncertainty around the duration of business disruptions and the extent of the spread of the virus in the United States and to other areas of the world will likely continue to adversely impact the national or global economy and negatively impact consumer spending. Any of these outcomes could have a material adverse impact on our business, financial condition, results of operations, and ability to execute and capitalize on our strategies. The full extent of COVID-19's impact on our operations and financial performance depends on future developments that are uncertain and unpredictable, including the duration and spread of the pandemic, any long-term health impacts on any partners who have been infected with COVID-19, its impact on capital and financial markets, and any new information that may emerge concerning the severity of the virus and its spread to other regions, as well as the actions taken to contain it, among others.

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In the weeks leading up to stay-at-home conditions in March and April 2020, consumer demand for our products, specifically essential pet food, surged. During this surge, we could not fulfill demand for all of our product orders. If such surges outpace our capacity build or occur at unexpected times, we may be unable to fully meet our customers' demands for our products. Further, it is unknown what impact a "second wave" of outbreaks in 2020 or beyond could have on our operations and workforce. Such impacts could include effects on our business and operations from additional government restrictions on travel, shipping, and workforce activities, including stay-at-home orders.

***A disruption, malfunction, or increased costs in the operation, expansion or replenishment of our distribution centers or our supply chain would affect our ability to deliver to our locations and e-commerce customers or increase our expenses, which could harm our sales and profitability.***

Our vendors generally ship merchandise to one or more of our distribution centers, which receive and allocate merchandise to our locations and e-commerce customers. The success of our pet care centers depends on their timely receipt of merchandise. If any shipped merchandise were to be delayed because of the impact of weather on transnational shipping, particularly from our vendors in Asia, our operations would likely be significantly disrupted. Disruption to shipping and transportation channels due to slowdowns or work stoppages at ports on the West Coast of the United States have occurred in the past, and to the extent they occur in the future, could cause us to rely more heavily on airfreight to achieve timely delivery to our customers, resulting in significantly higher freight costs. We may not be able to pass all or any portion of these higher costs on to our customers or adjust our pricing structure in a timely manner in order to remain competitive, either of which could have a material adverse effect on our results of operations.

We have faced labor shortages at several of our distribution centers due to factors directly or indirectly related to COVID-19, which has adversely affected our results of operations. If any of our distribution centers were to shut down, continue to suffer substantial labor shortages, or lose significant capacity for any reason, our operations would likely be significantly disrupted. We compete with other retailers for the supply of personnel to staff our distribution centers, some of whom are larger than us and have access to greater capital resources than we do. If we are unable to successfully recruit and retain personnel to staff our distribution centers, we may face labor shortages or be forced to increase wages and enhance benefits for such personnel, which may have an adverse effect on our results of operations. In addition, any interruption or malfunction in our distribution operations, including, but not limited to, the loss of a key vendor that provides transportation of merchandise to or from our distribution centers, or regulatory issues with respect to any of our distribution centers, could adversely affect our sales and results of operations. An interruption in our inventory supply chain could result in out-of-stock or excess merchandise inventory levels or adversely affect our ability to make timely deliveries to e-commerce customers, and could adversely affect our sales and results of operations.

***Our operations are subject to extensive governmental regulation, and we may incur material liabilities under, or costs in order to comply with, existing or future laws and regulations. Our failure to comply with such laws and regulations may result in enforcements, recalls, and other adverse actions that could disrupt our operations and adversely affect our financial results.***

Our operations, including some of our vendors, are subject to federal, state, and local laws and regulations established by the Occupational Safety and Health Administration ("OSHA"), the U.S. Food and Drug Administration (the "FDA"), the U.S. Department of Agriculture (the "USDA"), the Drug Enforcement Administration (the "DEA"), the U.S. Environmental Protection Agency (the "EPA"), the National Labor Relations Board, and by various other federal, state, local, and foreign authorities. These laws and regulations govern, among other things, our relationships with employees, including minimum wage requirements, overtime, terms and conditions of employment, working conditions, and citizenship requirements; the weights and measures of our products; the manufacturing and distribution of foods, drugs, and controlled substances intended for animal use; our businesses that provide veterinary services and pet insurance plans; the transportation, handling, and sale of small pets;

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emissions to air and water and the generation, handling, storage, discharge, transportation, disposal, and remediation of waste and hazardous materials; the processing, storage, distribution, safety, advertising, labeling, promotion, and import or export of our products; providing services to our customers; contracted services with various third-party providers; credit and debit card processing; the handling, security, protection, and use of customer and associate information; and the licensing and certification of services. In addition, we are subject to a wide range of state and local regulations relating to COVID-19, which are frequently changing. Read “Business—Government Regulation.”

Violations of or liability under applicable laws and regulations may result in administrative, civil or criminal fines, penalties or sanctions against us, revocation or modification of applicable permits, licenses, or authorizations, environmental, health and safety investigations or remedial activities, voluntary or involuntary product recalls, warning or untitled letters or cease and desist orders against operations that are not in compliance, or third-party liability claims against us, among other things. Such laws and regulations generally have become more stringent over time and may become more so in the future, and we may incur (directly, or indirectly through our outsourced private brand manufacturing partners) material costs to comply with current or future laws and regulations or in any required product recalls. Some of these laws and regulations are subject to varying and uncertain interpretations, application, and enforcement by courts and regulatory authorities with broad discretion, which can mean that our efforts to maintain compliance in all jurisdictions are not always successful. Liabilities under, costs of compliance with, and the impacts on us of any alleged or determined non-compliance with any such laws and regulations could materially and adversely affect our business, reputation, financial condition, and results of operations. In addition, changes in the laws and regulations to which we are subject could impose significant limitations and require changes to our business, which may increase our compliance expenses, make our business costlier and less efficient to conduct, and compromise our growth strategy. Although we routinely obtain broad indemnities from our vendors in respect of their products, we could be adversely affected if we were found not to be in compliance with applicable regulations and we were not made whole by our vendors.

Among other regulatory requirements, the FDA regulates the inclusion of specific claims in pet food labeling. For example, pet food products that are labeled or marketed with claims that may suggest that they are intended to treat or prevent disease in pets would potentially meet the statutory definitions of both a food and a drug. The FDA has issued guidance containing a list of specific factors it will consider in determining whether to initiate enforcement action against such products if they do not comply with the regulatory requirements applicable to drugs. These factors include, among other things, whether the product is only made available through or under the direction of a veterinarian and does not present a known safety risk when used as labeled. While we believe that we market our products in compliance with the policy articulated in FDA's guidance and in other claim-specific guidance, the FDA may disagree or may classify some of our products differently than we do, and may impose more stringent regulations which could lead to alleged regulatory violations, enforcement actions, and/or product recalls. In addition, we may produce new products in the future that may be subject to FDA pre-market review before we can market and sell such products. Our distribution centers are also subject to periodic inspection by the FDA or other governmental authorities.

Currently, many states in the United States have adopted the Association of American Feed Control Officials (the “AAFCO”) definition of the term “natural” with respect to the pet food industry, which means a feed or feed ingredient derived solely from plant, animal, or mined sources, not having been produced by or subject to a chemically synthetic process and not containing any additives or processing aids that are chemically synthetic except in amounts as might occur in good manufacturing practices. Certain of our pet food products use the term “natural” in their labelling or marketing materials. As a result, we may incur material costs to comply with any new labeling requirements relating to the term “natural” and could be subject to liabilities if we fail to timely comply with such requirements, which could have a material adverse effect on our business, financial condition, and results of operations.

***Failure to comply with governmental regulations or the expansion of existing or the enactment of new laws or regulations applicable to our veterinary services could adversely affect our business and our financial condition or lead to fines, litigation, or our inability to offer veterinary products or services in certain states.***

All of the states in which we operate impose various registration, permit, and/or licensing requirements relating to the provision of veterinary products and services. To fulfill these requirements, we believe that we have registered with appropriate governmental agencies and, where required, have appointed a licensed veterinarian to act on behalf of each facility. All veterinarians practicing in our veterinary service businesses are required to maintain valid state licenses to practice.

In addition, certain states have laws, rules, and regulations which require that veterinary medical practices be owned by licensed veterinarians and that corporations which are not owned by licensed veterinarians refrain from providing, or holding themselves out as providers of, veterinary medical care, or directly employing or otherwise exercising control over veterinarians providing such care. We may experience difficulty in expanding our operations into other states or jurisdictions with similar laws, rules, and regulations. Our provision of veterinary services through tele-veterinarian offerings is also subject to an evolving set of state laws, rules, and regulations. Although we believe that we have structured our operations to comply with our understanding of the veterinary medicine laws of each state or jurisdiction in which we operate, interpretive legal precedent and regulatory guidance varies by jurisdiction and is often sparse and not fully developed. A determination that we are in violation of applicable restrictions on the practice of veterinary medicine in any jurisdiction in which we operate could have a material adverse effect on us, particularly if we are unable to restructure our operations to comply with the requirements of that jurisdiction.

We strive to comply with all applicable laws, regulations and other legal obligations applicable to our veterinary services. It is possible, however, that these requirements may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another or may conflict with other rules or our practices. We cannot guarantee that our practices have complied, comply, or will comply fully with all such laws, regulations, requirements, and obligations. Any failure, or perceived failure, by us to comply with our filed permits and licenses with any applicable federal-, state-, or international-related laws, industry standards or codes of conduct, regulatory guidance, orders to which we may be subject, or other legal obligations relating to privacy or consumer protection could adversely affect our reputation, brand, and business, and may result in claims, proceedings or actions against us by governmental entities or others or other liabilities. Any such claim, proceeding, or action could hurt our reputation, brand and business, force us to incur significant expenses in defending such proceedings, distract our management, increase our costs of doing business, result in a loss of customers and vendors, and may result in the imposition of monetary liability. We may also be contractually liable to indemnify and hold harmless third parties from the costs or consequences of non-compliance with any laws or regulations applicable to our veterinary services. In addition, various federal, state, and foreign legislative and regulatory bodies may expand existing laws or regulations, enact new laws or regulations, or issue revised rules or guidance applicable to our veterinary services. Any such changes may force us to incur substantial costs or require us to change our business practices. This could compromise our ability to pursue our growth strategy effectively and may adversely affect our ability to acquire customers or otherwise harm our business, financial condition, and results of operations.

***We occasionally seek to grow our business through acquisitions of or investments in new or complementary businesses, products or services, or through strategic ventures, and the failure to successfully identify these opportunities, manage and integrate these acquisitions, investments, or alliances, or to achieve an adequate return on these investments, could have an adverse effect on us.***

The pet care industry is highly fragmented. We have completed acquisitions in the past and may pursue expansion and acquisition opportunities in the future. If we are unable to manage acquisitions, investments, or strategic ventures, or integrate any acquired businesses, services, or technologies

effectively, we may not realize the expected benefits from the transaction relative to the consideration paid, and our business, financial condition, and results of operations may be adversely affected. To be successful, the integration process requires us to achieve the benefits of combining the companies, including generating operating efficiencies and synergies and eliminating or reducing redundant costs. This integration process involves inherent uncertainties, and we cannot assure you that the anticipated benefits of these acquisitions will be fully realized without incurring unanticipated costs or diverting management's attention from our core operations.

From time to time we also make strategic investments. These investments typically involve many of the same risks posed by acquisitions, particularly those risks associated with the diversion of our resources, the inability of the new venture to generate sufficient revenues, the management of relationships with third parties, and potential expenses. Strategic ventures have the added risk that the other strategic venture partners may have economic, business, or legal interests or objectives that are inconsistent with our interests and objectives.

Further, we may be unsuccessful in identifying and evaluating business, legal, or financial risks as part of the due diligence process associated with a particular transaction. In addition, some investments may result in the incurrence of debt or may have contingent consideration components that may require us to pay additional amounts in the future in relation to future performance results of the subject business. If we do enter into agreements with respect to these transactions, we may fail to complete them due to factors such as failure to obtain regulatory or other approvals. We may be unable to realize the full benefits from these transactions, such as increased net sales or enhanced efficiencies, within the timeframes that we expect or at all. These events could divert attention from our other businesses and adversely affect our business, financial condition, and results of operations. Any future acquisitions also could result in potentially dilutive issuances of equity securities, the incurrence of additional debt, or the assumption of contingent liabilities.

***We are subject to risks related to online payment methods.***

We currently accept payments using a variety of methods, including credit cards, debit cards, Paypal, and gift cards. As we offer new payment options to consumers, we may be subject to additional regulations, compliance requirements, fraud, and other risks. For certain payment methods, we pay interchange and other fees, which may increase over time and raise our operating costs and lower profitability. As a merchant that accepts debit and credit cards for payment, we are subject to the Payment Card Industry ("PCI") 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 and 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 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. As well, the Fair and Accurate Credit Transactions Act requires systems that print payment card receipts to employ personal account number truncation so that the customer's full account number is not viewable on the slip.

Further, as our business changes, we may be subject to different rules under existing standards, which may require new assessments that involve costs above what we currently pay for compliance. In the future, as we offer new payment options to consumers, including by way of integrating emerging mobile and other payment methods, we may be subject to additional regulations, compliance requirements, and fraud. If we fail to comply with the rules or requirements of any provider of a payment method we accept, if the volume of fraud in our transactions limits or terminates our rights to use payment methods we currently accept, or if a data breach occurs relating to our payment systems, we may, among other things, be subject to fines, legal proceedings, or higher transaction fees and may lose, or face restrictions placed upon, our ability to accept credit card payments from consumers or facilitate other types of online payments. If any of these events were to occur, our business, financial condition, and results of operations could be materially and adversely affected.

We also occasionally receive orders placed with fraudulent data. If we are unable to detect or control fraud, our liability for these transactions could harm our business, financial condition, and results of operations.

***Our marketing programs, e-commerce initiatives, and use of consumer information are governed by an evolving set of laws and enforcement trends, and changes in privacy laws or trends, or our failure to comply with existing or future laws, could substantially harm our business and results of operations.***

We collect, maintain, use, and share consumer data provided to us through online activities and other consumer interactions in our business in order to provide a better experience for our customers. Our current and future marketing programs depend on our ability to collect, maintain, use and share this information with service providers, and our ability to do so depends on the trust that our customers place in us and our ability to maintain that trust. Additionally, our use of consumer data is subject to the terms of our privacy policies and certain contractual restrictions in third-party contracts as well as evolving federal, state, and international laws and enforcement trends. While we strive to comply with all such regulatory and contractual obligations and believe that we are good stewards of our customers' data, this area is rapidly evolving, and it is possible that these requirements may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another, may conflict with other rules, or may conflict with our practices. If so, we may suffer damage to our reputation and be subject to proceedings or actions against us by governmental entities or others. Any such proceeding or action could hurt our reputation, force us to spend significant amounts to defend our practices, distract our management, increase our costs of doing business, and result in monetary liability.

One of the ways we track consumer data and interactions for marketing purposes is through the use of third-party "cookies." Federal and state governmental authorities continue to evaluate the privacy implications inherent in the use of third-party cookies and other methods of online tracking for behavioral advertising and other purposes. The U.S. government has enacted, has considered, or is considering legislation or regulations that could significantly restrict the ability of companies and individuals to engage in these activities, such as by regulating the level of consumer notice and consent required before a company can employ cookies or other electronic tracking tools or the use of data gathered with such tools. Additionally, some providers of consumer devices and web browsers have implemented, or announced plans to implement, means to make it easier for internet users to prevent the placement of cookies or to block other tracking technologies, which could if widely adopted result in the use of third-party cookies and other methods of online tracking becoming significantly less effective. The regulation of the use of these cookies and other current online tracking and advertising practices or a loss in our ability to make effective use of services that employ such technologies could increase our costs of operations and limit our ability to acquire new customers on cost-effective terms and, consequently, materially and adversely affect our business, financial condition, and results of operations.

In addition, various federal and state legislative and regulatory bodies, or self-regulatory organizations, may expand or further enforce current laws or regulations, enact new laws or regulations, or issue revised rules or guidance regarding privacy, data protection, consumer protection, and advertising. For example, in June 2018, California enacted the California Consumer Privacy Act (the "CCPA"), which took effect on January 1, 2020. The CCPA gives California residents expanded rights to access and delete their personal information, opt out of certain sales of personal information, and receive detailed information about what personal information is collected, how their personal information is used, and how that personal information is shared. The CCPA provides for civil penalties for violations enforced by the California Attorney General, as well as a private right of action for data breaches that is expected to increase data breach litigation. Further, on November 3, 2020, the California Privacy Rights Act (the "CPRA") was voted into law by California residents. The CPRA significantly amends the CCPA, and imposes additional data protection obligations on companies doing business in California, including additional consumer rights processes and opt outs for certain uses of sensitive data. It also creates a new California data protection agency specifically tasked to

enforce the law, which could result in increased regulatory scrutiny of California businesses in the areas of data protection and security. The substantive requirements for businesses subject to the CPRA will go into effect on January 1, 2023, and become enforceable on July 1, 2023. Some observers have noted that the CCPA and CPRA could mark the beginning of a trend toward more stringent state privacy legislation in the United States. Similar laws have been proposed in other states and at the federal level, and if passed, such laws may have potentially conflicting requirements that would make compliance challenging. We have incurred and may continue to incur costs to adapt our systems and practices to comply with the current CCPA requirements and these costs may adversely affect our financial condition and results of operations. Additionally, the Federal Trade Commission (the “FTC”), and many state attorneys general are interpreting existing federal and state consumer protection laws to impose evolving standards for the online collection, use, dissemination, and security of other personal data. Courts may also adopt the standards for fair information practices promulgated by the FTC, which concern consumer notice, choice, security, and access. Consumer protection laws require us to publish statements that describe how we handle personal data and choices individuals may have about the way we handle their personal data. If such information that we publish is considered untrue, we may be subject to government claims of unfair or deceptive trade practices, which could lead to significant liabilities and consequences. Further, according to the FTC, violating consumers’ privacy rights or failing to take appropriate steps to keep consumers’ personal data secure may constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Each of these privacy, security, and data protection laws and regulations—and others, including the CAN-SPAM Act of 2003, regulating our use of certain electronic mail marketing and state data breach notification laws requiring notifications to state residents in certain instances—and any other such changes or new laws or regulations, could impose significant limitations, require changes to our business, or restrict our use or storage of personal information, which may increase our compliance expenses and make our business costlier or less efficient to conduct. In addition, any such changes could compromise our ability to develop an adequate marketing strategy and pursue our growth strategy effectively, which, in turn, could adversely affect our business, financial condition, and results of operations.

***We face the risk of litigation resulting from unauthorized text messages sent in violation of the Telephone Consumer Protection Act.***

We send short message service, or SMS, text messages to customers. The actual or perceived improper sending of text messages may subject us to potential risks, including liabilities or claims relating to consumer protection laws. Numerous class-action suits under federal and state laws have been filed in recent years against companies who conduct SMS texting programs, with many resulting in multi-million-dollar settlements to the plaintiffs. Any future such litigation against us could be costly and time-consuming to defend. For example, the Telephone Consumer Protection Act of 1991, a federal statute that protects consumers from unwanted telephone calls, faxes and text messages, restricts telemarketing and the use of automated SMS text messages without proper consent. Federal or state regulatory authorities or private litigants may claim that the notices and disclosures we provide, form of consents we obtain or our SMS texting practices are not adequate or violate applicable law. This may in the future result in civil claims against us. The scope and interpretation of the laws that are or may be applicable to the delivery of text messages are continuously evolving and developing. If we do not comply with these laws or regulations or if we become liable under these laws or regulations, we could face direct liability, could be required to change some portions of our business model, could face negative publicity, and our business, financial condition and results of operations could be adversely affected. Even an unsuccessful challenge of our SMS texting practices by our customers, regulatory authorities, or other third parties could result in negative publicity and could require a costly response from and defense by us.

***Our reputation and business may be harmed if our or our vendors' computer network security or any of the databases containing customer, employee, or other personal information maintained by us or our third-party providers is compromised, which could materially adversely affect our results of operations.***

We collect, store, and transmit proprietary or confidential information regarding our customers, employees, job applicants, and others, including credit card information and personally identifiable information. We also collect, store, and transmit employees' health information in order to administer employee benefits; accommodate disabilities and injuries; to comply with public health requirements; and to mitigate the spread of COVID-19 in the workplace. The protection of customer, employee, and company data in the information technology systems we use (including those maintained by third-party providers) is critical. In the normal course of business, we are and have been the target of malicious cyber-attack attempts and have experienced other security incidents. For example, in September 2020, we discovered malware designed to illegally access our customers' credit card information had been installed on the website of one of our business units. We engaged a cybersecurity firm to assist us in launching an investigation, and took steps to remediate the breach, including shutting down the impacted systems to prevent unauthorized access to customer data. Our investigation revealed that customers' personal information exposed in this incident included names, email addresses, addresses, credit card numbers, credit card expiration dates, credit card CVV codes and account passwords. We notified state regulators and the affected individuals. In October 2020, we received a demand letter from legal counsel for two individuals in connection with this incident claiming violations of various provisions of California law and asserting other common law causes of action. This demand letter also stated the intention to seek relief on behalf of similarly situated customers. Our evaluation of this demand letter is ongoing.

While to date, we do not believe such identified security events have been material or significant to us, including to our reputation or business operations, or had a material financial impact, we can not assure you that such incidents or future cyber-attacks will not expose us to material liability. Security could be compromised and confidential information, such as customer credit card numbers, employee information, or other personally identifiable information that we or our vendors collect, transmit, or store, could be misappropriated or system disruptions could occur. In addition, cyber-attacks such as ransomware attacks could lock us out of our information systems and disrupt our operations. We may not have the resources or technical sophistication to anticipate or prevent rapidly evolving types of cyber-attacks. Attacks may be targeted at us, our customers, our employees, or others who have entrusted us with information. Actual or anticipated attacks may cause us to incur increasing costs, including costs to deploy additional personnel and protection technologies, train employees, and engage third-party experts and consultants. Advances in computer capabilities, new technological discoveries, or other developments may result in the breach or compromise of the technology used by us to protect transactions or other sensitive data. In addition, data and security breaches could also occur as a result of non-technical issues, including intentional or inadvertent breach by our employees or by persons with whom we have commercial relationships, that result in the unauthorized release of personal or confidential information. Any compromise or breach of our or our vendors' computer network security could result in a violation of applicable privacy and other laws, costly investigations, litigation, including class actions, and notification, as well as potential regulatory or other actions by governmental agencies and harm to our brand, business, and results of operations. As a result of any of the foregoing, we could experience adverse publicity, loss of sales, the cost of remedial measures and significant expenditures to reimburse third parties for damages, which could adversely impact our results of operations. Any insurance we maintain against the risk of this type of loss may not be sufficient to cover actual losses or may not apply to the circumstances relating to any particular loss.

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 or our vendors may not be able to anticipate these frequently changing techniques or implement adequate preventive measures for all of them. Failure by us or our vendors to comply with data security requirements, including the CCPA's new "reasonable security" requirement in light of the private right

of action, or rectify a security issue may result in class action litigation, fines and the imposition of restrictions on our ability to accept payment cards, which could adversely affect our operations. We cannot assure you that we or our vendors will be able to satisfy the PCI data security standards. In addition, PCI is controlled by a limited number of vendors that have the ability to impose changes in fee structures and operational requirements without negotiation. Such changes in fees and operational requirements may result in our failure to comply with PCI security standards, as well as significant unanticipated expenses. Any unauthorized access into our customers' sensitive information, or other data handled by or on behalf of us, even if we are compliant with industry security standards, could put us at a competitive disadvantage, result in deterioration of our customers' confidence in us, and subject us to potential litigation, liability, fines, and penalties and consent decrees, which could require us to expend significant resources related to remediation or result in a disruption of our operations, any of which could have a material adverse effect on our business, financial condition, and results of operations.

***If our information systems or infrastructure fail to perform as designed or are interrupted for a significant period of time, our business could be adversely affected.***

The efficient operation of our business is dependent on our information systems. In particular, we rely on our information systems to effectively manage our financial and operational data, to maintain our in-stock positions, and to transact the sale of our products in our pet care centers. The failure of our information systems to perform as designed, loss of data, or any interruption of our information systems for a significant period of time could disrupt our business.

Our operations also depend on our ability to maintain and protect the computer systems we use to manage our purchase orders, pet care center inventory levels, web applications, accounting functions, and other critical aspects of our business. Our systems are vulnerable to damage from fire, floods, earthquakes, power loss, telecommunications failures, terrorist and cyber-attacks, and similar events. Our disaster recovery planning may not be sufficient to adequately respond to any such events. In addition, we may have inadequate insurance coverage to compensate for any related losses and expenses. Any of these events could damage our reputation, disrupt our business, and be expensive to remedy.

We continue to invest in our information systems and IT infrastructure. Enhancement to or replacement of our major financial or operational information systems could have a significant impact on our ability to conduct our business operations and increase our risk of loss resulting from disruptions of normal operating processes and procedures that may occur during the implementation of new information systems. It may also require us to divest resources to ensure that implementation is successful. We can make no assurances that the costs of investments in our information systems will not exceed estimates, that the systems will be implemented without material disruption, or that the systems will be as beneficial as predicted. If any of these events occur, our results of operations could be adversely affected.

***Negative publicity arising from claims that we do not properly care for animals we handle or sell could adversely affect how we are perceived by the public and reduce our sales and profitability.***

From time to time we receive claims or complaints alleging that we do not properly care for some of the pets we handle or for companion animals we handle and sell, which may include dogs, cats, birds, fish, reptiles, and other small animals. Deaths or injuries sometimes occur while animals are in our care. As a result, we may be subject to claims that our animal care practices, including grooming, training, veterinary, and other services, or the related training of our associates, do not provide the proper level of care. Our efforts to establish our reputation as a "health and wellness" company increases the risk of claims or complaints regarding our practices. Any such claims or complaints, as well as any related news reports or reports on social media, even if inaccurate or untrue, could cause negative publicity, which in turn could harm our business and have a material adverse effect on our results of operations.

***Our international operations and evolving foreign trade policy may result in additional market risks, which may adversely affect our business.***

As our international operations grow, they may require greater management and financial resources. International operations require the integration of personnel with varying cultural and business backgrounds and an understanding of the relevant differences in the cultural, legal, and regulatory environments. Our results may be increasingly affected by the risks of our international activities, including:

- challenges anticipating or responding to the impact that local culture and market forces may have on local consumer preferences and trends;
- fluctuations in currency exchanges rates;
- changes in international staffing and employment issues;
- the imposition of taxes, duties, tariffs, or other trade barriers;
- shipping delays, such as the recent slowdown or work stoppage at ports on the West Coast, or customs delays;
- greater difficulty in utilizing and enforcing our intellectual property rights;
- the burden of complying with foreign laws, including regulatory regimes, tax laws, privacy laws, and financial accounting standards;
- political and economic instability and developments;
- issues or disputes arising with our joint venture partners, if any, in such operations; and
- the risk that COVID-19 spreads widely in any country where we have significant employee presence, facilities, or critical operations, thereby impairing our ability to manage day-to-day operations and service our customers, increasing our costs of operations, and resulting in potential losses in revenue.

Moreover, certain policies and statements of the President of the United States and senior administration officials have given rise to uncertainty regarding the future of international trade agreements and the United States' position on international trade. For example, the U.S. government has threatened to undertake a number of actions relating to trade with Mexico, including the closure of the border and the imposition of escalating tariffs on goods imported into the United States from Mexico. It remains unclear what additional actions, if any, the current U.S. administration will take with respect to trade relationships. Additional trade restrictions, including tariffs, quotas, embargoes, safeguards, and customs restrictions, could increase the cost or reduce the supply of products available to us and to our vendors based in the United States and may require us to modify our supply chain organization or other current business practices, any of which could harm our business, financial condition, and results of operations.

Our products are sourced from a wide variety of vendors, including from vendors overseas, particularly in China. In addition, some of the products that we purchase from vendors in the United States also depend, in whole or in part, on vendors located outside the U.S. In 2018 and 2019, the United States imposed significant tariffs on various products imported from China, including certain products we source from China. The United States has also stated that further tariffs may be imposed on additional products imported from China if a trade agreement is not reached. On January 15, 2020, a "phase one" trade deal was signed between the United States and China and was accompanied by a decision from the United States to cancel a plan to increase tariffs on an additional list of Chinese products. However, given the limited scope of the phase one agreement, concerns over the stability of bilateral trade relations remain. At this time, we cannot assure you that a broader trade agreement will be successfully negotiated between the United States and China to reduce or eliminate the existing tariffs.

If additional tariffs are imposed on our products, or other retaliatory trade measures are taken, our costs could increase and we may be required to raise our prices. Further, efforts to mitigate this

tariff risk, including a shift of production to places outside of China, could result in increased costs and disruption to our operations. These potential outcomes could result in the loss of customers and adversely affect our operating performance. To mitigate tariff risks with China, we may also seek to shift production outside of China, which could result in increased costs and disruption to our operations.

***Our quarterly operating results may fluctuate due to the timing of expenses, new pet care center openings, pet care center closures, and other factors.***

Our expansion plans, including the timing of new and remodeled pet care centers and veterinary hospitals, and related pre-opening costs, the amount of net sales contributed by new and existing pet care centers, and the timing of and estimated costs associated with pet care center closings or relocations, may cause our quarterly results of operations to fluctuate. Further, new pet care centers and service offerings tend to experience higher payroll, advertising and other store-level expenses as a percentage of net sales than more mature pet care centers, and such openings also often contribute to lower pet care center operating margins until those pet care centers become established, which may result in quarterly fluctuations in operating results. Quarterly operating results are not necessarily accurate predictors of performance.

Quarterly operating results may also vary depending on a number of factors, many of which are outside our control, including:

- changes in our pricing policies or those of our competitors;
- our sales and channels mix and the relevant gross margins of the products and services sold;
- the hiring and retention of key personnel;
- wage and cost pressures;
- changes in fuel prices or electrical rates;
- costs related to acquisitions of businesses; and
- general economic factors.

***Pet food safety, quality, and health concerns could adversely affect our business.***

We could be adversely affected if consumers lose confidence in the safety and quality of our owned brand or vendor-supplied pet food products and supplies. Adverse publicity about these types of concerns, whether valid or not, may discourage consumers from buying the products in our locations or cause vendor production and delivery disruptions. The actual or perceived sale of contaminated pet food products by our vendors or us could result in product liability claims against our vendors or us and a loss of consumer confidence, which could have an adverse effect on our sales and operations. In addition, if our products are alleged to pose a risk of injury or illness, or if they are alleged to have been mislabeled, misbranded, or adulterated, or to otherwise be in violation of governmental regulations, we may need to find alternate ingredients for our products, delay production of our products, or discard or otherwise dispose of our products, which could adversely affect our results of operations. If this occurs after the affected product has been distributed, we may need to withdraw or recall the affected product. Given the difficulty in converting pet food customers, if we lose customers due to a loss of confidence in safety or quality, it may be difficult to reacquire such customers.

***Restrictions imposed in reaction to outbreaks of animal diseases or COVID-19 could have a material adverse effect on our business, financial condition, and results of operations.***

If animal diseases, such as mad cow disease, foot-and-mouth disease, or highly pathogenic avian influenza, also known as “bird flu,” impact the availability of the protein-based ingredients our vendors use in products, our vendors may be required to locate alternative sources for protein-based

ingredients. Those sources may not be available to sustain our sales volumes, may be costlier, and may affect the quality and nutritional value of our products. If outbreaks of mad cow disease, foot-and-mouth disease, bird flu, or any other animal disease, or the regulation or publicity resulting therefrom impacts the cost of the protein-based ingredients we have in our products, or the cost of the alternative protein-based ingredients necessary for our products as compared to our current costs, we may be required to increase the selling price of our products to avoid margin deterioration. However, we may not be able to charge higher prices for our products without negatively impacting future sales volumes.

As a result of the disruptions resulting from COVID-19, some manufacturers of pork and other protein-based ingredients we use in our products were forced to shut down processing plants or take other adverse actions. While our supply chain was not disrupted, similar disruptions in the future due to COVID-19 or other outbreaks could potentially limit the supply of or increase prices for certain of meat proteins used in our pet food products, adversely affecting our business and results of operations.

***Product recalls and product liability, as well as changes in product safety and other consumer protection laws, may adversely impact our operations, merchandise offerings, reputation, financial condition, results of operations, and cash flows.***

We are subject to regulations by a variety of federal, state, and international regulatory authorities, including regulations regarding the safety and quality of our products. We purchase merchandise from several hundred different vendors. One or more of our vendors, including manufacturers of our owned or private label brand products, might not adhere to product safety requirements or our quality control standards, and we might not identify the deficiency before merchandise ships to our pet care centers. Any issues of product safety or allegations that our products are in violation of governmental regulations, including, but not limited to, issues involving products manufactured in foreign countries, could cause those products to be recalled. If our vendors fail to manufacture or import merchandise that adheres to our quality control standards, product safety requirements or applicable governmental regulations, our reputation and brands could be damaged, potentially leading to increases in customer litigation against us. Further, to the extent we are unable to replace any recalled products, we may have to reduce our merchandise offerings, resulting in a decrease in sales. If our vendors are unable or unwilling to recall products failing to meet our quality standards, we may be required to recall those products at a substantial cost to us. Moreover, changes in product safety or other consumer protection laws could lead to increased costs to us for certain merchandise, or additional labor costs associated with readying merchandise for sale. Long lead times on merchandise ordering cycles increase the difficulty for us to plan and prepare for potential changes to applicable laws. In the event that we are unable to timely comply with regulatory changes or regulators do not believe we are complying with current regulations applicable to us, significant fines or penalties could result, and could adversely affect our reputation, financial condition, results of operations, and cash flows.

***Fluctuations in the prices and availability of certain commodities, such as rawhide, grains, and meat protein, could materially adversely affect our operating results.***

The pet food and supplies industry is subject to risks related to increases in the price of and the availability of certain commodities used in the production of certain pet food and other pet-related products, specifically seed, wheat, and rice, as well as other materials such as rawhide, that are used in certain pet accessories. Additionally, increased human consumption or population increases may potentially limit the supply of or increase prices for certain of meat proteins used in animal feed. Historically, in circumstances where these price increases have resulted in our manufacturers or vendors increasing the costs we pay for our food products, we have been able to pass these increases on to customers. However, our ability to pass on increased purchase costs in the future will be significantly impacted by market conditions and competitive factors. If we are unable to pass on any increased purchase costs to customers, we may experience reduced margins, which could have a material adverse effect on our business, financial condition, and results of operations.

***Failure to establish, maintain, protect, and enforce our intellectual property and proprietary rights or prevent third parties from making unauthorized use of our technology or our brand could harm our competitive position or require us to incur significant expenses to enforce our rights.***

Our trademarks, such as Bond & Co., Good 2 Go, Good Lovin', Harmony, Imagitarium, Leaps & Bounds, Pals Rewards, Petco, PetCoach, PupBox, Reddy, Ruff & Mews, So Phresh, Vetco, Well & Good, WholeHearted, and You & Me are valuable assets that support our brand and consumers' perception of our products. We rely on trademark, copyright, trade secret, patent, and other intellectual property laws, as well as nondisclosure and confidentiality agreements and other methods, to protect our trademarks, trade names, proprietary information, technologies, and processes. We might not be able to obtain broad protection in the United States for all of our intellectual property. The protection of our intellectual property rights may require the expenditure of significant financial, managerial and operational resources. Moreover, the steps we take to protect our intellectual property may not adequately protect our rights or prevent third parties from infringing or misappropriating our proprietary rights, and we may be unable to broadly enforce all of our trademarks. Any of our patents, trademarks, or other intellectual property rights may be challenged by others or invalidated through administrative process or litigation. Our patent and trademark applications may never be granted. Additionally, the process of obtaining patent protection is expensive and time-consuming, and we may be unable to prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. Even if issued, there can be no assurance that these patents will adequately protect our intellectual property, as the legal standards relating to the validity, enforceability and scope of protection of patent and other intellectual property rights are uncertain. We also cannot be certain that others will not independently develop or otherwise acquire equivalent or superior technology or intellectual property rights. Further, our nondisclosure agreements and confidentiality agreements may not effectively prevent disclosure of our proprietary information, technologies and processes and may not provide an adequate remedy in the event of unauthorized disclosure of such information, which could harm our competitive position. In addition, effective intellectual property protection may be unavailable or limited for some of our trademarks and patents in some foreign countries. We might be required to expend significant resources to monitor and protect our intellectual property rights. For example, we may need to engage in litigation or similar activities to enforce our intellectual property rights, to protect our trade secrets or to determine the validity and scope of proprietary rights of others. However, we may be unable to discover or determine the extent of any infringement, misappropriation, or other violation of our intellectual property rights and other proprietary rights. Despite our efforts, we may be unable to prevent third parties from infringing upon, misappropriating or otherwise violating our intellectual property rights and other proprietary rights. Any such litigation, whether or not resolved in our favor, could require us to expend significant resources and divert the efforts and attention of our management and other personnel from our business operations. If we fail to protect our intellectual property, our business, financial condition and results of operations may be materially adversely affected.

***We may be subject to intellectual property infringement claims or other allegations, which could result in substantial damages and diversion of management's efforts and attention.***

We have obligations with respect to the non-use and non-disclosure of third-party intellectual property. The steps we take to prevent misappropriation, infringement, or other violation of the intellectual property of others may not be successful. From time to time, third parties have asserted intellectual property infringement claims against us and may continue to do so in the future. These risks have been amplified by the increase in third parties whose sole or primary business is to assert such claims. While we believe that our products and operations do not infringe in any material respect upon proprietary rights of other parties and/or that meritorious defenses would exist with respect to any assertions to the contrary, we may from time to time be found to infringe on the proprietary rights of others.

Any claims that our products, services or marketing materials infringe the proprietary rights of third parties, regardless of their merit or resolution, could be costly, result in injunctions against us or

payment of damages by us, and may divert the efforts and attention of our management and technical personnel. We may not prevail in such proceedings given the complex technical issues and inherent uncertainties in intellectual property litigation. If such proceedings result in an adverse outcome, we could, among other things, be required to:

- pay substantial damages (potentially treble damages in the United States);
- cease the manufacture, use, distribution, or sale of the infringing products, operations, or services;
- discontinue the use of the infringing methods or processes;
- expend significant resources to develop non-infringing products, operations, or services or re-brand our business and products; and
- obtain a license from the third party claiming infringement, which may not be available on commercially reasonable terms, or may not be available at all.

If any of the foregoing occurs, our ability to compete could be affected or our business, financial condition, and results of operations may be materially adversely affected.

***Our real estate leases generally obligate us for long periods, which subjects us to various financial risks.***

We lease virtually all of our pet care center and distribution center locations generally for long terms. While we have the right to terminate some of our leases under specified conditions by making specified payments, we may not be able to terminate a particular lease if or when we would like to do so. If we decide to close pet care centers, we are generally required to continue paying rent and operating expenses for the balance of the lease term, or to pay to exercise rights to terminate, and the performance of any of these obligations may be expensive. When we assign or sublease vacated locations, we may remain liable for the lease obligations if the assignee or sublessee does not perform. In addition, when leases for the pet care centers in our ongoing operations expire, we may be unable to negotiate renewals, either on commercially acceptable terms, or at all, which could cause us to close pet care centers. Accordingly, we are subject to the risks associated with leasing real estate, which could have a material adverse effect on our operating results.

Further, the success of our pet care centers depends on a number of factors including the sustained success of the shopping center where the pet care center is located, consumer demographics, and consumer shopping habits and patterns. Changes in consumer shopping habits and patterns, reduced customer traffic in the shopping centers where our pet care centers are located, financial difficulties of our landlords, anchor tenants, or a significant number of other retailers, and shopping center vacancies or closures could impact the profitability of our pet care centers and increase the likelihood that our landlords fail to fulfill their obligations and conditions under our lease agreements. While we have certain remedies and protections under our lease agreements, the loss of business that could result if a shopping center should close or if customer traffic were to significantly decline as a result of lost tenants or improper care of the facilities or due to macroeconomic effects, including the impact of COVID-19, could have a material adverse effect on our financial position, results of operations, and cash flows.

***We are party to routine litigation arising in the ordinary course of our business and may become involved in additional litigation, all of which could require time and attention from certain members of management and result in significant legal expenses.***

We are involved in litigation arising in the ordinary course of business, including claims related to federal or state wage and hour laws, working conditions, product liability, consumer protection, advertising, employment, intellectual property, tort, privacy and data protection, disputes with landlords and vendors due to the disruptions caused by COVID-19, claims from customers or employees

alleging failure to maintain safe premises with respect to protocols relating to COVID-19, and other matters. Even if we prevail, litigation can be time-consuming and expensive. An unfavorable outcome in one or more of these existing lawsuits, or future litigation to which we become a party, could have a material adverse effect on our business, financial condition, results of operations, and cash flows.

***Changes in laws, accounting standards, and subjective assumptions, estimates, and judgments by management related to complex accounting matters could significantly affect our financial results.***

Accounting principles generally accepted in the United States and related accounting pronouncements, implementation guidelines, and interpretations with regard to a wide range of matters relevant to our business are highly complex, continually evolving, and involve many subjective assumptions, estimates, and judgments by us. Changes in these rules or their interpretation, or changes in facts, underlying assumptions, estimates, or judgments by us could significantly impact our reported or expected financial performance.

***Failure to attract and retain quality sales associates and experienced management personnel could adversely affect our performance.***

Our performance depends on recruiting, developing, training, and retaining partners who are capable sales associates in large numbers and experienced management personnel. Our ability to meet our labor needs while controlling labor costs is subject to external factors such as unemployment levels, prevailing wage rates, minimum wage legislation, changing demographics, health and other insurance costs, and governmental labor and employment requirements. We have faced labor shortages and increased wage competition at several of our distribution centers due to factors directly or indirectly related to COVID-19, which has adversely affected our results of operations. In the event of increasing wage rates, if we fail to increase our wages competitively, the quality of our workforce could decline, causing our customer service to suffer, while increasing our wages could cause our earnings to decrease. If we do not continue to attract, train, and retain quality associates and management personnel, our performance could be adversely affected.

***Labor disputes may have an adverse effect on our operations.***

We are not currently party to a collective bargaining agreement with any of our employees. If we were to experience a union organizing campaign, this activity could be disruptive to our operations. We cannot assure you that some or all of our employees will not become covered by a collective bargaining agreement or that we will not encounter labor conflicts or strikes. Any labor disruptions could have an adverse effect on our business or results of operations and could cause us to lose customers.

***Claims under our insurance plans and policies may differ from our estimates, which could adversely affect our results of operations.***

We use a combination of insurance and self-insurance plans to provide for potential liabilities for workers' compensation, general liability, business interruption, property and directors' and officers' liability insurance, vehicle liability, and employee health-care benefits. Our insurance coverage may not be sufficient, and any insurance proceeds may not be timely paid to us. In addition, liabilities associated with the risks that are retained by us are estimated, in part, by considering historical claims experience, demographic factors, severity factors, and other actuarial assumptions, and our business, financial condition, and results of operations may be adversely affected if these assumptions are incorrect.

***We are subject to environmental, health, and safety laws and regulations that could result in costs to us.***

In connection with the ownership and operations of our pet care centers and distribution centers, we are subject to laws and regulations relating to the protection of the environment and health and

safety matters, including those governing the management and disposal of wastes and the cleanup of contaminated sites. We could incur costs, including fines and other sanctions, cleanup costs, and third-party claims, as a result of violations of or liabilities under environmental laws and regulations. Although we are not aware of any of our sites at which we currently have material remedial obligations, the imposition of remedial obligations as a result of the discovery of contaminants in the future could result in additional costs.

***Resistance from veterinarians to authorize prescriptions or attempts/efforts on their part to discourage pet owners from purchasing from us could cause our sales to decrease and could adversely affect our financial condition and results of operations.***

The laws and regulations relating to the sale and delivery of prescription pet medications vary from state to state, but generally require that prescription pet medications be dispensed with authorization from a prescribing veterinarian. Some veterinarians may decide to resist providing our customers with a copy of their pet's prescription or resist authorizing the prescription to the pharmacy staff of our fulfillment vendor, thereby effectively preventing us from filling such prescriptions under applicable law. Certain veterinarians may decide to discourage pet owners from purchasing from internet mail order pharmacies. If the number of veterinarians who refuse to authorize prescriptions to the pharmacy staff of our fulfillment vendor increases, or if veterinarians are successful in discouraging pet owners from purchasing from us, our sales could decrease and our financial condition and results of operations may be materially adversely affected.

***We may fail to comply with various state or federal regulations covering the dispensing of prescription pet medications, including controlled substances, through our veterinary services businesses, which may subject us to reprimands, sanctions, probations, fines, or suspensions.***

The sale and delivery of prescription pet medications and controlled substances through our veterinary services businesses are governed by extensive regulation and oversight by federal and state governmental authorities. The laws and regulations governing our operations and interpretations of those laws and regulations are increasing in number and complexity, change frequently, and can be inconsistent or conflicting. In addition, the governmental authorities that regulate our business have broad latitude to make, interpret, and enforce the laws and regulations that govern our operations and continue to interpret and enforce those laws and regulations more strictly and more aggressively each year. In the future, we may be subject to routine administrative complaints incidental to the dispensing of prescription pet medications through our veterinary services businesses.

If we are unable to maintain the licenses granted by relevant state authorities in connection with our dispensing of prescription pet medications, or if we become subject to actions by the FDA, the DEA, or other regulators, our dispensing of prescription medications to pet parents could cease and we may be subject to reprimands, sanctions, probations, or fines, which could have a material adverse effect on our business, financial condition, and results of operations.

***Our results may be adversely affected by serious disruptions or catastrophic events, including public health issues, geopolitical events, and weather.***

Geopolitical events, such as war or civil unrest in a country in which our vendors are located, or terrorist or military activities disrupting transportation, communication, or utility systems, local protests, and unrest and natural disasters such as hurricanes, tornadoes, floods, earthquakes, and other adverse weather and climate conditions, whether occurring in the United States or abroad, particularly during peak seasonal periods, could disrupt our operations or the operations of one or more of our vendors, or could severely damage or destroy one or more of our pet care centers or distribution centers located in the affected areas. For example, day-to-day operations, particularly our ability to receive products from our vendors or transport products to our pet care centers, could be adversely affected, or we could be required to close pet care centers or distribution centers in the affected areas or in areas served by the affected distribution center. These factors could also cause consumer

confidence and spending to decrease or result in increased volatility in the United States and global financial markets and economy. These or other occurrences could significantly impact our operating results and financial performance.

### **Risks Related to Our Indebtedness**

#### ***Our substantial indebtedness could adversely affect our cash flows and prevent us from fulfilling our obligations under existing debt agreements.***

As of October 31, 2020, we and our subsidiaries had approximately \$3,301 million of indebtedness outstanding (\$2,405 million under the term loan facility, \$750 million in Floating Rate Senior Notes, \$132 million in 3.00% Senior Notes, and \$14 million in finance lease obligations). As of October 31, 2020, \$390 million of unused commitments were available to be borrowed under the revolving credit facility (as defined herein). This amount is net of \$62 million of outstanding letters of credit and a \$48 million borrowing base reduction for a shortfall in qualifying assets, net of reserves. Although we intend to repay a portion of our outstanding indebtedness as described in the “Use of Proceeds” section of this prospectus, we expect availability on our revolving credit facility to remain unchanged, subject to normal working capital requirements and borrowing base adjustments, and we will continue to have substantial indebtedness following completion of this offering, which could restrict our operations and could have important consequences. For example, it could:

- make it more difficult for us to satisfy our obligations with respect to our existing indebtedness;
- increase our vulnerability to general adverse economic and industry conditions;
- require us to dedicate a substantial portion of our cash flows from operations to payments on our indebtedness, thereby reducing the availability of our cash flows to fund working capital and capital expenditures, and for other general corporate purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and industry, which may place us at a competitive disadvantage compared to our competitors that have less debt;
- restrict us from making strategic acquisitions or other investments or cause us to make non-strategic divestitures; and
- limit, along with the financial and other restrictive covenants in the documents governing our indebtedness, among other things, our ability to obtain additional financing for working capital and capital expenditures, and for other general corporate purposes.

Please read “Recapitalization and Corporate Conversion” for more information regarding the recapitalization of our company that will be effected substantially contemporaneously with the completion of this offering, and please read “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources” and “Description of Indebtedness” for descriptions of the senior secured credit facilities that will remain in place following the completion of this offering.

#### ***The agreements governing our indebtedness include restrictive covenants that limit our operating flexibility, which could harm our long-term interests.***

The term loan facility and revolving credit facility all impose material restrictions on us. These restrictions, subject in certain cases to ordinary course of business and other exceptions, may limit our ability to engage in some transactions, including the following:

- incurring additional debt;
- paying dividends, redeeming capital stock, or making other restricted payments or investments;
- selling assets, properties, or licenses;

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- creating liens on assets;
- entering into sale and lease-back transactions;
- undergoing a change in control;
- merging, consolidating, or disposing of substantially all assets;
- entering into new lines of business;
- entering into transactions with affiliates; and
- placing restrictions on the ability of subsidiaries to pay dividends or make other payments.

Any of these restrictions on our ability to operate our business in our discretion could adversely affect our business by, among other things, limiting our ability to adapt to changing economic, financial, or industry conditions and to take advantage of corporate opportunities, including opportunities to obtain debt financing, repurchase stock, refinance or pay principal on our outstanding debt, or complete acquisitions for cash or debt.

Any future debt that we incur may contain financial maintenance covenants. In addition, the revolving credit facility contains financial maintenance covenants that are triggered by certain conditions. Events beyond our control, including prevailing economic, financial, and industry conditions, could affect our ability to satisfy these financial maintenance covenants, and we cannot assure you that we will satisfy them.

Any failure to comply with the restrictions of the term loan facility, revolving credit facility, and any subsequent financing agreements, including as a result of events beyond our control, may result in an event of default under these agreements, which in turn may result in defaults or acceleration of obligations under these agreements and other agreements, giving our lenders and other debt holders the right to terminate any commitments they may have made to provide us with further funds and to require us to repay all amounts then outstanding. Our assets and cash flow may not be sufficient to fully repay borrowings under our outstanding debt instruments. In addition, we may not be able to refinance or restructure the payments on the applicable debt. Even if we were able to secure additional financing, it may not be available on favorable terms.

***Despite current indebtedness levels, we may incur substantial additional indebtedness in the future. This could further increase the risks associated with our substantial leverage.***

We may incur substantial additional indebtedness in the future, which would increase our debt service obligations and could further reduce the cash available to invest in operations. The terms of the credit agreements governing the senior secured credit facilities allow us and our subsidiaries to incur additional indebtedness, subject to limitations. As of October 31, 2020, we and our subsidiaries had an additional \$390 million of unused commitments available to be borrowed under the revolving credit facility. This amount is net of \$62 million of outstanding letters of credit and a \$48 million borrowing base reduction for a shortfall in qualifying assets, net of reserves. If new debt is added to our debt levels, or any debt is incurred by our subsidiaries, the related risks that we and our subsidiaries now face could increase.

***To service our indebtedness, we will require a significant amount of cash. Our ability to generate or access cash depends on many factors beyond our control.***

Our ability to make payments on and refinance our indebtedness and to fund planned capital expenditures, will depend on our ability to generate or access cash in the future. This ability is subject to general economic, financial, competitive, legislative, regulatory, and other factors that are beyond our control.

We cannot assure you that our business will generate sufficient cash flows from operations or that future borrowings will be available to us under the senior secured asset-based revolving credit

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facility in an amount sufficient to enable us to pay our indebtedness or to fund our other liquidity needs. Further, we cannot assure you that we will be able to refinance any of our indebtedness, including the senior secured credit facilities, on commercially reasonable terms, or at all.

***Our failure to comply with the covenants contained in the credit agreements for the senior secured credit facilities, including as a result of events beyond our control, could result in an event of default that could cause repayment of our debt to be accelerated.***

If we are not able to comply with the covenants and other requirements contained in the credit agreements governing the senior secured credit facilities or any other debt instruments, an event of default under the relevant debt instrument could occur. In addition to imposing restrictions on our business and operations, some of our debt instruments include covenants relating to financial ratios and tests. Our ability to comply with these covenants may be affected by events beyond our control, including prevailing economic, financial, and industry conditions. The breach of any of these covenants would result in a default under these instruments. If an event of default does occur under one of these agreements, it could trigger a default under our other debt instruments, prohibit us from accessing additional borrowings, and permit the holders of the defaulted debt to declare amounts outstanding with respect to that debt to be immediately due and payable. Our assets and cash flows may not be sufficient to fully repay borrowings under our outstanding debt instruments. In addition, we may not be able to refinance or restructure the payments on the applicable debt. Even if we were able to secure additional financing, it may not be available on favorable terms.

***The amount of borrowings permitted under the revolving credit facility may fluctuate significantly, which may adversely affect our liquidity, results of operations, and financial position.***

The amount of borrowings permitted at any one time under the revolving credit facility is subject to a borrowing base valuation of the collateral thereunder, net of certain reserves. As a result, our access to credit under the revolving credit facility is potentially subject to significant fluctuations depending on the value of the borrowing base of eligible assets as of any measurement date, as well as certain discretionary rights of the agents in respect of the calculation of such borrowing base value. The inability to borrow under the revolving credit facility may adversely affect our liquidity, results of operations, and financial position.

***Our variable rate indebtedness subjects us to interest rate risk, which could cause our indebtedness service obligations to increase significantly.***

Borrowings under the senior secured credit facilities are at variable rates of interest and expose us to interest rate risk. If interest rates increase, our debt service obligations on the variable rate indebtedness would increase even though the amount borrowed remains the same, and our net income and cash flows, including cash available for servicing our indebtedness, would correspondingly decrease. Although we may enter into agreements limiting our exposure to higher interest rates, these agreements may not be effective.

***A ratings downgrade or other negative action by a ratings organization could adversely affect the trading price of the shares of our Class A common stock.***

Credit rating agencies continually revise their ratings for companies they follow. The condition of the financial and credit markets and prevailing interest rates have fluctuated in the past and are likely to fluctuate in the future. In addition, developments in our business and operations could lead to a ratings downgrade for us or our subsidiaries. Any fluctuation in the rating of us or our subsidiaries may impact our ability to access debt markets in the future or increase our cost of future debt, which could have a material adverse effect on our operations and financial condition and may adversely affect the trading price of shares of our Class A common stock.

***Changes affecting the availability of LIBOR may have consequences for us that cannot yet be reasonably predicted.***

We have outstanding debt with variable interest rates based on the London Inter-bank Offered Rate (“LIBOR”). Advances under the revolving credit facility and the term loan facility generally bear interest based on (i) the Eurodollar Rate (as defined in our credit agreements and calculated using LIBOR) or (ii) the Base Rate (as defined in our credit agreements). The LIBOR benchmark has been the subject of national, international, and other regulatory guidance and proposals to reform. In July 2017, the United Kingdom Financial Conduct Authority (the authority that regulates LIBOR) announced that it intends to stop compelling banks to submit rates for the calculation of LIBOR after 2021. These reforms may cause LIBOR to perform differently than it has in the past, and LIBOR may ultimately cease to exist after 2021. Alternative benchmark rates may replace LIBOR and could affect our debt securities, debt payments, and receipts. At this time, it is not possible to predict the effect of any changes to LIBOR, any phase out of LIBOR, or any establishment of alternative benchmark rates. Any new benchmark rate will likely not replicate LIBOR exactly, which could impact our contracts that terminate after 2021. There is uncertainty about how applicable law and the courts will address the replacement of LIBOR with alternative rates on variable rate retail loan contracts and other contracts that do not include alternative rate fallback provisions. If LIBOR ceases to exist after 2021, the interest rates on the revolving credit facility and the term loan facility will be based on the Base Rate or an alternative benchmark rate, which may result in higher interest rates. In addition, any changes to benchmark rates may have an uncertain impact on our cost of funds and our access to the capital markets, which could impact our results of operations and cash flows. Uncertainty as to the nature of such potential changes may also adversely affect the trading market for our securities.

**Risks Related to Our Class A Common Stock**

***Our Sponsors will continue to have significant influence over us after this offering, including control over decisions that require the approval of stockholders, which could limit your ability to influence the outcome of matters submitted to stockholders for a vote.***

We are currently controlled, and after this offering is completed will continue to be controlled, by our Sponsors through our Principal Stockholder. After giving effect to the Recapitalization, the Corporate Conversion, and the completion of this offering, our Sponsors will control % of the outstanding voting power of our company. As long as our Sponsors beneficially own or control at least a majority of our outstanding voting power, they will have the ability to exercise substantial control over all corporate actions requiring stockholder approval, irrespective of how our other stockholders may vote, including the election and removal of directors and the size of our board of directors, any amendment of our certificate of incorporation or bylaws, or the approval of any merger or other significant corporate transaction, including a sale of substantially all of our assets. Even if their ownership falls below 50%, our Sponsors will continue to be able to strongly influence or effectively control our decisions.

Additionally, our Sponsors’ interests may not align with the interests of our other stockholders. Our Sponsors, and other investment funds affiliated with them, are in the business of making investments in companies and may acquire and hold interests in businesses that compete directly or indirectly with us. Our Sponsors, and other investment funds affiliated with them, may also pursue acquisition opportunities that may be complementary to our business, and, as a result, those acquisition opportunities may not be available to us.

***We are a “controlled company” within the meaning of the Nasdaq rules and, as a result, expect to qualify for, and intend to rely on, exemptions from certain corporate governance requirements. You will not have the same protections as those afforded to stockholders of companies that are subject to such governance requirements.***

After completion of this offering, our Sponsors, through our Principal Stockholder, will continue to control a majority of the voting power of our common stock with respect to director elections. As a

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result, we will be a “controlled company” within the meaning of the corporate governance standards of Nasdaq. Under these rules, a company of which more than 50% of the voting power with respect to director elections is held by an individual, group, or another company is a “controlled company” and may elect not to comply with certain corporate governance requirements, including:

- the requirement that a majority of the board of directors consist of independent directors;
- the requirement that our nominating and corporate governance committee be composed entirely of independent directors with a written charter addressing the committee’s purpose and responsibilities; and
- the requirement that our compensation committee be composed entirely of independent directors with a written charter addressing the committee’s purpose and responsibilities.

Following this offering, we intend to utilize one or more of these exemptions. As a result, we will not have a majority of independent directors and our Compensation Committee and Nominating and Governance Committee will not consist 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.

Our Sponsors are not subject to any contractual obligation to retain their controlling interest, except that they have agreed, subject to certain exceptions, not to sell or otherwise dispose of any shares of our Class A common stock or other securities exercisable or convertible into our Class A common stock for a period of at least 180 days after the date of this prospectus without the prior written consent of . We cannot assure you as to the period of time during which any of our Sponsors will in fact maintain their control of our Class A common stock following the offering.

### ***Certain of our directors have relationships with our Sponsors, which may cause conflicts of interest with respect to our business.***

Following this offering, of our directors will be affiliated with our Sponsors. These directors have fiduciary duties to us and, in addition, have duties to the applicable Sponsor or stockholder affiliate. As a result, these directors may face real or apparent conflicts of interest with respect to matters affecting both us and the affiliated Sponsors, whose interests may be adverse to ours in some circumstances.

### ***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 may adversely affect the market price of our stock.***

Provisions in our certificate of incorporation and bylaws, which will be in effect upon the completion of this offering following the Corporate Conversion, may have the effect of delaying or preventing a change of control or changes in our management. Our certificate of incorporation and bylaws will include provisions that:

- provide that, except with regard to directors nominated by our Principal Stockholder, vacancies on our board of directors shall be filled only by a majority of directors then in office, even though less than a quorum, or by a sole remaining director;
- establish that our board of directors is divided into three classes, with each class serving three-year staggered terms;
- provide that our directors can be removed for cause only, once our Principal Stockholder (including its permitted transferees under the stockholder’s agreement) no longer beneficially owns 50% or more of our outstanding Class A common stock and Class B-1 common stock;
- provide that, once our Principal Stockholder (including its permitted transferees under the stockholder’s agreement) no longer beneficially owns 50% or more of our outstanding Class A

common stock and Class B-1 common stock, any action required or permitted to be taken by the stockholders must be effected at a duly called annual or special meeting of stockholders and may not be effected by any consent in writing in lieu of a meeting of such stockholders;

- specify that, once our Principal Stockholder (including its permitted transferees under the stockholder's agreement) no longer beneficially owns 50% or more of our outstanding Class A common stock and Class B-1 common stock, special meetings of our stockholders can be called only by our board of directors, or the Chairman of our board of directors (prior to such time, special meetings of the stockholders of our company shall be called by the Chairman of our board of directors or our Secretary at the request of our Principal Stockholder, in addition to being able to be called by the Chairman of our board of directors and by our board of directors);
- require the approval of the holders of at least two-thirds of the voting power of all outstanding stock entitled to vote thereon, voting together as a single class, to amend or repeal our bylaws and certain articles of our certificate of incorporation once our Principal Stockholder (including its permitted transferees under the stockholder's agreement) ceases to beneficially own at least 50% of the Class A common stock and Class B-1 common stock;
- establish an advance notice procedure for stockholder proposals to be brought before an annual meeting, including proposed nominations of persons for election to our board of directors;
- authorize our board of directors to issue, without further action by the stockholders, shares of undesignated preferred stock; and
- reflect three classes of common stock.

These and other 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. In addition, we will be a Delaware corporation and governed by the Delaware General Corporation Law (the "DGCL"). In general, Section 203 of the DGCL, an anti-takeover law, prohibits a publicly held Delaware corporation from engaging in a business combination, such as a merger, with a person or group owning 15% or more of the corporation's voting stock, which person or group is considered an interested stockholder under the DGCL, for a period of three years following the date the person became an interested stockholder, unless (with certain exceptions) the business combination or the transaction in which the person became an interested stockholder is approved in a prescribed manner. We intend to elect in our certificate of incorporation not to be subject to Section 203. However, our certificate of incorporation will contain provisions that have the same effect as Section 203, except that they will provide our Sponsors, our Principal Stockholder, their affiliates, and their respective successors (other than our company), as well as their direct and indirect transferees, will not be deemed to be "interested stockholders," regardless of the percentage of our voting stock owned by them, and accordingly will not be subject to such restrictions. For additional details, read "Description of Capital Stock."

***Since we have no current plans to pay regular cash dividends on our Class A common stock following this offering, you may not receive any return on investment unless you sell your Class A common stock for a price greater than that which you paid for it.***

We do not anticipate paying any regular cash dividends on our Class A common stock following this offering. Any decision to declare and pay dividends in the future will be made at the discretion of our board of directors and will depend on, among other things, our financial condition, results of operations, cash requirements, contractual restrictions and other factors that our board of directors may deem relevant. In addition, our ability to pay dividends is, and may be, limited by covenants of existing and any future outstanding indebtedness we or our subsidiaries incur, including under the senior secured credit facilities. Therefore, any return on investment in our Class A common stock is solely dependent upon the appreciation of the price of our Class A common stock on the open market, which may not occur. Please read "Dividend Policy" for more detail.

***We are a holding company with nominal net worth and will depend on dividends and distributions from our subsidiaries to pay any dividends.***

PET Acquisition LLC and Petco Holdings, Inc. LLC are holding companies with nominal net worth. We do not have any material assets or conduct any business operations other than our investments in our subsidiaries. Our business operations are conducted primarily out of our indirect operating subsidiary, Petco Animal Supplies and its subsidiaries. As a result, in addition to the restrictions on payment of dividends that apply under the terms of our existing indebtedness, our ability to pay dividends, if any, will be dependent upon cash dividends and distributions or other transfers from our subsidiaries, including from Petco Animal Supplies Stores, Inc. Payments to us by our subsidiaries will be contingent upon their respective earnings and subject to any limitations on the ability of such entities to make payments or other distributions to us.

***The multi-class structure of our common stock may adversely affect the trading market for our Class A common stock.***

In July 2017, S&P Dow Jones and FTSE Russell announced changes to their eligibility criteria for the inclusion of shares of public companies on certain indices, including the Russell 2000, the S&P 500, the S&P MidCap 400 and the S&P SmallCap 600, to exclude companies with multiple classes of shares of common stock from being added to these indices. As a result, our multi-class capital structure makes us ineligible for inclusion in any of these indices, and mutual funds, exchange-traded funds and other investment vehicles that attempt to passively track these indices will not be investing in our stock. Further, we cannot assure you that other stock indices will not take a similar approach to S&P Dow Jones or FTSE Russell in the future. Exclusion from indices could make our Class A common stock less attractive to investors and, as a result, the market price of our Class A common stock could be adversely affected.

***Our certificate of incorporation will designate the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, and the federal district courts as the exclusive forum for Securities Act claims, which could limit our stockholders' ability to obtain what such stockholders believe to be a favorable judicial forum for disputes with us or our directors, officers, other employees, or agents.***

Our certificate of incorporation will provide that, unless we, in writing, select or consent to the selection of an alternative forum, all complaints asserting any internal corporate claims (defined as claims, including claims in the right of our company: (i) that are based upon a violation of a duty by a current or former director, officer, employee, or stockholder in such capacity; or (ii) as to which the DGCL confers jurisdiction upon the Court of Chancery), to the fullest extent permitted by law, and subject to applicable jurisdictional requirements, shall be the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have, or declines to accept, subject matter jurisdiction, another state court or a federal court located within the State of Delaware). Further, unless we select or consent to the selection of an alternative forum, the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. Our choice-of-forum provision will not apply to suits brought to enforce any liability or duty created by the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. Any person or entity purchasing or otherwise acquiring or holding any interest in our common stock shall be deemed to have notice of and to have consented to the forum selection provisions described in our certificate of incorporation. These choice-of-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 our directors, officers or other employees, which may discourage such lawsuits against us and such persons. It is possible that a court may find these provisions of our certificate of incorporation inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, in which case we may incur additional costs associated with resolving such matters in other jurisdictions, which could materially

adversely affect our business, financial condition, or results of operations and result in a diversion of the time and resources of our management and board of directors.

### General Risk Factors

***As a public company, we will become subject to additional laws, regulations, and stock exchange listing standards, which will impose additional costs on us and divert our management's attention.***

We have operated our business as a private company since October 2006. After this offering, we will be subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act of 2002, as amended, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the listing requirements of Nasdaq, and other applicable securities laws and regulations. Compliance with these laws and regulations will increase our legal and financial compliance costs and make some activities more difficult, time-consuming or costly. For example, the Exchange Act will require us, among other things, to file annual, quarterly, and current reports with respect to our business and operating results. We also expect that being a public company and being subject to new rules and regulations will make it more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These additional requirements will impose significant additional costs on us and may divert management's attention and affect our ability to attract and retain qualified board members.

***An active, liquid trading market for our Class A common stock may not develop, which may limit your ability to sell your shares.***

Prior to this offering, there was no public market for our Class A common stock. Although we have applied to list our Class A common stock on Nasdaq under the symbol "WOOF," an active trading market for our shares may never develop or be sustained following this offering. The initial public offering price will be determined by negotiations between us and the underwriters and may not be indicative of market prices of our Class A common stock that will prevail in the open market after the offering. A public trading market having the desirable characteristics of depth, liquidity, and orderliness depends upon the existence of willing buyers and sellers at any given time, and its existence is dependent upon the individual decisions of buyers and sellers over which neither we nor any market maker has control. The failure of an active and liquid trading market to develop and continue would likely have a material adverse effect on the value of our Class A common stock. The market price of our Class A common stock may decline below the initial public offering price, and you may not be able to sell your shares of our Class A common stock at or above the price you paid in this offering, or at all. An inactive market may also impair our ability to raise capital to continue to fund operations by selling shares and may impair our ability to acquire other companies or technologies by using our shares as consideration.

***Our operating results and share price may be volatile, and the market price of our Class A common stock after this offering may drop below the price you pay.***

Our quarterly operating results are likely to fluctuate in the future as a publicly traded company. In addition, securities markets worldwide have experienced, and are likely to continue to experience, significant price and volume fluctuations. This market volatility, as well as general economic, market, or political conditions, could subject the market price of our shares to wide price fluctuations regardless of our operating performance. You may not be able to resell your shares at or above the initial public offering price or at all. Our operating results and the trading price of our shares may fluctuate in response to various factors, including:

- market conditions in the broader stock market;
- actual or anticipated fluctuations in our quarterly financial and operating results;
- introduction of new products or services by us or our competitors;

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- issuance of new or changed securities analysts' reports or recommendations;
- changes in debt ratings;
- results of operations that vary from expectations of securities analysts and investors;
- guidance, if any, that we provide to the public, any changes in this guidance or our failure to meet this guidance;
- strategic actions by us or our competitors;
- announcement by us, our competitors, or our vendors of significant contracts or acquisitions;
- sales, or anticipated sales, of large blocks of our stock;
- additions or departures of key personnel;
- regulatory, legal, or political developments;
- public response to press releases or other public announcements by us or third parties, including our filings with the SEC;
- litigation and governmental investigations;
- changing economic conditions;
- changes in accounting principles;
- default under agreements governing our indebtedness; and
- other events or factors, including those from natural disasters, pandemic, pest disease, war, acts of terrorism, or responses to these events.

These and other factors, many of which are beyond our control, may cause our operating results and the market price and demand for our shares to fluctuate substantially. While we believe that operating results for any particular quarter are not necessarily a meaningful indication of future results, fluctuations in our quarterly operating results could limit or prevent investors from readily selling their shares and may otherwise negatively affect the market price and liquidity of our shares. In addition, in the past, when the market price of a stock has been volatile, holders of that stock have sometimes brought securities class action litigation against the company that issued the stock. If any of our stockholders brought a lawsuit against us, we could incur substantial costs defending the lawsuit. Such a lawsuit could also divert the time and attention of our management from our business, which could significantly harm our profitability and reputation.

***If you purchase shares of Class A common stock in this offering, you will suffer immediate and substantial dilution to the net tangible book value per share of your investment.***

The initial public offering price of our Class A common stock is substantially higher than the net tangible book deficit per share of our Class A common stock. Therefore, if you purchase shares of our Class A common stock in this offering, you will pay a price per share that substantially exceeds our net tangible book deficit per share after this offering. Based on an assumed initial public offering price of \$ \_\_\_\_\_ per share, which is the midpoint of the price range on the cover of this prospectus, you will experience immediate dilution of \$ \_\_\_\_\_ per share, representing the difference between our pro forma net tangible book deficit per share after giving effect to this offering and the initial public offering price. In addition, purchasers of our Class A common stock in this offering will have paid \_\_\_\_\_ % of the aggregate price paid by all purchasers of our Class A common stock but will own only approximately \_\_\_\_\_ % of our Class A common stock outstanding after this offering. We also have a large number of outstanding stock options to purchase Class A common stock with exercise prices that are below the estimated initial public offering price of our Class A common stock. To the extent that these options are exercised, you will experience further dilution. Please read "Dilution" for more detail.

***Your percentage ownership in us may be diluted by future issuances of capital stock, which could reduce your influence over matters on which stockholders vote.***

Pursuant to our certificate of incorporation and bylaws, our board of directors will have the authority, without action or vote of our stockholders, to issue all or any part of our authorized but unissued shares of common stock, including shares issuable upon the exercise of options, or shares of our authorized but unissued preferred stock. Issuances of common stock or voting preferred stock would reduce your influence over matters on which our stockholders vote and, in the case of issuances of preferred stock, would likely result in your interest in us being subject to the prior rights of holders of that preferred stock. Moreover, the ability of holders of Class B-1 common stock to convert each of their shares into one share of Class A common stock, subject to the transfer to us of an equivalent number of shares of Class B-2 common stock, may increase the number of outstanding shares of Class A common stock; however, such conversion rights will not dilute or otherwise affect the voting rights of the holders of Class A common stock because Class B-1 common stock and Class B-2 common stock taken on a combined basis will have the same voting rights as Class A common stock.

***A significant portion of our total outstanding shares are restricted from immediate resale but may be sold into the market in the near future. This could cause the market price of our Class A common stock to drop significantly, even if our business is doing well.***

Sales of a substantial number of shares of our Class A common stock in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell shares, could reduce the market price of our Class A common stock. After this offering, we will have outstanding \_\_\_\_\_ shares of Class A common stock based on the number of shares outstanding as of \_\_\_\_\_. Substantially all of the shares that are not being sold in this offering will be subject to a 180-day lock-up period provided under agreements executed in connection with this offering. These shares will, however, be able to be resold after the expiration of the lock-up agreements described in the “Shares Eligible for Future Sale” and “Underwriting (Conflicts of Interest)” sections of this prospectus. We also intend to file a Form S-8 under the Securities Act to register all shares of Class A common stock that we may issue under our equity compensation plans. In addition, our Principal Stockholder will have demand registration rights that will require us to file registration statements in connection with future sales of our stock by our Principal Stockholder, including in connection with the note purchase agreement described below. Please read “Certain Relationships and Related Party Transactions—Registration Rights Agreement.” Sales by our Principal Stockholder could be significant. Once we register these shares, they can be freely resold in the public market, subject to legal or contractual restrictions, such as the lock-up agreements described in the “Underwriting (Conflicts of Interest)” section of this prospectus. As restrictions on resale end, the market price of our stock could decline if the holders of currently restricted shares sell them or are perceived by the market as intending to sell them. Lastly, in connection with the closing of this offering, our Principal Stockholder is expected to enter into a note purchase agreement. The obligations under the note purchase agreement will be secured by a pledge of all of the shares of our common stock owned by our Principal Stockholder and its affiliates. If our Principal Stockholder were to default on any of its obligations under the note purchase agreement or in the event of a collateral deficiency the holders would have the right to foreclose on all of our common stock subject to the pledge and sell such shares of common stock. Such an event could further cause our stock price to decline and could result in a change in control of our company that could trigger a default under, or acceleration of, the obligations under our term loan facility and revolving credit facility. Certain affiliates of Goldman Sachs & Co. LLC, together with other investors, will be holders of the notes governed by this note purchase agreement and will not be subject to a lock-up agreement in the event of a foreclosure on our common stock. Any foreclosure on our common stock which secures obligations under the note purchase agreement could result in the sale of a significant number of shares of our common stock, which could result in a decrease in the price of our common stock.

***If securities or industry analysts do not publish research or reports about our business, if they adversely change their recommendations regarding our shares, or if our results of operations do not meet their expectations, our share price and trading volume could decline.***

The trading market for our shares likely will be influenced by the research and reports that industry or securities analysts publish about us or our business. We do not have any control over these analysts. If one or more of these analysts cease coverage of our company or fail to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our share price or trading volume to decline. Moreover, if one or more of the analysts who cover us downgrade our stock, or if our results of operations do not meet their expectations, our share price could decline.

***If our operating and financial performance in any given period does not meet the guidance that we have provided to the public or the expectations of our investors and analysts, our stock price may decline.***

We anticipate providing guidance on our expected operating and financial results for future periods on an annual basis only, as we believe this approach is better aligned with the long-term view we take in managing our business and our focus on long-term stockholder value creation. Although we believe that this guidance will provide investors and analysts with a better understanding of management's expectations for the future and is useful to our stockholders and potential stockholders, such guidance comprises forward-looking statements subject to the risks and uncertainties described in this prospectus and in our other public filings and public statements. Our actual results may not always be in line with or exceed the guidance we have provided or the expectations of our investors and analysts, especially in times of economic uncertainty. If, in the future, our operating or financial results for a particular period do not meet our guidance or the expectations of our investors and analysts or if we reduce our guidance for future periods, our share price could decline.

***If our internal control over financial reporting or our disclosure controls and procedures are not effective, we may be unable to accurately report our financial results, prevent fraud, or file our periodic reports in a timely manner, which may cause investors to lose confidence in our reported financial information and may lead to a decline in our stock price.***

Prior to the completion of this offering, we were a private company and have not been subject to the internal control and financial reporting requirements that are required of a publicly traded company. We will be required to comply with the requirements of The Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), following the date we are deemed to be an "accelerated filer" or a "large accelerated filer," each as defined in the Exchange Act, which could be as early as our first fiscal year beginning after the effective date of this offering. The Sarbanes-Oxley Act requires that we maintain effective internal control over financial reporting and disclosure controls, and procedures. In particular, we must perform system and process evaluation, document our controls and perform testing of our key control over financial reporting to allow management and our independent public accounting firm to report on the effectiveness of our internal control over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act. Our testing, or the subsequent testing by our independent public accounting firm, may reveal deficiencies in our internal control over financial reporting that are deemed to be material weaknesses. If we are not able to comply with the requirements of Section 404 in a timely manner, or if we or our accounting firm identifies deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, the market price of our stock would likely decline and we could be subject to lawsuits, sanctions or investigations by regulatory authorities, which would require additional financial and management resources.

***Unanticipated changes in effective tax rates or adverse outcomes resulting from examination of our income or other tax returns could adversely affect our financial condition and results of operations.***

We are subject to taxes by the U.S. federal, state, and local tax authorities, and our tax liabilities will be affected by the allocation of expenses to differing jurisdictions. Our future effective tax rates could be subject to volatility or adversely affected by a number of factors, including:

- changes in the valuation of our deferred tax assets and liabilities;
- expected timing and amount of the release of any tax valuation allowances;
- tax effects of stock-based compensation; or
- changes in tax laws, regulations, or interpretations thereof.

In addition, we may be subject to audits of our income, sales, and other transaction taxes by U.S. federal, state, and local taxing authorities. Outcomes from these audits could have an adverse effect on our operating results and financial condition.

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Statements contained in this prospectus concerning expectations, beliefs, plans, objectives, goals, strategies, future events, or performance and underlying assumptions and other statements that are other than statements of historical fact are “forward-looking statements” within the meaning of the federal securities laws. Although we believe that the expectations and assumptions reflected in these statements are reasonable, there can be no assurance that these expectations will prove to be correct. Forward-looking statements are subject to many risks and uncertainties, and actual results may differ materially from the results discussed in such forward-looking statements. In addition to the specific factors discussed in “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” the following are among the important factors that could cause actual results to differ materially from the forward-looking statements:

- general economic factors, a decline in consumer spending or changes in consumer preferences, or failure to successfully predict and respond to changing consumer trends and demand;
- any damage to our reputation or our brand;
- competition, including internet-based competition;
- difficulty in recruiting and retaining skilled veterinarians;
- challenges associated with integrating and growing our e-commerce business;
- failure to successfully execute our growth strategies, including expanding our veterinary service offerings and building out our digital and data capabilities, or manage and sustain our recent growth;
- failure to generate or obtain sufficient capital to finance our growth;
- the loss of key personnel or our principal executive officers;
- the loss of any of our key merchandise vendors, or of our exclusive distribution arrangements with certain of our vendors;
- health epidemics, pandemics, and similar outbreaks, such as the recent outbreak of COVID-19, and the actions taken by third parties, including, but not limited to, governmental authorities, customers, contractors, and vendors, in response to such epidemics or pandemics;
- a disruption, malfunction, or increased costs in the operation, expansion, or replenishment of our distribution centers or our supply chain that would affect our ability to deliver to our locations and e-commerce customers or increase our expenses;
- the effects of government regulation, permitting, and other legal requirements, including new legislation or regulation related to our veterinary services;
- breaches of, or interruptions in, our or our vendors’ data security and information systems, or cyber-attacks that disrupt our information systems;
- pet food safety, quality, and health concerns;
- our substantial indebtedness could adversely affect our financial condition and limit our ability to pursue our growth strategy;
- the impact of current and potential changes to federal or state tax rules and regulations; and
- other factors described under “Risk Factors.”

Any of the foregoing events or factors, or other events or factors, could cause actual results, including financial performance, to vary materially from the forward-looking statements included in this prospectus. Additionally, the unprecedented nature of the COVID-19 pandemic may give rise to risks that are currently unknown or amplify the risks associated with many of these factors. You should

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consider these important factors, as well as the risk factors set forth in this prospectus, in evaluating any statement made in this prospectus. Please read “Risk Factors” for more information. For the foregoing reasons, you are cautioned against relying on any forward-looking statements. Any forward-looking statement speaks only as of the date on which such statement is made, and we do not undertake any obligation to update or revise these forward-looking statements, except as required by law.

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. 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.

## USE OF PROCEEDS

We expect to receive approximately \$            million of net proceeds from this offering (or \$            million if the underwriters exercise in full their option to purchase additional shares of our Class A common stock), based upon the assumed initial public offering price of \$            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. We intend to use a portion of the net proceeds from this offering to pay the accrued but unpaid interest on the exchanged Floating Rate Senior Notes and to redeem in full the remaining \$300 million aggregate principal amount, plus accrued but unpaid interest, of the Floating Rate Senior Notes that remain outstanding after the Recapitalization and the remainder of the proceeds, plus cash on hand, to repay a portion of the term loan facility.

The Floating Rate Senior Notes mature on January 26, 2024 and had a weighted average interest rate of 9.1% as of October 31, 2020. Certain affiliates of Goldman Sachs & Co. LLC are holders of our Floating Rate Senior Notes and will receive a portion of the proceeds of this offering utilized to redeem the Floating Rate Senior Notes that remain outstanding after the Recapitalization. See "Underwriting (Conflicts of Interest)." The term loan facility matures on January 26, 2023 and had a weighted average interest rate on the borrowings outstanding of 4.3% as of October 31, 2020.

Assuming no exercise of the underwriters' option to purchase additional shares, each \$1.00 change in the assumed initial public offering price of \$            per share (which is the midpoint of the price range set forth on the cover page of this prospectus) would cause the net proceeds from this offering, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us, to change by approximately \$            million, assuming no change to the number of shares of our Class A common stock offered by us, as set forth on the cover page of this prospectus. Similarly, an increase (decrease) of one million shares of common stock sold in this offering by us would increase (decrease) our net proceeds by \$            million, assuming the initial public offering price of \$            per share, (which is the midpoint of the price range set forth on the cover page of this prospectus) remains the same and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. If the proceeds increase for any reason, we would use the additional net proceeds for other general corporate purposes. If the proceeds decrease for any reason, then we expect that we would retain less net proceeds for general corporate purposes.

## DIVIDEND POLICY

We do not anticipate declaring or paying any cash dividends to holders of our Class A common stock in the foreseeable future. We currently intend to retain future earnings, if any, to finance the growth of our business. Our future dividend policy is within the discretion of our board of directors and will depend upon then-existing conditions, including our results of operations, financial condition, capital requirements, investment opportunities, statutory restrictions on our ability to pay dividends and other factors our board of directors may deem relevant. Please read “Risk Factors—The agreements governing our indebtedness include restrictive covenants that limit our operating flexibility, which could harm our long-term interests,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources,” and “Description of Indebtedness” for descriptions of restrictions on our ability to pay dividends.

## RECAPITALIZATION AND CORPORATE CONVERSION

### Recapitalization

Substantially contemporaneously with the completion of this offering, we will participate in certain transactions described below, which will collectively have the net effect of reducing our indebtedness and increasing our stockholders' equity.

#### **3.00% Senior Notes**

Prior to the completion of this offering, the noteholders, including Scooby LP, will contribute to us \$132 million aggregate principal amount of our outstanding 3.00% Senior Notes, which were issued to certain equityholders, including Scooby LP, as a means of facilitating a potential distribution of cash to such equityholders, plus accrued but unpaid interest. After accounting for an offset of certain inter-company indebtedness, we will cancel the 3.00% Senior Notes and record the cancellation as a capital contribution by the noteholders to us. For more information about the 3.00% Senior Notes, please read "Certain Relationships and Related Party Transactions—Related Party Transactions—3.00% Senior Notes" and Note 9 to our historical consolidated financial statements included elsewhere in this prospectus.

#### **Floating Rate Senior Notes**

Substantially contemporaneously with the completion of this offering, holders of \$750 million aggregate principal amount of Petco Animal Supplies' outstanding Floating Rate Senior Unsecured Notes (the "Floating Rate Senior Notes"), which were issued in a private placement offering in January 2016 to finance the transactions contemplated by the Merger Agreement, will exchange \$450 million aggregate principal amount of such notes for a series of new notes to be issued by our Principal Stockholder. Our Principal Stockholder will contribute the Floating Rate Senior Notes to us, which we will cancel and record as a capital contribution by our Principal Stockholder to us. For more information about the Floating Rate Senior Notes, please read Note 9 to our historical consolidated financial statements included elsewhere in this prospectus.

After the exchange described above, there will be \$300 million aggregate principal amount of Floating Rate Senior Notes outstanding. We intend to use a portion of the net proceeds from this offering to pay the accrued but unpaid interest on the exchanged Floating Rate Senior Notes and to redeem in full all of the remaining Floating Rate Senior Notes for a redemption price equal to the principal amount plus accrued but unpaid interest. Please read "Use of Proceeds."

### Corporate Conversion

We currently operate as a Delaware limited liability company under the name PET Acquisition LLC. Prior to the effectiveness of the registration statement of which this prospectus forms a part, PET Acquisition LLC will convert into a Delaware corporation pursuant to a statutory conversion and change its name to Petco Health and Wellness Company, Inc.

Prior to our conversion to a corporation, Scooby LP will transfer all of the units of PET Acquisition LLC that it holds to our Principal Stockholder, an entity to be formed for the sole purpose of holding our equity. Such transfer is not a necessary step of the Corporation Conversion but facilitates the exchange of the Floating Rate Senior Notes described in "—Recapitalization—Floating Rate Senior Notes."

In connection with the Corporate Conversion, and prior to the closing of this offering, all of the outstanding units of PET Acquisition LLC will be converted into an aggregate of \_\_\_\_\_ shares of our common stock. \_\_\_\_\_ shares of our common stock will be designated Class A common stock, and \_\_\_\_\_ shares of our common stock will be designated Class B-1 common stock, with an equal number ( \_\_\_\_\_ shares of our common stock) designated Class B-2 common stock. The number of

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shares of Class A common stock and Class B-1 and Class B-2 common stock to be issued in connection with the Corporate Conversion will be determined in accordance with the applicable provisions of the plan of conversion. We will issue such number of shares of Class B-1 common stock and B-2 common stock as is necessary to facilitate CPP Investments' compliance with certain regulations under the Canada Pension Plan Investment Board Act that restrict CPP Investments from directly or indirectly investing in securities of a corporation that carry more than 30% of the votes that may be cast for the election of directors of the corporation. For more information on the shares of Class B-2 common stock subject to such regulations, please read footnote (6) to the table in "Principal Stockholders."

We expect to be controlled, through our Principal Stockholder, by our Sponsors following the Corporate Conversion. After giving effect to the Corporate Conversion and the completion of this offering, our Sponsors will control % of the voting power of our company. For more information on the indirect ownership of our common stock by our Sponsors and the voting and economic rights associated with each class of our common stock, please read "Principal Stockholders" and "Description of Capital Stock," respectively.

Following the Corporate Conversion, Petco Health and Wellness Company, Inc. will continue to hold all the property and assets of PET Acquisition LLC and will assume all of the debts and obligations of PET Acquisition LLC, subject to the exchange of the Floating Rate Senior Notes described in "—Recapitalization—Floating Rate Senior Notes." Petco Health and Wellness Company, Inc. will be governed by a certificate of incorporation filed with the Delaware Secretary of State and bylaws, the material provisions of which are described in the section captioned "Description of Capital Stock."

The purpose of the Corporate Conversion is to reorganize our corporate structure so that the top-tier entity in our corporate structure—the entity that is offering Class A common stock to the public in this offering—is a corporation rather than a limited liability company and so that our existing investors will own our common stock rather than membership units in a limited liability company.

Except as otherwise noted herein, the consolidated financial statements included elsewhere in this prospectus are those of PET Acquisition LLC and its consolidated operations. We do not expect that the Corporate Conversion will have a material effect on the results of our core operations.

## CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of October 31, 2020:

- on a historical basis;
- on a pro forma basis to give effect to (i) the Recapitalization and (ii) the Corporate Conversion; and
- on a pro forma as adjusted basis to reflect the sale of shares of our Class A common stock in this offering at an assumed initial offering price of \$ \_\_\_\_\_ per share, which is the midpoint of the range set forth on the cover this prospectus, and the application of the net proceeds from this offering to repay debt as described under “Use of Proceeds.”

This table is derived from, should be read together with, and is qualified in its entirety by reference to the historical consolidated financial statements and the accompanying notes included elsewhere in this prospectus. You should also read this table in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

(dollars in millions)	As of October 31, 2020		
	Actual	Pro Forma	Pro Forma As Adjusted
Cash and cash equivalents	\$ 196	\$ 196	\$ _____
Long-term debt, including current portions:			
Senior secured credit facilities:			
Revolving Credit Facility(1)	\$ —	\$ —	\$ —
Term Loan Facility	2,405	2,405	—
Floating Rate Senior Notes	750	300	—
3.00% Senior Notes	132	—	—
Finance lease obligations	14	14	14
Total debt(2)	3,301	2,719	_____
Members’ equity:			
Members’ interest	1,366	—	—
Accumulated deficit	(801)	—	—
Accumulated other comprehensive loss	(6)	—	—
Members’ equity	559	—	—
Noncontrolling interest	(13)	—	—
Total equity	546	—	—
Stockholders’ equity:			
Class A common stock, par value \$0.001 per share (no shares authorized, issued or outstanding, actual; authorized shares and issued and outstanding shares, pro forma; and authorized shares and issued and outstanding shares, pro forma as adjusted)	—		
Class B-1 common stock, par value \$0.001 per share (no shares authorized, issued or outstanding, actual; authorized shares and issued and outstanding shares, pro forma; and authorized shares and issued and outstanding shares, pro forma as adjusted)(3)	—		

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	As of October 31, 2020		
	Actual	Pro Forma	Pro Forma As Adjusted
<b>(dollars in millions)</b>			
Class B-2 common stock, par value \$0.001 per share (no shares authorized, issued or outstanding, actual; authorized shares and issued and outstanding shares, pro forma; and authorized shares and issued and outstanding shares, pro forma as adjusted)(4)	—		
Preferred stock, par value \$0.001 per share ( authorized shares, actual and as adjusted)	—	—	—
Paid in capital	—	1,948	
Accumulated deficit	—	(801)	
Accumulated other comprehensive loss	—	(6)	
Stockholders' equity	—	1,141	
Noncontrolling interest	—	(13)	
Total equity	—	1,128	
Total capitalization	<u>\$3,847</u>	<u>\$3,847</u>	<u>\$</u>

- (1) As of October 31, 2020, there were no outstanding borrowings under the revolving credit facility and \$390 million of available capacity, which is net of \$62 million of outstanding letters of credit and a \$48 million borrowing base reduction for a shortfall in qualifying assets, net of reserves.
- (2) Excludes the impact of original issue discounts and debt issuance costs of \$63 million.
- (3) The rights of the holders of our Class A common stock and our Class B-1 common stock are identical in all respects, except that our Class B-1 common stock does not vote on the election or removal of our directors.
- (4) The rights of the holders of our Class B-2 common stock differ from the rights of the holders of our Class A common stock and Class B-1 common stock in that holders of our Class B-2 common stock only possess the right to vote on the election or removal of our directors.

## DILUTION

Purchasers of our Class A common stock in this offering will experience immediate and substantial dilution in the net tangible book value per share of our Class A common stock for accounting purposes. Our net tangible book value as of October 31, 2020 was approximately \$ \_\_\_\_\_ million, or \$ \_\_\_\_\_ per share.

After giving effect to the Recapitalization and the Corporate Conversion, pro forma net tangible book value per share is determined by dividing our net tangible book value, or total tangible assets less total liabilities, by the number of shares of our Class A common stock that will be outstanding immediately prior to the completion of this offering. Assuming an initial public offering price of \$ \_\_\_\_\_ (which is the midpoint of the price range set forth on the cover page of this prospectus), after giving effect to the sale of our Class A common stock in this offering and further assuming the receipt of the estimated net proceeds (after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us), our adjusted pro forma net tangible book value as of \_\_\_\_\_ would have been approximately \$ \_\_\_\_\_ million, or \$ \_\_\_\_\_ per share. This represents an immediate increase in the net tangible book value of \$ \_\_\_\_\_ per share to our existing stockholders and an immediate dilution to new investors purchasing shares in this offering of \$ \_\_\_\_\_ per share, resulting from the difference between the offering price and the pro forma as adjusted net tangible book value after this offering. The following table illustrates the per share dilution to new investors purchasing shares in this offering:

Assumed initial public offering price per share	\$ _____
Pro forma net tangible book value per share as of October 31, 2020	\$ _____
Increase per share attributable to new investors in this offering	
As adjusted pro forma net tangible book value per share (after giving effect to this offering)	
Dilution in pro forma net tangible book value per share to new investors in this offering	\$ _____

A \$1.00 increase (decrease) in the assumed initial public offering price of \$ \_\_\_\_\_ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) our as-adjusted pro forma net tangible book value per share after this offering by \$ \_\_\_\_\_ million and increase (decrease) the dilution to new investors in this offering by \$ \_\_\_\_\_ per share, assuming the number of shares of our Class A common stock offered by us, as set forth on the cover page of this prospectus, remains the same, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, an increase (decrease) of one million shares of common stock sold in this offering by us would increase (decrease) our net proceeds by \$ \_\_\_\_\_ million, assuming the initial public offering price of \$ \_\_\_\_\_ per share, (which is the midpoint of the price range set forth on the cover page of this prospectus) remains the same and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

The above discussion and table below are based on the number of shares of our Class A common stock outstanding as of the date of this prospectus and exclude an additional \_\_\_\_\_ shares of our Class A common stock reserved for future issuance under the 2020 Plan, as described in "Executive Compensation—2020 Equity Incentive Plan," and \_\_\_\_\_ shares of our Class A common stock reserved for future issuance under the ESPP, as described in "Executive Compensation—2020 Employee Stock Purchase Plan."

The following table summarizes, on an adjusted pro forma basis as of October 31, 2020, the total number of shares of our Class A common stock owned by existing stockholders and to be owned by new investors, the total consideration paid and the average price per share paid by our existing stockholders and to be paid by new investors in this offering at \$ \_\_\_\_\_, which is the midpoint of the

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price range set forth on the cover page of this prospectus, calculated before deduction of estimated 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>%</u>	<u>Amount</u>	<u>%</u>	
Existing stockholders		%	\$	%	\$
New investors in this offering					
<b>Total</b>		<b>100%</b>	<b>\$</b>	<b>100%</b>	<b>\$</b>

If the underwriters exercise in full their option to purchase \_\_\_\_\_ additional shares, the number of shares held by new investors will increase to \_\_\_\_\_, or approximately \_\_\_\_\_ % of our outstanding shares of Class A common stock.

## SELECTED HISTORICAL CONSOLIDATED FINANCIAL DATA

The following table presents our selected historical consolidated financial data as of the dates and for the periods indicated. The selected historical consolidated financial data as of and for the fiscal years 2019 and 2018, and the thirty-nine weeks ended October 31, 2020, are derived from the audited consolidated financial statements included elsewhere in this prospectus. The selected historical consolidated financial data as of and for the thirty-nine weeks ended November 2, 2019 are derived from the unaudited consolidated financial statements included elsewhere in this prospectus. The selected historical consolidated financial data as of and for the fiscal years 2017, 2016, and 2015 are derived from the unaudited historical consolidated financial statements not included in this prospectus.

Historical results are not necessarily indicative of the results to be expected for future periods. We refer you to the notes to our historical consolidated financial statements for a discussion of the basis on which our historical consolidated financial statements are prepared.

Our fiscal year ends on the Saturday closest to January 31, resulting in fiscal years of either 52 or 53 weeks. All references to a fiscal year refer to the fiscal year ending on the Saturday closest to January 31 of the following year. For example, references to Fiscal 2019 refer to the fiscal year beginning February 3, 2019 and ending February 1, 2020. Fiscal 2019, Fiscal 2018, Fiscal 2016, and Fiscal 2015 each include 52 weeks, and Fiscal 2017 includes 53 weeks.

Our consolidated financial statements are presented in two distinct periods to indicate the application of two different bases of accounting between the periods presented. The period prior to January 30, 2016 is identified as “predecessor” and the period from January 30, 2016 forward is identified as “successor.” The acquisition of our company by our Sponsors was recorded on January 30, 2016, the end of our 2015 fiscal year. The activity between the period of the acquisition date of January 26, 2016 through January 30, 2016 was included in the predecessor’s consolidated financial statements, as we determined that the results of operations and cash flows for the five-day period from January 26, 2016 through January 30, 2016 were not material.

As a result of the acquisition and the application of push-down accounting, our consolidated financial statements for the period before January 30, 2016 are presented on a different basis than for the periods on or after January 30, 2016, and are therefore not comparable.

The following table should be read in conjunction with the sections entitled “Capitalization” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our historical consolidated financial statements and the accompanying notes included elsewhere in this prospectus.

	Fiscal Year					Thirty-Nine Weeks Ended	
	Successor				Predecessor	Successor	
	2019 (52 weeks ended February 1, 2020 )	2018 (52 weeks ended February 2, 2019)	2017 (53 weeks ended February 3, 2018)	2016 (52 weeks ended January 28, 2017)	2015 (52 weeks ended January 30, 2016)	October 31, 2020	November 2, 2019
<b>(dollars in thousands)</b>							
<b>Statement of operations data:</b>							
Net sales	\$ 4,434,514	\$ 4,392,173	\$ 4,527,630	\$ 4,493,753	\$ 4,412,293	\$ 3,582,489	\$ 3,285,858
Cost of sales	2,527,995	2,487,334	2,580,090	2,574,322	2,521,936	2,045,016	1,877,237
Gross profit	1,906,519	1,904,839	1,947,540	1,919,431	1,890,357	1,537,473	1,408,621
SG&A expenses	1,776,919	1,746,387	1,734,690	1,617,667	1,563,052	1,410,024	1,339,154
Goodwill & indefinite-lived intangible impairment	19,000	373,172	517,791	—	—	—	—
Operating income (loss)	110,600	(214,720)	(304,941)	301,764	327,305	127,449	69,467
Interest income	(335)	(420)	(427)	(99)	(82)	(332)	(201)
Interest expense	253,018	243,744	206,795	228,134	161,254	169,096	192,222

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	Fiscal Year					Thirty-Nine Weeks Ended	
	Successor				Predecessor	Successor	
	2019 (52 weeks ended February 1, 2020 )	2018 (52 weeks ended February 2, 2019)	2017 (53 weeks ended February 3, 2018)	2016 (52 weeks ended January 28, 2017)	2015 (52 weeks ended January 30, 2016)	October 31, 2020	November 2, 2019
<b>(dollars in thousands)</b>							
Loss on extinguishment of debt	—	460	—	13,002	50,624	—	—
Acquisition expenses	—	—	—	—	75,559	—	—
(Loss) Income before income taxes and (income) loss from equity method investees	(142,083)	(458,504)	(511,309)	60,727	39,950	(41,315)	(122,554)
Income tax (benefit) expense	(35,658)	(45,840)	(181,678)	22,392	20,399	(13,537)	(28,263)
(Income) loss from equity method investees	(2,441)	1,124	(1,391)	(848)	(930)	(2,952)	(326)
Net (loss) income	(103,984)	(413,788)	(328,240)	39,183	20,481	(24,826)	(93,965)
Net loss attributable to noncontrolling interest(1)	(8,111)	—	—	—	—	(4,502)	(5,263)
Net (loss) income attributable to members	<u>\$ (95,873)</u>	<u>\$ (413,788)</u>	<u>\$ (328,240)</u>	<u>\$ 39,183</u>	<u>\$ 20,481</u>	<u>\$ (20,324)</u>	<u>\$ (88,702)</u>
<b>Per unit data:</b>							
(Loss) income per unit attributable to Common Series A and Common Series B members, basic and diluted	\$ (0.07)	\$ (0.28)	\$ (0.23)	\$ 0.03	\$ —	\$ (0.01)	\$ (0.06)
Weighted average units used in computing loss per unit attributable to Common Series A and Common Series B members	1,457,985	1,457,164	1,457,442	1,458,405	—	1,458,558	1,457,794
Cash dividends declared per common unit	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —
Pro forma net (loss) income per Class A common stock and Class B-1 common stock attributable to stockholder (2)							
Basic							
Diluted							
<b>Statement of cash flow data:</b>							
Net cash provided by (used in)							
Operating activities	\$ 110,337	\$ 203,202	\$ 246,454	\$ 282,606	\$ 206,543	\$ 201,480	\$ (34,248)
Investing activities	(139,041)	(142,682)	(87,657)	(169,330)	(2,569,635)	(95,920)	(119,220)
Financing activities	(3,071)	(32,099)	(97,800)	(97,513)	2,246,064	(51,124)	117,595
Net (decrease) increase in cash, cash equivalents, and restricted cash	<u>\$ (31,775)</u>	<u>\$ 28,421</u>	<u>\$ 60,997</u>	<u>\$ 15,763</u>	<u>\$ (117,028)</u>	<u>\$ 54,436</u>	<u>\$ (35,873)</u>

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	Fiscal Year					Thirty-Nine Weeks Ended	
	Successor				Predecessor	Successor	
	2019 (52 weeks ended February 1, 2020 )	2018 (52 weeks ended February 2, 2019)	2017 (53 weeks ended February 3, 2018)	2016 (52 weeks ended January 28, 2017)	2015 (52 weeks ended January 30, 2016)	October 31, 2020	November 2, 2019
<b>(dollars in thousands)</b>							
<b>Balance Sheet data (end of period):</b>							
Cash and cash equivalents	\$ 148,785	\$ 180,649	\$ 151,754	\$ 90,551	\$ 74,824	\$ 195,832	\$ 145,815
Merchandise inventories, net	478,968	470,144	470,789	464,222	469,333	541,352	519,212
Working (deficit) capital(3)	(130,936)	218,138	232,742	191,630	169,838	(59,702)	(40,313)
Fixed assets, net	656,256	683,547	737,542	833,731	857,146	618,930	683,870
Total assets(4)	6,155,118	4,924,379	5,384,262	5,905,953	5,941,667	6,203,814	6,276,342
Total debt(5)	3,270,131	3,239,167	3,242,719	3,316,415	3,372,642	3,237,664	3,381,217
Total equity	561,061	637,909	1,045,645	1,368,753	1,333,702	545,617	566,192
<b>Other Financial and Operational Data:</b>							
Comparable sales increase (decrease)(6)	3.9%	(1.1)%				9.6%	4.0%
Total pet care centers at end of period	1,478	1,490				1,468	1,488
Total pet care centers with veterinarian practices at end of period	81	39				105	70
Total Active Customers (in thousands)(7)	19,651	19,075				21,462	19,727
Total Active Multi-Channel Customers (in thousands)(8)	3,024	2,786				3,531	3,000
Net loss margin(9)	(2.3)%	(9.4)%				(0.7)%	(2.9)%
Adjusted EBITDA(10)	\$ 424,547	\$ 437,836				\$ 335,749	\$ 292,628
Adjusted EBITDA margin(10)	9.6%	10.0%				9.4%	8.9%

- (1) The non-controlling interest represents 50% of the net loss of our veterinary joint venture, which is a variable interest entity for which we were deemed to be the primary beneficiary beginning in Fiscal 2019 due to revisions made in the joint operating agreement. Prior to Fiscal 2019, the joint venture was accounted for as an equity method investment.
- (2) Assumes conversion of PET Acquisition LLC units into shares of our common stock in the Corporate Conversion. Class B-2 common stock is not allocated earnings on a pro forma, per share basis because it only has nominal economic rights.
- (3) Working (deficit) capital is defined as current assets minus current liabilities.
- (4) We adopted ASU 2016-02, "Leases (Topic 842)," and related amendments as of February 3, 2019, the beginning of Fiscal 2019 on a prospective basis and therefore, fiscal years prior to 2019 have not been revised.
- (5) Total debt includes obligations under the senior secured credit facilities, the Floating Rate Senior Notes, the 3.00% Senior Notes, and finance leases. Amounts are reflected net of unamortized discounts and debt issuance costs.
- (6) Comparable sales growth is for our total enterprise. A new location or digital site is included in comparable sales beginning on the first day of the fiscal month following 12 full fiscal months of operation and is subsequently compared to like time periods from the previous year. Relocated stores become comparable stores on the first day of operation if the original store was open longer than 12 full fiscal months. If, during the period presented, a store was closed, sales from that store are included up to the first day of the month of closing. Additionally, our comparable sales exclude the impact of the wind-down and migration of our Drs. Foster & Smith digital site to Petco.com in Fiscal 2018 and Fiscal 2019. Please read "Management's Discussion and Analysis of Financial Condition and Results of Operations—How We Assess the Performance of Our Business."
- (7) As of the last date of a reporting period, Total Active Customers is defined as the total number of trackable unique customers (including Pals Loyalty members) that have made at least one transaction with us, across any of our channels, during the prior 12-month period.
- (8) As of the last date of a reporting period, Total Active Multi-Channel Customers is defined as the total number of trackable unique customers that have transacted with us across at least two of our channels during the prior 12-month period.
- (9) Net loss margin is defined as net loss divided by net sales.
- (10) Adjusted EBITDA and Adjusted EBITDA Margin, are non-GAAP financial measures. Please read "—Non-GAAP Financial Measures" for additional information regarding these non-GAAP financial measures and a reconciliation to the most comparable GAAP measures of each.

## Non-GAAP Financial Measures

### **Adjusted EBITDA and Adjusted EBITDA Margin**

We present Adjusted EBITDA, a non-GAAP financial measure, because we believe it enhances an investor's understanding of our financial and operational performance by excluding certain material non-cash items, unusual or non-recurring items that we do not expect to continue in the future, and certain other adjustments we believe are or are not reflective of our ongoing operations and performance. Adjusted EBITDA enables operating performance to be reviewed across reporting periods on a consistent basis. We use Adjusted EBITDA as one of the principal measures to evaluate and monitor our operating financial performance and to compare our performance to others in our industry. We also use Adjusted EBITDA in connection with establishing discretionary annual incentive compensation targets, to make budgeting decisions, to make strategic decisions regarding the allocation of capital, and to report our quarterly results as defined in our debt agreements, although under such agreements the measure is calculated differently and is used for different purposes.

We define Adjusted EBITDA as net (loss) income attributable to members excluding:

- interest expense, net and losses on debt extinguishment;
- income tax (benefit) expense;
- depreciation, amortization, asset impairments, and write-offs;
- (income) loss from equity method investees;
- goodwill and indefinite-lived intangible impairment;
- equity-based compensation;
- pre-opening and closing expenses;
- non-cash occupancy-related costs;
- severance expenses; and
- other non-recurring costs.

We believe it is useful to exclude these items that are non-cash or non-routine in nature, as they are not components of our business operations and may not directly correlate to the underlying performance of our business. In addition, we add back 50% of EBITDA related to our 50% owned veterinary joint venture for years prior to Fiscal 2019 (in Fiscal 2019, we began consolidating this joint venture in our financial results) and our 50% owned Mexico joint venture for all periods. We believe it is useful to include our portion of the results of these joint ventures, as it reflects the performance of key components of our business, including veterinary services and international operations, and presents more comparable EBITDA-based financial information rather than (income) loss on a standalone basis. Our portion of the results of these joint ventures has limitations as an analytical tool, including that amounts shown on the individual line items do not necessarily represent our legal claim to the assets and liabilities, or the revenues and expenses presented. In addition, other companies may calculate such proportionate results differently, which reduces their comparability. Further, we define Adjusted EBITDA Margin as Adjusted EBITDA divided by net sales.

Adjusted EBITDA is not a substitute for net (loss) income, the most comparable GAAP measure, and is subject to a number of limitations as a financial measure, so it should be used in conjunction with GAAP financial measures and not in isolation. There can be no assurances that we will not modify the presentation of Adjusted EBITDA in the future. In addition, other companies in our industry may define Adjusted EBITDA differently, limiting its usefulness as a comparative measure.

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The table below presents a reconciliation of net loss attributable to members to Adjusted EBITDA and Adjusted EBITDA Margin after taking into account net sales for the periods presented:

	Fiscal Year		Thirty-Nine Weeks Ended	
	2019 (52 weeks ended February 1, 2020)	2018 (52 weeks ended February 2, 2019)	October 31, 2020	November 2, 2019
<b>(dollars in thousands)</b>				
<b>Reconciliation of Net Loss Attributable to Members to Adjusted EBITDA</b>				
Net loss attributable to members	\$ (95,873)	\$ (413,788)	\$ (20,324)	\$ (88,702)
Interest expense, net	252,683	243,324	168,764	192,021
Income tax benefit	(35,658)	(45,840)	(13,537)	(28,263)
Depreciation and amortization	173,544	186,997	128,961	129,600
(Income) loss from equity method investees	(2,441)	1,124	(2,952)	(326)
Loss on debt extinguishment	—	460	—	—
Goodwill & indefinite-lived intangible impairment	19,000	373,172	—	—
Asset impairment and write offs	11,871	17,677	7,651	9,256
Equity-based compensation	9,489	8,452	7,464	7,002
Veterinary Joint Venture EBITDA(1)	—	(4,135)	—	—
Mexico Joint Venture EBITDA(2)	14,227	7,614	12,419	9,440
Store pre-opening expenses	10,325	6,551	7,010	8,045
Store closing expenses	4,068	16,484	5,947	1,528
Severance	10,164	6,699	3,759	8,562
Non-cash occupancy-related costs(3)	32,763	4,339	17,089	26,006
Non-recurring costs(4)	20,385	28,706	13,498	18,459
Adjusted EBITDA	<u>\$ 424,547</u>	<u>\$ 437,836</u>	<u>\$ 335,749</u>	<u>\$ 292,628</u>
Net Sales	4,434,514	4,392,173	3,582,489	3,285,858
Adjusted EBITDA Margin	<u>9.6%</u>	<u>10.0%</u>	<u>9.4%</u>	<u>8.9%</u>

- (1) Veterinary Joint Venture EBITDA represents 50% of the entity's operating results for years prior to Fiscal 2019, when the joint venture was accounted for as an equity method investment. Beginning in Fiscal 2019, this joint venture is now included in our consolidated results with the 50% portion we do not own being adjusted as a noncontrolling interest. We believe it is useful to include our portion of the results of this joint venture prior to Fiscal 2019, as it best reflects the actual performance of our overall business and improves comparability of our financial information. The Veterinary Joint Venture EBITDA is aligned with the portion of such entity's net loss that is included in (income) loss from equity method investees in the financial statements because such entity does not have similar items to those excluded in our calculation of Adjusted EBITDA.
- (2) Mexico Joint Venture EBITDA represents 50% of the entity's operating results for all years, as adjusted to reflect the results on a basis comparable to our Adjusted EBITDA. In the financial statements, this joint venture is accounted for as an equity method investment, and reported net of depreciation and income taxes. Because such a presentation would not reflect the adjustments made in our calculation of Adjusted EBITDA, we include our 50% interest in our Mexico Joint Venture on an Adjusted EBITDA basis to ensure consistency. The table below presents a reconciliation of Mexico Joint Venture net income to Mexico Joint Venture EBITDA:

	Fiscal Year		Thirty-Nine Weeks Ended	
	2019 (52 weeks ended February 1, 2020)	2018 (52 weeks ended February 2, 2019)	October 31, 2020	November 2, 2019
<b>(dollars in thousands)</b>				
Net Income	\$ 8,662	\$ 6,902	\$ 7,165	\$ 4,560
Depreciation	11,298	4,532	8,771	8,022
Income tax expense	4,107	3,673	4,527	3,225
Foreign currency gain (loss)	(406)	164	867	(82)
Interest expense (income), net	4,793	(43)	3,508	3,155
EBITDA	<u>\$ 28,454</u>	<u>\$ 15,228</u>	<u>\$ 24,838</u>	<u>\$ 18,880</u>
50% of EBITDA	<u>\$ 14,227</u>	<u>\$ 7,614</u>	<u>\$ 12,419</u>	<u>\$ 9,440</u>

- (3) Non-cash occupancy-related costs include the difference between cash and straight-line rent for all periods. Beginning in Fiscal 2019, in connection with our adoption of the lease accounting standard, favorable lease rights of \$125.2 million and unfavorable lease rights of \$30.8 million were reclassified from intangible assets and other long-term liabilities, respectively, to right-of-use lease assets and the related amortization is now included in non-cash occupancy costs. In addition to the reclassification, the amortization period of these lease right assets has decreased to align with the terms of the underlying right-of-use lease assets, thus resulting in an acceleration of expense compared to prior years. The overall adoption of the

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lease accounting standard did not have an impact on our Adjusted EBITDA, as this increase in addback was completely offset in other impacted lines such as lower depreciation and amortization, asset impairments and write-offs, and store closing expenses.

- (4) Non-recurring costs include: unrealized fair market value adjustments on non-operating investments; class action settlements and related legal fees; one-time consulting and other costs associated with our strategic transformation initiatives; discontinuation and liquidation costs; and costs related to this offering. While we have incurred significant costs associated with the COVID-19 pandemic during the thirty-nine weeks ended October 31, 2020, we have not classified any of these costs as non-recurring due to the uncertainty surrounding the pandemic's length and long-term impact on the macroeconomic operating environment.

## 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 in conjunction with our historical consolidated financial statements and the accompanying notes included elsewhere in this prospectus. The discussion and analysis below contain certain forward-looking statements about our business and operations that are subject to the risks, uncertainties, and other factors described in the section entitled "Risk Factors," beginning on page 21, and elsewhere in this prospectus. These risks, uncertainties, and other factors could cause our actual results to differ materially from those expressed in, or implied by, the forward-looking statements. Please read the section entitled "Cautionary Note Regarding Forward-Looking Statements."*

### Overview

We are a beloved brand in the U.S. pet care industry with more than 55 years of service to pets and the people who love and care for them. Since our founding in 1965, we have been developing new standards in pet care, delivering comprehensive wellness solutions through our products and services, and creating communities that deepen the pet-parent bond. Over the last three years, we have transformed the business from a successful traditional retailer to a disruptive, fully-integrated, digital-focused provider of pet health and wellness offerings. We revamped our leadership team and invested over \$300 million to build out leading capabilities across e-commerce and digital, owned brands, data analytics, and a full suite of on-site services including veterinary care. Our investments have delivered a comprehensive, integrated, and technology-enabled ecosystem of channels and offerings, complemented by a rapid innovation capability that is disrupting the pet market and providing pet parents with a differentiated holistic solution for all their pet care needs.

Our go-to-market strategy is powered by a multi-channel platform that integrates our strong digital presence with our nationwide physical network. Our data-driven digital footprint, consisting of an entirely redesigned e-commerce site and personalized mobile app, delivers an exceptional customer experience and serves as a hub for pet parents to manage their pets' health, wellness, and merchandising needs, while enabling them to shop wherever, whenever, and however they want. By strategically leveraging our extensive physical network consisting of approximately 1,470 pet care centers located within three miles of 54% of our customers, we are able to offer our comprehensive product and service offering in a localized manner with a meaningful last-mile advantage over our competition. Through our connected platform, we serve our customers in a differentiated manner by offering the convenience of ship-from-store, BOPUS, and curbside pick-up. This integrated, multi-channel approach clearly resonates with our customers, as the number of customers who engage with us across multiple channels has grown by 20% over the last three years. Further, these multi-channel customers spend between 3x to 6x more with us compared to single-channel customers. In the last 12 months ended October 31, 2020, we achieved approximately 80% retention of our multi-channel customers.

Through our multi-channel platform, we provide a comprehensive offering of differentiated products and services that fulfill all the needs of pet parents and their pets. Our product offering leverages our owned brand portfolio and partnerships with premium third-party brands to deliver high quality food that avoids artificial ingredients, complemented by a wide variety of premium pet care supplies. We augment this premier product offering with a broad suite of professional services, including grooming as well as in-store and online training. Our service offering is further enhanced by a rapidly expanding, affordable veterinary service platform, which includes full-service veterinary hospitals, Vetco clinics, and tele-veterinarian services. In addition, we are increasingly linking our offerings with subscription programs such as membership and pet health insurance that create deeper engagement with our over 21 million Active Customers as of October 31, 2020, with our Pals loyalty program members accounting for approximately 80% of transactions in the thirty-nine weeks ended October 31, 2020. In addition to providing differentiated products and services, our over 23,000 knowledgeable, passionate partners provide important high-quality advice to our customers in our pet

care centers. With our integrated platform and comprehensive offering, we provide a complete pet health and wellness ecosystem that drives engagement across our enterprise and creates life-long customer relationships.

### **How We Assess the Performance of Our Business**

In assessing our performance, we consider a variety of performance and financial measures:

#### ***Comparable Sales***

Comparable sales is an important measure throughout the retail industry and includes both retail and digital sales of products and services. A new location or digital site is included in comparable sales beginning on the first day of the fiscal month following 12 full fiscal months of operation and is subsequently compared to like time periods from the previous year. Relocated stores become comparable stores on the first day of operation if the original store was open longer than 12 full fiscal months. If, during the period presented, a store was closed, sales from that store are included up to the first day of the month of closing. Additionally, our comparable sales exclude the impact of the wind-down and migration of our Drs. Foster & Smith digital site to Petco.com in Fiscal 2018 and Fiscal 2019. There may be variations in the way in which some of our competitors and other retailers calculate comparable sales. As a result, data in this prospectus regarding our comparable sales may not be comparable to similar data made available by other retailers.

Comparable sales allow us to evaluate how our overall ecosystem is performing by measuring the change in period-over-period net sales from locations and digital sites that have been open for the applicable period. We intend to improve comparable sales by continuing initiatives aimed to increase customer retention, frequency of visits, and basket size. General macroeconomic and retail business trends are a key driver of changes in comparable sales.

#### ***Adjusted EBITDA and Adjusted EBITDA Margin***

Adjusted EBITDA is defined as net loss attributable to members excluding:

- interest expense, net and losses on debt extinguishment;
- income tax (benefit) expense;
- depreciation, amortization, asset impairments, and write-offs;
- (income) loss from equity method investees;
- goodwill and indefinite-lived intangible impairment;
- equity-based compensation;
- pre-opening and closing expenses;
- non-cash occupancy-related costs;
- severance expenses; and
- other non-recurring costs.

We believe it is useful to exclude these items that are non-cash or non-routine in nature, as they are not components of our business operations and may not directly correlate to the underlying performance of our business. In addition, we add back 50% of EBITDA related to our 50% owned veterinary joint venture for years prior to Fiscal 2019 (in Fiscal 2019, we began consolidating this joint venture in our financial results) and our 50% owned Mexico joint venture for all periods. We believe it is useful to include our portion of the results of these joint ventures, as it reflects the performance of key components of our business, including veterinary services and international operations, and presents more comparable EBITDA-based financial information rather than (income) loss on a standalone basis.

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We define Adjusted EBITDA margin as Adjusted EBITDA divided by net sales. We expect adjusted EBITDA margin to improve over the long term. Please read “Selected Consolidated Financial and Other Data—Non-GAAP Financial Measures” for more information regarding our use of Adjusted EBITDA and Adjusted EBITDA Margin and a reconciliation to net (loss) income attributable to members, the most comparable GAAP measure.

### **Total Active Customers**

As of the last date of a reporting period, Total Active Customers is defined as the total number of trackable unique customers (including Pals Loyalty members) that have made at least one transaction with us, across any of our channels, during the prior 12-month period. We view the number of Total Active Customers as an indicator of our scale, the reach of our integrated platform, consumer awareness of our brand, and our growth.

### **Total Active Multi-Channel Customers**

As of the last date of a reporting period, Total Active Multi-Channel Customers is defined as the total number of trackable unique customers that have transacted with us across at least two of our channels during the prior 12-month period. For purposes of tracking these customers, we consider our channels to be our (1) pet care center merchandise, (2) e-commerce and digital, (3) grooming and training services, and (4) veterinary services including veterinary hospitals and Vetco clinics. We view the number of Total Active Multi-Channel Customers as an indicator of our ability to engage with customers both digitally and through our nationwide physical network, address customer product and service needs, and capture a greater share of wallet.

## **Factors Affecting Our Business**

We believe that our performance and future success depend on a number of factors that present significant opportunities for us but also pose risks and challenges, including those discussed below and in the section of this prospectus titled “Risk Factors.”

### **Pet Industry Trends**

The U.S. pet care industry is a large, attractive growth market experiencing a significant acceleration in response to multiple secular consumer themes. In 2020, the industry is estimated to serve more than 72 million households with pets, representing a total addressable market of \$97 billion. Due to its non-discretionary nature, the market has demonstrated a long-term track record of consistent growth and resilience throughout economic cycles. From 2020 to 2024, the industry is expected to grow at a 7% CAGR, driven by steady, predictable growth in the underlying pet population coupled with strong tailwinds associated with pet humanization and COVID-19.

### **Customer Pet Purchase Trends**

We have focused on building our complete pet care ecosystem to cover all the ways customers want to shop for their pet care needs. As we saw the major purchase trend shift and growth into areas like e-commerce, services, and veterinary care, we actively invested to build capabilities and offerings to effectively capitalize on the opportunity. Our business will be impacted by our ability to continue to understand and react to changing customer purchase trends.

### **Customer Acquisition, Retention, and Spend**

Our business is impacted by our ability to successfully attract new customers to any one of our channels, build their loyalty to engender return visits, and expand their spend with Petco across multiple purchase channels (e.g., pet care centers, e-commerce, and services) and categories (e.g.,

pet food, supplies, and companion animal). This is the primary focus of all our customer engagement efforts from digital, to performance marketing campaigns, to new product introductions, and to Petco partner cross-selling activities in pet care centers. The ability to convert more of our customers to loyal, multi-channel shoppers will affect business performance.

### ***Innovation and Transformation***

Our operating results over the last two years reflect significant investments made to support innovation and business transformation strategies. These investments include: digital and e-commerce integration and expansion; data analytical capabilities; veterinary services; marketing and advertising; and our owned brands. We also have developed advanced sales reporting that provides our pet care center General Managers and field leadership teams with data to track performance across multiple dimensions, identify opportunities, and execute strategies to drive incremental sales.

Specifically, some of these investments have included:

- Approximately \$185.1 million of capital investments in Fiscal 2019 and Fiscal 2018 in our new and existing pet care center locations, including the build-out of over 70 veterinary hospitals.
- Approximately \$106.8 million of capital investments in Fiscal 2019 and Fiscal 2018 related to digital and information technology, specifically the development of integration capabilities with our pet care center locations, our Petco App, and the development and deployment of data analytical and reporting capabilities.
- An \$18.1 million increase in advertising in Fiscal 2019 compared to Fiscal 2018, representing the strategic rightsizing of our go-forward advertising footprint. For the thirty-nine weeks ended October 31, 2020, advertising expenses increased \$56.9 million compared to the prior year period to further adapt our advertising footprint to support the acceleration of our e-commerce and digital sales growth.
- Over \$10.0 million investment in pet care center payroll-related costs in Fiscal 2019 related to comprehensive selling training to all partners, and to support and execute transformation initiatives.

While these investments provided a key foundation and drive increased sales, ongoing performance of the business will depend on our ability to leverage our existing distribution network and pet care center locations for product delivery and fulfillment, including implementing BOPUS and curbside pick-up, and build upon and enhance these efforts.

### ***Gross Margin and Expense Management***

Our operating results are impacted by our ability to convert revenue growth into higher gross margin and operating margin. The sales mix related to consumables, supplies and services, with services typically having lower margins, and customer shopping preferences impacting our gross margin results. We focus gross margin and expense management on achieving a balance between ensuring adequate resource spend to grow sales with attention to driving increased profitability. The business has successfully implemented cost optimization initiatives in the past and will continue to find opportunities to enhance profit margins and operate more efficiently in the future.

### ***Talent and Culture***

We see our Petco partners as the core to building a purpose-driven performance culture. Our business results rely on our ability to continually: add talented partners, specifically in our scaling business areas like e-commerce, veterinary care, and grooming and training services; provide the best tools, partner training, and competitive compensation to deliver higher sales and better customer experiences; and engender a positive, collaborative, and respectful working environment. Our Partners represent the strength of our brand every day and are key to ongoing growth.

## Impact of the COVID-19 Pandemic on Our Business

The ongoing COVID-19 pandemic has impacted every aspect of the economy, including employment, consumer spending patterns, living and working conditions, and the viability of certain business sectors. As an essential retailer, all of our pet care centers have remained open, as we are the grocery store, pharmacy, and doctor's office for many of our nation's pets. Market data indicates that with more of the working population staying home, there has been an increase in pet ownership and the percentage of disposable income spent on home-related goods and services, including pet care. This macroeconomic trend is favorably impacting our business results to date, but the possible sustained spread or resurgence of the pandemic, and any government response thereto, increases the uncertainty regarding future economic conditions that will impact our business in the future.

We have quickly adapted our business and operations since the start of the pandemic to ensure, first and foremost, the health and safety of our partners, the animals in our care, and the customers we serve. These adaptations include: providing additional paid-time off and four cycles of appreciation bonuses to our frontline partners; establishing a \$2.0 million employee support fund to assist our partners and their families impacted by the pandemic; investing in sanitation, plexiglass barriers, signage, and personal protective equipment; and adopting strict safety protocols that limit direct human interactions and promote social distancing, including temporarily reducing pet care center hours during the initial phase of the pandemic.

We were well-positioned to meet the increasing and evolving needs of pets and their parents at the onset of the pandemic. In March 2020, we experienced significant increases in customer pet food purchases, or pantry loading, and were able to maintain our in-stock levels for pet food products despite the sudden change in demand. As the months progressed, our sales growth shifted to our supplies category, due to an increase in pet ownership and shifts in disposable income spending toward pets. We deprioritized our companion animal business in the early months of the pandemic to enable our partners to focus on essential customer needs during reduced pet care center hours and to minimize the health and safety risk for our partners. As stay-at-home orders began to lift and pet care center hours normalized, we quickly accelerated companion animal sourcing to catch up with growing customer demands. In services, to ensure partner safety, we temporarily suspended our training services and vaccination clinic operations, and we reduced our grooming capacity while stay-at-home orders were in place. Although we had experienced increasing customer demand for services before the pandemic, sales attributable to such services declined significantly from March through May 2020 as a result of the suspension.

We have experienced a significant acceleration of our e-commerce business, particularly as it relates to the integrated offering with our pet care centers. Our ship-from-store capability enabled us to maintain regular shipping timelines during a period when the broader market experienced difficulties. We capitalized on our BOPUS capability and rolled out curbside pick-up in a matter of weeks, enabling us to get products to customers faster and at a higher margin than online retailers that incur costs to ship products to their customers. We have incurred additional expenses to support our e-commerce business and integrated pet care center offerings. While pet care center customer traffic spiked at the onset of the pandemic with food pantry loading then decreased significantly as stay-at-home orders were put in place, our pet care center performance has improved as customers benefit from the combination of our e-commerce and digital platform and our integrated pet care center locations offering both convenient order pick-up and essential pet services.

We have taken a number of precautionary measures to ensure financial flexibility and maximize liquidity. We drew \$250.0 million on the revolving credit facility in March 2020 given the uncertainty of the macroeconomic environment at the start of the pandemic, but as a result of our strong financial performance to-date, we have repaid the balance in full and have no amounts outstanding as of October 31, 2020. We temporarily suspended capital expenditures to preserve liquidity, but as our financial results surpassed earlier expectations, we have returned to our initial capital plan. In efforts to control expenses, we negotiated discounts and concessions with landlords and vendors, executed

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disciplined prioritization across corporate and store expenses, and temporarily furloughed or implemented temporary pay cuts for non-frontline partners.

We may need to make future adaptations to our business model and/or take other temporary or precautionary measures as a result of any possible sustained spread or resurgence of the pandemic. Any future actions will continue to prioritize the safety of our partners and customers while simultaneously focusing on the dynamic needs of our customers.

### **Significant Components of Results of Operations**

#### ***Net Sales***

Our net sales comprise gross sales of products and services, net of sales tax and certain discounts and promotions offered to our customers, including those offered under our customer loyalty programs. Net sales are driven by comparable sales, new pet center locations, and expanded offerings.

#### ***Cost of Sales and Gross Profit***

Gross profit is equal to our net sales minus our cost of sales. Gross profit rate measures gross profit as a percentage of net sales.

Our cost of sales includes the following types of expenses:

- direct costs net of vendor rebates, allowances, and discounts for products sold, including inbound freight charges;
- shipping and handling costs;
- inventory shrinkage costs and write-downs;
- payroll costs of pet groomers, trainers, veterinarians, and other direct costs of services; and
- costs associated with operating our distribution centers including payroll, occupancy costs and depreciation.

Our digital gross profit rate tends to be lower than the gross profit rate from sales in our pet care centers due to incremental costs associated with shipping and other expenses of delivery to customers. In addition, our gross profit rate tends to be lower for services than for products.

#### ***Selling, General, and Administrative Expense***

The following types of expenses are included in our selling, general, and administrative costs ("SG&A"):

- payroll costs of pet care center employees and management;
- store occupancy and utilities costs (including rent, depreciation, common area maintenance, and real estate taxes);
- other costs associated with store operations;
- credit and debit card fees and other third-party transaction fees like those charged by Paypal;
- store pre-opening and remodeling costs;
- advertising expenses; and
- general and administrative costs, including payroll and other costs associated with management and other support functions.

SG&A includes both fixed and variable costs and therefore is not directly correlated with net sales. We expect that our SG&A expenses will increase in future periods due to additional expenses we expect to incur as a result of being a public company, including stock-based compensation.

### ***Goodwill and Indefinite-Lived Intangible Impairment***

In connection with the Fiscal 2015 acquisition by our current Sponsors, we recorded goodwill of approximately \$3.0 billion and an indefinite-lived trade name asset of \$1.1 billion. We evaluate these assets for impairment annually and whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Please read the discussion of these assets under “Critical Accounting Policies and Estimates.”

### ***Interest Expense***

Our interest expense is primarily associated with the senior secured credit facilities, the Floating Rate Senior Notes, the 3.00% Senior Notes, and interest rate caps. Please read discussion under “—Liquidity and Capital Resources—Sources of Liquidity—Derivative Financial Instruments.”

### ***Income Tax Benefit***

Income taxes consist of an estimate of federal and state income taxes based on enacted federal and state tax rates, as adjusted for allowable credits, deductions, and the valuation allowance against deferred tax assets, as applicable.

### ***(Income) Loss from Equity Method Investees***

Our equity method investments prior to Fiscal 2019 consisted primarily of our 50% owned veterinary joint venture and our 50% owned Mexico joint venture. Beginning in Fiscal 2019, the veterinary joint venture is now included in our consolidated results. Please read “Net Loss Attributable to Non-controlling Interest” below for more information regarding our non-controlling interests.

### ***Net Loss Attributable to Non-controlling Interest***

The non-controlling interest represents 50% of the net loss of our veterinary joint venture, which is a variable interest entity for which we were deemed to be the primary beneficiary beginning in Fiscal 2019 due to revisions made in the joint operating agreement. Prior to Fiscal 2019, the veterinary joint venture was accounted for as an equity method investment.

## **Executive Summary**

Our business transformation initiatives, accelerated by an increase in pet ownership and a shift in customer discretionary spend on pets, have driven strong top- and bottom-line growth in our business. Comparing the first thirty-nine weeks of Fiscal 2020 and Fiscal 2019, we achieved the following results:

- increase in net sales from \$3.29 billion to \$3.58 billion, representing period-over-period growth of 9.0%;
- comparable sales growth of 9.6%;
- increase in operating income from \$69.5 million to \$127.4 million, representing period-over-period growth of 83.5%;
- a decrease in net loss attributable to members from \$(88.7) million to \$(20.3) million, representing a period-over-period improvement of 77.1%; and
- an increase in Adjusted EBITDA from \$292.6 million to \$335.7 million, representing period-over-period growth of 14.7%.

For a description of our non-GAAP measures and reconciliations to their most comparable U.S. GAAP measures, please read the section titled “Selected Historical Consolidated Financial Data—Non-GAAP Financial Measures.”

## Results of Operations

The following table summarizes our results of operations and the percent of net sales of line items included in our consolidated statements of operations:

	Fiscal Year		Thirty-Nine Weeks Ended	
	2019 (52 weeks ended February 1, 2020)	2018 (52 weeks ended February 2, 2019)	October 31, 2020	November 2, 2019
<b>Statements of Operations Data (dollars in thousands):</b>				
Net sales	\$ 4,434,514	\$ 4,392,173	\$ 3,582,489	\$ 3,285,858
Cost of sales	2,527,995	2,487,334	2,045,016	1,877,237
Gross profit	1,906,519	1,904,839	1,537,473	1,408,621
Selling, general, and administrative expenses	1,776,919	1,746,387	1,410,024	1,339,154
Goodwill and indefinite-lived intangible impairment	19,000	373,172	—	—
Operating income (loss)	110,600	(214,720)	127,449	69,467
Interest income	(335)	(420)	(332)	(201)
Interest expense	253,018	243,744	169,096	192,222
Loss on extinguishment of debt	—	460	—	—
Loss before income taxes and (income) loss from equity method investees	(142,083)	(458,504)	(41,315)	(122,554)
Income tax benefit	(35,658)	(45,840)	(13,537)	(28,263)
(Income) loss from equity method investees	(2,441)	1,124	(2,952)	(326)
Net loss	(103,984)	(413,788)	(24,826)	(93,965)
Net loss attributable to noncontrolling interest	(8,111)	—	(4,502)	(5,263)
Net loss attributable to members	<u>\$ (95,873)</u>	<u>\$ (413,788)</u>	<u>\$ (20,324)</u>	<u>\$ (88,702)</u>
	Fiscal Year	Fiscal Year	Thirty-Nine Weeks Ended	
	2019 (52 weeks ended February 1, 2020)	2018 (52 weeks ended February 2, 2019)	October 31, 2020	November 2, 2019
Net sales	100.0%	100.0%	100.0%	100.0%
Cost of sales	57.0	56.6	57.1	57.1
Gross profit	43.0	43.4	42.9	42.9
Selling, general and administrative expenses	40.1	39.8	39.4	40.8
Goodwill and indefinite-lived intangible impairment	0.4	8.5	—	—
Operating income (loss)	2.5	(4.9)	3.5	2.1
Interest income	(0.0)	(0.0)	(0.0)	(0.0)
Interest expense	5.7	5.5	4.7	5.9
Loss on extinguishment of debt	—	0.0	—	—
Loss before income taxes and (income) loss from equity method investees	(3.2)	(10.4)	(1.2)	(3.8)
Income tax benefit	(0.8)	(1.0)	(0.4)	(0.9)
(Income) loss from equity method investees	(0.1)	0.0	(0.1)	0.0
Net loss	(2.3)	(9.4)	(0.7)	(2.9)
Net loss attributable to noncontrolling interest	(0.2)	—	(0.1)	(0.2)
Net loss attributable to members	<u>(2.1)%</u>	<u>(9.4)%</u>	<u>(0.6)%</u>	<u>(2.7)%</u>
<b>Operational Data:</b>				
Comparable sales increase (decrease)	3.9%	(1.1)%	9.6%	4.0%

	Fiscal Year		Thirty-Nine Weeks Ended	
	2019 (52 weeks ended February 1, 2020)	2018 (52 weeks ended February 2, 2019)	October 31, 2020	November 2, 2019
Total pet care centers at end of period	1,478	1,490	1,468	1,488
Total pet care centers with veterinarian practices at end of period	81	39	105	70
Total Active Customers (in thousands)	19,651	19,075	21,462	19,727
Total Active Multi-Channel Customers (in thousands)	3,024	2,786	3,531	3,000
Net loss margin(1)	(2.3)%	(9.4)%	(0.7)%	(2.9)%
Adjusted EBITDA (in thousands)(2)	\$ 424,547	\$ 437,836	\$ 335,749	\$ 292,628
Adjusted EBITDA margin(2)	9.6%	10.0%	9.4%	8.9%

(1) Net loss margin is defined as net loss divided by net sales.

(2) Adjusted EBITDA and Adjusted EBITDA Margin are non-GAAP financial measures. Please read "Selected Historical Consolidated Financial Data—Non-GAAP Financial Measures" for additional information regarding these non-GAAP financial measures and a reconciliation to the most comparable GAAP measures of each.

### Thirty-nine weeks ended October 31, 2020 compared with thirty-nine weeks ended November 2, 2019

#### Net Sales and Comparable Sales

Net sales increased \$296.6 million, or 9.0%, to \$3.58 billion for the thirty-nine weeks ended October 31, 2020 compared to net sales of \$3.29 billion for the thirty-nine weeks ended November 2, 2019 driven by a 9.6% increase in our comparable sales. With our investments in our business over the past two years, we were, and continue to be, well-positioned to meet the increasing and evolving needs of pets and their parents. Our sales growth period-over-period was a result of these investments, coupled with an increase in pet ownership and a shift in consumer spending toward the pet category as a result of the COVID-19 pandemic. Our e-commerce and digital sales increased from 7.0% of total net sales for the thirty-nine weeks ended November 2, 2019 to 13.3% of total net sales for the thirty-nine weeks ended October 31, 2020 driven by a change in consumer shopping preferences. With an integrated offering that includes BOPUS, curbside pick-up, and ship-from-store, we were able to quickly get products to customers in a safe manner regardless of their delivery or pick-up preference.

Supplies and companion animal sales increased \$274.7 million due to increases in pet ownership and shifts in disposable income toward pets and represented 47.7% of sales in the thirty-nine weeks ended October 31, 2020 compared to 43.6% of sales in the thirty-nine weeks ended November 2, 2019. Dog and cat food sales increased \$24.2 million and represented 43.2% of sales in the thirty-nine weeks ended October 31, 2020 compared to 46.4% of sales in the thirty-nine weeks ended November 2, 2019. Services sales decreased \$13.6 million and represented 7.9% of sales in the thirty-nine weeks ended October 31, 2020 compared to 9.1% of sales in the thirty-nine weeks ended November 2, 2019. The decrease was due to the temporary suspension of our training services and vaccination clinic operations and reducing our grooming capacity while stay-at-home orders were in place to ensure the safety of our partners. Slightly offsetting these decreases was growth in our hospital business of \$33.3 million due to increases in comparable sales and the addition of 35 new hospitals period-over-period.

#### Cost of Goods Sold and Gross Profit

Gross profit increased \$128.9 million, or 9.1%, to \$1.54 billion for the thirty-nine weeks ended October 31, 2020 compared to gross profit of \$1.41 billion for the thirty-nine weeks ended November 2, 2019. As a percentage of sales, our gross profit rate was consistent at 42.9% for the thirty-nine weeks ended October 31, 2020 and November 2, 2019. The increase in gross profit was due to the overall

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increase in net sales. Gross profit rate was impacted by the shift in sales mix to our supplies category, which typically carries higher margins, from our services category, which typically carries lower margins during the thirty-nine weeks ended October 31, 2020. However, this increase was offset by the shift in sales to e-commerce, which typically carries lower margins than pet care center sales. E-commerce sales margins benefitted by the growth in BOPUS, curbside delivery, and ship-from-store, which typically carry higher margins as they reduce or eliminate shipping costs associated with online sales. Approximately 80% of Petco.com orders were fulfilled by our pet care centers during the thirty-nine weeks ended October 31, 2020.

Slightly offsetting the growth in gross profit period-over-period were COVID-related expenses of approximately \$5.3 million for appreciation bonuses for our frontline services partners, including groomers, trainers and veterinarians, and distribution center partners and approximately \$1.3 million due to increased sanitation costs at our distribution centers and for purchases of personal protective equipment.

### ***Selling, General and Administrative Expenses***

SG&A expenses increased \$70.9 million, or 5.3%, to \$1.41 billion for the thirty-nine weeks ended October 31, 2020 compared to \$1.34 billion for the thirty-nine weeks ended November 2, 2019. As a percentage of net sales, SG&A expenses decreased from 40.8% in the thirty-nine weeks ended November 2, 2019 to 39.4% in the thirty-nine weeks ended October 31, 2020. The increase in expense period-over-period was driven by a \$56.9 million increase in advertising expenses to support the acceleration of our e-commerce and digital sales growth; \$11.7 million of COVID-related appreciation bonuses for our frontline pet care center partners; \$9.3 million of COVID-related expenses for sanitation, safety-related costs, personal protective equipment and the establishment of our employee assistance fund; and \$6.1 million of expenses incurred in connection with the public offering. Slightly offsetting these increases was a decrease in pet care center payroll costs of \$12.7 million due to reduced pet care center hours and focus on essential selling activities during the early months of the pandemic.

### ***Interest Expense***

Interest expense decreased \$23.1 million, or 12.0%, to \$169.1 million in the thirty-nine weeks ended October 31, 2020 compared with \$192.2 million in the thirty-nine weeks ended November 2, 2019. The decrease was primarily driven by lower interest rates, slightly offset by an increase in our average revolver balance period-over-period. In March 2020, we borrowed \$250.0 million on the revolving credit facility as a precautionary measure given the uncertainty of the macroeconomic environment at the start of the COVID-19 pandemic. We subsequently repaid the amount in full and had no borrowings outstanding as of October 31, 2020. We expect that our interest expense will continue to decrease following the completion of this offering as we intend to use a portion of the net proceeds from this offering to redeem, after the Recapitalization, the remaining Floating Rate Senior Notes and the remainder of the proceeds, plus cash on hand, to repay a portion of the term loan facility.

### ***Income Tax Benefit***

Our effective tax rate was 41.0% for the thirty-nine weeks ended October 31, 2020, resulting in an income tax benefit of \$13.5 million, compared to an effective tax rate of 24.2% and income tax benefit of \$28.3 million in the thirty-nine weeks ended November 2, 2019. The increase in effective tax rate is driven by the remeasurement of deferred tax assets related to \$67.4 million of net operating losses available under the CARES Act that are expected to be carried back to fiscal year(s) before the U.S Tax Cuts and Jobs Act ("Tax Act") was enacted, which resulted in a benefit of \$8.5 million.

### ***Net Loss Attributable to Members***

Net loss attributable to members decreased \$68.4 million to \$20.3 million in the thirty-nine weeks ended October 31, 2020 compared with a net loss attributable to members of \$88.7 million in the thirty-nine weeks ended November 2, 2019. The improvement period-over-period was primarily driven by

higher gross margin of \$128.9 million and lower interest expense of \$23.1 million, slightly offset by higher SG&A costs of \$70.9 million and a lower income tax benefit of \$14.7 million.

### **Fiscal 2019 (52 weeks) compared with Fiscal 2018 (52 weeks)**

#### ***Net Sales and Comparable Sales***

Net sales increased \$42.3 million, or 1.0%, to \$4.43 billion for Fiscal 2019 compared to net sales of \$4.39 billion in Fiscal 2018 driven by a 3.9% increase in our comparable sales. Our sales growth year-over-year was a result of our overall pet care center sales performance, particularly our services, which increased \$57.8 million and represented 9.1% of our total sales in Fiscal 2019 compared to 7.9% of sales in Fiscal 2018. The increase in services as a percentage of total net sales was driven by our grooming business and our veterinary hospitals. We added 42 veterinary hospitals during Fiscal 2019 bringing our total number of hospitals to 81 as of the end of the year compared with 39 hospitals as of the end of Fiscal 2018. Dog and cat food sales increased \$8.7 million and remained a consistent percentage of our sales mix year-over-year. Slightly offsetting these increases was a decrease in our supplies and companion animal sales of \$29.1 million, which was primarily attributable to the wind-down and migration of our Drs. Foster & Smith digital site to Petco.com. As noted above, our comparable sales exclude sales related to the Drs. Foster & Smith digital site.

#### ***Cost of Goods Sold and Gross Profit***

Gross profit increased \$1.7 million, or 0.1%, to \$1.91 billion in Fiscal 2019 from gross profit of \$1.90 billion in Fiscal 2018. Our overall gross profit increase was driven by our comparable sales growth in Fiscal 2019 and lower distribution center costs of \$13.1 million driven by productivity enhancements and cost management initiatives, slightly offset by \$7.0 million in higher distribution freight costs due to rate and fuel increases year-over-year. As a percentage of sales, our gross profit rate decreased to 43.0% compared to 43.4% in Fiscal 2018. The decrease in gross profit rate was primarily a result of a shift in overall sales mix due to an increase in services revenue, which typically carries lower margins. Slightly offsetting the decrease in gross profit rate was margin improvement due to an increase in sales of our owned brands, which carry higher gross margins and surpassed \$1.0 billion in annual sales in Fiscal 2019. Our owned brand food and supplies represented 27.1% of merchandise sales in Fiscal 2019 compared to 24.4% of merchandise sales in Fiscal 2018.

#### ***Selling, General and Administrative Expenses***

SG&A expenses increased \$30.5 million, or 1.7%, to \$1.78 billion in Fiscal 2019 compared to \$1.75 billion in Fiscal 2018. As a percentage of net sales, SG&A expenses increased from 39.8% in Fiscal 2018 to 40.1% in Fiscal 2019. The increase is primarily driven by: higher advertising expense of \$18.1 million due to investments in right-sizing our advertising footprint; a \$12.0 million increase occupancy-related costs primarily due to an acceleration of non-cash lease rights expense as a result of adopting the lease accounting standard in Fiscal 2019; \$12.0 million of hospital and general support costs associated with our veterinary joint venture that we began consolidating in Fiscal 2019; and an \$11.0 million increase in pet care center payroll-related costs driven by investments in connection with our retail transformation initiative. Slightly offsetting these increases was lower depreciation and amortization expense of \$13.5 million due to more assets becoming fully depreciated and \$5.0 million in proceeds from the settlement of a legal claim.

#### ***Goodwill and Indefinite-lived Intangible Impairment***

Our annual impairment test in Fiscal 2019 indicated that the fair value of our single reporting unit exceeded the carrying value, and therefore no goodwill impairment charge was recorded. In Fiscal 2018, our annual impairment test resulted in a charge of \$290.2 million driven by a combination of market conditions, increased competition from online competitors, and decreased financial performance.

The annual impairment analysis of our indefinite-lived trade name asset resulted in impairment charges of \$19.0 million and \$83.0 million in Fiscal 2019 and Fiscal 2018, respectively, driven by a

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combination of market conditions, increased competition from online competitors, and decreased financial performance.

### **Interest Expense**

Interest expense increased \$9.3 million, or 3.8%, to \$253.0 million in Fiscal 2019 compared with \$243.7 million in Fiscal 2018. The increase in expense was primarily driven by higher interest rates and a higher average revolver balance year-over-year.

### **Income Tax Benefit**

Our effective tax rate was 27.3% in Fiscal 2019, resulting in an income tax benefit of \$35.7 million, compared to an effective tax rate of 9.9% and income tax benefit of \$45.8 million in Fiscal 2018. The increase in our effective tax rate in Fiscal 2019 was primarily due to the non-deductible goodwill impairment charge impacting our rate in Fiscal 2018. The lower effective tax rate in Fiscal 2018 was primarily due to the Tax Act that was enacted in December 2017.

### **Net Loss Attributable to Members**

Net loss attributable to members decreased \$317.9 million to \$95.9 million in Fiscal 2019 compared with a net loss of \$413.8 million in Fiscal 2018. The improvement year-over-year was primarily driven by lower goodwill and indefinite-lived intangible impairment of \$354.2 million and leverage in our SG&A corporate support costs, slightly offset by planned increases in advertising and investments to support our transformation initiatives in-store operations, grooming, and veterinary expansion.

## **Liquidity and Capital Resources**

### **Overview**

Our primary sources of liquidity are funds generated by operating activities and borrowings from the revolving credit facility. Our ability to fund our operations, to make planned capital investments, to make scheduled debt payments and to repay or refinance indebtedness depends on our future operating performance and cash flows, which are subject to prevailing economic conditions and financial, business, and other factors, some of which are beyond our control. Cash and cash equivalents totaled \$195.8 million as of October 31, 2020. We believe that our current resources, together with anticipated cash flows from operations and borrowing capacity under the revolving credit facility will be sufficient to finance our operations, meet our current debt obligations, and fund anticipated capital investments for the next 12 months. We may, however, seek additional financing to fund future growth or refinance our existing indebtedness through the debt capital markets, but we cannot be assured that such financing will be available on favorable terms, or at all.

### **Cash Flows**

The following table summarizes our consolidated cash flows:

	Fiscal Year		Thirty-Nine Weeks Ended	
	2019 (52 weeks ended February 1, 2020)	2018 (52 weeks ended February 2, 2019)	October 31, 2020	November 2, 2019
(dollars in thousands)				
<b>Total cash provided by (used in):</b>				
Operating activities	\$ 110,337	\$ 203,202	\$ 201,480	\$ (34,248)
Investing activities	(139,041)	(142,682)	(95,920)	(119,220)
Financing activities	(3,071)	(32,099)	(51,124)	117,595
(Decrease) increase in cash, cash equivalents and restricted cash	<u>\$ (31,775)</u>	<u>\$ 28,421</u>	<u>\$ 54,436</u>	<u>\$ (35,873)</u>

### **Operating Activities**

Our primary source of operating cash is sales of products and services to customers, which are substantially all on a cash basis and therefore provide us with a significant source of liquidity. Our primary uses of cash in operating activities include purchases of inventory; freight and warehousing costs; employee-related expenditures; occupancy-related costs for our pet care centers, distribution centers and corporate support centers; credit card fees; interest under our debt agreements; and marketing expenses. Net cash provided by operating activities is impacted by our net loss adjusted for certain non-cash items, including: depreciation, amortization, impairments and write-offs; amortization of debt discounts and issuance costs; deferred income taxes; equity-based compensation; impairments of goodwill and intangible assets; and the effect of changes in operating assets and liabilities.

Net cash provided by operating activities was \$201.5 million in the thirty-nine weeks ended October 31, 2020 compared with net cash used in operating activities of \$34.2 million in the thirty-nine weeks ended November 2, 2019. The increase was driven by net sales growth of \$296.6 million period-over-period driven by our strategic investments, the increase in pet ownership and shift in consumer spending toward the pet category as a result of the COVID-19 pandemic. A decrease in cash payments for interest of \$43.6 million driven by the timing of quarterly payments and lower interest rates, and a \$28.6 million CARES Act deferral of the employer portion of certain payroll taxes also contributed to the increase. This was offset by an increase in cash paid for advertising of \$50.4 million, a \$33.8 million increase in cash paid for shipping costs on higher e-commerce and digital sales, \$27.6 million in COVID-19 related expenses, a \$10.3 million increase in legal and professional fees primarily related to the public offering, and the timing and volume of inventory purchases.

Net cash provided by operating activities was \$110.3 million in Fiscal 2019 compared with \$203.2 million in Fiscal 2018. This was driven by a timing-related decrease of \$25.0 million in cash collections on trade accounts receivable, \$22.3 million in planned increases in cash paid for advertising to support our transformation initiatives, and \$14.8 million of net cash used in operating activities by our veterinary joint venture, which we began consolidating beginning in Fiscal 2019. Increases of \$4.4 million in cash paid for interest and \$3.7 million in cash paid for income taxes also contributed to the decrease. The remaining decrease is primarily due to changes in other assets and liabilities, specifically the timing of inventory purchases and payments on accounts payable.

### **Investing Activities**

Cash used in investing activities consists primarily of capital expenditures, which in Fiscal 2019 and Fiscal 2018 primarily supported our transformation initiatives. Net cash used in investing activities was \$95.9 million and \$119.2 million for the thirty-nine weeks ended October 31, 2020 and November 2, 2019, respectively. The decrease in capital spend period-over-period was due to a strategic decision to temporarily suspend capital expenditures in the early months of the COVID pandemic to preserve liquidity given the uncertainty in the macroeconomic environment. Our capital expenditures resumed as our operations stabilized and financial results improved, and for Fiscal 2020, we now expect to incur capital expenditures as originally planned.

Net cash used in investing activities was \$139.0 million in Fiscal 2019 compared with \$142.7 million in Fiscal 2018 and related primarily to capital expenditures. Offsetting our cash used for capital expenditures in Fiscal 2019 was proceeds from the sale-leaseback of our San Antonio corporate support center, for which we received net proceeds of \$18.5 million. The sale-leaseback enabled us to enhance our liquidity and fund investments to support our strategic growth and transformation initiatives.

The majority of our capital expenditures are discretionary in nature and made to expand our business. In Fiscal 2020, we expect to spend approximately \$165.0 million to \$180.0 million in capital expenditures.

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Capital expenditures by category during the periods set forth below are as follows:

	Fiscal Year			Thirty-Nine Weeks Ended	
	2020 Estimate (52 weeks ending January 30, 2021)	2019 (52 weeks ended February 1, 2020)	2018 (52 weeks ended February 2, 2019)	October 31, 2020	November 2, 2019
(dollars in thousands)					
New and existing pet care center locations	\$ 95,000 – 100,000	\$ 100,394	\$ 84,671	\$ 54,757	\$ 80,906
Digital and Information technology	65,000 – 70,000	51,358	55,465	35,379	34,713
Supply chain and other	5,000 – 10,000	5,154	7,927	6,153	3,581
Total capital expenditures	<u>\$ 165,000 – 180,000</u>	<u>\$ 156,906</u>	<u>\$ 148,063</u>	<u>\$ 96,289</u>	<u>\$ 119,200</u>

### **Financing Activities**

Financing activities primarily consist of borrowings and paydowns on the revolving credit facility to support the working capital needs of the business and principal payments on the term loan facility of \$25.3 million per year.

Net cash used in financing activities was \$51.1 million for the thirty-nine weeks ended October 31, 2020 and primarily consisted of term loan principal payments of \$18.9 million and net payments on the revolving credit facility of \$29.0 million. At the start of the COVID pandemic in March 2020, we took a precautionary draw on the revolving credit facility of \$250.0 million. As operations stabilized and financial results improved, the balance was repaid in full and no amounts were outstanding as of October 31, 2020.

Net cash provided by financing activities was \$117.6 million for the thirty-nine weeks ended November 2, 2019 and primarily consisted of term loan principal payments of \$18.9 million and net borrowings on the revolving credit facility of \$141.0 million to support the working capital needs of the business. The outstanding balance on the revolving credit facility was \$141.0 million as of November 2, 2019.

Net cash used in financing activities was \$3.1 million in Fiscal 2019 and primarily consisted of term loan principal payments of \$25.3 million and net borrowings on the revolving credit facility of \$29.0 million to support the working capital needs of the business. The outstanding balance on the revolving credit facility was \$29.0 million as of February 1, 2020.

Net cash used in financing activities was \$32.1 million in Fiscal 2018 and primarily consisted of term loan principal payments of \$25.3 million. No amounts were outstanding on the revolving credit facility as of February 2, 2019.

### **Sources of Liquidity**

#### **Senior Secured Credit Facilities**

Petco Animal Supplies has a \$2,525.0 million term loan facility maturing on January 26, 2023, which was most recently amended on January 27, 2017, and a revolving credit facility, providing for senior secured financing of up to \$500.0 million expiring on the earlier of 91 days prior to the maturity of the term loan facility (currently October 27, 2022) or five years from the most recent amendment, subject to a borrowing base. The term loan facility and the revolving credit facility are collectively referred to as the “senior secured credit facilities.”

As of October 31, 2020, the outstanding principal balance of the term loan facility was \$2,405.1 million (\$2,359.0 million, net of the unamortized discount and debt issuance costs). Interest

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under the term loan facility is, at our option, the bank's alternative base rate ("ABR") or LIBOR, adjusted for statutory reserve requirements ("Adjusted LIBOR"), subject to a 1.00% floor, payable upon maturity of the LIBOR contract, in either case, plus the applicable rate. The ABR is the greater of the bank prime rate, federal funds effective rate plus 0.5%, or the LIBOR quoted rate plus 2.0%. The applicable rate is 2.25% per annum for an ABR loan or 3.25% per annum for an Adjusted LIBOR loan. Additionally, when Petco Animal Supplies' senior secured first lien net leverage ratio falls below 4.00, each of the applicable rate options will be reduced by 0.25%. Principal payments under the term loan facility are \$6.3 million quarterly.

As of October 31, 2020, no amounts were outstanding under the revolving credit facility and \$390.2 million remains available, which is net of \$61.5 million of outstanding letters of credit issued in the normal course of business and a \$48.3 million borrowing base reduction for a shortfall in qualifying assets, net of reserves. The principal qualifying assets in our borrowing base are inventory and credit and debit card receivables.

The revolving credit facility has availability up to \$500.0 million and a \$150.0 million letter of credit sub-facility. The availability is limited to a borrowing base, which allows borrowings of up to 90% of eligible accounts receivable plus 90% of the net orderly liquidation value of eligible inventory plus up to \$50.0 million of qualified cash of Petco Animal Supplies to which Petco Animal Supplies and the Guarantors have no access, less reserves as determined by the administrative agent. Letters of credit reduce the amount available to borrow under the revolving credit facility by their face value.

Interest on the revolving credit facility is based on either ABR or Adjusted LIBOR subject to a floor of 0%, in either case, plus an applicable margin. The applicable margin is currently equal to 25 basis points in the case of ABR loans and 125 basis points in the case of Adjusted LIBOR loans. The applicable margin is adjusted quarterly based on the average historical excess availability as a percentage of the Line Cap, which represents the lesser of the aggregate revolving credit facility and the borrowing base, as follows:

<u>Average Historical Excess Availability</u>	<u>Applicable Margin for Adjusted LIBOR Loans</u>	<u>Applicable Margin for ABR Loans</u>
Less than 33.3% of the Line Cap	1.75%	0.75%
Less than 66.7% but greater than or equal to 33.3% of the Line Cap	1.50%	0.50%
Greater than or equal to 66.7% of the Line Cap	1.25%	0.25%

The revolving credit facility is subject to an unused commitment fee. If the actual daily utilized portion exceeds 50%, the unused commitment fee is 0.25%. Otherwise, the unused commitment fee is 0.375% and is not dependent upon excess availability.

The obligations under the senior secured credit facilities are secured by substantially all of the personal property assets of Petco Animal Supplies with differing priority rights to the various personal property assets ascribed to each facility. Both credit facility agreements, while not identical, contain certain affirmative and negative covenants related to indebtedness, liens, fundamental changes in the business, investments, restricted payments and agreements, and a fixed charge coverage ratio, among other things.

The credit agreements governing the senior secured credit facilities contain customary default provisions including, among others, the failure to make payments when due, defaults under other material indebtedness, non-compliance with covenants, change of control and bankruptcy, the occurrence of any of which would limit our ability to draw on the revolving credit facility and could result in the applicable lenders under the senior secured credit facilities accelerating the maturity of such indebtedness and foreclosing upon the collateral pledged thereunder.

### **Derivative Financial Instruments**

In March 2016, we entered into a series of five interest rate cap agreements with four counterparties totaling \$1,950.0 million to limit the maximum interest rate on a portion of our variable-rate debt and limit our exposure to interest rate variability when three-month LIBOR exceeds 2.25%.

Terms of our interest rate caps and their fair values as of October 31, 2020 are as follows (in thousands):

<b>Notional amount</b>	<b>Effective date</b>	<b>Expiration date</b>	<b>Fair Value</b>
\$ 975,000	January 31, 2017	January 31, 2021	\$ (720)
243,750	January 31, 2017	January 31, 2021	(168)
243,750	January 31, 2017	January 31, 2021	(173)
243,750	January 31, 2017	January 31, 2021	(168)
243,750	January 31, 2017	January 31, 2021	(165)
<u>\$ 1,950,000</u>			<u>\$ (1,394)</u>

Although we are exposed to credit loss in the event of nonperformance by our counterparties, credit risk is considered limited due to the credit ratings of the counterparties and the use of a master netting agreement, which permits the netting of derivative payables and receivables. We have not historically incurred, and do not expect to incur in the future, any losses as a result of counterparty default. The notional amount of our outstanding derivatives is not an indicator of the magnitude of potential exposure.

The interest rate cap agreements contain provisions that would be triggered in the event we default on our debt agreements, which in turn could cause ineffectiveness or termination of the underlying cap agreements. As of October 31, 2020, no events of default have occurred. There is no collateral posting requirement outside the provisions in the debt agreements.

### **3.00% Senior Notes and Floating Rate Senior Notes**

In connection with this offering, the 3.00% Senior Notes will be exchanged and canceled, and the Floating Rate Senior Notes will be fully redeemed after the application of the proceeds from this offering. For more information regarding this indebtedness, please read "Recapitalization and Corporate Conversion" and Note 9 to the historical consolidated financial statements included elsewhere in this prospectus.

## **Off-Balance Sheet Arrangements and Contractual Obligations**

### **Off-Balance Sheet Arrangements**

We do not have any relationships that are considered off-balance sheet arrangements. We do enter into certain short-term lease commitments, letters of credit and purchase obligations in the normal course of business.

### Contractual Obligations

The following summarizes our contractual obligations at February 1, 2020 and the effect such obligations could have on our liquidity and cash flow in future periods (amounts in thousands):

	Fiscal year					Total
	2020	2021 & 2022	2023 & 2024	2025 & beyond	Other	
Estimated interest and fees on debt obligations(1)	\$ 162,455	\$ 354,862	\$ 85,313	\$ —	\$ —	\$ 602,630
Purchase obligations(2)	181,326	25,872	16,009	4,489	—	227,696
Total commitments	343,781	380,734	101,322	4,489	—	830,326
Debt, short and long term(3)	25,250	2,530,453	750,000	—	—	3,305,703
Operating leases(4)	418,994	675,425	458,101	458,356	—	2,010,876
Finance leases(4)	4,327	5,513	4,319	6,157	—	20,316
Other long-term liabilities(5)	—	5,213	900	5,006	77,677	88,796
Total recorded liabilities	448,571	3,216,604	1,213,320	469,519	77,677	5,425,691
Total commitments and recorded liabilities	\$ 792,352	\$ 3,597,338	\$ 1,314,642	\$ 474,008	\$ 77,677	\$ 6,256,017

- (1) Estimated interest on debt obligation is based on average interest rates in effect at October 31, 2020. Debt fees include commitment and other fees associated with the senior secured credit facilities.
- (2) Purchase obligations include various obligations that have specified purchase commitments. As of February 1, 2020, future purchase obligations include open purchase orders and non-cancellable obligations under marketing, information technology, and employment contracts.
- (3) Amounts shown for debt include principal payments only and exclude any debt discounts and deferred financing costs.
- (4) Represents minimum rents payable under operating and finance leases, excluding common area maintenance, insurance, or tax payments, for which we are obligated.
- (5) Other long-term liabilities consist of: self-insurance reserves; asset retirement obligations; and deferred and other compensation. For all items excluding other compensation, we are unable to make a reasonably reliable estimate of the timing of payments in individual years beyond 12 months, due to uncertainties in the timing of the settlement of liabilities; these items are therefore included in the "other" category.

### Segment

We operate under one reportable segment and support and serve pets and their parents through our integrated ecosystem of pet care centers, services, and e-commerce.

### Inflation and Deflation Trends

Inflation and deflation can impact our financial performance. During inflationary periods, our financial results can be positively impacted in the short term as we sell lower-priced inventory in a higher price environment. Over the longer term, the impact of inflation is largely dependent on our ability to pass price increases to customers, which is subject to competitive market conditions. Although neither inflation nor deflation has had a material impact on our operating results, we can make no assurance that our business will not be affected by inflation or deflation in the future.

## Seasonality

Our financial performance is not significantly impacted by seasonality, as the majority of our sales are generated by pet parents caring for their pets year-round.

## Critical Accounting Policies and Estimates

The preparation of our consolidated financial statements in conformity with accounting principles generally accepted in the United States, or "GAAP," requires us to make assumptions and estimates about future results, and apply judgments that affect the reported amounts of assets, liabilities, net sales, expenses and related disclosures. We base our estimates and judgments on historical experience, current trends and other factors that we believe to be relevant at the time our consolidated financial statements are prepared. On an ongoing basis, we review the accounting policies, assumptions, estimates and judgments to ensure that our financial statements are presented fairly and in accordance with GAAP. However, because future events and their effects cannot be determined with certainty, actual results could differ from our assumptions and estimates, and such differences could be material.

We state our significant accounting policies in the notes to our annual consolidated financial statements, which are included in this prospectus. We believe that the following accounting policies and estimates described below have the greatest potential impact on our financial statements, and therefore we consider these to be critical to aid in fully understanding and evaluating our reported financial results.

### ***Inventory Reserves***

We value our inventory at the lower of the cost or net realizable value through the establishment of inventory valuation and shrink reserves. Cost is determined by the average cost method and includes inbound freight charges. Our valuation reserves represent the excess of the carrying value or average cost, over the amount we expect to realize from the ultimate sale of the inventory. Valuation reserves establish a new cost basis, and subsequent changes in facts or circumstances do not result in an increase in the newly established cost basis. Our valuation reserves are subject to uncertainties, as the calculation requires us to make assumptions regarding inventory aging, forecasted consumer demand and trends and the promotional environment.

Our inventory shrink reserve represents estimated physical inventory losses that have occurred since the last physical inventory date. Periodic inventory observations are performed on a regular basis at store locations, and cycle counts are performed for inventory at distribution centers to ensure inventory is properly stated in our financial statements. During the period between counts at store and distribution center locations, we accrue for estimated shrink losses based on historical shrinkage results, taking into consideration any current trends in the business.

We have not made any material changes in our methodology used to establish our inventory valuation and shrink reserves during the past three fiscal years, and we have not had material adjustments between our estimated shrinkage percentages and actual results. A 10% difference in our actual valuation reserve at February 1, 2020 would have an insignificant effect on pre-tax loss in Fiscal 2019. Additionally, we do not believe there is a reasonable likelihood that there will be a material change in future estimates or assumptions we use to calculate our shrink reserve. However, if estimates of losses are inaccurate, we may be exposed to losses or gains that could be material. A 10% difference in our actual reserve at February 1, 2020 would have affected pre-tax loss by \$2.8 million in Fiscal 2019.

### ***Long-lived Assets***

Long-lived assets, other than goodwill and intangible assets, which are separately discussed below, are tested for recoverability whenever events or changes in circumstances indicate that the

carrying value of an asset may not be recoverable. A long-lived asset is not recoverable if its carrying amount exceeds the sum of the undiscounted cash flows expected to result from its use and eventual disposition. If a long-lived asset is not recoverable, an impairment loss is recognized for the amount by which the carrying amount of the long-lived asset (or group of assets) exceeds its fair value, with fair value determined based on the income approach.

Factors we consider important and which could trigger an impairment review include: (i) significant underperformance of a store relative to expected historical or projected future operating results; (ii) significant changes in the manner of our use of assets or strategy for our overall business; (iii) significant negative industry or economic trends; or (iv) planned store closings.

We have not made any material changes in the accounting methodology we use to assess impairment losses during the past three fiscal years.

### **Goodwill and Trade Name Intangible Assets**

#### **Goodwill**

We evaluate goodwill annually in our fourth quarter or whenever events or changes in circumstances indicate that the carrying value may not be recoverable. We have identified one reporting unit and selected our fourth fiscal quarter to perform our annual goodwill impairment testing. Goodwill impairment guidance provides entities the option to perform a qualitative assessment to determine whether further impairment testing is necessary. The qualitative assessment requires significant judgments about economic conditions, including the entity's operating environment, its industry and other market conditions, entity-specific events related to financial performance or loss of key personnel, and other events that could impact the reporting unit. If management concludes, based on assessment of relevant events, facts, and circumstances, that it is more likely than not that a reporting unit's fair value is greater than its carrying value, no further impairment testing is required.

If management's assessment of qualitative factors indicates that it is more likely than not that the fair value of a reporting unit is less than its carrying value, then a quantitative assessment is performed. We also have the option to bypass the qualitative assessment described above and proceed directly to the quantitative assessment, where we compare the fair value of the reporting unit to its carrying value. If the fair value of the reporting unit exceeds the carrying value of our net assets assigned to that unit, goodwill is not considered impaired and we are not required to perform further testing. If the carrying value of net assets assigned to the reporting unit exceeds the fair value of the reporting unit, then we would record an impairment loss equal to the difference.

The fair value of our reporting unit is estimated using the assistance of a third-party valuation firm and quantitative impairment tests are calculated using a discounted cash flow analysis and a public company analysis. Significant assumptions inherent in these valuation methodologies are employed and include, but are not limited to, prospective financial information, growth rates, discount rates, and comparable multiples from publicly traded companies in similar industries.

We have not made any material changes in the accounting methodology we use to assess goodwill impairment losses during the past three fiscal years.

#### **Indefinite-lived trade name**

We consider the Petco trade name to be an indefinite-lived intangible asset, as we currently anticipate that this trade name will contribute cash flows to us indefinitely. We perform our annual impairment test during the fourth quarter of each year or whenever events or changes in circumstances indicate the carrying value may not be recoverable. Management has the option to first perform a quantitative assessment of its trade name asset to determine whether it is necessary to perform a quantitative impairment test. We also have the option to bypass the qualitative assessment described above and proceed directly to quantitative assessment.

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The fair value of our trade name is estimated using the assistance of a third-party valuation firm using the relief from royalty valuation method, a variation of the discounted cash flow approach. Significant assumptions inherent in the valuation methodology are employed and include, but are not limited to, prospective financial information, royalty rates and discount rates. An impairment charge is recorded for the amount by which the carrying amount of the trade name exceeds its fair value.

We have not made any material changes in the accounting methodology we use to assess indefinite-lived trade name impairment during the past three fiscal years.

### ***Self-insurance Reserves***

We maintain accruals for our self-insurance of workers' compensation, employee-related healthcare benefits and general and auto liabilities. Insurance coverage is in place above per occurrence retention limits to limit our exposure to large claims. These insurance policies have stated maximum coverage limits, after which we bear the risk of loss. When estimating our self-insurance reserves, we consider a number of factors, including historical experience, trends related to claims and payments, and information provided by our insurance brokers and actuaries. Periodically, we review our assumptions and valuations provided by our actuaries to determine the adequacy of our self-insurance reserves.

We are required to make assumptions and to apply judgments to estimate the ultimate cost to settle reported claims and claims incurred but not reported at the balance sheet date. There were no significant changes to the self-insurance reserves during the past three years other than routine current period activity. A 10% change in our self-insurance reserves at February 1, 2020 would have affected pre-tax loss by \$8.2 million in Fiscal 2019.

### **Recent Accounting Pronouncements**

Refer to Note 1 in the historical consolidated financial statements included elsewhere in this prospectus for information regarding recently issued accounting pronouncements.

### **Quantitative and Qualitative Disclosures about Market Risk**

We are subject to market risks arising from transactions in the normal course of our business. These risks are primarily associated with interest rate fluctuations, as well as changes in our credit standing, based on the capital and credit markets, which are not predictable. We do not currently hold any instruments for trading purposes.

#### ***Interest Rate Risk***

We are subject to interest rate risk in connection with the senior secured credit facilities. As of February 1, 2020, we had \$2,424.0 million outstanding under the term loan facility and \$29.0 million outstanding under the revolving credit facility. The term loan facility and the revolving credit facility each bear interest at variable rates. After taking into account our interest rate caps: (i) an increase of 100 basis points in the variable rates on the amounts outstanding under the senior secured credit facilities as of February 1, 2020 would have increased annual cash interest in the aggregate by approximately \$7.1 million; and (ii) a decrease of 100 basis points in the variable rates on the amounts outstanding under the senior secured credit facilities as of February 1, 2020 would have decreased annual cash interest in the aggregate by approximately \$21.4 million. For information regarding the five interest rate cap agreements that we entered into in March 2016 to limit the maximum interest rate on a portion of our variable-rate debt and limit our exposure to interest rate variability, please read “—Liquidity and Capital Resources—Sources of Liquidity—Derivative Financial Instruments.”

We cannot predict market fluctuations in interest rates and their impact on our debt, nor can there be any assurance that long-term fixed-rate debt will be available at favorable rates, if at all.

Consequently, future results may differ materially from estimated results due to adverse changes in interest rates or debt availability.

***Credit Risk***

As of February 1, 2020, our cash and cash equivalents were maintained at major financial institutions in the United States, and our current deposits are likely in excess of insured limits. We believe these institutions have sufficient assets and liquidity to conduct their operations in the ordinary course of business with little or no credit risk to us.

***Foreign Currency Risk***

Substantially all of our business is currently conducted in U.S. dollars. We do not believe that an immediate 10% increase or decrease in the relative value of the U.S. dollar as compared to other currencies would have a material effect on our operating results.

## **BUSINESS**

### **Our Mission**

We love pets. We are a purpose-driven company dedicated to improving the lives of pets, their parents, and the partners who work for us. We are committed to being the leading, most trusted resource in pet care, providing a comprehensive portfolio of essential products and services with expert advice that addresses all aspects of pet health and wellness.

### **Our Company**

We are a beloved brand in the U.S. pet care industry with more than 55 years of service to pets and the people who love and care for them. Since our founding in 1965, we have been developing new standards in pet care, delivering comprehensive wellness solutions through our products and services, and creating communities that deepen the pet-parent bond. Over the last three years, we have transformed the business from a successful traditional retailer to a disruptive, fully-integrated, digital-focused provider of pet health and wellness offerings. We revamped our leadership team and invested over \$300 million to build out leading capabilities across e-commerce and digital, owned brands, data analytics, and a full suite of on-site services including veterinary care. Our investments have delivered a comprehensive, integrated, and technology-enabled ecosystem of channels and offerings, complemented by a rapid innovation capability that is disrupting the pet market and providing pet parents with a differentiated holistic solution for all their pet care needs. For more information regarding our transformation investments, please read “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Innovation and Transformation.”

Our go-to-market strategy is powered by a multi-channel platform that integrates our strong digital presence with our nationwide physical network. Our data-driven digital footprint, consisting of an entirely redesigned e-commerce site and personalized mobile app, delivers an exceptional customer experience and serves as a hub for pet parents to manage their pets’ health, wellness, and merchandise needs, while enabling them to shop wherever, whenever, and however they want. By strategically leveraging our extensive physical network consisting of approximately 1,470 pet care centers located within three miles of 54% of our customers, we are able to offer our comprehensive product and service offering in a localized manner with a meaningful last-mile advantage over our competition. Through our connected platform, we serve our customers in a differentiated manner by offering the convenience of ship-from-store, BOPUS, and curbside pick-up. This integrated, multi-channel approach clearly resonates with our customers, as the number of customers who engage with us across multiple channels has grown by 20% over the last three years. Further, these multi-channel customers spend between 3x to 6x more with us compared to single-channel customers. In the last 12 months ended October 31, 2020, we achieved approximately 80% retention of our multi-channel customers.

Through our multi-channel platform, we provide a comprehensive offering of differentiated products and services that fulfill all the needs of pet parents and their pets. Our product offering leverages our owned brand portfolio and partnerships with premium third-party brands to deliver high quality food that avoids artificial ingredients, complemented by a wide variety of premium pet care supplies. We augment this premier product offering with a broad suite of professional services, including grooming as well as in-store and online training. Our service offering is further enhanced by a rapidly expanding, affordable veterinary service platform, which includes full-service veterinary hospitals, Vetco clinics, and tele-veterinarian services. In addition, we are increasingly linking our offerings with subscription programs such as membership and pet health insurance that create deeper engagement with our over 21 million Active Customers as of October 31, 2020, with our Pals loyalty program members accounting for approximately 80% of transactions in the thirty-nine weeks ended October 31, 2020. In addition to providing differentiated products and services, our over 23,000 knowledgeable, passionate partners provide important high-quality advice to our customers in our pet care centers. With our integrated platform and comprehensive offering, we provide a complete pet health and wellness ecosystem that drives engagement across our enterprise and creates life-long customer relationships.

### Only Fully-Integrated and Comprehensive Pet Care Ecosystem

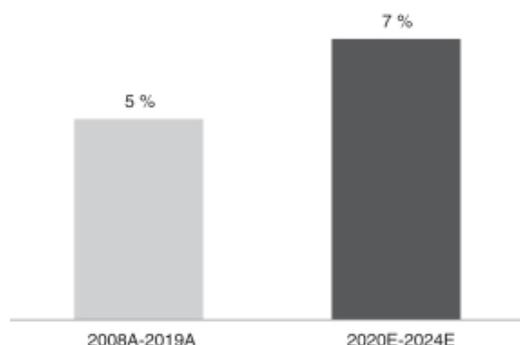


### Industry Dynamics

The U.S. pet care industry is a large, attractive growth market experiencing a significant acceleration in response to multiple secular themes. The industry serves more than 72 million households with pets and represents a total addressable market of \$97 billion in 2020. Since 2008, the industry has grown at a 5% CAGR, driven by steady, predictable growth in the underlying pet population coupled with strong tailwinds associated with pet humanization. Due to the essential, consumable nature of pet care, the industry has demonstrated resilience across economic cycles. During the Great Recession, the industry delivered strong performance, growing at a CAGR of 6% from 2008 to 2010. With respect to our business, we are strategically focused on growing our presence in three of the fastest-growing areas of the market: services, e-commerce, and veterinary, which are projected to grow at 11%, 14%, and 9% CAGRs, respectively, from 2020 to 2024.

As a result of the COVID-19 pandemic, the industry is experiencing a significant increase in demand that is expected to be a tailwind for years to come. According to Packaged Facts, the number of households with pets in the United States is expected to increase by 4% in 2020, creating an estimated \$4 billion in incremental annual demand for pet care products. Given the long-term, recurring demand for pet care products and services, which is expected to continue to grow in response to the pet humanization trend, this step function increase in the pet population represents a meaningful acceleration in total industry growth from 5% historically to 7% through 2024, according to Packaged Facts and company internal estimates. As pet care demand continues to grow, we believe we are well-positioned to capture an outsized portion of the growing market as the only fully-integrated, comprehensive pet care provider in the industry.

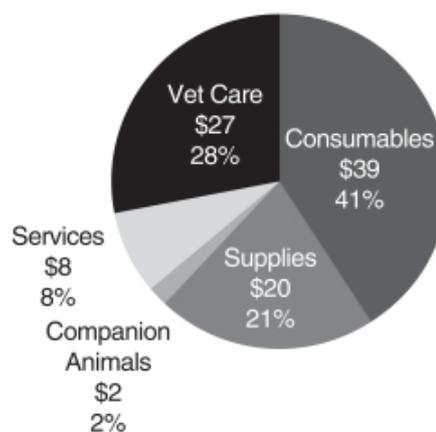
**U.S. Pet Care Industry CAGR**



Source: Packaged Facts and company internal estimates.

**U.S. Pet Care Industry by Category**

(\$ in billions, 2020)  
Total: \$97 billion



Source: Packaged Facts and company internal estimates.

**Our Transformation**

Three years ago, we saw several major opportunities to accelerate our business. First, customers were shifting online and we saw a meaningful opportunity to better leverage our differentiated strengths and physical network to benefit from this shift. Second, research showed that pet parents had multiple care needs across products and services, but they were confused and looking for a partner to help them navigate to the right health and wellness decisions. Third, we recognized a need to become much more analytical and operationally rigorous. Lastly, the organization required clear strategic direction following a period of transition and cost cutting. Over the past three years we have invested over \$300 million to support our innovation and business transformation strategies. These investments include: digital and e-commerce integration and expansion; data analytical capabilities; veterinary services; marketing and advertising; and our owned brands. Our transformation actions were focused on the following major initiatives and investments.

**Assembled a Next Generation Leadership Team to Drive Transformation.** Two years ago, we hired Ron Coughlin, who previously ran HP's \$33 billion Personal Systems business as Division President and, prior to that, had a successful career in senior executive roles at PepsiCo and experience with businesses in transition. As Chief Executive Officer, he made multiple senior management hires and changes, adding digital and technology, consumer-packaged goods, marketing, and best-in-class retail experience to the leadership team. These executives bring experience from leading companies, including Best Buy, Walmart, Jet.com, Target, Bank of America, Williams Sonoma, and HP, among others. This highly qualified leadership team has implemented significant operational and cultural change to our business, including a substantial acceleration of our digital capabilities, optimizing the effectiveness of pet care center partners through training, enhanced analytic tools and communication, step changed marketing and customer engagement return on investment, launching a veterinary hospital network, and supporting the scaling of our pet health and wellness offerings.

**Built Leading E-Commerce and Digital Capabilities that Leverage our Physical Network.** With pet parents increasingly engaging online, we aggressively invested to create a

superior e-commerce and app experience to succeed in the market, improving the speed, navigation, personalization, and services access of our website and app. We focused on optimizing site merchandising, market-based pricing, convenient order delivery within two days, and digital sales conversion rate to successfully attract and retain customers, all of which have experienced noticeable growth since the fourth quarter of 2019. We launched a hassle-free repeat delivery service, which has the highest-rated customer satisfaction in the industry, and provides a revenue stream that increased 13% in Fiscal 2019 and 36% in the first three quarters of Fiscal 2020. To further differentiate and create scale advantages, we leveraged our physical network to roll out key capabilities, including ship-from-store, which grew to over 730 enabled locations as of October 31, 2020, BOPUS, which grew over 275% from February 2, 2020 through October 31, 2020, and curbside pick-up that allow us to meet our customers anywhere they want to shop and provide a significant last-mile fulfillment advantage versus our competition, driven by our distributed inventory and proximity to customers. These efforts have resulted in total e-commerce sales, gross margin and customer lifetime value growth. E-commerce sales grew 33% in Fiscal 2019 and in the first three quarters of Fiscal 2020 e-commerce sales grew 107% while initial margin rate grew 11%.

**Reinvented Grooming and Training, and Launched a Full-Service Veterinary Hospital Network.** Pet services represent the most personalized, sticky, high-touch part of the market, which is critical as we focus on acquiring and retaining high-value customers. In grooming, we invested in digital integration, marketing, staff compensation, and other operational improvements to transform a negative growth business in Fiscal 2018 into one that grew 10% in Fiscal 2019 while also adding 470,000 new customers and decreasing groomer turnover by over 30% from Fiscal 2018 to the end of the third quarter of Fiscal 2020. In training, we have led with innovation, and this year launched online training classes that can be conducted at home in order to attract new pet parents. In Fiscal 2017, we embarked on one of the fastest veterinary hospital build-outs in the industry and today offer full-service veterinary care at over 100 pet care centers, driving both incremental service and merchandise sales, and unlocking the prescription food addressable market.

**Created a Highly Differentiated Owned and Exclusive Product Offering.** We offer a highly differentiated owned and exclusive product assortment that engenders strong customer loyalty. We focused on three core product differentiating capabilities: nutritional expertise, exclusive partnerships, and a leading owned brand platform. As a testament to our commitment to pet health and wellness, in May 2019 we made the decision to pivot away from dog and cat food and treats that contain artificial ingredients making us the only major national retailer in the industry to take a stand against artificial ingredients in dog and cat food. We utilized a best brands strategy to form new partnerships with some of the most highly regarded premium food brands in the industry, such as Just Food For Dogs.

In 2019, we leveraged our established owned brand platform and capabilities to launch Reddy, a fashion-driven supplies brand, to complement WholeHearted, our premium food brand. We have grown our owned brand sales at a CAGR of 14% between Fiscal 2017 and Fiscal 2019, and during Fiscal 2019, our owned brands generated sales of \$1.1 billion, or approximately 27% of total product sales, up from 17% of sales in Fiscal 2015. The combination of our differentiated food and supplies strategy, including owned and exclusive brands, has enabled us to offer a premium product offering, with more than 50% of our offering not available via online or mass competitors.

**Implemented a Performance Culture Led by Data Analytics.** Our differentiated singular view of the customer across products, services, and channels, in combination with insights from our Pals loyalty database, provides access to a robust wealth of data that is difficult to replicate. We implemented new capabilities to leverage these data to inform strategic and tactical decision-making across our organization, and ultimately drive higher customer engagement and lifetime value. We created a singular view of our customer to drive everything from marketing decisions and innovation of new products and services to how we operate our pet care centers. In our pet care centers, we have pushed data down to our pet care center General Managers and field leadership teams through advanced sales reporting to enhance decision-making. We developed a user-friendly, action-focused dashboard (HUB), which enables our managers to track performance across multiple dimensions, identify opportunities, and execute strategies to drive incremental sales. We also simplified the key

metrics that we utilize to track performance and aligned incentives against those metrics by rolling out a revamped incentive structure across our field organization.

**Attracted Exceptional Talent in Key Growth Areas.** As part of our strategic evolution, we recruited next generation talent across various levels and functional areas throughout the organization. In addition to systems investments, we added over 100 technology and analytics experts supporting our e-commerce and technology innovation efforts. In the field and services areas, we strategically acquired senior talent from leading companies in the retail, hospitality, and consumer sectors. We created effective training programs to develop critical skills, driving increased employee engagement and retention. In veterinary, we built a team of veterinarians, veterinary hospital operators, and veterinarian staff recruiters from leading companies in order to rapidly scale our model. We are dedicated to leveraging our rich diversity of talent to foster a culture that supports an open forum for idea exchange, promotes an environment of inclusion, and builds connections with our communities, partners, and vendors. Our team additions and investment in talent development have not only helped to raise our performance expectations, but have been instrumental in creating a purpose-driven performance culture across the organization.

For more information regarding our transformation investments, please read “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Innovation and Transformation.”

Despite everything we have accomplished in recent years (and our accelerating momentum in 2020), we believe that we are just getting started. The transformational investments and initiatives of the last three years strategically position us to pursue numerous opportunities that we believe will drive long-term growth. As we look ahead, we could not be more excited for the future.

### **Our Competitive Strengths**

#### ***Category-Defining Brand with Long-Term Customer Relationships Built on Trust***

Since our founding in 1965, we have focused on building long-term relationships with pet parents by providing an exceptional customer experience. Our top-of-mind awareness is among the highest in the industry, cited by 28% of customers as the first brand that comes to mind when asked to name a brand in pet products. Across our platform, we have a team of over 23,000 highly trained pet care experts who love animals and are passionate about sharing their expertise with pet parents. Through our people—such as digital experts, sales and engagement partners, groomers, trainers, companion animal experts, and veterinarians—we are able to build and maintain long-term, high-touch relationships with pet parents.

Our brand is consistently strengthened by the touchpoints we have with our customers across channels, products, and services. As of October 31, 2020, we served over 21 million Active Customers, with members of our Pals loyalty program representing approximately 80% of our transactions in the thirty-nine weeks ended October 31, 2020 and ranking among the largest loyalty programs in the industry. We leverage the data from our Pals program via in-store technology (including hand-held devices that our partners use to assist customers with shopping), content, and recommendations in a highly personalized manner. Our customer relationships are built on trust and supported by high customer affinity, as demonstrated by our average nine-out-of-ten Voice of Consumer rating in the first three quarters of Fiscal 2020.

#### ***The Only Fully-Integrated Comprehensive Offering of Pet Products and Services Nationwide***

We provide the only fully-integrated comprehensive offering of pet care products and services that meet the needs of pet parents everywhere—something that none of our competitors currently offer.

Our product strategy is built around an extensive offering that features premium owned and partner brands known for quality and innovation. We offer leading varieties of wholesome, premium

food that build upon our expertise in pet nutrition. For example, we proudly offer premium brands such as human-grade Just Food For Dogs, which are not widely available in other national pet specialty stores. In addition to food, we offer a wide range of pet supplies to meet the needs of pet parents. The combination of our differentiated food and supplies strategy, including owned and exclusive brands, has enabled us to offer a premium product offering, with more than 50% of our offering not available via online or mass competitors.

Our service offering consists of professional grooming, training, and veterinary services. In addition to acting as a profitable driver of new customer acquisition, our service platform helps retain and expand the yearly spend of existing customers, drive visit frequency and digital engagement, and build long-term loyalty.

Through our connected multi-channel ecosystem, we are able to offer our comprehensive product and service offering across all channels to meet our customer wherever, whenever, and however they want to shop. During the nine months ended October 31, 2020, customers who shopped across the four channels we track for these purposes (pet care center merchandise, e-commerce and digital, grooming and training services, and veterinary services including veterinary hospitals and Vetco clinics) spent on average 6x with us versus customers who only shopped one of these channels. Demonstrating the impact of our comprehensive ecosystem on our pet care centers, our 90 pet care centers that offer grooming, training veterinary services, ship-from-store, and BOPUS generate on average 91% higher revenue, as measured over the last 12 months ended October 31, 2020, than that of our average pet care center in Fiscal 2017.

### ***Connected Ecosystem Combining Leading Digital Capabilities and a Strategic Physical Network***

We have built a connected ecosystem comprising leading digital capabilities and a national physical network. Through our Petco.com website and Petco app, we offer premier digital navigation, speed, assortment, market-based pricing, content, and personalization features. Through our physical network, we have the ability to consistently fulfill and deliver a growing assortment of products directly to consumers in addition to convenient offerings such as BOPUS and curbside pick-up. Our physical proximity to our customers also provides us a significant last-mile cost advantage relative to competitors. In the thirty-nine weeks ended October 31, 2020, approximately 80% of Petco.com orders were fulfilled by our pet care centers, either as ship-from-store, BOPUS, or curbside pick-up. Additionally, we have experienced increasing pet care center sales through our Petco app since its launch, with many pet parents electing to take advantage of BOPUS and curbside pick-up for their orders. For customers seeking even greater convenience, we offer repeat delivery options that facilitate recurring purchases. Our repeat delivery revenue stream increased 13% in Fiscal 2019, and for the thirty-nine weeks ended October 31, 2020, BOPUS purchases and repeat deliveries of products accounted for 61% of Petco.com sales. Finally, we continually leverage our digital capabilities to innovate, such as online booking of grooming appointments, convenient at-home services like on-line training, and mobile grooming. Our connected ecosystem provides us with a singular view of our customer, which fuels our highly effective performance marketing function to drive repeat visits and grow customer lifetime value. For the thirty-nine weeks ended October 31, 2020, we achieved a Petco.com customer retention rate that was 12% higher than that of the prior year period.

### ***Rapidly Growing Veterinary Services Offering Stack***

According to Packaged Facts, more than 70% of pet owners have concerns about the affordability of veterinary healthcare. In response, we have established a differentiated and highly scalable, affordable veterinary healthcare service platform that consists of our full-service veterinary hospitals, Vetco clinics, and tele-veterinary services. In Fiscal 2019, we serviced over 400,000 customers through our veterinary offering platform.

We are rapidly expanding our full-service veterinary hospitals across the country to provide expanded service coverage. By integrating these veterinary hospitals into existing pet care centers, we

benefit from significant structural advantages compared to existing veterinary care providers, positioning us to deliver a more affordable solution to our customers. Through our digitally enabled approach, we offer competitive and affordable exam fees, supported by convenient online appointment scheduling, text reminders and weekend booking availability. We have experienced strong early success from our veterinary hospital strategy driven by highly compelling unit economics. Our veterinary hospitals have historically required approximately \$600,000 in build-out costs and generate four-wall profitability by year two. We target sales and four-wall EBITDA margins at maturity of approximately \$1.5 million and 20%, respectively. The ability for customers to conveniently purchase health-related products, including prescription food, at the time of a veterinary appointment creates a strong complementary relationship in an under-penetrated category for Petco. Despite reducing the total selling square footage of an existing pet center when we add a veterinary hospital, we experience a sales uplift in merchandise and non-veterinary services. Average non-veterinary sales increased by approximately 600 basis points in the first year of veterinary hospital operations. Additionally, sales of prescription food, which require an on-site veterinary hospital, are currently averaging an incremental \$1,000 of sales per week per pet care center. Our recent introduction of Petco Vital Care Membership, a subscription program that provides access to our holistic health and wellness offering, and Petco Insurance leverage our growing veterinary services network to provide incremental benefits and convenience for customers.

### ***Industry-Leading Grooming and Training Business Driving Recurring Trip Frequency***

Leveraging our strategic physical network, we have built one of the largest grooming and training businesses in the pet care industry. These essential services drive recurring visits into our pet care centers, allowing us to earn a greater share of wallet from our customers, as demonstrated by the fact that over the past three years our service customers tend to spend 2x as much with us compared to our non-service customers.

In our grooming business, we served over 2 million pets across approximately 1,350 of our pet care centers during Fiscal 2019. We are building on the success of our investment strategy with the addition of new elements such as our “Spa Club” grooming loyalty program, breed-specific marketing, and mobile grooming. Spa Club has helped drive a 14% improvement in customer retention rate between the fourth quarter of Fiscal 2018 and the fourth quarter of Fiscal 2019.

In our training business, we served over 180,000 pets across approximately 1,470 pet care centers during Fiscal 2019. Because training is generally conducted at an early stage in a pet’s life, this offering is a strategic customer acquisition tool to engender long-term loyalty with new pet parents. We continue to focus on augmenting our core in-store training offering with the launch of at-home and online training classes. In Fiscal 2019, on average, our training customers spent 3.3x more with us than our non-training customers.

### ***Premier Owned Brand Product Development and Innovation Platform***

We operate a leading, owned brand portfolio that has grown rapidly and is highly accretive to our product gross margins, typically driving a margin rate that is more than 1,000 basis points higher than comparable third-party brands. Our extensive direct customer relationships provide us with insights that allow us to identify unmet customer needs and trends and rapidly build products and services around those needs. We have an established infrastructure for developing, launching, and fostering growth in owned brand products, including an in-house packaged goods insights function, experienced fashion leadership, and a dedicated sourcing office in Asia.

Over the last three years, we have demonstrated the speed and depth of our innovation platform through the launch of 89 new brands and 5,000 new products. In 2016, we launched our first major proprietary pet food brand, WholeHearted, which features a premium ingredient panel, an attractive price point, quality packaging, and authentic branding that effectively targets millennial pet parents. In Fiscal 2019, we launched Reddy, our proprietary supplies brand that features premium fabrics and

urban contemporary styling appealing to fashion-focused pet parents. We also believe our Well & Good brand has similar potential to tap into customer demand for premium wellness products. Sales of our owned brand portfolio have grown at a 14% CAGR between Fiscal 2017 and Fiscal 2019, and for Fiscal 2019, our owned brands generated sales of \$1.1 billion, or approximately 27% of total product sales, up from 17% of product sales in Fiscal 2015.

### ***Best-in-Pet Technology Capabilities***

We have developed the ability to compete with the best-in-class innovation capabilities of our competitors. We invested over \$150 million over the past three years in our digital systems and recruited leading digital talent, employing over 100 technology and analytics experts organized in rapid deployment “squad” structures linked to major areas like e-commerce, services, and CRM. Our operating experience and insights enable us to develop, test, and scale solutions in a rapid innovation cycle. We also seek to leverage our existing assets and advantages in the market to ensure our innovation implementations are not easily replicable by the competition. In the last 24 months, we have launched new programs, such as curbside pick-up, online dog training, an online food coach, our complete pet wellness app, pet medical record consolidation, and Petco Vital Care Membership. Our ability to leverage our physical network has been a distinct competitive advantage. We believe our advanced innovation capabilities provide us with insights and opportunities to continue to enhance customer engagement, rapidly improve our offerings, and expand into new product and service lines faster and better than competitors.

### ***Highly Experienced and Proven Management Team***

We have an experienced and proven management team of successful retail, consumer, and technology industry veterans and a deep bench of talent supporting our emerging services, e-commerce, and omni-channel competencies.

- Our Chief Executive Officer, Ron Coughlin, who has been with Petco for over two years, brings 11 years of experience at HP, including eight as Division President, and 13 years of marketing experience at PepsiCo where he left as a Chief Marketing Officer
- Our Chief Financial and Operating Officer, Michael Nuzzo, actively oversees our supply chain and our services and veterinary businesses, after joining us in 2015, and has over 20 years of experience managing financial and operational strategy at leading public and private retail companies, including GNC and Abercrombie & Fitch
- Our Chief Digital & Innovation Officer, Darren MacDonald, brings critical e-commerce experience, having built one of the leading global e-commerce platforms during his prior roles at Walmart and Jet.com, and having developed one of the most trafficked online shopping comparison engines as CEO of Pronto Network, an IAC company
- Our Chief Pet Care Center Officer, Justin Tichy, offers deep field experience with leading store teams at public retail companies, including Best Buy, Target, and Walmart
- Our Chief Merchandising Officer, Nick Konat, brings leading consumer and retail expertise from managing merchandising strategies at Target as well as from his experience as a consultant at Accenture
- Our Chief Human Resources Officer, Michelle Bonfilio, has prior experience in the pet industry and senior human resources roles with leading public retailers, including The Gap and Williams Sonoma
- Our Chief Information and Administrative Officer, John Zavada, brings valuable information technology experience, formerly serving as CIO of Restoration Hardware and L Brands, among others
- Our Chief Legal Officer and Secretary, Ilene Eskenazi, brings over 20 years of legal experience from leading retail, apparel, and consumer packaged goods companies, having served as general counsel for other leading global brands such as Red Bull and True Religion

- Our Chief Marketing Officer, Tariq Hassan, brings significant marketing, brand management and communications experience, having served in leadership roles at Bank of America and Hewlett-Packard Company (now HP Inc.)

The balance of the senior team has experience from a host of high caliber companies.

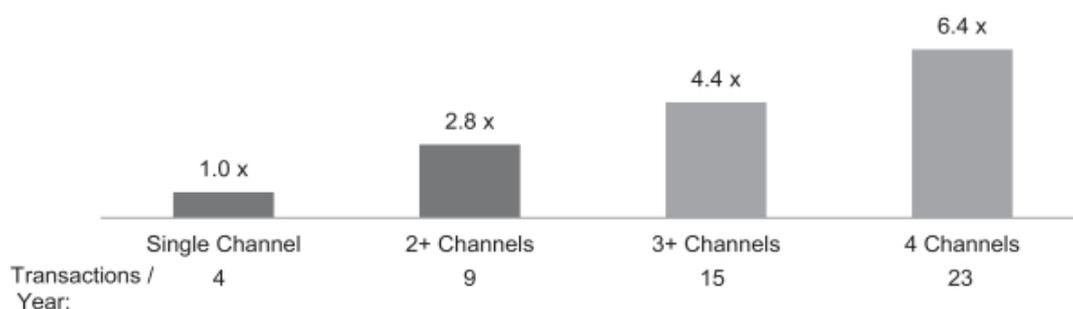
### Our Growth Strategies

Building upon our success to date, we see a significant opportunity to drive long-term growth across our business by executing on the following growth strategies:

#### ***Continue to Acquire New Customers and Drive Engagement Across All our Channels.***

- **Acquire New Customers:** Strong secular trends in the industry are introducing new pet parents to the category. We are distinctively positioned to acquire new customers through our effective marketing, e-commerce engagement, new pet programs, Pals loyalty program, Petco app, and sticky services offerings, as well as our strategic physical network, which provides a low-cost acquisition and powerful brand awareness vehicle. As one of the most recognizable brands in the industry and the only fully-integrated complete solution for all pet health and wellness needs, we are distinctively positioned to successfully acquire new customers looking for the best first stop as new pet parents.
- **Increase Engagement and Monetization Across All Channels and Offerings:** Our multi-channel and multi-category customers represent our highest yearly and lifetime value spend levels and will be a meaningful contributor to our future growth. During the 12 months ended October 31, 2020, we achieved approximately 80% retention of our multi-channel customers. Over that same period, customers who engage with us across two or more channels spend on average 2.8x as much as our single-channel customers spend, and those who engage with us across three or more channels and all four channels spend on average 4.4x to 6.4x as much, respectively. We plan to drive these spend levels higher as we scale our e-commerce platform and full-service veterinary hospitals. Further, we believe we have an embedded opportunity to significantly grow the value of our active customer base by attracting customers to additional channels, leveraging our comprehensive health and wellness offering, in-store cross-selling, Petco app, advanced CRM capabilities, and subscription programs like repeat delivery, which directly facilitate multi-channel purchases.

**Relative Spend by Customer Type (Indexed to Single-Channel Customer)**



Source: Company data; customer spend data are as of the 12 months ended October 31, 2020; during the 12 months ended October 31, 2020, our average single-channel customer spent approximately \$150.

*Note: Channels consist of pet care center merchandise, e-commerce and digital, grooming and training services, and veterinary services.*

- **Maximize Customer Engagement and Loyalty with Subscription Programs:** Beyond our repeat delivery program, we have only begun to capitalize on subscription revenue opportunities, including through the recent launches of additional value-add subscription programs:
- **Petco Vital Care Membership:** an annual fee-based membership program that provides preferred access to our holistic health and wellness offering across products, grooming, and veterinary care;
- **PupBox:** a service that provides monthly shipments of premium food, treats, and merchandise to puppy parents; and
- **Petco Insurance:** an annual service that provides affordable, full-service pet health coverage with added pet product and services prerequisites not offered by traditional insurance company plans.

All three programs have experienced strong initial customer reception to date. While these programs are relatively nascent, we are excited by the opportunity to bring together our product and service offerings under subscription programs that we believe will positively impact the customer experience while providing us with an attractive revenue stream from subscription businesses.

#### ***Continue to Grow Our Digital Business.***

We intend to leverage our fully-integrated ecosystem, high-performance website and mobile app experience, fulfillment cost advantages, and differentiated services offerings to capitalize on the continued strong growth of e-commerce in the pet industry. In particular, we expect the continued expansion of BOPUS and curbside pick-up, which we are able to offer profitably given our strategic physical network, to allow us to substantially grow e-commerce sales while maintaining a leading customer fulfillment proposition. Our ability to connect our online platform with our in-person offerings, such as grooming, training, and veterinary care, creates a “flywheel” that drives greater online visits, which in turn create more opportunities for cross-selling other products and services. By leveraging our technology and operational assets, we plan to continue delivering innovation and new multi-channel offerings with a goal of meeting or exceeding overall pet e-commerce industry growth, as well as increasing our e-commerce penetration.

#### ***Expand Our Health & Wellness Services.***

- **Rapid Expansion of our Differentiated Veterinary Services:** Veterinary care is one of the fastest-growing categories in the pet industry and one of our key strategic priorities. Through our comprehensive veterinary offering stack and affordable care positioning, we are disrupting the industry and intend to gain market share by expanding on our proven, replicable model of offering affordable, high-quality veterinary services to pet parents everywhere. We have experienced strong results from the 105 full-service veterinary hospitals currently open and plan to continue to add 60 to 70 hospitals per year to new, relocated, and remodeled pet care centers as we execute on a 900+ location white space. We also have the opportunity to utilize tele-veterinary services to grow the revenue base of our hospitals through convenient online appointments. Outside of our full-service veterinary hospitals, we are expanding our Vetco clinic business both within Petco and through partnerships with other retail partners. We believe that through our affordable, convenient, and tech-enabled veterinary proposition, we are well-positioned to capture increasing share in the attractive veterinary services market while driving overall share of customer wallet by marketing and cross-selling our non-veterinary offerings.
- **Continue to Grow Our Core Grooming and Training Businesses:** The grooming and training markets are highly fragmented and offer us an opportunity to meaningfully grow our market share. Grooming is a large addressable market in the United States, representing approximately \$3 billion in 2020, according to Packaged Facts. Relative to our competitors, our scale and digital capabilities, such as convenient online scheduling, provide us with a

compelling advantage. In our grooming business, we have an opportunity to increase productivity by adding staff to meet elevated customer demand, selling higher priced service packages, and adding mobile grooming capabilities to capture demand for at-home services. In our training business, we have a multi-year growth opportunity with our recently expanded offerings beyond our standard in-store group classes, including private, one-on-one classes both in-store and at-home, as well as online training classes taught by our elite trainers.

***Drive Product Sales with Emphasis on Owned Brand Innovation and Exclusive Brands.***

We have a significant opportunity to leverage our differentiated owned brand development and innovation capabilities to accelerate growth of our leading owned brand portfolio, which has experienced growth at a CAGR of 14% between Fiscal 2017 and Fiscal 2019. During Fiscal 2019, our owned brand business accounted for \$1.1 billion of sales, or 27% of total product sales, driven by the success of our WholeHearted and recently launched Reddy brands, and our exclusive and differentiated product offerings accounted for \$1.7 billion of sales, or 43%, of total product sales. Looking ahead, owned brands are a key strategic priority for us as we will leverage consumer insights to drive continued innovation in our offerings across food and supplies in a manner that is differentiated relative to our competitors. Additionally, we intend to grow our brand portfolio through new partnerships with premium brands in the industry, as well as expanding existing partnerships, such as a broader rollout of Just Food For Dogs pantries and on-site kitchens. Our differentiated food and supplies offering is a key driver of customer loyalty and stickiness, with more than 50% of our offering not available in online or mass competitors.

***Leverage Category Capabilities to Expand Our Offerings and Geographies.***

Our journey is just beginning. Our fully-integrated multi-channel ecosystem provides us with tremendous data and insights, as well as the ability to continually innovate and add new capabilities and offerings. We plan to continue to add to our service offerings with new elements of our breed-specific at-home and online training classes. In the subscription offering area, we are planning initiatives in proprietary credit card, membership, and wellness programs. Within our technology platform, we plan to build upon our strong momentum to rapidly innovate and roll out new capabilities.

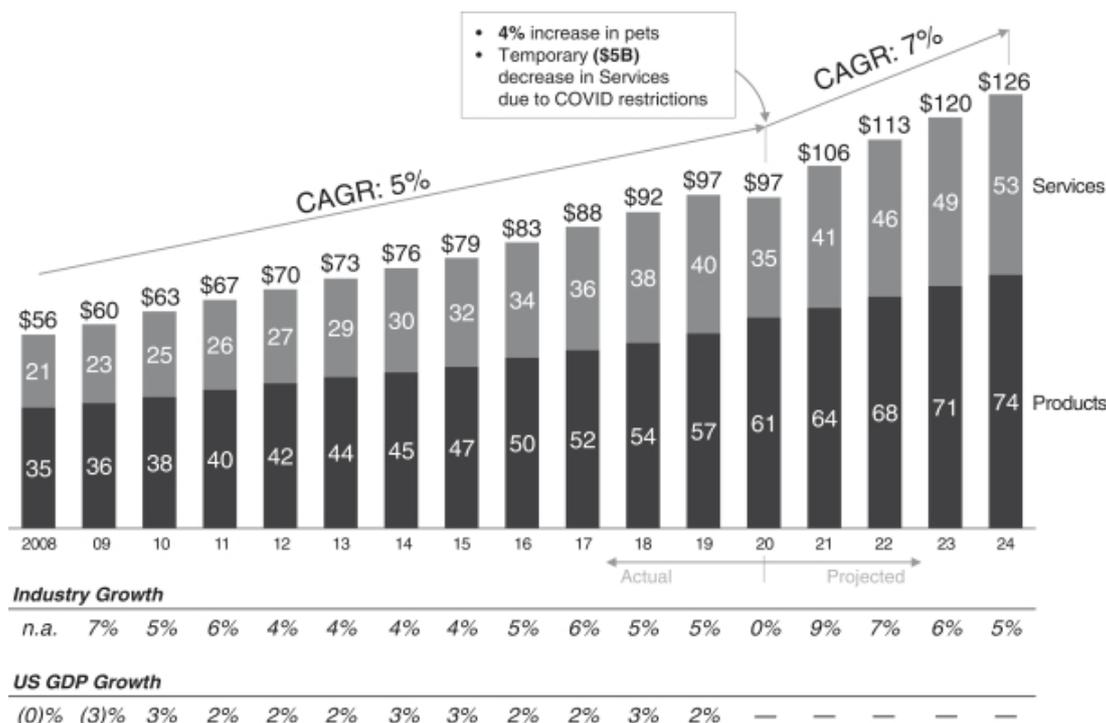
Internationally, we see significant opportunity to deploy our comprehensive model to expand our presence in new markets. We will leverage the success of our joint venture with Grupo Gigante in Mexico, where we have over 80 locations, and our wholesale partnership with Canadian Tire in Canada, where we have Petco products in approximately 450 locations, including the initial launch and build-out of dedicated Petco shop-in-shops, to continue to grow in these geographies. Looking ahead, we also see a meaningful opportunity to pursue a wholesale distribution approach like with Canadian Tire in new international geographies in Central and South America, Europe, and Asia.

**Our Industry**

The U.S. pet care industry is a large, attractive growth market experiencing a significant acceleration in response to multiple secular consumer themes. In 2020, the industry is expected to serve more than 72 million households with pets, representing a total addressable market of \$97 billion. Due to its non-discretionary nature, the market has demonstrated a long-term track record of consistent growth and resilience throughout economic cycles. From 2020 to 2024, the industry is expected to grow at a 7% CAGR, driven by steady, predictable growth in the underlying pet population coupled with strong tailwinds associated with pet humanization and COVID-19.

As a result of the COVID-19 pandemic, the industry is experiencing a significant increase in demand that is expected to be a tailwind for years to come, given the long-term, subscription-like demand for pet care products and services. Packaged Facts predicts a 4% growth in pet-owning households in 2020. Although this step function increase in the pet population was offset in 2020 by a decrease in consumption of services (including veterinary services) during COVID-19 shutdowns, it represents a meaningful, long-term change in total industry growth from 5% historically to 7% through 2024, according to Packaged Facts and company internal estimates.

### U.S. Pet Care Industry Sales (\$ in billion)



Source: 2008 to 2014 based on aggregation from American Pet Products Association and Packaged Facts. 2014 to 2024E based on Packaged Facts as adjusted for company internal estimates. US GDP Growth based on Bureau of Economic Analysis data.

The U.S. pet industry is broadly broken down into two categories: pet products, which includes non-discretionary food and supplies; and pet services, which includes essential veterinary services and non-medical services, such as grooming and training. Through our complete pet health and wellness ecosystem, we address all of these categories in a distinctive and holistic manner.

#### **Pet Products**

In 2020, the pet products category is expected to represent a \$61 billion market consisting of the \$39 billion pet consumables, \$20 billion pet supplies, and \$2 billion companion animals categories. Based on Packaged Facts and company internal estimates, pet food and supplies are forecasted to grow at a CAGR of 5% and 4%, respectively, from 2020 to 2024.

Within the pet products category, the pet specialty channel represents a 22% category share as of June 2020, according to Packaged Facts. Petco has significant brand dominance within the category, with approximately 31% market share of the total U.S. pet specialty channel as of 2019. With its dedicated focus and large assortment of pet products and services, the pet specialty channel is most competitively positioned to capitalize on category trends such as pet humanization, pet ownership growth, and growing demand for a one-stop destination for pet care.

#### **Pet Services**

The pet services category represents a \$35 billion market consisting of the \$27 billion veterinary services and \$8 billion non-medical services categories in 2020. According to Packaged Facts and

company internal estimates, veterinary services and non-medical services are forecasted to grow at a CAGR of 9% and 14%, respectively, from 2020 to 2024. The pet services category is primarily addressed by pet specialty and veterinarian channels.

The same trends positively impacting the pet products market are also driving increased consumption of pet services, including veterinary, grooming, and training. We believe that the main drivers of consumer selection of service providers are trust, price, quality of care, and convenience. We believe that our integrated platform and comprehensive offering differentiate us from our competition and position us to benefit from the continued growth in pet services, as well as to grow share in what remains a highly fragmented market.

### ***Impact of the COVID-19 Pandemic on Our Industry***

Although the COVID-19 crisis has presented significant challenges to the broader economy, the pandemic has accelerated several consumer trends that have meaningfully benefited the pet care industry, which has been deemed essential by federal, state, and local authorities. Pet adoption and purchase has accelerated meaningfully as consumers spend more time at home and outdoors, and have an increasing desire for companionship, a need to entertain children, and a growing appreciation for the physical and mental health and wellness benefits of pet parenthood. According to Packaged Facts, over 86% and 84% of dog and cat owners, respectively, agree that pets have a positive impact on both physical and mental health. In addition, consumers are increasingly migrating from urban cities to less densely populated communities, which are more conducive to raising a pet.

### ***Industry Trends***

The following key trends have historically driven, and continue to drive, strong growth in the industry:

- **Large, Resilient Category with Favorable Long-Term Trends.** The pet industry is a large, stable market that has consistently demonstrated resilience across economic cycles, driven by the non-discretionary replenishment nature of consumable products and services such as pet food, grooming, and veterinary services.
- **Continued Momentum Behind the Pet Humanization Trend.** The pet humanization trend remains strong with 94% of pet parents agreeing “I consider my dog or cat to be part of my family,” according to Packaged Facts. In addition, according to an internal study, 94% of dog parents want to provide the healthiest, most nutritious food for their pet, but only 58% are confident they are doing so. These dynamics have resulted in increasing demand for premium pet care goods and services as pet parents seek to provide their pets with the best care possible. According to Packaged Facts, the annual spend per pet has grown at a 4% CAGR from \$1,179 in 2015 to \$1,401 in 2019.
- **Growing Consumption of Pet Health Services.** Attributable in part to the pet humanization trend, demand for pet health services has risen dramatically in recent years. Veterinary services represent the second-largest market within pet health services, having generated \$27 billion of revenue in 2020.

Rising focus on pet health is also driving increased adoption of pet insurance, especially in developed markets, where the rates of insured pets are as high as 25%. In the United States, the North American Pet Health Insurance Association reported that only 2% of pets are estimated to be covered by insurance, which implies potential for significant growth.

- **Shift Toward Digital, including Increased E-Commerce Penetration.** Pet parents are spending a greater share of their total pet care spend online. In the last several years, online growth has been driven by the increased adoption of pet food subscription programs and the general expansion of online membership services, which cover most major consumer packaged goods categories.
- **Increased Customer Focus on Total Solutions and the Value of an Integrated Offering.** Convenience is playing an increasingly important role in the pet care industry as

consumers become accustomed to online purchasing and subscription services. The ability to offer a one-stop destination for customers to manage all pet care needs, whether in store, online, in-home, or on a mobile device, is increasingly becoming a competitive advantage versus pure-play online, mass, and smaller independent specialty retailers. This is demonstrated by a recent Lippincott survey that stated that half of all pet parents prefer a one-stop experience and 73% of pet parents expect to make more purchases with a membership program.

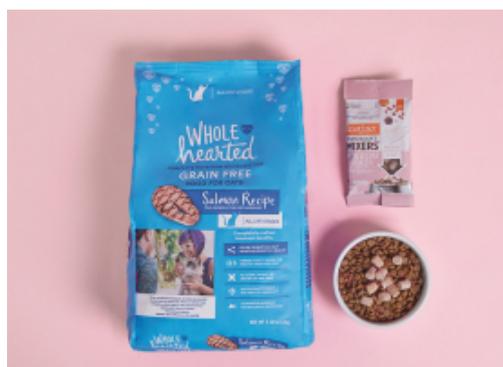
- **Strong Growth Trends in International Markets.** The pet humanization trend continues to proliferate across the globe, with several countries around the world emerging as promising growth markets for the pet industry. Over the last several years, developing countries such as China and Mexico have experienced strong economic growth that has given rise to an expanding middle class with growing disposable income, driving increased pet ownership and spending on pets. Other countries in both South America and Asia have exhibited similar macro trends that are contributing to increased consumption on pet products and services.

These favorable tailwinds have driven strong and consistent growth in the industry, with spending on pets projected by Packaged Facts to reach \$126 billion in the United States in 2024, up from \$97 billion in 2020, representing a CAGR of 7%.

## Our Comprehensive Offering

### Product Offering

We offer a comprehensive product offering consisting of over 57,000 products across pet food, supplies, and companion animals available through our physical and online channels. In Fiscal 2019, 51% of our product sales comprised non-discretionary consumable products, such as food and supplements, which feature high purchase frequency over the life of a pet and sticky characteristics due to a strong desire for pet parents to avoid switching food brands. In addition, in Fiscal 2019, we generated more than 27% of our product sales from owned brands—such as WholeHearted, Reddy, and Well & Good. This represents a much higher percentage of our merchandise mix compared to our online competitors, helps the Petco ecosystem attract and retain customers, and also offers us an enhanced margin profile as owned brands, on average, have a more than 1,000 basis points higher margin than comparable third-party brands.

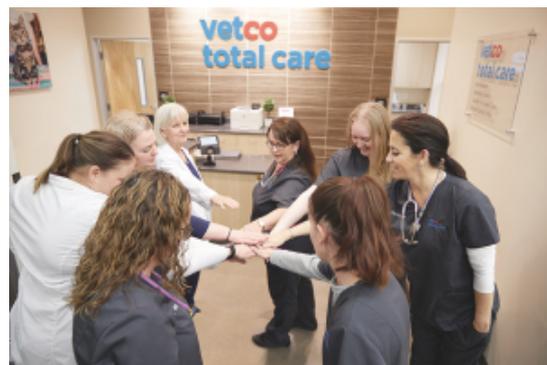


### Service Offering

We offer the industry's only fully-integrated comprehensive service offering that includes professional grooming, training and veterinary services. Unlike some other consumer purchases, the services we offer for pet parents are essential, recurring, and high frequency in nature. In addition to acting as a profitable driver of new customer acquisition, our service platform helps retain customers,

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drive physical visit frequency and digital engagement, and build long-term loyalty. During Fiscal 2019, our service offering sales grew 14% year-over-year, and represented approximately 9% of sales. As one of the fastest-growing parts of our business, we expect services as a percentage of sales to grow meaningfully as we continue to expand on our new Nexus format for our pet care centers, which has resulted in a higher mix of services relative to the pre-Nexus format mix.



### **Multi-Channel Platform**

We have developed a data-driven go-to-market platform consisting of robust digital capabilities and a strategic physical network of pet care centers woven together by a singular view of the customer.

#### ***Data***

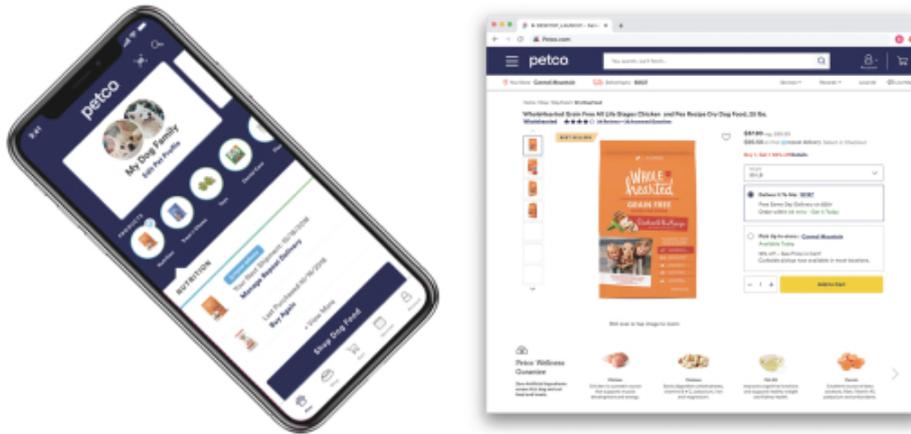
We have built a proprietary customer database leveraging information collected across our digital and physical network to construct a singular view of each of our customers. Between our Pals program and our ability to capture purchase information across our channels, we have one of the most robust databases of Active Customers and pet spend in the industry. From these data, we identify customer cohorts, cross-selling opportunities, new pet parent trends, breed-specific purchase patterns, and the likelihood of certain customers trying services, in addition to other trends. Data analysis forms the basis for ongoing marketing activities, product development, and operational improvements.

#### ***Digital Capabilities***

Over the last two years, we have implemented a radical transformation in our digital business spanning core site experience, offerings, and capabilities. Today, our robust digital capabilities consist of an entirely redesigned website, featuring an enhanced product discovery experience, and easy-to-use navigation of top brands, as well as a proprietary and personalized app that serves as a singular pet management center that helps pet parents track their health, wellness, and merchandise interactions with us. These digital capabilities have created a seamless multi-channel experience for our customers who, after downloading the app, spend increasingly more with us as they take advantage of more features offered on our digital platforms.

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With repeat delivery, BOPUS, and curbside pick-up capabilities, guests can receive products more quickly and conveniently than pet-oriented online-only competitors who offer no option for same day shipping, which we plan to begin offering in December 2020. These capabilities seamlessly link our digital presence with our physical network, which positions us to more effectively serve our customers.



### ***Physical Network***

We operate approximately 1,470 pet care centers across the United States and Puerto Rico. Our Petco locations average approximately 14,000 square feet and typically carry 10,000 core SKUs, with nearly all offering grooming and training services, 800 offering Vetco clinics, and 105 offering full-service veterinary hospitals. We operate 59 locations in the United States under our Unleashed brand, our concept which caters to more urban areas, as well as 89 locations in Mexico through our joint venture with Grupo Gigante.

Over the last five years, we have used our new Nexus format for our new and remodeled pet care centers. This new proven format features a modernized in-store experience by showcasing our differentiated service offering, elevated nutrition engagement, and companion animal theater. Currently, our new Nexus format incorporates revenue-driving elements like ship-from-store fulfillment stations, full-service veterinary hospitals, Just Food For Dogs pantries and kitchens, Reddy branded shops, and prescription food assortment. We have also incorporated more in-store technology, including hand-held devices for our partners to assist customers with shopping, content, and recommendations.

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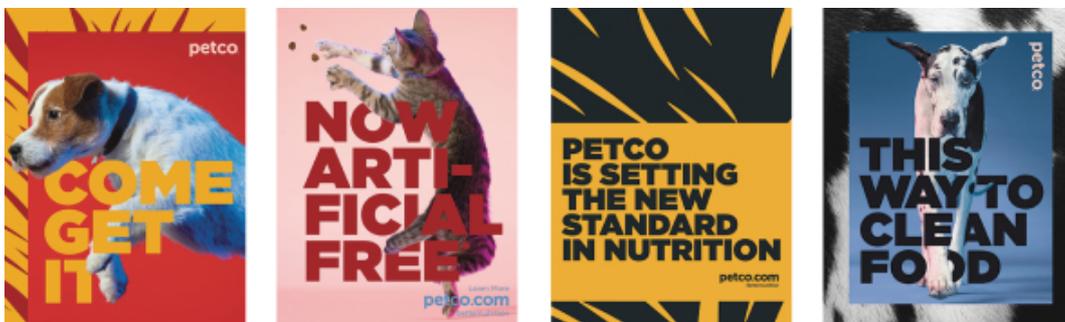
Our new Nexus remodel strategy has demonstrated significant economic benefits. As of the end of Fiscal 2019, the 81 locations with the new Nexus format and the revenue-driving elements (including the full-service veterinary hospital) cited above have, on average, experienced a lift in sales of approximately 600 basis points in the first full year post-remodel. As we continue to expand our Nexus format across our physical network, including veterinary hospitals, we expect to meaningfully increase the productivity and profitability generated by each pet care center, resulting in significant long-term growth for our company.



**Marketing and Advertising**

Over the last two years, we have completely overhauled our marketing and media strategy. The upgrade has been powered by talent infusions from Jet.com, Target, Bank of America, PepsiCo, REI's membership group, HP, Kraft, and Samsung. The rebirth began with the major announcement of Petco's commitment to eliminate artificial ingredients. This announcement was Petco's largest PR/Media event impact in its history, strengthened brand awareness, and put Petco on the road to becoming a marketing-driven company. This was followed by a build-out of marketing behind our services offerings that helped drive our revenue growth from negative mid-single digits to positive growth of 14% in Fiscal 2019. We then built a world-class performance marketing capability that has meaningfully accelerated our e-Commerce business growth and positively impacted pet care center sales.

Correspondingly, we have seen a dramatic improvement in marketing return on investment. Our return on advertising spend (ROAS) more than doubles the median retailer ROAS of \$3.00, and even exceeds the ROAS of specialty retailers in the 75th percentile of \$6.37 per Nielsen. This strong return has given us an industry-leading customer lifetime value to customer acquisition cost ratio. We have been able to achieve these results through capability builds in insights, analytics, advanced digital marketing, analytics and improved CRM and loyalty expertise. As a result, marketing and advertising has become a "flywheel" driver of our recent strong business results.



## Our Partners

Our Petco partners are our most significant assets, critical to the delivery of our transformation. Our store partners offer a level of customer engagement and content that is differentiated in retail and based on a true passion for pets. Over the past two years, we streamlined methods for setting executional priorities, provided comprehensive selling training, developed store-level sales marketing capabilities, and recaptured our partners' hearts through enhanced benefits, employee resource groups, and constant communication through tools like Workplace, an intra-company communication and collaboration platform. These efforts have increased our customer satisfaction scores, decreased partner attrition by 3% in Fiscal 2019 over the previous year, and improved our revenue per employee-hour. Our partners, including our groomers and trainers, are primarily employed on an at-will basis, and are compensated through base salary and incentive programs.



## Distribution Network

We operate five primary and three regional distribution centers located in various parts of the United States that handle almost all distribution for our company. Bulk items are shipped either directly from our main distribution centers or regional distribution centers to our pet care centers across the country. Manufacturers ship product to both the main and regional distribution centers. Over the past three years, we have continued to enhance warehouse and transportation information systems, our facilities, and links with our pet center fulfillment infrastructure. We currently fulfill orders from our e-commerce customers through all of our main distribution centers or directly from pet care centers. Our ship-from-store, BOPUS, and curbside programs enhance our distribution network, allowing us to more quickly and cost effectively serve our customers. During the three quarters of Fiscal 2020, approximately 80% of digital orders (including BOPUS and ship-from-store) were fulfilled by pet care centers, which has allowed us to deliver product more quickly and cost-effectively than we otherwise could by using traditional distribution center fulfillment. On average, BOPUS orders provide 4% higher margins than standalone online orders.

We only sell the products we carry directly to consumers and primarily purchase our products directly from our vendors rather than through third-party distributors. As such, we do not rely on third-party distributors to conduct our business. Any relationships we have with third-party distributors are governed by non-exclusive agreements that do not obligate us to minimum volume or fees, and such agreements may be terminated by either party on 90 days' prior written notice.



### **Vendor and Veterinarian Arrangements**

We purchase merchandise from over 200 vendors. In Fiscal 2019, our top vendor represented approximately 5% of annual sales, and in the thirty-nine weeks ended October 31, 2020, no single vendor accounted for more than 5% of our sales. We onboard our vendors using a standardized process to confirm their adherence to our standards, policies, and procedures, including those relating to legal compliance, standard payment terms, and product quality. These relationships are typically governed by our standard vendor terms and conditions, under which we submit purchase orders to our vendors specifying the types, quantities, and agreed prices for merchandise that we intend to purchase from them. These agreements do not typically have minimum order requirements or exclusivity obligations for either party. Our terms and conditions do not have a set term but allow us to terminate the relationship for convenience at any time upon written notice to the vendor. Our vendors may terminate the relationship on 90-days' written notice but are obligated to perform any purchase order accepted prior to such notice.

Our full-service veterinary hospitals are either operated by us or by third-party veterinary services partners with whom we have long-term contractual relationships. In the hospitals that are operated by our third-party veterinary services partners, we generally provide facilities, equipment, and customer relations management support, while the veterinary services partners provide staffing and run the day-to-day operations of the hospital. The veterinary service partners pay us a royalty based on hospital sales and a license fee to use our space and equipment. Either party can terminate the contractual relationship upon 180-days' written notice or, as applicable, upon a breach of the contract by us or a violation of the standard operating procedures by the veterinary service partner. Our Vetco clinics are staffed by Vetco personnel, some of whom are independent contractor veterinarians.

### **Petco Foundation**

At the Petco Foundation, a separately incorporated 501(c)(3) nonprofit organization supported both by contributions from us and contributions from our customers and community partners, we believe that every animal deserves to live its best life. Since 1999, the Petco Foundation has invested more than \$280 million in lifesaving animal welfare work to make that happen. With our more than 4,000 animal welfare partners, we inspire and empower communities to make a difference by investing in adoption and medical care programs, spay/neuter services, pet cancer research, service and therapy animals, and numerous other lifesaving initiatives. Through the Think Adoption First program, the Petco Foundation partners with Petco stores and animal welfare organizations across the country to increase pet adoptions. To date, we have helped more than 6.3 million pets find their new loving families.

## **Properties**

We have co-headquartered facilities, located in San Diego, California, and San Antonio, Texas. Our San Diego, California location was completed in the summer of Fiscal 2015, comprising a total of 257,000 square feet, and is under a long-term lease. Our San Antonio location consists of a sub-divided leased facility, comprising a total of 73,000 square feet.

We lease all of our distribution center locations and nearly all of our approximately 1,470 pet care centers. The original lease term for pet care centers is generally ten years, with certain leases being shorter or longer, and many of these leases contain renewal options. The vast majority of Pet care center leases, excluding renewal options, expire at various dates over the next ten years. Our pet care centers are generally located at sites co-anchored by strong destination stores. Certain leases require payment of property taxes, utilities, common area maintenance and insurance and, if annual sales at certain locations exceed specified amounts, provide for additional rent expense.

## **Legal Proceedings**

We are involved in the legal proceedings described in Note 16, Commitments and Contingencies, in our historical consolidated financial statements included elsewhere in this prospectus, and we are subject to other claims and litigation arising in the ordinary course of business. The outcome of any litigation is inherently uncertain, and if decided adversely to us, or if we determine that settlement of particular litigation is appropriate, we may be subject to liability that could have a material adverse effect on our business. We believe that there are no pending lawsuits or claims that, individually or in the aggregate, may have a material effect on our business, financial condition or results of operations.

## **Our Trademarks and Other Intellectual Property**

We believe that our rights in our intellectual property, including trademarks and domain names, as well as contractual provisions and restrictions on access to our proprietary technology, are important to our marketing efforts to develop brand recognition and differentiate our brand from our competitors. We own a number of trademarks that have been registered, or for which registration applications are pending, in the United States and certain foreign jurisdictions. These trademarks include Bond & Co., Good 2 Go, Good Lovin', Harmony, Imagitarium, Leaps & Bounds, Pals Rewards, Petco, PetCoach, PupBox, Reddy, Ruff & Mews, So Phresh, Vetco, Well & Good, WholeHearted, and You & Me. The current registrations of these trademarks are effective for varying periods of time and may be renewed periodically, provided that we, as the registered owner, or our licensees where applicable, comply with all applicable renewal requirements including, where necessary, the continued use of the trademarks in connection with similar goods. We expect to pursue additional trademark registrations to the extent we believe they would be beneficial and cost-effective.

In addition to trademark protection, we own numerous domain names, including [www.petco.com](http://www.petco.com). We also enter into, and rely on, confidentiality and proprietary rights agreements with our employees, consultants, contractors and business partners to protect our trade secrets, proprietary technology, and other confidential information. We further control the use of our proprietary technology and intellectual property through provisions in both our customer terms of use on our website and in our vendor terms and conditions.

We believe that our intellectual property has substantial value and has significantly contributed to our success to date. We continually engage with manufacturers to develop and market better quality pet products under our brand names to better serve our customers at a lower price.

## **Government Regulation**

We are subject to a broad range of federal, state, local, and foreign laws and regulations intended to protect public health, natural resources, and the environment. Our operations, including our private

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brand manufacturing outsourcing partners, are subject to regulation by OSHA, the FDA, the USDA, the DEA and by various other federal, state, local, and foreign authorities regarding the processing, packaging, storage, distribution, advertising, labeling, and import of our products, including food safety standards. Please read “Risk Factors—Risks Related to Our Business—Our operations are subject to extensive governmental regulation, and we may incur material liabilities under, or costs in order to comply with, existing or future laws and regulation. Our failure to comply with such laws and regulations may result in enforcements, recalls, and other adverse actions that could disrupt our operations and adversely affect our financial results.”

The FDA regulates animal feed, including pet food, under the Federal Food, Drug, and Cosmetic Act, (the “FFDCA”), and its implementing regulations. Although pet foods are not required to obtain premarket approval from the FDA, the FFDCA requires that all animal foods are safe for consumption, produced under sanitary conditions, contain no harmful substances, and are truthfully labelled. Most states also require that pet foods distributed in the state be registered or licensed with the appropriate state regulatory agency. In addition, most facilities that manufacture, process, pack, or hold foods, including pet foods, must register with the FDA and renew their registration every two years, and are subject to periodic FDA inspection. This includes most foreign, as well as domestic facilities. Registration must occur before the facility begins its pet food manufacturing, processing, packing, or holding operations.

In addition, any substance that is added to or is expected to become a component of a pet food must be used in accordance with a food additive regulation issued by the FDA, unless the substance is generally recognized as safe, or GRAS, under the conditions of its intended use. A food additive regulation may be obtained through the submission of a food additive petition to the FDA demonstrating that a food additive is safe for its intended use and has utility. Use of a food ingredient that is neither GRAS nor an approved food additive may cause a food to be adulterated, in which case the food may not be legally marketed in the United States.

The labeling of pet foods is regulated by both the FDA and some state regulatory authorities. FDA regulations require proper identification of the product, a net quantity statement, a statement of the name and place of business of the manufacturer or distributor, and proper listing of all the ingredients in order of predominance by weight. Most states also enforce their own labeling regulations, many of which are based on model definitions and guidelines developed by the AAFCO. The AAFCO is a voluntary, non-governmental membership association of local, state, and federal agencies that are charged with regulation of the sale and distribution of animal feed, including pet foods. The degree of oversight of the implementation of these regulations varies by state, but typically includes a state review and approval of each product label as a condition of sale in that state.

FDA also regulates the inclusion of specific claims in pet food labeling. For example, pet food products that are labeled or marketed with claims that may suggest that they are intended to treat or prevent disease in pets would potentially meet the statutory definitions of both a food and a drug. The FDA has issued guidance regarding products that provide nutrients in support of an animal’s daily nutrient needs but which are also labeled as being intended for use to diagnose, cure, mitigate, treat, or prevent disease, thereby meeting the statutory definitions of both a food and a drug. Noting an increase in the number of dog and cat foods labeled as being intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, and noting that animal health may suffer when such products are not subject to pre-market FDA approval and are provided in the absence of a valid veterinarian-client-patient relationship, the FDA identified specific factors it will consider in determining whether to initiate enforcement action against products that satisfy the definitions of both an animal food and an animal drug, but which do not comply with the regulatory requirements applicable to animal drugs.

Under Section 423 of the FFDCA, the FDA may require the recall of an animal feed product if there is a reasonable probability that the product is adulterated or misbranded and the use of or exposure to the product will cause serious adverse health consequences or death. In addition, pet food manufacturers may voluntarily recall or withdraw their products from the market.

In addition, our business and our vendors' businesses are subject to foreign and domestic laws and regulations applicable to companies conducting business on the internet and the collection and use of personal information generally. Jurisdictions vary as to how, or whether, existing laws governing, areas such as data privacy and security, consumer protection or sales and other taxes, among other areas, apply to the internet and e-commerce, and these laws are continually evolving. Related laws may govern the manner in which we collect, use, store, or transfer sensitive information, or impose obligations on us in the event of a security breach or an inadvertent disclosure of such information. International jurisdictions impose different, and sometimes more stringent, consumer and privacy protections. Additionally, tax regulations in jurisdictions where we do not currently collect state or local taxes may subject us to the obligation to collect and remit such taxes, or to additional taxes, or to requirements intended to assist jurisdictions with their tax collection efforts. New legislation or regulations, the application of laws from jurisdictions whose laws do not currently apply to our business, or the application of existing laws and regulations to the internet and e-commerce generally could result in significant additional taxes on our business. Further, we could be subject to fines or other payments for any past failures to comply with these requirements. Please read "Risk Factors—Risks Related to Our Business—Our marketing programs, e-commerce initiatives and use of consumer information are governed by an evolving set of laws and enforcement trends, and unfavorable changes in privacy laws or trends, or our failure to comply with existing or future laws, could substantially harm our business and results of operations." The continued growth of and demand for e-commerce is likely to result in more laws and regulations that impose additional compliance burdens on e-commerce companies.

Certain states have laws, rules, and regulations that require that veterinary medical practices be either wholly owned or majority owned by licensed veterinarians and that corporations that are not wholly owned or majority owned by licensed veterinarians refrain from providing, or holding themselves out as providers of, veterinary medical care, or directly employing or otherwise exercising control over veterinarians providing such care. In these states and jurisdictions, we provide management and other administrative services to veterinary practices rather than owning such practices or directly employing the veterinarians providing medical care. Although we believe that we have structured our operations to comply with our understanding of the veterinary medicine laws of each state and jurisdiction in which we operate, interpretive legal precedent and regulatory guidance varies by jurisdiction and is often sparse and not fully developed.

In addition, all of the states in which we operate impose various registration permit and/or licensing requirements. To fulfill these requirements, we have registered each of our facilities with appropriate governmental agencies and, where required, have appointed a licensed veterinarian to act on behalf of each facility. All veterinarians practicing in our animal wellness centers are required to maintain valid state licenses to practice and veterinarians practicing in our full-service hospitals are required to maintain valid licenses with the DEA. We are also required to comply with state laws governing the dispensing of prescription pet medications by our veterinarians. Additionally, our pet insurance plans must be registered with certain state departments of insurance and comply with their requirements. We cannot assure you that we will not be subject to reprimands, sanctions, probations, or fines, or that one or more of our licenses or registrations will not be suspended or revoked.

## MANAGEMENT

### Directors and Executive Officers of Petco

The following table sets forth certain information as of December 3, 2020, regarding individuals who are expected to serve as our executive officers and/or directors following the completion of this offering.

<u>Name</u>	<u>Age</u>	<u>Position with Petco</u>
Ronald Coughlin, Jr.	54	Chief Executive Officer and Director
Michael Nuzzo	50	Executive Vice President, Chief Financial Officer and Chief Operating Officer
Michelle Bonfilio	50	Chief Human Resources Officer
Ilene Eskenazi	48	Chief Legal Officer and Corporate Secretary
Tariq Hassan	51	Chief Marketing Officer
Nicholas Konat	43	Chief Merchandising Officer
Darren MacDonald	42	Chief Digital & Innovation Officer
Justin Tichy	49	Chief Pet Care Center Officer
John Zavada	57	Chief Information & Administrative Officer
Maximilian Biagosch	48	Director
Cameron Breitner	46	Director
Gary Briggs	57	Director
Nishad Chande	45	Director
Christy Lake	46	Director
Jennifer Pereira	38	Director
Christopher J. Stadler	56	Director

#### **Executive Officers**

**Ronald Coughlin, Jr.** has served as our Chief Executive Officer and director since June 2018. In addition to the Chief Executive Officer role, he is expected to serve as Chairman of our board of directors following the completion of this offering. Prior to joining us, Mr. Coughlin served from 2014 to 2018 as President of HP Inc.'s Personal Systems segment, a \$33 billion global business that offers consumer and commercial products and services. Previously, he served as Senior Vice President of Consumer PCs, Senior Vice President of LaserJet Hardware and Commercial Document Services and Solutions, and Senior Vice President of Sales, Strategy, and Marketing at HP Inc. (previously known as Hewlett-Packard Company). Prior to joining HP Inc. in 2007, Ron spent 13 years at PepsiCo in a range of senior executive roles, including Chief Marketing Officer of PepsiCo International Beverages. Mr. Coughlin earned a bachelor's degree in international marketing from Lehigh University and a master's degree in business administration from the Kellogg School of Management at Northwestern University.

**Michael Nuzzo** has served as our Executive Vice President, Chief Financial Officer since May 2015. He also became our Chief Operating Officer and President of our services businesses in July 2019. Prior to joining us, Mr. Nuzzo served from July 2014 to April 2015 as Chief Administrative Officer at 4moms, a technology and robotics startup company. Prior to joining 4moms, Mr. Nuzzo served as the Executive Vice President and Chief Financial Officer for GNC Holdings, Inc., a multinational health and nutrition retailer, from 2008 to 2014, playing a lead role in the company's initial public offering in 2011. From 1999 to September 2008, Mr. Nuzzo served in various senior level finance, retail operations, and strategic planning roles with Abercrombie & Fitch, a specialty retailer of casual clothing for men, women, and children, including Senior Vice President of Corporate Finance from June 2008 to September 2008 and Vice President of Corporate Finance from January 2006 to May 2008. Prior to his work in the retail sector, Mr. Nuzzo was a senior consultant in the healthcare industry with William M. Mercer and Medimetrix Group. Mr. Nuzzo holds a bachelor's degree in economics from Kenyon College and a master's degree in finance and accounting from the University of Chicago.

**Michelle Bonfilio** has served as our Chief Human Resources Officer since October 2018. Prior to joining us, Ms. Bonfilio served from April 2017 to October 2018 as Chief Human Resources Officer for The Wine Group, LLC, the second-largest global producer of wine in the United States. Previously, she served as Vice President, Human Resources at Delta Dental of California from January 2016 to April 2017 and as Vice President, Human Resources at Big Heart Pet Brands from August 2014 to August 2015. She also held various HR leadership positions at Gap, Inc. from January 2005 to July 2014. Ms. Bonfilio holds a bachelor's degree in psychology from the University of California, Davis.

**Ilene Eskenazi** has served as our Chief Legal Officer and Corporate Secretary since September 2020. Prior to joining us, from 2016 to 2020, Ms. Eskenazi served as Global General Counsel and Chief Human Resources Officer at Boardriders, Inc. (formerly Quiksilver, Inc.), a leading action sports and lifestyle company. Previously, she served from 2013 to 2016 as Chief Legal Officer and Senior Vice President of Talent Operations and Performance at True Religion Apparel, Inc., an apparel and retail company. True Religion subsequently filed for Chapter 11 bankruptcy in July 2017, which it exited four months later. Before that, Ms. Eskenazi served as the General Counsel for Red Bull North America, Inc. between 2008 and 2013 and as the Deputy General Counsel at The Wonderful Company between 2002 and 2008. Ms. Eskenazi started her legal career at Skadden, Arps, Slate, Meagher and Flom LLP. Ms. Eskenazi holds a bachelor's degree in philosophy from the University of Michigan and a J.D. from the University of California, Los Angeles School of Law.

**Tariq Hassan** has served as our Chief Marketing Officer since July 2018. Prior to joining us, Mr. Hassan served from 2015 to 2017 as head of brand for Bank of America, a multinational investment bank and financial services holding company. Prior to that, he held global leadership roles with Hewlett-Packard Company (now HP Inc.), a leading global provider of personal computing and other access devices, imaging, and printing products, and related technologies, solutions and services, between 2008 and 2012, and global executive management roles with Omnicom Group, Inc., a global marketing, media, and corporate communications holding company, between 2001 and 2008 and then again between 2012 and 2014. Mr. Hassan holds an honors bachelor's degree in international political science and philosophy from the University of Western Ontario, and a master's degree in integrated marketing communications from Northwestern University.

**Nicholas Konat** has served as our Chief Merchandising Officer since September 2018. He joined Petco in 2015 as Vice President of Owned Brands, leading product innovation and design before being promoted to Senior Vice President of Owned Brands and Merchandising. Prior to joining us, Mr. Konat served as Director of Food and Merchandising Planning at Target Corporation, capping a 9+ year career there where he held a range of merchandising, planning and leadership roles across the food and fashion categories. Mr. Konat also spent six years with Accenture plc, a multinational professional services company. Mr. Konat holds an honors bachelor's degree in political science and government from St. John's University.

**Darren MacDonald** has served as our Chief Digital & Innovation Officer since June 2019. Prior to joining us, Mr. MacDonald served from February 2016 to January 2017 as Senior Vice President of Jet.com, a then e-commerce company, and from January 2017 to June 2019 as Group General Manager and Global Officer for U.S. at Walmart Inc., a multinational retail corporation. Prior to that, between April 2014 and February 2016, he was the Founder and CEO of Ingress Capital. Previously, he was the CEO of The Pronto Network, an IAC company, and also held a number of roles at Avery Dennison Corporation. Mr. MacDonald holds a bachelor's degree from the University of California, Berkeley and a master's degree in business administration from the University of California, Los Angeles.

**Justin Tichy** has served as our Chief Pet Care Center Officer since October 2018. Prior to joining us, Mr. Tichy served from May 2015 to October 2018 as President of Sales at Confie, one of the largest privately held insurance brokers in the nation. Previously, he held key leadership positions at Best Buy Co., Inc., Target Corp., and Walmart Inc. Mr. Tichy holds a bachelor's degree in business management from Pennsylvania State University and a master's degree in organizational management from the University of Phoenix.

**John Zavada** has served as our Chief Information & Administrative Officer since September 2016. Prior to joining us, Mr. Zavada served from 2013 to 2016 as Senior Vice President and Chief Information Officer at Restoration Hardware, a luxury home-furnishings company. Previously, he filled Chief Information Officer roles at Guitar Center, Big Lots, Inc., Gottschalks Department Stores, and Victoria's Secret Stores. Mr. Zavada holds a bachelor's degree in business information systems from California State Polytechnic University.

### **Directors**

**Maximilian Biagosch** has been a member of our board of directors since 2018. Mr. Biagosch is a Managing Director at CPP Investments, one of our Sponsors, which he joined in 2015. Between 2007 and 2015, Mr. Biagosch worked at Permira Advisers LLP, an international investment firm, where he was the head of Permira's Capital Markets Group. Prior to Permira Advisers LLP, Mr. Biagosch worked in investment banking at Deutsche Bank and at BNP Paribas. Mr. Biagosch received a Master of Laws (LLM) from Ludwig-Maximilians-Universität Munich. His experience across multiple industries and with portfolio company operational performance improvement qualifies him to serve on our board of directors.

**Cameron Breitner** has been a member of our board of directors since 2016. He is a Managing Partner at CVC, the private equity and investment advisory firm that advises and manages CVC Funds, one of our Sponsors, which he joined in 2007. He is the head of CVC's San Francisco office and shares responsibility for overseeing CVC's U.S. Private Equity activities. Prior to joining CVC, Mr. Breitner was a Managing Director at Centre Partners, a private equity firm, where he worked from 1998 to 2007. Prior to Centre Partners, he worked in mergers and acquisitions at Bowles Hollowell Conner & Co. Mr. Breitner currently serves on the board of directors of Advantage Solutions Inc., a leading business solutions provider to consumer goods manufacturers and retailers. Mr. Breitner has previously served on the board of directors of BJ's Wholesale Club Holdings, Inc. among many other public and private companies. Mr. Breitner received a bachelor's degree in psychology from Duke University. His retail industry experience qualifies him to serve on our board of directors.

**Gary Briggs** has been a member of our board of directors since 2018. Since 2019, he has served as the Chairman at Hawkfish, a data and technology firm. He also serves on the board of directors of Etsy and Afterpay. Previously, between 2013 and 2018, Mr. Briggs served as the Chief Marketing Officer of Facebook, Inc., a social media conglomerate corporation. Prior to joining Facebook, he served in various leadership roles at Google LLC, a technology company. Before then, he held a number of marketing and general management leadership roles at eBay Inc., PayPal, Inc., PepsiCo, Inc., and IBM Corp. Earlier in his career, he was a management consultant with McKinsey and Company. He holds a bachelor's degree from Brown University and a master's degree from the Kellogg School of Management at Northwestern University. His extensive experience in marketing and brand management qualifies him to serve on our board of directors.

**Nishad Chande** has been a member of our board of directors since 2016. He is a Senior Managing Director, U.S. Head of Consumer and Co-Head of Business Services at CVC, the private equity and investment advisory firm that advises and manages CVC Funds, one of our Sponsors, which he joined in 2016. Prior to joining CVC, he worked at Centre Partners, a private equity firm, from 2005 to 2016, Bain & Company from 2003 to 2005, Raymond James Capital from 1999 to 2001, and Schroders from 1997 to 1999. Mr. Chande previously served on the board of directors of BJ's Wholesale Club Holdings, Inc. Mr. Chande holds a bachelor's degree in economics and mathematics from Dartmouth College and a master's in business administration degree from the Wharton School at the University of Pennsylvania. His experience across multiple industries qualifies him to serve on our board of directors.

**Christy Lake** has served as a member of our board of directors since 2018. Since April 2020 she has served as the Chief People Officer at Twilio, a cloud communications platform. Previously, between 2018 and 2020, Ms. Lake served as a Senior Vice President and Chief People Officer at Box,

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Inc., an internet company. Prior to Box, Ms. Lake worked at Medallia, serving as VP of People and Culture from 2016 to 2018 and VP of HRBP & HR Operations in 2016. Ms. Lake also served as Global Head of HR for HP's Personal Systems division from 2015 to 2016 and has held additional HR positions at HP and The Home Depot, among other companies. Ms. Lake holds a bachelor's degree in political science from the University of Connecticut. Her experience in leadership across various industries qualifies her to serve on our board of directors.

**Jennifer Pereira** has been a member of our board of directors since 2016. She is a Senior Principal at CPP Investments, one of our Sponsors, which she joined in 2011 and where she currently leads consumer and retail private equity efforts in North America. Prior to joining CPP Investments, Ms. Pereira worked at the Boston Consulting Group from 2006 to 2009. Ms. Pereira also serves as a director on the board of directors of Ultimate Kronos Group and as an observer on the board of directors of Merlin Entertainments Ltd. She holds a bachelor's degree in engineering from the University of Toronto and a master's degree in business administration from the Wharton School at the University of Pennsylvania. Her experience in private equity investing and the consumer and retail industries qualifies her to serve on our board of directors.

**Christopher J. Stadler** has been a member of our board of directors since 2016. He is a Managing Partner at CVC, the private equity and investment advisory firm that advises and manages CVC Funds, one of our Sponsors, which he joined in 2007. Mr. Stadler is on the board of the CVC Capital Partners advisory business and is the Co-Chairman of the Europe/North America Private Equity Board. Prior to joining CVC, he worked for Investcorp as Head of Private Equity, North America after joining as Managing Director in 1996. Mr. Stadler previously served on the board of directors of BJ's Wholesale Club Holdings, Inc. He holds a bachelor's degree in economics from Drew University and a master's degree in business administration from Columbia University. His experience across multiple industries qualifies him to serve on our board of directors.

### **Status as a Controlled Company**

Because our Sponsors will control \_\_\_\_\_ shares of Class A common stock and \_\_\_\_\_ shares of Class B-2 common stock, which are the only classes of our common stock entitled to vote on director elections and which represent in the aggregate approximately \_\_\_\_\_ % of the voting power with respect to director elections, we expect to be a controlled company as of the completion of this offering under the Nasdaq rules. A controlled company is not required to have a majority of independent directors or form an independent compensation or nominating and corporate governance committee. As a controlled company, we will remain subject to rules that require us to have an audit committee composed entirely of independent directors, subject to the "phase-in" rules applicable to newly public companies. Under the "phase in" rules, we must have at least three independent directors on our audit committee within one year of the effectiveness of the registration statement of which this prospectus forms a part. We expect to have at least \_\_\_\_\_ independent directors upon the completion of this offering.

If at any time we cease to be a controlled company, we will take all action necessary to comply with SEC rules and regulations and the Nasdaq rules, including by appointing a majority of independent directors to our board of directors and ensuring that we have a compensation committee and a nominating and corporate governance committee, each composed entirely of independent directors, subject to the permitted "phase-in" periods.

### **Board of Directors and Committees**

#### ***Composition of Our Board of Directors After This Offering***

Our business and affairs are managed under the direction of our board of directors. We expect our board of directors to consist of at least \_\_\_\_\_ members upon the completion of this offering. We are in the process of identifying additional individuals who will serve on our board of directors upon the completion of this offering.

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Our certificate of incorporation and bylaws, which will be in effect upon the completion of this offering, will provide for our board of directors to be classified into three classes of directors, serving staggered three-year terms of office. Our board of directors will have the exclusive power to fix the number of directors in each class. Only one class of directors will be elected at each annual meeting of our stockholders, with the other classes continuing for the remainder of their respective three-year terms. Directors designated as Class I directors will have initial terms expiring at the first annual meeting of stockholders following the completion of this offering. Directors designated as Class II directors will have initial terms expiring at the second annual meeting of stockholders following the completion of this offering. Directors designated as Class III directors will have initial terms expiring at the third annual meeting of stockholders following the completion of this offering. Beginning with the first annual meeting of stockholders following the completion of this offering, directors of each class the term of which shall then expire shall be elected to hold office for a three-year term and until the election and qualification of their respective successors in office or until any such director's earlier death, resignation, removal, retirement or disqualification.

In connection with this offering, we expect to enter into a stockholder's agreement with our Principal Stockholder, which will provide our Principal Stockholder with the right to designate a certain number of nominees for election to our board of directors and with certain committee nomination and observer rights. Specifically, pursuant to the stockholder's agreement, so long as our Principal Stockholder (including its permitted transferees under the stockholder's agreement) has sold, in the aggregate, (i) 50% or less of the total outstanding shares of Class A Common Stock and Class B-1 Common Stock beneficially owned (directly or indirectly) by it upon the completion of this offering, it will be entitled to nominate six directors, (ii) more than 50% but less than or equal to 75%, it will be entitled to nominate four directors; (iii) more than 75% but less than or equal to 90%, it will be entitled to nominate two directors; and (iv) more than 90%, it will not be entitled to nominate any directors. The size of the board is expected to be fixed at \_\_\_\_\_ directors. If, with the Principal Stockholder's prior written consent, the size of the board is decreased, the Principal Stockholder will be entitled to designate the same number of persons for nomination and election to our board of directors as set forth above. If, with the Principal Stockholder's prior written consent, the size of the board is increased, our Principal Stockholder will be entitled to designate a proportional number of persons for nomination and election to our board of directors (rounded up to the nearest whole, even number). In addition, subject to any requirements, including independence requirements, for committee members imposed by applicable law or by the applicable rules of any national securities exchange on which the Class A common stock may be listed or traded, our Principal Stockholder will have the right to have two of its nominees appointed to serve on each committee of the board of directors for so long as our Principal Stockholder has the right to designate at least two directors for nomination and election to the board. Our Principal Stockholder will also be entitled to designate at least four non-voting observers to attend all meetings of the board of directors and its committees as long as our Principal Stockholder has nomination rights under the Stockholder's Agreement.

The Principal Stockholder has been deemed to have nominated Christopher J. Stadler, Cameron Breitner, and Nishad Chande as designees of CVC, and Jennifer Pereira, Maximilian Biagosch, and \_\_\_\_\_ as designees of CPP Investments, for nomination and election to our board of directors.

In accordance with our certificate of incorporation and the stockholder's agreement, each of which will be in effect upon the completion of this offering, our board of directors will be divided into three classes with staggered three year terms. Our directors will be initially divided among the three classes as follows:

- the Class I directors will be \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, and their terms will expire at the first annual meeting of stockholders to be held following the completion of this offering;
- the Class II directors will be \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, and their terms will expire at the second annual meeting of stockholders to be held following the completion of this offering; and

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- the Class III directors will be \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, and their terms will expire at the third annual meeting of stockholders following the completion of this offering.

At any time when the members of the board are allocated among separate classes of directors, we will take all necessary action so that the directors designated by the Principal Stockholder are in the applicable classes of directors designated by the Principal Stockholder.

Please read “Certain Relationships and Related Party Transactions—Stockholder’s Agreement” for more information.

### **Director Independence**

Each of Gary Briggs and Christy Lake is expected to be “independent” as defined under the Nasdaq rules and Rule 10A-3 under the Exchange Act. We intend to appoint at least one other director who will be “independent” as defined under the Nasdaq rules and Rule 10A-3 under the Exchange Act within one year after the effective date of the registration statement of which this prospectus forms a part.

### **Committees of Our Board of Directors**

In connection with this offering, our board of directors will establish an Audit Committee, as well as a Compensation Committee and a Nominating and Corporate Governance Committee. These committees are described below.

#### **Audit Committee**

In connection with this offering, we will form the Audit Committee as required by the Nasdaq listing rules consisting of \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. We will rely on the phase-in rules of the SEC and Nasdaq with respect to the independence of our Audit Committee. These rules permit us to have an Audit Committee that has one member that is independent as of the effectiveness of the registration statement of which this prospectus forms a part, a majority of members that are independent within 90 days of the effectiveness of the registration statement of which this prospectus forms a part, and all members that are independent within one year of the effectiveness of the registration statement of which this prospectus forms a part. \_\_\_\_\_ will qualify as the “independent” director for purposes of the SEC and Nasdaq independence rules that are applicable to audit committee members. \_\_\_\_\_ will serve as the chair of the Audit Committee. \_\_\_\_\_ is expected to qualify as an “audit committee financial expert” as defined by the SEC. The Audit Committee will be governed by a charter that complies with the Nasdaq rules. Our Audit Committee, among other things, will have responsibility for:

- assisting our board of directors in its oversight responsibilities regarding the integrity of our financial statements, our compliance with legal and regulatory requirements, the independent accountant’s qualifications and independence, and our accounting and financial reporting processes of and the audits of our financial statements;
- preparing the report required by the SEC for inclusion in our annual proxy or information statement;
- approving audit and non-audit services to be performed by the independent accountants; and
- performing such other functions as our board of directors may from time to time assign to the audit committee.

#### **Compensation Committee**

Upon the completion of this offering, the Compensation Committee will consist of \_\_\_\_\_ and \_\_\_\_\_. \_\_\_\_\_ will serve as the chair of the Compensation Committee. As a controlled company,

we will rely upon the exemption from the Nasdaq requirement that we have a compensation committee composed entirely of independent directors. The Compensation Committee will be governed by a charter that complies with the Nasdaq rules. Our Compensation Committee, among other things, will have responsibility for:

- reviewing and approving the compensation and benefits of our Chief Executive Officer and other executive officers;
- recommending the amount and form of non-employee director compensation;
- appointing and overseeing any compensation consultant; and
- performing such other functions as our board of directors may from time to time assign to the compensation committee.

#### ***Nominating and Corporate Governance Committee***

Upon the completion of this offering, the Nominating and Corporate Governance Committee will consist of \_\_\_\_\_ and \_\_\_\_\_ will serve as the chair of the Nominating and Corporate Governance Committee. As a controlled company, we will rely upon the exemption from the Nasdaq requirement that we have a nominating and corporate governance committee composed entirely of independent directors. The Nominating and Corporate Governance Committee will be governed by a charter that complies with the Nasdaq rules. Our Nominating and Corporate Governance Committee, among other things, will have responsibility for:

- identifying individuals qualified to become members of our board of directors, consistent with criteria approved by our board of directors; and
- developing and recommending to our board of directors a set of corporate governance guidelines and principles.

#### **Compensation Committee Interlocks and Insider Participation**

During Fiscal 2019 and currently, the Compensation Committee, which was formed in September 2018, consists of Max Biagosch (Chair), Cameron Breitner, and Christy Lake. None of our executive officers currently serves, or in the past fiscal year has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board of directors or Compensation Committee. None of the members of the Compensation Committee is, nor has ever been, an officer or employee of our company.

#### **Code of Business Conduct and Ethics**

We intend to adopt a code of business conduct and ethics in connection with this offering relating to the conduct of our business by all of our employees, officers and directors. Our code of business conduct and ethics will satisfy the requirement that we have a “code of conduct” under the Nasdaq and SEC rules. It will be posted on our website at [www.petco.com](http://www.petco.com). To the extent required under the listing rules and SEC rules, we intend to disclose future amendments to certain provisions of this code of business conduct and ethics, or waivers of such provisions, applicable to any of our executive officers or directors, on our website identified above.

## **Corporate Governance Guidelines**

In connection the completion with this offering, we intend to adopt corporate governance guidelines, which will serve as a flexible framework within which our board of directors and its committees will operate. These guidelines will cover a number of areas, including the role of our board of directors, board composition and leadership structure, director independence, director selection, qualification and election, director compensation, executive sessions, CEO evaluation, succession planning, annual board assessments, board committees, director orientation and continuing education, board communication with stockholders and others. A copy of our corporate governance guidelines will be posted on our website at [www.petco.com](http://www.petco.com).

## EXECUTIVE COMPENSATION

### Compensation Discussion and Analysis

This Compensation Discussion and Analysis, or CD&A, provides an overview of our executive compensation philosophy, objectives, and design and each element of our executive compensation program with regard to the compensation awarded, to, earned by, or paid to our named executive officers (our “NEOs”), during Fiscal 2019, as well as certain changes we have made to our executive compensation program since the end of Fiscal 2019. Our NEOs are or were employed by our subsidiary, Petco Animals Supplies Stores, Inc.

For Fiscal 2019, our NEOs were:

<u>Name</u>	<u>Title</u>
Ronald Coughlin, Jr.	Chief Executive Officer
Michael Nuzzo	Executive Vice President, Chief Financial Officer and Chief Operating Officer(1)
Darren MacDonald	Chief Digital & Innovation Officer(2)
Justin Tichy	Chief Pet Care Center Officer
Michelle Bonfilio	Chief Human Resources Officer
Laura Wilkin	Former Executive Vice President and Chief Supply Chain Officer(3)

- (1) Mr. Nuzzo is, and throughout Fiscal 2019 was, our acting principal financial officer.  
(2) Mr. MacDonald was appointed as Chief Digital and Innovation Officer on June 10, 2019.  
(3) Ms. Wilkin’s employment with us ended on August 30, 2019.

#### ***Principal Objectives of Our Compensation Program for Named Executive Officers***

Our executive team is critical to our success and to building value for our stockholders. The principal objectives of our executive compensation program are to:

- attract and retain highly talented executives to serve in leadership positions and advance our long-term growth strategy;
- motivate such executives to succeed by providing compensation that is based on both short- and long-term Petco performance;
- reward our executives appropriately over time for performance that increases stockholder value; and
- align the interests of our officers with those of our stockholders by delivering a substantial portion of the officers’ compensation through incentives that drive long-term enterprise value.

Our executive compensation program is designed to reinforce a sense of ownership in Petco, urgency with respect to our business growth and overall entrepreneurial spirit. The program links rewards to overall Petco performance.

#### ***Process for Setting Executive Compensation***

##### ***Role of our Board of Directors and Management in Compensation Decisions***

As described below, the primary elements of our executive compensation program are annual base salary, annual short-term cash incentives, long-term equity incentives, and retirement and termination benefits. Together, these items are intended to be complementary and serve the goals described above.

Historically and during Fiscal 2019 prior to the formation of our Compensation Committee as described below, our executive compensation program was developed and overseen by our board of

directors. In making decisions regarding the allocation of compensation between short-term and long-term compensation, between cash and non-cash compensation, or among different forms of cash and non-cash compensation, our board of directors took into account the views and recommendations of management, in particular our Chief Executive Officer, or our CEO (except with respect to his own compensation). Our CEO made recommendations about annual base salary increases, annual short-term incentive targets and long-term equity grants for our NEOs using market data and internal equity alignment while working within the parameters of our annual budget for base salary increases and the size of the equity pool.

In September 2018, our board of directors formed a Compensation Committee to oversee our executive compensation program going forward. The purpose of the Compensation Committee is to evaluate the compensation of the executive officers of Petco and assure that they are compensated effectively in a manner consistent with the stated compensation strategy of Petco, internal equity considerations, competitive practice, and the requirements of any appropriate regulatory bodies. In March 2020, the Compensation Committee began to schedule and administer stand-alone meetings in order to build more robust compensation-related governance practices.

### ***Use of Compensation Consultants***

In preparation for this offering, the Compensation Committee engaged Exequity as its independent compensation consultant in October 2019 to begin planning for stand-alone Compensation Committee meetings and to provide compensation consulting services going forward. It is expected that Exequity will provide services including a review and analysis of our executive compensation levels and practices, remuneration of members of our board of directors, executive officer and non-employee director ownership guidelines, peer group compensation, and long-term incentive plan design and grant practices.

### ***Internal Pay Equity and Other Factors***

In setting base salary, annual short-term cash incentives and long-term equity incentives, our board of directors, in collaboration with the CEO, has considered factors such as internal pay equity, the experience and length of service of the executive, relative responsibilities among members of our executive team, individual contributions by the executive, and business conditions. In addition, our board of directors has also relied on the experience of its Sponsor-affiliated members who consider the compensation of our executive team in light of the compensation structure of other portfolio companies or private equity-backed companies in general, which typically favors higher long-term incentive compensation due to the nature of such businesses and their ownership.

For elements of compensation other than total direct compensation, such as severance and change in control benefits, our board of directors has relied on its own business experience and familiarity with market conditions in determining the appropriate level of protections for our NEOs.

### ***Elements of Compensation***

The main components of our executive compensation during Fiscal 2019 included base salary, an annual cash incentive, long-term equity incentive awards, and other benefits and perquisites.

#### ***Base Salary***

We pay our NEOs a base salary to provide them with a fixed, base level of compensation commensurate with the executive's skill, competencies, experience, contributions, and performance, as well as general review of market compensation. Base salaries are generally reviewed annually, and our board of directors makes adjustments to reflect individual and Petco performance as well as any survey and peer group data provided at such time. Our CEO and Chief Human Resources Officer make recommendations to our board of directors regarding base salary adjustments for our NEOs

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(except with respect to their own salaries). These recommendations are generally based upon the executive's individual contributions to Petco for the prior fiscal year, leadership and contribution to Petco performance, internal pay considerations, market conditions and survey data, and our overall budget for base salary increases for Petco employees generally. Our board of directors takes all of these factors into account when making its decisions on base salaries but does not assign any specific weight to any one factor. In addition to the annual base salary review, our board of directors may also adjust base salaries at other times during the year in connection with promotions, increased responsibilities, or to maintain competitiveness in the market.

There were no base salary increases awarded to NEOs in Fiscal 2019. The chart below provides the base salary for each of our NEOs as of the end of Fiscal 2019.

<u>Name</u>	<u>Base Salary as of 02/01/2020</u>
Ronald Coughlin, Jr.	\$ 850,000
Michael Nuzzo	\$ 650,000
Darren MacDonald	\$ 550,000
Justin Tichy	\$ 480,000
Michelle Bonfilio	\$ 456,000
Laura Wilkin(1)	\$ 515,000

(1) For Ms. Wilkin, this amount reflects her base salary in effect immediately prior to her separation.

### Fiscal Year 2020 Base Salary Actions

In March 2020 the Compensation Committee reviewed total direct compensation for each named executive officer and awarded Ms. Bonfilio a base salary increase to \$490,000 in light of market data and Ms. Bonfilio's position.

In connection with the COVID-19 pandemic and the resulting economic downturn, our executive leaders, including our NEOs, proactively agreed to temporarily receive reduced base salaries in light of the economic uncertainties caused by the pandemic. Effective April 19, 2020 through May 30, 2020, Mr. Coughlin agreed to receive no base salary, while all other NEOs agreed to 25% reductions in base salary. Effective May 31, 2020, base salaries for all NEOs returned to pre-pandemic levels.

In September 2020, the Compensation Committee awarded each NEO, except Ms. Bonfilio who received an increase earlier in the year, a 2.25% base salary increase in accordance with our annual merit cycle. These small base salary increases were consistent with Petco-wide increases provided to all salaried employees based upon Petco's strong performance through unprecedented times, which was accomplished as one team.

The chart below provides the base salary for each of our NEOs, excluding Ms. Wilkin, following the adjustments described herein.

<u>Name</u>	<u>Base Salary as of 09/30/2020</u>
Ronald Coughlin, Jr.	\$ 869,125
Michael Nuzzo	\$ 664,625
Darren MacDonald	\$ 562,375
Justin Tichy	\$ 490,800
Michelle Bonfilio	\$ 490,000

### ***Annual Cash Incentive Program***

A hallmark of the transformation of our business has been the belief that annual cash incentives should be based upon actual performance measured against specified key business and financial metrics. These metrics span both company and individual performance.

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Each of our NEOs participates in our Corporate Annual Performance Incentive Plan (the “Bonus Plan”) and is eligible for a target annual cash bonus that is equal to a percentage of his or her annual base salary. For Fiscal 2019, the target annual bonus for each of our NEOs was as follows:

<b>Name</b>	<b>Target Annual Cash Incentive (% of Base Salary)</b>
Ronald Coughlin, Jr.	125%
Michael Nuzzo	80%
Darren MacDonald	80%
Justin Tichy	60%
Michelle Bonfilio	60%
Laura Wilkin(1)	80%

(1) For Ms. Wilkin, this amount reflects her target bonus in effect prior to her separation.

At the beginning of each fiscal year, our board of directors establishes each NEO’s target annual cash incentive amount as well as the performance metrics under the Bonus Plan. Annual cash incentives for our NEOs are based on the achievement of Petco and personal performance goals. For Fiscal 2019, the Bonus Plan considered a balanced mix of overall Petco financial measures (50%) (“Company Performance”) and personal performance (50%) to assign its payout to each NEO. At the outset of Fiscal 2019, our board of directors set threshold, target, and maximum goals for each performance metric that it believed to be reasonable and reflective of current business conditions and our business plan and budget for the fiscal year. Our board of directors reserved the right to make adjustments to such goals based on non-recurring events during the fiscal year that were not otherwise in the purview of our board of directors when setting such goals. It was our board of directors’ view that threshold levels of performance should have a higher probability of achievement and maximum levels should have lower probability of achievement, and that payouts associated with each should serve as significant incentive to employees. Notwithstanding performance of any particular Company Performance measure, the Bonus Plan provided that no payment would be paid if Adjusted EBITDA performance was less than 95% of the target goal.

In addition to the Company Performance measures, for each of the CEO’s direct reports, personal performance is recommended by the CEO and approved by the Compensation Committee generally based on achievement of strategic objectives and support for our leadership and diversity and inclusion initiatives. For the CEO, personal performance is recommended and approved by the Compensation Committee.

<b>Metric</b> (dollars in millions)	<b>Weighting</b>	<b>Threshold</b>	<b>Target(1)</b>	<b>Maximum</b>
<b>Company Performance</b>				
Adjusted EBITDA(2)	35.0%	\$ 407.3	\$ 452.5	\$ 515.9
Sales(3)	7.5%	\$ 4,392.2	\$ 4,508.4	\$ 4,605.0
Levered Free Cash Flow(4)	7.5%	\$ 228.1	\$ 258.1	\$ 295.1
<b>Personal Performance</b>	<b>50.0%</b>	<b>—</b>	<b>—</b>	<b>—</b>
Payout Percentage:		25%	100%	200%(5)

(1) If performance is between the threshold (1) and target amounts set forth above and between the target and maximum amounts set forth above, the payout percentage is interpolated on a straight line basis.

(2) For purposes of the Bonus Plan, Adjusted EBITDA, which is a non-GAAP financial measure, is generally calculated consistent with the calculations shown under “Selected Historical Consolidated Financial Data—Non-GAAP Financial Measures” above; however, the board of directors and/or Compensation Committee, as applicable, has discretion to consider additional adjustments or remove adjustments as permitted under the terms of the Bonus Plan.

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- (3) Sales means total net sales, as reported in the consolidated financial statements included in this prospectus. Please read “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Significant Components of Results of Operations—Net Sales” for additional information regarding our net sales.
- (4) Levered Free Cash Flow, which is a non-GAAP financial measure, means cash generated from operations, less incentive expense, taxes, interest, and investments in capital and/or strategic acquisitions.
- (5) For Levered Free Cash Flow, the maximum payout percentage is 145%, rather than 200%.

Following completion of Fiscal 2019, the Compensation Committee utilized its discretion to establish a payout level of 105% for Fiscal 2019 in lieu of the Company Performance measures originally set in the beginning of Fiscal 2019 based on the Compensation Committee’s subjective view of Petco’s overall financial performance for Fiscal 2019. Although the Compensation Committee ultimately elected not to follow formulaically the Company Performance measures established at the outset of Fiscal 2019 and described above, the Compensation Committee believes that the portion of each NEO’s annual cash incentive award that would have otherwise been related to Company Performance more accurately reflected how Petco performed during Fiscal 2019. Additionally, following the end of Fiscal 2019, the Compensation Committee reviewed and considered the individual contributions of each NEO and determined the actual amount earned by each of our NEOs under the Bonus Plan for Fiscal 2019. The Compensation Committee felt that strong financial performance for Petco in Fiscal 2019, combined with the strategic momentum delivered by the NEOs, supported above-target payout amounts for the Personal Performance metric within the plan. The table below sets forth the annual cash incentive award paid to each NEO for Fiscal 2019 under the Bonus Plan:

<b>Name</b>	<b>Annual Cash Incentive Award for 2019</b>
Ronald Coughlin, Jr.	\$ 1,158,125
Michael Nuzzo	\$ 646,000
Darren MacDonald(1)	\$ 512,000
Justin Tichy(1)	\$ 402,400
Michelle Bonfilio	\$ 387,280
Laura Wilkin(2)	—

- (1) Per the terms of their employment agreements, Messrs. MacDonald and Tichy were eligible to receive guaranteed payouts of at least \$440,000 and \$288,000, respectively, for Fiscal 2019.
- (2) As a result of her separation from employment, Ms. Wilkin did not receive a payout under the Bonus Plan for Fiscal 2019.

### Fiscal Year 2020 Annual Incentive Plan Actions

In connection with the COVID-19 pandemic and the extraordinary circumstances resulting from the economic downturn, the Compensation Committee has not approved an annual incentive plan for the 2020 fiscal year. The Compensation Committee plans to review operating performance, with a focus on our Adjusted EBITDA, and to use its discretion to determine annual incentive payouts for NEOs at the end of the 2020 fiscal year.

### ***Long-Term Equity Incentive Compensation***

Prior to this offering, our equity incentive program consisted of grants of Common Series C Units in Scooby LP, our indirect parent (the “C Units”). C Units are intended to qualify as “profits interests” for U.S. income tax purposes. The C Units are designed to align the NEOs’ interests with the interests of our equity holders and represent interests in the future profits (once a certain level of proceeds has been generated) in Scooby LP. C Units generally vest in equal annual installments over five years following the date of grant. C Units are also subject to accelerated vesting in connection with a change in control and certain other events, as described under “—Potential Payments Upon Termination or

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Change in Control—C Units” below. It is expected that the C Units will remain outstanding following this offering.

C Units are granted with a “Distribution Threshold,” which acts similarly to a strike price for a stock option such that the holder will only realize value in excess of such amount. The Distribution Threshold has traditionally been reviewed and set on a periodic basis in conjunction with a Petco valuation. All C Unit grants in Fiscal 2019 were granted with a Distribution Threshold of \$0.50 per unit pursuant to an outside valuation.

C Unit grants have been granted to new executives upon hire, or a short time thereafter, and grant amounts have been determined by internal equity alignment and external factors, including but not limited to sign-on awards and make-whole awards for employees forfeiting compensation opportunities from their prior employers. C Units are also granted from time-to-time thereafter for purposes related to recognition, promotion, retention, or other factors. In recognition of their performance, during Fiscal 2019, each of our NEOs other than Mr. Nuzzo received a grant of C Units as set described under “—2019 Grants of Plan-Based Awards Table” below.

Select management also have had an opportunity to purchase or receive Common Series B Units in Scooby LP (the “B Units”). These B Units are intended to represent full-value ownership interests equivalent to those held by our Sponsors (other than with respect to voting rights, which B Units do not possess) and have historically been purchased by holders for their then-fair market value. B Units are designed to align the NEOs’ interests with the interests of our equity holders and represent interests in the future profits of Scooby LP. During Fiscal 2019, Darren MacDonald, in accordance with his employment agreement, received 1,400,000 fully vested B Units in order to compensate him for the loss of unvested compensation from his prior employer.

### Fiscal Year 2020 Long-Term Equity Incentive Compensation Actions

As noted above, in recognition of unique contributions, an NEO may be awarded additional C Units. During Fiscal 2020, the following NEOs earned additional C Unit awards:

<u>Name</u>	<u>C Units Granted (#)</u>
Ronald Coughlin, Jr.	15,000,000
Michael Nuzzo	3,000,000
Darren MacDonald	—
Justin Tichy	1,000,000
Michelle Bonfilio	1,000,000
Laura Wilkin	—

Mr. Coughlin’s and Mr. Nuzzo’s awards were granted in recognition for their roles and extra efforts related to this offering and as a way to align their interests with our stockholders’ interests. Their grants were offered at a Distribution Threshold higher than other NEOs and significantly in excess of the then-fair market value of Scooby LP as determined pursuant to an outside valuation firm. Grants for Mr. Tichy and Ms. Bonfilio were awarded as recognition of strong performance, retention, and internal equity alignment purposes.

In connection with the consummation of this offering, we expect to grant equity awards to our NEOs under the 2020 Plan in the form of restricted stock units and nonqualified stock options, in each case, subject to three-year ratable vesting and other terms and conditions as provided in the applicable grant agreements.

### ***Other Benefits and Perquisites***

#### *Health and Welfare Benefits*

Our NEOs are eligible to participate in the health and welfare plans on the same terms offered to all of our salaried employees, with the exception of life insurance and disability coverage—which is provided at enhanced levels for all employees who serve as Vice Presidents or above.

### *Retirement Benefits*

We have not maintained, and do not currently maintain, a defined benefit pension plan in which our NEOs participate. All of our NEOs are eligible to participate in our 401(k) plan (a tax-qualified defined contribution plan), which is a broad-based retirement plan in which generally all of our employees can participate. Under the 401(k) plan, we make discretionary matching contributions which, for our NEOs, is 100% of the first 1% of an employee's contributions and 50% on the next 2% of base salary deferred, subject to certain limits under the Code (as defined herein), and employees vest ratably in matching contributions over a period of three years of service.

All of our NEOs are also eligible to participate in our nonqualified deferred compensation plan (a non-tax-qualified retirement plan), which provides eligible employees with an opportunity to defer a portion of their annual base salary and bonus. Under the nonqualified deferred compensation plan, we make a discretionary matching contribution of 50% of an eligible employee's contributions on the first 3% of base salary deferred (or, if the eligible employee is not yet eligible to participate in our 401(k) plan, the first 6% of base salary deferred) and on the first 6% of annual bonus deferred. The nonqualified deferred compensation plan is described further under "—Nonqualified Deferred Compensation" below.

We believe that our retirement programs serve as an important tool to attract and retain our NEOs and other key employees. We also believe that offering the ability to create stable retirement benefits encourages our NEOs and other key employees to make a long-term commitment to us.

### *Severance Benefits under Employment Agreements*

We have entered into employment agreements with each of our NEOs, which are described in more detail under "—Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards Table" and "—Potential Payments Upon Termination or Change in Control—Employment Agreements" below. The employment agreements provide our NEOs with severance protection, which is designed to be fair and competitive in order to aid in attracting and retaining experience executives.

### *Perquisites*

During Fiscal 2019 we provided our NEOs with limited, low cost perquisites, including financial counseling services and wellness exams. We provide these limited perquisites to ensure our compensation program, as a whole, remains competitive with companies for which we compete for talent. During Fiscal 2019, Mr. Coughlin also incurred expenses related to his family members accompanying him on business travel on a leased aircraft paid for by Petco. Mr. Coughlin was assessed imputed income related to the trip based on the length of the trip at the standard industry fare level and the terminal charge.

In connection with their hiring, Mr. MacDonald, Ms. Bonfilio, and Ms. Wilkin each received relocation assistance pursuant to our relocation package provided to all director-level and above employees who must relocate in connection with their hiring. The relocation package generally covers the following: (i) travel associated with finding a home, temporary living, or a final move, (ii) interim living expenses through corporate housing (which for Ms. Wilkin, was substituted with a single payment of \$25,000 in lieu of directly provided corporate housing), (iii) expenses associated with the sale and/or purchase of a home, (iv) shipment and/or storage of household goods, (v) associated miscellaneous expenses up to a specified cap (generally \$3,000, but for Ms. Bonfilio, \$19,500), and (vi) certain tax gross-ups to assist with the tax impact of the program. These relocation benefits are subject to scaled repayment in the event the NEO voluntarily resigns or is terminated by us for cause within the 24-month period following the final reimbursement or payment provided under the program.

**Other Matters**

**Tax and Accounting Implications of Executive Compensation Decisions**

While there are currently no formal policies in place, as a result of this offering, the Compensation Committee expects to review and consider formal corporate governance policies regarding stock ownership and retention, anti-hedging, anti-pledging, and claw-backs.

Historically, as we have not been publicly traded, we have not previously taken the deductibility limit imposed by Section 162(m) of the Code into consideration in making compensation decisions. However, we expect that following the consummation of this offering, we may authorize compensation payments that exceed the deductibility limitation under Section 162(m) of the Code when we believe that such payments are appropriate to attract and retain executive talent. In addition, assuming Treasury Regulations that were proposed in 2019 take effect, amounts in excess of the \$1 million threshold paid pursuant to our existing employment agreements and other arrangements may be nondeductible.

We account for the B Units and C Units granted to our NEOs in accordance with the Financial Accounting Standards Board Accounting Standards Codification Topic 718 (“FASB ASC Topic 718”), which requires us to estimate the expense of an award over the vesting period applicable to such award.

**Risk Assessment**

The Compensation Committee does not believe that our executive and non-executive compensation programs encourage excessive or unnecessary risk taking, and any risk inherent in our compensation programs is unlikely to have a material adverse effect on us.

**Stock Ownership Guidelines**

In connection with the consummation of this offering, we expect to adopt stock ownership guidelines applicable to our NEOs, other officers and members of our board of directors to create alignment between our officers and directors and our long-term performance, as well as to minimize excess risk taking that might lead to short-term returns at the expense of long-term value creation. We expect for the ownership guidelines to be established at the following levels:

<b>Title</b>	<b>Ownership Level</b>
Chief Executive Officer	5x annual base salary
Chief Financial Officer	3x annual base salary
Other NEOs and Officers	2x annual base salary
Independent Directors	5x annual cash retainer

It is expected that the requisite ownership level must be achieved within the later of (i) five years following the consummation of this offering or (ii) five years following the officer or director becoming subject to the stock ownership guidelines. In determining ownership levels, we expect to include shares of our Class A common stock owned outright by the officer or director, unvested time-based restricted shares and restricted stock units, vested in-the-money stock options, and shares of our common stock owned by the officer or director through our retirement plan and the ESPP. We do not expect to include unvested in-the-money stock options, stock options that are not in-the-money, or unearned performance-based equity in determining ownership levels.

## Executive Compensation Tables

### Summary Compensation Table

The table below sets forth the compensation earned by our NEOs during Fiscal 2019.

Name and Principal Position	Year	Salary (\$)	Bonus \$(4)	Stock Awards \$(5)	All Other Compensation \$(6)	Total (\$)
<b>Ronald Coughlin, Jr.</b> Chief Executive Officer	2019	\$ 850,000	\$ 1,158,125	\$ 7,578,000	\$ 44,527	\$ 9,630,652
<b>Michael Nuzzo</b> (1) EVP, Chief Financial Officer and Chief Operating Officer	2019	\$ 650,000	\$ 1,146,000	—	\$ 30,271	\$ 1,826,271
<b>Darren MacDonald</b> (2) Chief Digital & Innovation Officer	2019	\$ 349,039	\$ 512,000	\$ 1,948,000	\$ 267,677	\$ 3,076,716
<b>Justin Tichy</b> Chief Pet Care Center Officer	2019	\$ 480,000	\$ 414,400	\$ 894,250	\$ 5,292	\$ 1,793,942
<b>Michelle Bonfilio</b> Chief Human Resources Officer	2019	\$ 456,000	\$ 387,280	\$ 383,250	\$ 194,396	\$ 1,420,926
<b>Laura Wilkin</b> (3) Former EVP and Chief Supply Chain Officer	2019	\$ 307,019	—	\$ 766,500	\$ 2,536,002	\$ 3,609,521

- (1) Mr. Nuzzo is, and throughout Fiscal 2019 was, our acting principal financial officer.
- (2) Mr. MacDonald was appointed as Chief Digital & Innovation Officer on June 10, 2019.
- (3) Ms. Wilkin's employment with us ended on August 30, 2019, and in connection with her separation, we entered into a separation agreement (the "Wilkin Separation Agreement").
- (4) Amounts in this column include: (i) under the terms of his 2018 Special Retention Bonus Agreement, Mr. Nuzzo received a \$500,000 bonus payment for his continued employment with us through September 30, 2019. Mr. Nuzzo's 2018 Special Retention Bonus Agreement is described in more detail under "—Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards Table—Employment Agreements—Michael Nuzzo" below, (ii) under the terms of his employment agreement, Mr. Tichy was paid a \$12,000 installment of his sign-on bonus, and (iii) each NEO, other than Ms. Wilkin, received an annual cash incentive award under the Bonus Plan for Fiscal 2019, as described in more detail under "—Compensation Discussion and Analysis—Elements of Compensation—Annual Cash Incentive Program" above, which were paid in early 2020.
- (5) Amounts in this column represent the aggregate grant date fair value of the B Units and C Units granted during Fiscal 2019, calculated in accordance with FASB ASC Topic 718. For additional information regarding the assumptions underlying this calculation please read Note 13 to our consolidated financial statements for the fiscal year ended February 1, 2020.
- (6) Amounts reported in the "All Other Compensation" column include (i) matching contributions under our 401(k) plan made during Fiscal 2019, (ii) matching contributions under our nonqualified deferred compensation plan made during Fiscal 2019, (iii) reimbursement of relocation expenses, (iv) severance payments and benefits under the Wilkin Separation Agreement, (v) life insurance premiums paid by us for the benefit of the NEOs, (vi) income imputed for his family members accompanying him on business travel on a Petco-leased aircraft, and (vii) additional amounts, each as set forth in the following table.

Name	Petco 401(k) Match (\$)	Petco NQDC Match (\$)	Relocation Expenses (\$)	Severance (\$)	Life Insurance Premiums (\$)	Aircraft (\$)	Additional Amounts \$(2)	All Other Compensation Total (\$)
Ronald Coughlin, Jr.	\$ 1,079	\$26,042	—	—	\$ 2,622	\$3,252	\$ 11,532	\$ 44,527
Michael Nuzzo	\$ 5,600	—	—	—	\$ 1,710	—	\$ 22,961	\$ 30,271
Darren MacDonald	—	\$ 3,490	\$264,187	—	—	—	—	\$ 267,677
Justin Tichy	—	—	—	—	\$ 1,710	—	\$ 3,582	\$ 5,292
Michelle Bonfilio	\$ 6,652	—	\$181,952	—	\$ 1,710	—	\$ 4,082	\$ 194,396
Laura Wilkin(1)	—	—	\$ 7,197	\$2,522,000	\$ 2,828	—	\$ 3,977	\$ 2,536,002

- (1) Under the terms of Ms. Wilkin's separation agreement, she received a lump sum payment of \$515,000, equal to 12-months of her base salary at the time of her separation and a lump-sum payment of \$7,000, the cost equivalent to Petco's outplacement service package. In addition, pursuant to a Special Retention Bonus Agreement entered into in 2018, Ms. Wilkin was paid a Special Bonus of \$2,000,000 upon her termination and execution of a release of all claims against Petco.
- (2) Additional amounts represent expenses incurred under the Petco's Financial Counseling and Executive Wellness benefits.

**2019 Grants of Plan-Based Awards Table**

The following table includes information regarding annual cash incentive awards under the Bonus Plan and B Units and C Units granted to the NEOs, in each case, during Fiscal 2019.

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards(1)			All Other Stock Awards: Number of Shares of Stock or Units(#)(2)	Grant Date Fair Value of Stock and Option Awards (\$)(3)
		Threshold (\$)	Target (\$)	Maximum (\$)		
Ronald Coughlin, Jr.						
Annual Cash Incentive		\$ 265,625	\$ 1,062,500	\$ 2,125,000		
C Units	6/3/2019				30,000,000	\$ 7,578,000
Michael Nuzzo						
Annual Cash Incentive		\$ 130,000	\$ 520,000	\$ 1,040,000		
Darren MacDonald						
Annual Cash Incentive		\$ 440,000	\$ 440,000	\$ 880,000		
B Units	7/1/2019				1,400,000	\$ 686,000
C Units	7/1/2019				5,000,000	\$ 1,262,000
Justin Tichy						
Annual Cash Incentive		\$ 72,000	\$ 288,000	\$ 576,000		
C Units	4/1/2019				3,500,000	\$ 894,250
Michelle Bonfilio						
Annual Cash Incentive		\$ 68,400	\$ 273,600	\$ 547,200		
C Units	4/1/2019				1,500,000	\$ 383,250
Laura Wilkin						
Annual Cash Incentive		\$ 103,000	\$ 412,000	\$ 824,000		
C Units	5/1/2019				3,000,000	\$ 766,500

- (1) Amounts in these columns represent the threshold, target, and maximum payments for annual cash incentive awards under the Bonus Plan for Fiscal 2019. Threshold amounts represent a payment if the lowest performance level is achieved under all metrics associated with the Bonus Plan. As per the terms of his employment agreement, Mr. MacDonald was eligible for a guaranteed annual incentive payment of no less than \$440,000 for the Fiscal Year. For additional information regarding the Bonus Plan and the amounts paid thereunder, please read "—Compensation Discussion and Analysis—Elements of Compensation—Annual Cash Incentive Program" above.
- (2) Amounts in this column represent B Units granted to Mr. MacDonald and C Units granted to each NEO (other than Mr. Nuzzo) during Fiscal 2019. The B Units granted to Mr. MacDonald were fully vested at grant. C Units vest in equal annual increments over five years following the date of grant, subject to full acceleration upon the consummation of a change in control and partial acceleration in connection with certain other events. All C Unit grants in Fiscal 2019 were granted with a Distribution Threshold of \$0.50 per unit pursuant to an outside valuation. Ms. Wilkin's C Units were forfeited upon her termination of employment.
- (3) Amounts in this column represent the aggregate grant date fair value of the B Units and C Units granted during Fiscal 2019, calculated in accordance with FASB ASC Topic 718. For additional

information regarding the assumptions underlying this calculation please read Note 13 to our consolidated financial statements for the fiscal year ended February 1, 2020. Please read “—Compensation Discussion and Analysis—Elements of Compensation—Long-Term Equity Incentive Compensation” above for more information regarding these grants.

***Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards Table***

***Employment Agreements***

*Ronald Coughlin, Jr.*

In connection with Mr. Coughlin’s commencement of employment as our chief executive officer on June 4, 2018, we entered into an employment agreement with Mr. Coughlin, which was amended and restated effective upon the consummation of this offering. Pursuant to Mr. Coughlin’s employment agreement, he is entitled to receive a base salary of no less than \$850,000 (which will be increased to \$1,100,000 in connection with the amendment and restatement), an annual bonus targeted at 125% of his base salary subject to the achievement of board-approved performance goals, a stock replacement payment in connection with his engagement of \$8,000,000 (one-third of which remains subject to repayment upon a voluntary termination or termination by us for cause prior to June 4, 2021), and other customary terms and conditions. In addition, the agreement provides that Mr. Coughlin will receive a one-time “special performance bonus” of \$5,000,000 if our earnings before interest, taxes, depreciation, and amortization (“EBITDA”), as adjusted by our board of directors, exceeds \$500 million for any two consecutive fiscal years; provided, however, that upon the consummation of this offering (so long as such consummation occurs no later than 30 days following the end of Fiscal 2020), in accordance with the terms of his amended and restated employment agreement (i) this cash bonus will be replaced by a one-time grant of restricted stock units with an aggregate value of \$5,000,000 and (ii) vesting will be based on achievement of EBITDA in excess of \$500 million for Fiscal 2021, subject to Mr. Coughlin’s continued employment through Fiscal 2021. Mr. Coughlin is eligible for certain payments upon certain terminations of employment, as described under “—Potential Payments Upon Termination or Change in Control—Employment Agreements—Ronald Coughlin, Jr.” below.

Mr. Coughlin’s agreement (and his amended and restated agreement) also subjects him to covenants regarding non-solicitation of our employees and our customers, vendors, distributors, and strategic partners while Mr. Coughlin is employed by us and for one year thereafter. Mr. Coughlin is also a party to our standard Employee Proprietary Information and Inventions Agreement which, among other things, provides us standard protections regarding the confidentiality of our proprietary information and our ownership of intellectual property.

*Michael Nuzzo*

Mr. Nuzzo is party to an employment agreement with us dated April 8, 2015, as amended January 26, 2016. Pursuant to Mr. Nuzzo’s employment agreement, he was entitled to receive an initial base salary of \$575,000, an annual bonus targeted at 80% of his base salary subject to the achievement of performance goals, and other customary terms and conditions. Mr. Nuzzo is eligible for certain payments upon certain terminations of employment, as described under “—Potential Payments Upon Termination or Change in Control—Employment Agreements—Michael Nuzzo” below. The agreement subjects Mr. Nuzzo to covenants regarding non-solicitation of our employees and our customers, vendors, distributors, and strategic partners while Mr. Nuzzo is employed by us and for one year thereafter. Mr. Nuzzo is also a party to our standard Employee Proprietary Information and Inventions Agreement which, among other things, provides us standard protections regarding the confidentiality of our proprietary information and our ownership of intellectual property.

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Mr. Nuzzo is also party to a special retention bonus agreement, dated August 31, 2018, which was amended and restated effective October 8, 2020 and further amended and restated effective December 3, 2020, that provides the opportunity for potential bonuses and awards, as described below.

- Cash retention bonuses totaling \$1,500,000, of which \$500,000 was paid in October 2019 and \$1,000,000 will be paid if Mr. Nuzzo remains employed by us through March 31, 2021.
- One-time “special performance bonus” of \$2,000,000 if our EBITDA, as adjusted by our board of directors, exceeds \$500 million for any two consecutive fiscal years, subject to his continued employment through the last day of the second such fiscal year; provided, however, that upon the consummation of this offering (so long as such consummation occurs no later than 30 days following the end of Fiscal 2020), (i) this cash bonus will be replaced by a one-time grant of restricted stock units with an aggregate value of \$2,000,000 and (ii) vesting will be based on achievement of EBITDA in excess of \$500 million for Fiscal 2021, subject to Mr. Nuzzo’s continued employment through Fiscal 2021.
- One-time grant of 3,000,000 C Units granted in September 2020 (described above under “Compensation Discussion and Analysis—Elements of Compensation—Long-Term Equity Incentive Compensation—Fiscal Year 2020 Long-Term Equity Incentive Compensation Actions”). To better align Mr. Nuzzo with the interests of current equity holders, this grant utilizes a special higher Distribution Threshold of \$1.00 per unit. The award recognizes the unique role that Mr. Nuzzo plays with respect to generating future value and provides a heightened threshold for his attainment of reward associated with any future value generated by Petco.
- One-time restricted stock unit award with an aggregate value of \$3,000,000 to be made in conjunction with an initial public offering (including this offering). The award will time vest equally over three years following the date the award is issued, with 34% vesting on the first anniversary of such date and 33% vesting on each of the second and third anniversaries of such date. This award will not be issued if we do not complete an initial public offering prior to September 30, 2021.

Mr. Nuzzo’s special retention bonus agreement prior to its amendment and restatement also provided for two additional bonus opportunities which, under their terms, would have no longer be eligible to be earned upon consummation of this offering. Under the amended and restated special retention bonus agreement, the C Unit grant and restricted stock unit awards described above replaced these two additional bonus opportunities.

Mr. Nuzzo is eligible for certain payments upon certain terminations of employment and change in control events under the Nuzzo Employment Agreement and the special retention bonus agreement, as described under “—Potential Payments Upon Termination or Change in Control—Employment Agreements—Michael Nuzzo” below.

### *Darren MacDonald*

In connection with his appointment, we entered into an employment agreement with Mr. MacDonald on May 25, 2019, pursuant to which Mr. MacDonald is entitled to receive a base salary of \$550,000, annual bonus targeted at 80% of his base salary subject to achievement of performance goals (with a guaranteed bonus amount of at least \$440,000 for Fiscal 2019), relocation assistance, and other customary terms and conditions. Pursuant to Mr. MacDonald’s employment agreement, Mr. MacDonald was paid a retention bonus of \$675,000 in February 2020 (one-half of which is subject to repayment upon voluntary termination or a termination by us for cause prior to June 18, 2021). In addition, Mr. MacDonald will be entitled to a “digital growth award” based on revenues and EBITDA of our digital platform (“Digital EBITDA”) for each fiscal year through the fiscal year ending January 29, 2022, and Digital EBITDA is defined to mean (i) sales on our digital platform, less (ii) cost of goods sold

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attributable to such sales, less (iii) direct marketing spending on the digital platform, less (iv) any other direct expenses related to the digital platform, and subject to adjustment by our board in specified circumstances. The amount of the bonus will be determined as follows:

<b>Digital Revenue</b>	<b>Minimum Digital EBITDA</b>	<b>Amount of Digital Growth Award</b>
Less than \$538 million	N/A	\$0
At least \$538 million but less than \$591 million	\$38 million	\$500,000
At least \$591 million but less than \$619 million	\$43 million	\$1,076,000
At least \$619 million but less than \$645 million	\$46 million	\$2,420,000
\$645 million or more	\$48 million	\$4,302,000

If digital revenue is in a range above the corresponding Digital EBITDA range but the minimum Digital EBITDA goal is not met, then the award will be the amount in the immediately-preceding row (e.g., if digital revenue were \$600 million but Digital EBITDA were less than \$43 million, the award would be \$500,000). Any earned bonus will be paid following a change in control, an initial public offering, a secondary public offering, or a cash dividend to our stockholders, subject to specified caps. Except as described under “—Potential Payments Upon Termination or Change in Control—Employment Agreements—Darren MacDonald” below, Mr. MacDonald must remain employed by us through the payment date in order to receive payment of any earned award. The digital growth award, if earned, will be settled one-half in cash and one-half in fully vested B Units.

Mr. MacDonald is eligible for certain payments upon certain terminations of employment, as described under “—Potential Payments Upon Termination or Change in Control—Employment Agreements—Darren MacDonald” below. The agreement also subjects Mr. MacDonald to covenants regarding non-solicitation of our employees and our customers, vendors, distributors, and strategic partners while Mr. MacDonald is employed by us and for one year thereafter. Mr. MacDonald is also a party to our standard Employee Proprietary Information and Inventions Agreement which, among other things, provides us standard protections regarding the confidentiality of our proprietary information and our ownership of intellectual property.

### *Justin Tichy*

In connection with his appointment, we entered into an employment letter agreement with Mr. Tichy on September 17, 2018, pursuant to which Mr. Tichy was entitled to an initial base salary of \$480,000, an annual bonus targeted at 60% of his base salary subject to achievement of performance goals (with a guaranteed bonus amount of at least \$288,000 for Fiscal 2019), an initial signing bonus of \$200,000, and other customary terms and conditions. Pursuant to the agreement, Mr. Tichy will receive a cash retention bonus of \$500,000 if he remains employed by us in good standing through March 31, 2021 and a change in control event does not occur prior to such date. Additionally, Mr. Tichy is eligible for a bonus of \$36,000, \$24,000 of which has previously been paid, with the remaining \$12,000 installment to be paid if Mr. Tichy remains employed by us through October 15, 2020.

Mr. Tichy is eligible for certain payments upon certain terminations of employment, as described under “—Potential Payments Upon Termination or Change in Control—Employment Agreements—Justin Tichy” below. Mr. Tichy is also a party to our standard Employee Proprietary Information and Inventions Agreement which, among other things, provides us standard protections regarding the confidentiality of our proprietary information and our ownership of intellectual property.

### *Michelle Bonfilio*

In connection with her appointment, we entered into an employment letter agreement with Ms. Bonfilio on October 3, 2018, pursuant to which Ms. Bonfilio was entitled to an initial base salary of \$456,000, an annual bonus targeted at 60% of her base salary subject to achievement of performance goals, relocation assistance through May 31, 2019, and other customary terms and conditions.

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Pursuant to the agreement, Ms. Bonfilio will receive a cash retention bonus of \$250,000 if she remains employed by us in good standing through March 31, 2021 and a change in control event does not occur prior to such date.

We also have entered into a retention bonus agreement with Ms. Bonfilio that provides specified cash retention bonuses to Ms. Bonfilio. Pursuant to her retention agreement, Ms. Bonfilio will be eligible to receive the following retention bonuses, in addition to the cash retention bonus under her employment agreement: \$100,000 on the first pay period following March 31, 2021, and \$400,000 on the first pay period following February 1, 2022. The payment of each installment generally is subject to Ms. Bonfilio's continued employment through the specified date. However, if her employment is terminated by us without "cause" or due to her death or disability, she will receive any unpaid installments of the retention bonuses when otherwise due. In addition, if Ms. Bonfilio's employment is terminated by us for "cause" prior to February 1, 2022, she must repay the first installment of the retention bonus.

Ms. Bonfilio is eligible for certain payments upon certain terminations of employment, as described under "—Potential Payments Upon Termination or Change in Control—Employment Agreements—Michelle Bonfilio" below. Ms. Bonfilio is also a party to our standard Employee Proprietary Information and Inventions Agreement which, among other things, provides us standard protections regarding the confidentiality of our proprietary information and our ownership of intellectual property.

### *Laura Wilkin*

Prior to her separation, we were party to an employment letter agreement with Ms. Wilkin dated May 2, 2018, pursuant to which Ms. Wilkin was entitled to an initial base salary of \$515,000, an annual bonus targeted at 80% of her base salary subject to achievement of performance goals, relocation assistance, a retention bonus of \$2,000,000 payable 48 months following commencement of her employment, and other customary terms and conditions.

### **Outstanding Equity Awards at 2019 Fiscal Year-End**

The following table reflects information regarding outstanding unvested C Units held by our NEOs as of February 1, 2020.

Name	Stock Awards	
	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)(1)
Ronald Coughlin, Jr.(2)	66,000,000	\$ 0
Michael Nuzzo(3)	4,580,557	\$ 0
Darren MacDonald(4)	5,000,000	\$ 0
Justin Tichy(5)	5,600,000	\$ 0
Michelle Bonfilio(6)	2,400,000	\$ 0
Laura Wilkin	—	—

- (1) The C Units are intended to qualify as "profits interests" for U.S. tax purposes. They do not require the payment of an exercise price, but are economically similar to stock appreciation rights because they have no value for tax purposes as of the grant date and will obtain value only as the value of the underlying value of the security rises above its grant date value (referred to as the "distribution threshold"). Because, in each case, the unvested C Units would have had no value upon a liquidation as of February 1, 2020, we believe that, like stock appreciation rights, they are properly reported as having \$0 value as of that date.

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- (2) Mr. Coughlin's unvested C Units were granted with the following distribution thresholds and have vested or will vest ratably on the following vesting dates subject to his continued employment with us through each vesting date:

Number of C Units	Distribution Threshold	Vesting Dates
12,000,000	\$1.00	June 4, 2020, June 4, 2021, June 4, 2022, and June 4, 2023
24,000,000	\$0.75	June 4, 2020, June 4, 2021, June 4, 2022, and June 4, 2023
30,000,000	\$0.50	April 1, 2020, April 1, 2021, April 1, 2022, April 1, 2023, and April 1, 2024

- (3) Mr. Nuzzo's unvested C Units were granted with the following distribution thresholds and have vested or will vest ratably on the following vesting dates subject to his continued employment with us through each vesting date:

Number of C Units	Distribution Threshold	Vesting Dates
1,000,000	\$0.75	January 26, 2021
290,279	\$0.75	May 4, 2020
3,000,000	\$0.50	January 26, 2021, January 26, 2022, and January 26, 2023
290,279	\$0.50	May 4, 2020

- (4) Mr. MacDonald's unvested C Units were granted with a distribution threshold of \$0.50 and vest ratably on July 1, 2020, July 1, 2021, July 1, 2022, July 1, 2023, and July 1, 2025, in each case, subject to his continued employment with us through each vesting date.

- (5) Mr. Tichy's unvested C Units were granted with the following distribution thresholds and have vested or will vest ratably on the following vesting dates subject to his continued employment with us through each vesting date:

Number of C Units	Distribution Threshold	Vesting Dates
2,800,000	\$0.75	January 2, 2021, January 2, 2022, January 2, 2023, and January 2, 2024
2,800,000	\$0.50	January 2, 2021, January 2, 2022, January 2, 2023, and January 2, 2024

- (6) Ms. Bonfilio's unvested C Units were granted with the following distribution thresholds and have vested or will vest ratably on the following vesting dates subject to his continued employment with us through each vesting date:

Number of C Units	Distribution Threshold	Vesting Dates
1,200,000	\$0.75	January 2, 2021, January 2, 2022, January 2, 2023, and January 2, 2024
1,200,000	\$0.50	January 2, 2021, January 2, 2022, January 2, 2023, and January 2, 2024

### Option Exercises and Stock Vested

The following table reflects the B Units and C Units held by our NEOs which vested during Fiscal 2019.

Name	Stock Awards	
	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting \$(1)
Ronald Coughlin, Jr.	9,000,000	\$ 0
Michael Nuzzo	7,741,671	\$ 0
Darren MacDonald(2)	1,400,000	\$ 686,000
Justin Tichy	1,400,000	\$ 0
Michelle Bonfilio	600,000	\$ 0
Laura Wilkin	—	—

- (1) As described above under "—Outstanding Equity Awards at 2019 Fiscal Year End, we believe that the C Units that vested during Fiscal 2019 are similar to stock appreciation rights and have \$0 value as of February 1, 2020 because they would not have received any payments upon a liquidation as of that date.

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- (2) Per the terms of his employment agreement, Mr. MacDonald was awarded 1,400,000 fully-vested B Unit shares, each with a unit-value of \$0.49 at the end of Fiscal 2019.

### **Nonqualified Deferred Compensation**

The following table sets forth information regarding the value of accumulated benefits of our NEOs under our nonqualified deferred compensation arrangements as of February 1, 2020.

<b>Name</b>	<b>Executive Contributions in Last FY (\$)</b>	<b>Registrant Contributions in Last FY (\$)</b>	<b>Aggregate Earnings in Last FY (\$)</b>	<b>Aggregate Withdrawals/Distributions (\$)</b>	<b>Aggregate Balance at Last FYE (\$)(1)</b>
Ronald Coughlin, Jr.	\$ 1,066,587	\$ 26,042	\$ 184,289	—	\$ 1,595,773
Michael Nuzzo	—	—	—	—	—
Darren MacDonald	\$ 8,250	\$ 3,490	\$ 416	—	\$ 8,666
Justin Tichy	—	—	—	—	—
Michelle Bonfilio	—	—	—	—	—
Laura Wilkin	—	—	—	—	—

- (1) Amounts include our matching contributions applicable to Fiscal 2019 employee deferrals as reported under “—Summary Compensation Table” above.

Mr. Coughlin and Mr. MacDonald have elected to participate in our nonqualified deferred compensation plan, which is an unfunded plan that is available to executives and certain key employees and directors of Petco. Under the plan and pursuant to the terms of their employment agreements, as applicable, participants are permitted to defer a portion of their annual base salary and bonus. We make a matching contribution of 50% of an eligible employee’s contributions on the first 3% of base salary deferred (or, if the eligible employee is not yet eligible to participate in our 401(k) plan, the first 6% of base salary deferred) and on the first 6% of annual bonus deferred. Participants are 100% vested in matching contributions. Participants may select among a broad range of investment alternatives under this plan, and participants’ accounts are credited with a rate of return based on the performance of the selected investments. Petco does not provide above-market or preferential earnings on deferred compensation. If a participant separates from service on or after reaching age 55 and attaining six years of service, the participant’s account may be paid in a single lump sum or in annual installments from two to ten years (at the participant’s election). If a participant separates from service without meeting the age and service requirements set forth above, or as a result of his or her death or disability, the participant (or his or her beneficiaries, as applicable) will receive his or her account balance in the form of a lump sum. We have established a rabbi trust to assist in meeting a portion of our obligations under the plan. To the extent required to comply with Section 409A of the Code, payment upon termination of employment is subject to a six-month delay.

### **Potential Payments Upon Termination or Change in Control**

#### **Employment Agreements**

##### *Ronald Coughlin, Jr.*

Mr. Coughlin’s employment agreement provides severance benefits to Mr. Coughlin in the event he is terminated without “Cause” or he resigns for “Good Reason,” in each case, subject to his execution of a release of claims. The severance benefits include: (i) a lump sum payment equal to 18 months of his base salary; (ii) payment of any unpaid annual bonus from a prior fiscal year; (iii) a pro rata annual bonus for the year of termination based on actual achievement of applicable performance goals; (iv) if the special performance bonus was not previously paid, the \$500 million EBITDA goal was achieved for the prior year, and the EBITDA goal ultimately is achieved for the year of termination, a pro rata special performance bonus; (v) pro rata vesting of the portion of any unvested outstanding C Units or other equity awards that would have vested on the next-scheduled vesting date; and (vi) Petco-paid continued health insurance benefits under COBRA for up to 18 months following Mr. Coughlin’s termination.

For purposes of Mr. Coughlin's employment agreement:

- "Cause" includes (i) Mr. Coughlin's material breach of his employment agreement; (ii) the willful failure or refusal by him to substantially perform his duties; (iii) the conviction of Mr. Coughlin of, or the entering of a plea of nolo contendere by him with respect to, a felony or a misdemeanor involving moral turpitude; and (iv) Mr. Coughlin's inability or failure to competently perform his duties in any material respect due to the use of drugs or alcohol, subject to, in the cases of clauses (i) and (ii), customary notice and cure provisions.
- "Good Reason" means (i) the removal of Mr. Coughlin from our board of directors for any reason while he is employed by us; (ii) a material diminution in his authority, duties or responsibilities; (iii) a requirement that he report to any person or body other than our board of directors; (iv) a material diminution in his base salary or target bonus amount; (v) the relocation of his office to a location more than 30 miles from its present location; (vi) our failure to obtain the assumption in writing of its obligation to perform the employment agreement by any successor to all or substantially all of our assets, whether direct or indirect by a merger, consolidation, sale or similar transaction, unless such assumption occurs by operation of law; (vii) any bankruptcy, liquidation, receivership or other wind down of us or Scooby LP if (A) such event does not constitute a change in control (as defined in the Scooby LP limited partnership agreement) or (B) in connection with such event, (x) CVC Fund's affiliates and/or CPP Investments' affiliates do not retain the right to appoint the majority of the members of our board of directors and (y) a majority of our board of directors ceases to consist of members appointed by CVC Fund's affiliates and/or CPP Investments' affiliates; or (viii) any other action or inaction that constitutes a material breach by us of his employment agreement. If Mr. Coughlin intends to resign for one or more of the conditions listed above, he must give notice to us within 90 days after the initial existence of such condition, which we have 30 days to remedy following receipt of such notice. If we fail to cure, then any resignation by Mr. Coughlin within the 2-year period beginning with the initial existence of one or more of the foregoing conditions shall be deemed a resignation for "Good Reason."

Upon the consummation of this offering, Mr. Coughlin's amended and restated employment agreement will provide severance benefits to Mr. Coughlin in the event he is terminated without "Cause" or he resigns for "Good Reason," in each case, subject to his execution of a release of claims. If such termination occurs more than three months prior to or more than 18 months following a "Change in Control", in addition to the severance benefits under the current employment agreement as described above (excluding the pro rata vesting of the C Units and any other equity awards provided in clause (v) above), Mr. Coughlin will also receive: (i) if the restricted stock units granted in lieu of the special performance bonus have been granted but not yet vested and the EBITDA goal for Fiscal 2021 is ultimately achieved, pro rata vesting of such restricted stock units; (ii) acceleration of the time-based equity awards (excluding C Units and special restricted stock units) that would have vested during the 12 months following such termination; and (iii) acceleration of the performance-based equity awards (excluding C Units and special restricted stock units) for which the performance period ends during the 12 months following such termination, so long as such performance-based goals are actually achieved.

Additionally, in the event such termination without Cause or resignation for Good Reason occurs within the three months prior to or the 18 months following a Change in Control, Mr. Coughlin will be eligible for the following severance benefits in lieu of the severance benefits described above: (i) a lump sum payment equal to two times the sum of his base salary and target annual bonus; (ii) payment of any unpaid annual bonus from a prior fiscal year; (iii) a pro rata annual bonus for the year of termination based on actual achievement of applicable performance goals; (iv) if the special performance bonus was not previously paid, the \$500 million EBITDA goal was achieved for the prior year, and the EBITDA goal ultimately is achieved for the year of termination, the special performance bonus; (v) if the restricted stock units granted in lieu of the special performance bonus have been granted but not yet vested and the EBITDA goal for Fiscal 2021 is ultimately achieved, accelerated vesting of such restricted stock units; (vi) accelerated vesting of time-based equity awards (excluding C Units and special restricted stock units); (vii) all outstanding performance-based equity awards

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(excluding C Units) will remain outstanding and eligible to become earned based on achievement of the performance-based goals as if Mr. Coughlin had remained employed; and (viii) Petco-paid continued health insurance benefits under COBRA for up to 18 months following such termination.

Mr. Coughlin's amended and restated employment agreement also provides for the following accelerated vesting benefits upon a termination of his employment as a result of death or "Disability": (i) accelerated vesting of time-based equity awards (excluding C Units and special restricted stock units); (ii) all outstanding performance-based equity awards (excluding C Units and special restricted stock units) will remain outstanding an eligible to become earned based on achievement of the performance-based goals as if Mr. Coughlin had remained employed; and (iii) if the restricted stock units granted in lieu of the special performance bonus have been granted but not yet vested and the EBITDA goal for Fiscal 2021 is ultimately achieved, accelerated vesting of such restricted stock units.

Upon a Change in Control, if the benefits under Mr. Coughlin's amended and restated employment agreement would trigger an excise tax under Section 4999 of the Code, the amended and restated employment agreement provides that Mr. Coughlin's benefits will be reduced to a level at which the excise tax is not triggered, unless Mr. Coughlin would receive a greater amount without such reduction after taking into account the excise tax and other applicable taxes.

For purposes of Mr. Coughlin's employment agreement:

- "Cause" has the same meaning as provided under the current employment agreement but also includes Mr. Coughlin's material breach of any policy or code of conduct of Petco, subject to customary notice and cure provisions.
- "Change in Control" has the meaning provided under the 2020 Plan.
- "Disability" means that Mr. Coughlin is either (i) unable to engage in substantially gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or last for a continuous period of not less than 12 months or (ii) is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months Petco's accident and health plan.
- "Good Reason" means (i) the removal of Mr. Coughlin from our board of directors; (ii) a material diminution in his authority, duties or responsibilities; (iii) a requirement that he report to any person or body other than our board of directors; (iv) a material diminution in his base salary or target bonus amount; (v) the relocation of his office by more than 30 miles; (vi) our failure to obtain the assumption in writing of its obligation to perform the amended and restated employment agreement by any successor to all or substantially all of our assets, whether direct or indirect by a merger, consolidation, sale or similar transaction, unless such assumption occurs by operation of law; or (vii) any other action or inaction that constitutes a material breach by us of his amended and restated employment agreement. If Mr. Coughlin intends to resign for one or more of the conditions listed above, he must give notice to us within 90 days after the initial existence of such condition, which we have 30 days to remedy following receipt of such notice. If we fail to cure, then any resignation by Mr. Coughlin within the 180-day period beginning with the initial existence of one or more of the foregoing conditions shall be deemed a resignation for "Good Reason."

### *Michael Nuzzo*

Mr. Nuzzo's employment agreement provides severance benefits to Mr. Nuzzo in the event he is terminated without "Cause" or he resigns for "Good Reason," in each case, subject to his execution of a release of claims. The severance benefits include: (i) a lump sum payment equal to 18 months of base salary, and (ii) if the termination is without "Cause" and occurs within 12 months following a change in control, a pro rata bonus for the year of termination, based on actual performance immediately prior to such termination, but in no event greater than the target bonus.

For purposes of Mr. Nuzzo's employment agreement:

- "Cause" includes (i) Mr. Nuzzo's material breach of his employment agreement; (ii) the failure or refusal by Mr. Nuzzo to perform his duties; (iii) the conviction of Mr. Nuzzo of, or the entering of a plea of nolo contendere by him with respect to, a felony; (iv) Mr. Nuzzo's violation of our code of ethics or policies against discrimination or harassment; or (v) Mr. Nuzzo's inability or failure to competently perform his duties in any material respect due to the use of drugs or alcohol, in the cases of clauses (i) and (ii), subject to customary notice and cure provisions.
- "Good Reason" means (i) a material diminution in Mr. Nuzzo's authority, duties or responsibilities; (ii) a material diminution in the authority, duties or responsibilities or the person to whom Mr. Nuzzo reports; (iii) a material diminution in Mr. Nuzzo's base compensation; (iv) a material diminution of the budget over which Mr. Nuzzo has authority; (v) the relocation of his office to a location more than 50 miles from its present location other than a relocation to our San Antonio Support Center; (vi) our failure to obtain the assumption in writing of its obligation to perform the employment agreement by any successor to all or substantially all of our assets; or (vii) any other action or inaction that constitutes a material breach by us of Mr. Nuzzo's employment agreement. If Mr. Nuzzo intends to resign for one or more of the conditions listed above, he must give notice of such intent to us within 90 days after the initial existence of such condition, which we have 30 days to remedy following receipt of such notice. If we fail to cure, then any resignation by Mr. Nuzzo within the 2-year period beginning with the initial existence of one or more of the foregoing conditions shall be deemed a resignation for "Good Reason."

In addition to the benefits under his employment agreement, if Mr. Nuzzo's employment is terminated without Cause or upon the occurrence of a Change in Control (as described below under "—C Units"), he will receive a pro rata portion of any unpaid retention bonuses based on the number of days Mr. Nuzzo was employed from August 31, 2018 through the date of such termination or event as compared to the number of days from August 31, 2018 through March 31, 2021, the date the final portion of the retention bonus is required to be paid.

*Darren MacDonald*

Mr. MacDonald's employment agreement provides severance benefits to Mr. MacDonald in the event he is terminated without "Cause" or he resigns for "Good Reason," in each case, subject to his execution of a release of claims. The severance benefits include: (i) a lump sum payment equal to 12 months of his base salary; (ii) a pro rata annual bonus for the year of termination based on actual performance; (iii) if the termination is less than six months prior to a change in control, public offering, secondary public offering, or payment of any cash dividend to our shareholders, payment of any earned Digital Growth Award; and (iv) Petco-paid continued health insurance benefits under COBRA for up to 12 months following Mr. MacDonald's termination.

For purposes of Mr. MacDonald's employment agreement:

- "Cause" includes (i) Mr. MacDonald's material breach of his employment agreement; (ii) the intentional and material failure or refusal by Mr. MacDonald to substantially perform his duties; (iii) the conviction of Mr. MacDonald of, or the entering of a plea of nolo contendere by him with respect to, a felony or a misdemeanor involving moral turpitude; or (iv) Mr. MacDonald's substantial inability or failure to perform the essential functions of his position even with reasonable accommodation as required by law, in the cases of clauses (i), (ii) and (iv), subject to customary notice and cure provisions.
- "Good Reason" means (i) a material diminution in Mr. MacDonald's authority, duties or responsibilities; (ii) a requirement that he report to any person or body other than the chief executive officer or our board of directors; (iii) a diminution in his base salary; (iv) the relocation of his office to a location more than 50 miles from its present location; (v) our failure to obtain the assumption in writing of its obligation to perform the employment agreement by any buyer or successor to us upon the effective date of merger, consolidation, sale or similar transaction,

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unless such assumption occurs by operation of law; or (vii) any other action or inaction that constitutes a material breach by us of Mr. MacDonald's employment agreement. If Mr. MacDonald intends to resign for one or more of the conditions listed above, he must give notice of such intent to us within 90 days after the initial existence of such condition, which we have 30 days to remedy following receipt of such notice. If we fail to cure, then any resignation by Mr. MacDonald within the 180-day period beginning with the initial existence of one or more of the foregoing conditions shall be deemed a resignation for "Good Reason."

### *Justin Tichy*

Mr. Tichy's employment agreement provides severance benefits in the event he is terminated without cause, subject to his execution of a release of claims. The severance benefits require a lump sum payment equal to 12 months of base salary.

### *Michelle Bonfilio*

Ms. Bonfilio's employment agreement provides severance benefits in the event she is terminated without cause, subject to her execution of a release of claims. The severance benefits are a lump sum payment equal to 12 months of base salary.

In addition, any unpaid installments under Ms. Bonfilio's retention bonus agreement remain payable in the event of her termination of employment by us without "cause" or due to her death or disability. For purposes of the Ms. Bonfilio retention agreement, "cause" is defined to include any act of dishonesty or disloyalty, fraud, conviction of a felony or conviction of a misdemeanor involving moral turpitude, and/or willful misconduct by Ms. Bonfilio in the performance of her job duties.

### **C Units**

All unvested C Units will become fully vested upon the occurrence of a "Change in Control", subject to each NEO's continued employment through such event. A Change in Control will not occur upon the closing of this offering for purposes of the C Units.

In addition to acceleration upon a Change in Control, a portion of each NEO's C Units may vest upon direct or indirect sales by Scooby LP of our Class A common stock, and all unvested C Units will fully accelerate in the event Scooby LP sells 90% of its direct or indirect holdings of our Class A common stock.

Upon an NEO's termination without "Cause" (and, for Mr. Coughlin, a resignation for "Good Reason"), (i) a pro-rata portion of the C Units that would have vested at the next regularly scheduled vesting date will be accelerated based on the number of days elapsed since the most recent vesting date as compared to the total number of days between the most recent vesting date and the next regularly scheduled vesting date; and (ii) the NEO will continue to receive the benefit of the preceding paragraph for direct or indirect sales of our Class A common stock by Scooby LP up to 180 days following the date of termination.

For purposes of the C Units, "Cause" and "Good Reason" generally have the meaning provided in the applicable NEO's employment agreement or, if such agreement does not define such term, the meaning set forth in the Scooby LP partnership agreement. Additionally, "Change in Control" generally includes (i) a third party's acquisition of 50% or more of Scooby LP or (ii) a third party's acquisition of all or substantially all of the assets of Scooby LP and its subsidiaries, in each case, so long as the proceeds received by the Sponsors or Scooby LP consist of cash or marketable securities.

Additionally, the C Units are subject to customary repurchase rights in favor of Scooby LP in the event of the NEO's termination of employment.

**Quantification of Potential Payments**

The table below sets forth the aggregate amounts that would have been payable to each NEO under the Employment Agreements and C Units, as described above, assuming the applicable termination event or Change in Control occurred on February 1, 2020.

<u>Name</u>	<u>Termination without Cause (\$)</u>	<u>Resignation for Good Reason (\$)</u>	<u>Qualifying Termination in Connection with a Change in Control (\$)</u>
Ronald Coughlin, Jr.			
<i>Cash Payments</i> (1)	\$ 2,433,125	\$ 2,433,125	—
<i>Continued Health Benefits</i> (2)	\$ 23,170	\$ 23,170	—
<i>C Units</i> (3)	\$ 0	\$ 0	\$ 0
<b>Total</b>	\$ 2,456,295	\$ 2,456,295	\$ 0
Michael Nuzzo			
<i>Cash Payments</i> (1)	\$ 1,249,174	\$ 1,249,174	\$ 1,000,000
<i>C Units</i> (3)	—	—	\$ 0
<b>Total</b>	\$ 1,249,174	\$ 1,249,174	\$ 1,000,000
Darren MacDonald			
<i>Cash Payments</i> (1)	\$ 1,062,000	\$ 1,062,000	—
<i>Continued Health Benefits</i> (2)	\$ 0	\$ 0	—
<i>C Units</i> (3)	—	—	\$ 0
<b>Total</b>	\$ 1,062,000	\$ 1,062,000	\$ 0
Justin Tichy			
<i>Cash Payments</i> (1)	\$ 480,000	—	—
<i>C Units</i> (3)	—	—	\$ 0
<b>Total</b>	\$ 480,000	—	\$ 0
Michelle Bonfilio			
<i>Cash Payments</i> (1)	\$ 456,000	—	—
<i>C Units</i> (3)	—	—	\$ 0
<b>Total</b>	\$ 456,000	—	\$ 0

- (1) These amounts were determined as follows. For Mr. Coughlin, this includes 18 months of his base salary (\$1,275,000), and his annual bonus for Fiscal 2019 (\$1,158,125). For Mr. Nuzzo, the severance consists of 18 months of his base salary (\$975,000); he also would be entitled to a bonus payment of \$969,000 (1.5 times his bonus for Fiscal 2019) if the termination were without “Cause” within 12 months following a change in control. In addition for Mr. Nuzzo, he would receive a pro rata portion of his \$1,500,000 remaining retention bonus less the \$500,000 already paid (\$274,194) if he were terminated without cause or resigned for good reason prior to a change in control, or the full amount of the unpaid retention bonus of \$1,000,000 upon a change in control. For Mr. MacDonald, this consists of 12 months of his base salary (\$550,000) and his annual bonus for Fiscal 2019 (\$512,000). For Mr. Tichy and Ms. Bonfilio, this consists of 12 months of their base salaries (\$480,000 and \$456,000, respectively). Ms. Bonfilio would also remain eligible to receive any unpaid installments of her retention bonuses when otherwise due.
- (2) Amounts in this row are based on premiums in effect as of February 1, 2020, which are assumed for purposes of these calculations to remain in effect throughout the duration of the period in which continued health benefits are provided. For Mr. MacDonald, although he eligible to receive continued health benefits under the terms of his employment agreement, as of February 1, 2020, he was not a participant in our health plan and thus would not have received any benefit had the applicable termination occurred on such date.
- (3) Amounts in this row reflect the C Units that will become vested upon occurrence of the applicable event based on the value of such C Units on February 1, 2020 if there had been a liquidation as of that date and payout of the corresponding C Units. As described above, because the liquidation value of Petco was less than the “Distribution Threshold” of all outstanding C Units as of February 1, 2020, no amounts would have been payable in connection with the vesting of such C Units.

**Quantification under Mr. Coughlin’s Amended and Restated Employment Agreement**

The table below sets forth the aggregate amounts that would have been payable to Mr. Coughlin under his amended and restated employment agreement, as described above, assuming (i) the applicable termination event or Change in Control occurred on February 1, 2020 and (ii) the amended and restated employment agreement, rather than his current employment agreement, had been effective at such time. The amended and restated employment agreement does not change the treatment of C Units reported above, and thus they are not reflected in the table below. Because the special restricted stock units have not been granted and no time-based or performance-based equity awards (excluding the C Units) have been granted, no value is associated with the acceleration of the awards in the table below. As a result of the foregoing, the table does not reflect any value associated with a termination of Mr. Coughlin’s employment due to death or Disability, as such termination only provides for accelerated vesting of such equity awards.

Name	Termination without Cause; Resignation for Good Reason (\$)	Qualifying Termination in Connection with a Change in Control (\$) (1)
Ronald Coughlin, Jr.		
Cash Payments(2)	\$ 2,433,125	\$ 4,983,125
Continued Health Benefits(3)	\$ 23,170	\$ 23,170
<b>Total</b>	<b>\$ 2,456,295</b>	<b>\$ 5,006,295</b>

- (1) Includes a termination without Cause or a resignation for Good Reason, in each case, within the three months prior to or 18 months following a Change in Control.
- (2) For a termination without Cause or resignation for Good Reason, this amount includes 18 months of his base salary as of February 1, 2020 (\$1,275,000) and his annual bonus for Fiscal 2019 (\$1,158,125). For such terminations in connection with a Change in Control, this amount includes two times the sum of Mr. Coughlin’s base salary and target annual bonus as of February 1, 2020 (\$3,825,000) and his annual bonus for Fiscal 2019 (\$1,158,125).
- (3) Amounts in this row are based on premiums in effect as of February 1, 2020, which are assumed for purposes of these calculations to remain in effect throughout the duration of the 18-month period.

**Wilkin Separation Agreement**

In connection with her termination of employment with us, we and Ms. Wilkin entered into the Wilkin Separation Agreement, pursuant to which she received termination benefits specified in her employment agreement and her Special Retention Bonus Agreement. These payments included (i) a lump sum payment of \$515,000, equal to 12-months of her base salary at the time of her separation, (ii) a lump-sum payment of \$7,000, the cost equivalent to our outplacement service package, and (iii) accelerated payment of her \$2,000,000 retention bonus. We received a full release of claims in our favor pursuant to the Wilkin Separation Agreement, and all of Ms. Wilkin’s C Units were forfeited or repurchased for \$0.

**2020 Equity Incentive Plan**

In advance of the offering, we expect to adopt the Petco Health and Wellness Company, Inc. 2020 Equity Incentive Plan (the “2020 Plan”). The purpose of the 2020 Plan is to promote and closely align the interests of our employees, officers, non-employee directors, and other service providers and our stockholders by providing stock-based compensation and other performance-based compensation. The objectives of the 2020 Plan are to attract and retain the best available personnel for positions of substantial responsibility and to motivate participants to optimize the profitability and growth of Petco through incentives that are consistent with our goals and that link the personal interests of participants to those of our stockholders. The 2020 Plan will allow for the grant of stock options, both incentive stock options and “non-qualified” stock options; stock appreciation rights (“SARs”), alone or in conjunction with other awards; restricted stock and restricted stock units (“RSUs”); incentive bonuses, which may be paid in cash, stock, or a combination thereof; and other stock-based awards. We refer to these collectively herein as “Awards.”

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The following description of the 2020 Plan is not intended to be complete and is qualified in its entirety by the complete text of the 2020 Plan, a copy of which will be filed as an exhibit to the registration statement of which this prospectus forms a part. Stockholders and potential investors are urged to read the 2020 Plan in its entirety. Any capitalized terms which are used in this summary description but not defined here or elsewhere in this prospectus have the meanings assigned to them in the 2020 Plan.

### **Administration**

The 2020 Plan will be administered by the Compensation Committee, or such other committee designated by our board of directors to administer the plan, which we refer to herein as the Administrator. The Administrator will have broad authority, subject to the provisions of the 2020 Plan, to administer and interpret the 2020 Plan and Awards granted thereunder. All decisions and actions of the Administrator will be final.

### **Stock Subject to 2020 Plan**

The maximum number of shares that may be issued under the 2020 Plan will not exceed \_\_\_\_\_, subject to certain adjustments in the event of a change in our capitalization. Shares of common stock issued under the 2020 Plan may be either authorized and unissued shares or previously issued shares acquired by us. On termination or expiration of an Award under the 2020 Plan, in whole or in part, the number of shares of common stock subject to such Award but not issued thereunder or that are otherwise forfeited back to Petco will again become available for grant under the 2020 Plan. Additionally, shares retained or withheld in payment of any exercise price, purchase price or tax withholding obligation of an Award will again become available for grant under the 2020 Plan.

### **Limits on Non-Employee Director Compensation**

Under the 2020 Plan, the aggregate dollar value of all cash and equity-based compensation (whether granted under the Plan or otherwise) to our non-employee directors for services in such capacity shall not exceed \$ \_\_\_\_\_ during any calendar year. However, during the calendar year in which a non-employee director first joins our board of directors or during any calendar year in which a non-employee director serves as Chairman or Lead Director, such aggregate limit shall instead be \$ \_\_\_\_\_.

### **Types of Awards**

#### **Stock Options**

All stock options granted under the 2020 Plan will be evidenced by a written agreement with the participant, which provides, among other things, whether the option is intended to be an incentive stock option or a non-qualified stock option, the number of shares subject to the option, the exercise price, exercisability (or vesting), the term of the option, which may not generally exceed ten years, and other terms and conditions. Subject to the express provisions of the 2020 Plan, options generally may be exercised over such period, in installments or otherwise, as the Administrator may determine. The exercise price for any stock option granted may not generally be less than the fair market value of the common stock subject to that option on the grant date. The exercise price may be paid in cash or such other method as determined by the Administrator, including an irrevocable commitment by a broker to pay over such amount from a sale of the shares issuable under an option, the delivery of previously owned shares or withholding of shares deliverable upon exercise. Other than in connection with a change in our capitalization, we will not, without stockholder approval, reduce the exercise price of a previously awarded option, and at any time when the exercise price of a previously awarded option is above the fair market value of a share of common stock, we will not, without stockholder approval, cancel and re-grant or exchange such option for cash or a new Award with a lower (or no) exercise price.

### ***Stock Appreciation Rights***

SARs may be granted alone or in conjunction with all or part of a stock option. Upon exercising a SAR, the participant is entitled to receive the amount by which the fair market value of the common stock at the time of exercise exceeds the exercise price of the SAR. This amount is payable in common stock, cash, restricted stock, or a combination thereof, at the Administrator's discretion.

### ***Restricted Stock and RSUs***

Awards of restricted stock consist of shares of stock that are transferred to the participant subject to restrictions that may result in forfeiture if specified conditions are not satisfied. RSUs result in the transfer of shares of cash or stock to the participant only after specified conditions are satisfied. The Administrator will determine the restrictions and conditions applicable to each award of restricted stock or RSUs, which may include performance vesting conditions.

### ***Incentive Bonuses***

Each incentive bonus will confer upon the participant the opportunity to earn a future payment tied to the level of achievement with respect to one or more performance criteria established for a specified performance period. The Administrator will establish the performance criteria and level of achievement versus these criteria that will determine the threshold, target, and maximum amount payable under an incentive bonus, which criteria may be based on financial performance and/or personal performance evaluations. Payment of the amount due under an incentive bonus may be made in cash or shares, as determined by the Administrator.

### ***Other Stock-Based Awards***

Other stock-based awards are Awards denominated in or payable in, valued in whole or in part by reference to, or otherwise based on or related to, the value of stock.

### ***Performance Criteria***

The Administrator may specify certain performance criteria which must be satisfied before Awards will be granted or will vest. The performance goals may vary from participant to participant, group to group, and period to period.

### ***Transferability***

Awards generally may not be sold, transferred for value, pledged, assigned or otherwise alienated or hypothecated by a participant other than by will or the laws of descent and distribution, and each option or SAR may be exercisable only by the participant during his or her lifetime.

### ***Amendment and Termination***

Our board of directors has the right to amend, alter, suspend or terminate the 2020 Plan at any time, provided certain enumerated material amendments may not be made without stockholder approval. No amendment or alteration to the 2020 Plan or an Award or Award agreement will be made that would materially impair the rights of the holder, without such holder's consent; however, no consent will be required if the Administrator determines in its sole discretion and prior to the date of any change in control that such amendment or alteration either is required or advisable in order for us, the 2020 Plan or such Award to satisfy any law or regulation or to meet the requirements of or avoid adverse financial accounting consequences under any accounting standard, or is not reasonably likely to significantly diminish the benefits provided under such Award, or that any such diminishment has been adequately compensated. The 2020 Plan is expected to be adopted by our board of directors and our sole stockholder in connection with this offering and will automatically terminate, unless earlier terminated by our board of directors, ten years after such approval by our board of directors.

## 2020 Employee Stock Purchase Plan

In advance of the offering, we expect to adopt the Petco Health and Wellness Company, Inc. 2020 Employee Stock Purchase Plan (the "ESPP"). The purpose of the ESPP is to encourage and enable our eligible employees to acquire a proprietary interest in us through the ownership of our Class A common stock. A maximum of \_\_\_\_\_ shares may be purchased under the ESPP. The ESPP, and the rights of participants to make purchases thereunder, is intended to qualify under the provisions of Sections 421 and 423 of the Code.

The following description of the ESPP is not intended to be complete and is qualified in its entirety by the complete text of the ESPP, a copy of which will be filed as an exhibit to the registration statement of which this prospectus forms a part. Stockholders and potential investors are urged to read the ESPP in its entirety. Any capitalized terms which are used in this summary description but not defined here or elsewhere in this prospectus have the meanings assigned to them in the ESPP.

### **Administration**

The ESPP is administered by the Compensation Committee or another committee designated by our board of directors to administer the plan, which we refer to herein as the ESPP Administrator. All questions of interpretation of the ESPP are determined by the ESPP Administrator, whose decisions are final and binding upon all participants. The ESPP Administrator may delegate its responsibilities under the ESPP to one or more other persons.

### **Eligibility; Participation**

Each employee is eligible to participate in the ESPP. The first offering period will run for approximately 24 months, with subsequent offering periods lasting for 12 months, unless otherwise determined by the ESPP Administrator. Each offering period will contain successive six-month purchase periods.

An eligible employee may begin participating in the ESPP effective at the beginning of an offering period or any purchase periods within an offering period. Once enrolled in the ESPP, a participant is able to purchase our common shares with payroll deductions at the end of the applicable offering period. Once an offering period is over, a participant is automatically enrolled in the next offering period unless the participant chooses to withdraw from the ESPP.

### **Purchase Price**

The price per share at which shares are purchased under the ESPP is determined by the ESPP Administrator but in no event will be less than 85% of the fair market value of the common stock on the first or the last day of the offering period, whichever is lower. A participant may designate payroll deductions to be used to purchase shares up to a maximum of the percentage of the participant's compensation set by the ESPP Administrator (which rate may be changed from time to time, but in no event shall be greater than 15%). A participant may only change the percentage of compensation that is deducted to purchase shares under the ESPP (other than to withdraw entirely from the ESPP) effective at the beginning of an offering period. At the end of each offering period, unless the participant has withdrawn from the ESPP, payroll deductions are applied automatically to purchase common shares at the price described above. The number of shares purchased is determined by dividing the payroll deductions by the applicable purchase price.

### **Adjustments**

In the event of any reorganizations, recapitalizations, stock splits, reverse stock splits, stock dividends, extraordinary dividends or distributions or similar events, the ESPP Administrator will appropriately adjust the number and class of shares available under the ESPP and the applicable purchase price of such shares.

### **Limitations on Participation**

A participant is not permitted to purchase shares under the ESPP if the participant would own common stock possessing 5% or more of the total combined voting power or value of equity interests. A participant is also not permitted to purchase common stock with a fair market value in excess of \$25,000 in any one calendar year (or more than 5,000 shares in any purchase period). A participant does not have the rights of a shareholder until the shares are actually issued to the participant.

### **Transferability**

Rights to purchase Class A common stock under the ESPP may not be transferred by a participant and may be exercised during a participant's lifetime only by the participant.

### **Amendment and Termination**

The ESPP will become effective when it is approved by our sole stockholder prior to the completion of the offering described herein in accordance with applicable law. Our board of directors may amend, alter or discontinue the ESPP in any respect at any time; however, stockholder approval is required for any amendment that would increase the number of shares reserved under the ESPP other than pursuant to an adjustment as provided in the ESPP or materially change the eligibility requirements to participate in the ESPP.

## **Director Compensation**

We pay cash compensation to our independent, non-employee directors for their services as directors. The table below describes the compensation provided to our independent, non-employee directors in Fiscal 2019, which consisted solely of an annual cash stipend paid quarterly.

<u>Name(1)</u>	<u>Fees Earned or Paid in Cash (\$)</u>	<u>Total (\$)</u>
Gary Briggs	\$ 75,000	\$75,000
Christy Lake	\$ 75,000	\$75,000

(1) As of February 1, 2020, Mr. Briggs and Ms. Lake each held 1,500,000 C Units originally granted in 2018 with a Distribution Threshold of \$0.50, which are generally subject to the same terms as the C Units granted to our NEOs, as described under "Executive Compensation—Compensation Discussion and Analysis—Elements of Compensation—Long-Term Equity Incentive Compensation" and "Executive Compensation—Potential Payments Upon Termination or Change-in-Control—C Units" above.

In addition to the compensation described above, each of our independent, non-employee directors were offered reimbursement for reasonable, documented out-of-pocket expenses in connection with performing their duties.

Following this offering, we expect to adopt a director compensation program pursuant to which we expect to pay cash retainers, additional payments for serving on or as the chairperson of committees of our board of directors, and annual equity incentive awards. In addition, we expect that our director compensation program will provide each director with reimbursement for reasonable travel and miscellaneous expenses incurred in attending meetings and activities of our board of directors and its committees.

## PRINCIPAL STOCKHOLDERS

The following table sets forth the beneficial ownership of our common stock that, upon the consummation of this offering, will be owned by:

- each person known to us to beneficially own more than 5% of any class of our outstanding common stock;
- each member of our board of directors;
- each of our named executive officers; and
- all of our directors and executive officers as a group.

The amounts and percentage of shares of our common stock beneficially owned are reported on the basis of regulations of the SEC governing the determination of beneficial ownership of securities. Under the rules of the SEC, a person is deemed to be a “beneficial owner” of a security if that person has or shares “voting power,” which includes the power to vote or to direct the voting of such security, or “investment power,” which includes the power to dispose of or to direct the disposition of such security. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, common stock subject to options or warrants held by that person that are currently exercisable or exercisable within 60 days of the date of this prospectus, if any, are deemed outstanding, but are not deemed outstanding for computing the percentage ownership of any other person. Except as indicated by footnote, the persons named in the table below have sole voting and investment power with respect to all shares of our common stock shown as beneficially owned by them, subject to community property laws where applicable.

The percentage ownership information shown in the table prior to the completion of this offering is based on \_\_\_\_\_ shares of our Class A common stock, \_\_\_\_\_ shares of our Class B-1 common stock and \_\_\_\_\_ shares of our Class B-2 common stock outstanding as of \_\_\_\_\_, 2020, after giving effect to the Recapitalization and the Corporate Conversion. The percentage ownership information shown in the table after this offering is based on \_\_\_\_\_ shares of our Class A common stock, \_\_\_\_\_ shares of our Class B-1 common stock and \_\_\_\_\_ shares of our Class B-2 common stock outstanding as of \_\_\_\_\_, 2020, after giving effect to the sale of \_\_\_\_\_ shares of Class A common stock by us in this offering and assuming no exercise of the underwriters’ option to purchase additional shares. The rights of the holders of our Class A common stock and our Class B-1 common stock are identical in all respects, except that our Class B-1 common stock does not vote on the election or removal of directors. The rights of the holders of our Class B-2 common stock differ from the rights of the holders of our Class A common stock and Class B-1 common stock in that holders of our Class B-2 common stock only possess the right to vote on the election or removal of directors. The table does not reflect any shares of our common stock that may be purchased through the directed share program, as described under “Underwriting (Conflicts of Interest)—Directed Share Program.”



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Inc. has agreed for itself and its wholly owned subsidiary not to vote or transfer any shares of Class B-2 common stock held by it or such subsidiary except as directed by Canada Pension Plan Investment Board, and accordingly, Canada Pension Plan Investment Board may be deemed to beneficially own such shares held by 9314601 Canada Inc. or such subsidiary for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended. See footnote (4) above for information regarding Canada Pension Plan Investment Board.

## DESCRIPTION OF INDEBTEDNESS

### Senior Secured Credit Facilities

Petco Animal Supplies has a \$2,525.0 million senior secured term loan facility (the “term loan facility”), maturing on January 26, 2023, which was most recently amended on January 27, 2017, and a senior secured asset-based revolving credit facility (the “revolving credit facility”), providing for senior secured financing of up to \$500.0 million, subject to a borrowing base, expiring on the earlier of 91 days prior to the maturity of the term loan facility (currently October 27, 2022) or five years from the most recent amendment (August 23, 2023), which was most recently amended on August 23, 2018.

The obligations under the senior secured credit facilities are unconditionally guaranteed by each of Petco Animal Supplies’ domestic material subsidiaries (the “Guarantors”) and secured, subject to certain exceptions, by substantially all assets of Petco Animal Supplies and the Guarantors.

The credit agreements governing the senior secured credit facilities contain certain customary affirmative and negative covenants that relate to indebtedness, liens, fundamental changes in the business, investments, restricted payments, and agreements, among other things. The credit agreement governing the revolving credit facility requires Petco Animal Supplies to comply with a minimum fixed charge coverage ratio if excess availability falls below a specified threshold or other specified triggering events occur. Under the credit agreement governing the revolving credit facility, compliance with certain payment conditions, including a minimum fixed charge coverage, is required for Petco Animal Supplies taking certain corporate actions. Under the credit agreement governing the term loan facility, compliance with certain leverage criteria is required for Petco Animal Supplies taking certain corporate actions. These covenants apply to Petco Animal Supplies and its restricted subsidiaries.

The credit agreements governing the senior secured credit facilities contain customary default provisions including, among others, the failure to make payments when due, defaults under other material indebtedness, non-compliance with covenants, change of control, and bankruptcy, the occurrence of any of which would limit our ability to draw on the revolving credit facility and could result in the lenders under the senior secured credit facilities accelerating the maturity of such indebtedness and foreclosing upon the collateral pledged thereunder. Under the credit agreements governing the senior secured credit facilities, we are and will be permitted to enter into certain additional borrowing arrangements, subject to certain limitations. At October 31, 2020, we were in compliance with all of the covenants under the credit agreements governing the senior secured credit facilities.

### Term Loan Facility

As of October 31, 2020, the outstanding principal balance of the term loan facility was \$2,405.1 million (\$2,359.0 million, net of the unamortized discount and debt issuance costs). Interest under the term loan facility is at our option of the bank’s ABR, payable quarterly in arrears, or LIBOR (subject to a 1.00% floor), payable upon maturity of the LIBOR contract, plus the applicable rate in either case. The ABR is the greater of the bank prime rate, federal funds effective rate plus 0.5%, or adjusted LIBOR plus 2.0%. The applicable rate is based on the senior secured first lien net leverage ratio, and is currently calculated as follows:

<u>Senior Secured First Lien Net Leverage Ratio</u>	<u>ABR Spread</u>	<u>LIBOR Rate Spread</u>
>4.00 to 1.00	2.25%	3.25%
£4.00 to 1.00	2.00%	3.00%

Principal payments under the term loan facility are \$6.3 million quarterly, with the balance of the principal due at maturity.

## Revolving Credit Facility

The revolving credit facility was most recently amended on August 23, 2018, to extend the availability of \$500 million of commitments of consenting lenders to August 23, 2023, subject to a springing maturity 91 days inside the term loan facility maturity. The terms of the revolving credit facility remain substantially unchanged. As of October 31, 2020, no amounts were outstanding under the revolving credit facility.

The revolving credit facility has availability up to \$500.0 million and a \$150.0 million letter of credit sub-facility. The availability is limited to a borrowing base, which allows us to borrow up to 90.0% of eligible accounts receivable plus 90.0% of the net orderly liquidation value of the inventory plus 100% of qualified cash not to exceed \$50.0 million, net of certain reserves. Letters of credit reduce the amount available to borrow under the revolving credit facility by their face value.

Interest on the revolving credit facility is based on either ABR or Adjusted LIBOR subject to a floor of 0%, in either case, plus an applicable margin. The applicable margin is currently equal to 25 basis points in the case of ABR loans and 125 basis points in the case of Adjusted LIBOR loans. The applicable margin is adjusted quarterly based on the average historical excess availability as a percentage of the Line Cap, which represents the lesser of the aggregate revolving credit facility and the borrowing base, as follows:

<u>Average Historical Excess Availability</u>	<u>Applicable Margin for Adjusted LIBOR Loans</u>	<u>Applicable Margin for ABR Loans</u>
Less than 33.3% of the Line Cap	1.75%	0.75%
Less than 66.7% but greater than or equal to 33.3% of the Line Cap	1.50%	0.50%
Greater than or equal to 66.7% of the Line Cap	1.25%	0.25%

The fee in effect on unused commitments is based on average daily exposure under the revolving credit facility, and is equal to 0.25% if the exposure exceeds 50% of the line cap in effect. Otherwise, the fee is equal to 0.375%.

As of October 31, 2020, no amounts were outstanding under the revolving credit facility and \$390.2 million remains available, which is net of \$61.5 million of outstanding letters of credit issued in the normal course of business and a \$48.3 million borrowing base reduction for a shortfall in qualifying assets, net of reserves.

## 3.00% Senior Notes and Floating Rate Senior Notes

In connection with this offering, the 3.00% Senior Notes will be contributed to us and canceled, and the Floating Rate Senior Notes will be fully redeemed. For more information regarding this indebtedness, please read "Recapitalization and Corporate Conversion" and Note 9 to the historical consolidated financial statements included elsewhere in this prospectus.

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

### Procedures for Review, Approval, and Ratification of Related Person Transactions

Upon the completion of this offering, our board of directors will adopt a written policy regarding the review, approval, ratification, or disapproval by our Audit Committee of transactions between us or any of our subsidiaries and any related person (to be defined in the policy to include our executive officers, directors or director nominees, any stockholder beneficially owning in excess of 5% of our stock or securities exchangeable for our stock, and any immediate family member of any of the foregoing persons) in which the amount involved since the beginning of our last completed fiscal year will or may be expected to exceed \$120,000 and in which one or more of such related persons has a direct or indirect material interest. In approving or rejecting any such transaction, we expect that our Audit Committee will consider the relevant facts and circumstances available and deemed relevant to the Audit Committee. Any member of the Audit Committee who is a related person with respect to a transaction under review will not be permitted to participate in the deliberations or vote on approval, ratification, or disapproval of the transaction.

### Related Party Transactions

Our Sponsors are our principal beneficial owners through our Principal Stockholder and other entities and, after giving effect to the Corporate Conversion and the completion of this offering, will own \_\_\_\_\_ shares of our Class A common stock, \_\_\_\_\_ shares of our Class B-1 common stock, and \_\_\_\_\_ shares of our Class B-2 common stock representing collectively approximately \_\_\_\_\_ % of the voting power of our company. \_\_\_\_\_ and \_\_\_\_\_, representatives of \_\_\_\_\_, are directors on our board of directors.

#### **3.00% Senior Notes**

In January 2016, we issued 0.75% Senior Unsecured Notes in an initial aggregate principal amount of \$125,000,000 to Scooby LP and other noteholders. On April 16, 2019, the notes were extended, amended, and restated with an interest rate of 3.00% (with effectiveness from January 26, 2019) (as amended, the “3.00% Senior Notes”). The 3.00% Senior Notes were subsequently extended, amended, and restated on July 25, 2019, February 3, 2020, and September 28, 2020. As of September 28, 2020, Scooby LP held a total principal amount of \$120.4 million of the 3.00% Senior Notes.

Prior to the completion of this offering, noteholders, including Scooby LP, will contribute to us \$132 million aggregate principal amount of the outstanding 3.00% Senior Notes, plus accrued but unpaid interest. In connection with the contribution, we will pay Scooby LP \$4 million to cover certain of its expenses. After accounting for an offset of certain inter-company indebtedness, we will cancel the 3.00% Senior Notes and record the cancellation as a capital contribution to us. For more information about the 3.00% Senior Notes, please read “Recapitalization and Corporate Conversion” and Note 9 to our historical consolidated financial statements included elsewhere in this prospectus.

#### **Promissory Note**

Scooby LP holds a promissory note issued by Petco Animal Supplies with an initial principal amount of \$3.5 million in connection with the acquisition by Petco Animal Supplies of an online pet healthcare service on March 22, 2017. Half of this promissory note was redeemed effective as of March 25, 2019, and the remaining half of the promissory note equal to \$1.9 million remains outstanding as of October 31, 2020.

#### **Management Services Agreement**

On January 26, 2016, and in connection with the acquisition of our company by our Sponsors, Petco Animal Supplies entered into a management services agreement with certain affiliates and/or

investment advisors of our Sponsors (the “Sponsor MSA Parties”), pursuant to which the Sponsor MSA Parties agreed to provide certain management and financial services. The services include management, consulting, and financial planning services in connection with the operation and growth of our company. As compensation for such services, we agreed to reimburse the Sponsor MSA Parties’ costs for services rendered, including expenses related to maintaining the holding company structure through which our Sponsors own us indirectly, plus reimbursement of reasonable out-of-pocket expenses incurred in connection with the services rendered. We also agreed to provide customary indemnification to the Sponsor MSA Parties. We paid approximately \$310,000 in Fiscal 2017, \$340,000 in Fiscal 2018, \$45,000 in Fiscal 2019, and \$210,000 in the thirty-nine week period ended October 31, 2020 in costs and reimbursements. This agreement will be terminated in connection with the closing of this offering.

### **Registration Rights Agreement**

In connection with the completion of this offering, we will enter into a registration rights agreement with the Principal Stockholder. We expect that the agreement will contain provisions that will require us to register under the federal securities laws the offer and resale of shares of our Class A common stock held by the Principal Stockholder upon demand thereof. The agreement will also grant the Principal Stockholder the opportunity to include its shares in any registration statement filed by us in connection with a public offering of our equity securities (customarily known as “piggyback rights”). These registration rights will be subject to certain conditions and limitations. We expect the Principal Stockholder to exercise its demand registration rights as soon as 180 days after completion of this offering pursuant to its obligations under the note purchase agreement. We will generally be obligated to pay all registration expenses in connection with these registration obligations, regardless of whether a registration statement is filed or becomes effective.

### **Stockholder’s Agreement**

In connection with the completion of this offering, we intend to enter into a stockholder’s agreement with the Principal Stockholder. The stockholder’s agreement will give our Principal Stockholder the right to designate a certain number of nominees for election to our board of directors and certain committee nomination and observer rights so long as the Principal Stockholder does not sell below, or beneficially owns (directly or indirectly), as applicable, a specified percentage of our outstanding Class A common stock and Class B-1 common stock. Please read “Management—Board of Directors and Committees—Composition of Our Board of Directors After This Offering.” Additionally, the stockholder’s agreement will specify that we will not take certain significant actions specified therein without the prior written consent of our Principal Stockholder as long as our Principal Stockholder (including its permitted transferees under the stockholder’s agreement) beneficially owns (directly or indirectly) at least 25% of the outstanding shares of Class A common stock and Class B-1 common stock (as adjusted for stock splits, combinations, reclassifications and similar transactions). Such specified actions include:

- liquidation, dissolution or winding up of our company;
- any material change in the nature of the business or operations of our company and our subsidiaries, taken as a whole, as of the date of the stockholder’s agreement;
- hiring or terminating the CEO of our company and his or her successors and, so long as our Principal Stockholder beneficially owns (directly or indirectly) at least 50% of the outstanding shares of Class A common stock and Class B-1 common stock (as adjusted for stock splits, combinations, reclassifications, and similar transactions), hiring or terminating any other executive officer of our company and his or her successor;
- any mergers or other transaction that, if consummated, would constitute a “change in control” (as defined in the stockholder’s agreement) or entering into any definitive agreement or series of related agreements that govern any transaction or series of related transactions that, if consummated, would result in a “change in control”;

- entering into any agreement providing for the acquisition or divestiture of assets or persons, in each such case, involving consideration payable or receivable by the Company or any of its subsidiaries in excess of a specified monetary threshold in a 12-month period;
- any incurrence by us or any of our subsidiaries of indebtedness for borrowed money (including through capital leases, the issuance of debt securities or the guarantee of indebtedness of another person), other than indebtedness incurred under an existing and previously approved revolving credit facility, in excess of a specified monetary threshold in a 12-month period or that would result in our company's total net leverage ratio (as defined in the senior secured credit facilities) exceeding 4:00:1:00;
- any issuance or series of related issuances of equity securities by us or our subsidiaries, other than grants of equity securities under any equity compensation plan (including an employee stock purchase plan) approved by the board of directors or a committee thereof;
- any payment or declaration of any dividend or other distribution of any shares of Class A Common Stock or Class B-1 Common Stock or entering into any recapitalization transaction the primary purpose of which is to pay a dividend of shares of Class A Common Stock or Class B-1 Common Stock;
- any increase or decrease in the size of the board of directors or the committees of the board; and
- amendments to, or modification or repeal of, organizational documents (such as our certificate of incorporation and bylaws or equivalent organizational documents of our subsidiaries) that adversely affect any of the Principal Stockholder, CVC or CPP Investments or their respective affiliates.

### **Indemnification Agreements**

Our bylaws will provide that we will indemnify our directors and officers to the fullest extent permitted by law. In addition, we intend to enter into separate indemnification agreements with our directors and certain officers. Each indemnification agreement will provide, among other things, for indemnification to the fullest extent permitted by law and our bylaws against any and all expenses, judgments, fines, penalties, and amounts paid in settlement of any claim, subject to certain exceptions contained in those agreements. The indemnification agreements will provide for the advancement or payment of all expenses to the indemnitee and for the reimbursement to us if it is found that such indemnitee is not entitled to such indemnification under applicable law and our bylaws or the applicable indemnification agreement.

## DESCRIPTION OF CAPITAL STOCK

*The description of our Class A, Class B-1 and B-2 common stock and our preferred stock reflects the completion of the Corporate Conversion.*

We are a Delaware corporation. After giving effect to the Corporate Conversion and the completion of this offering, our authorized capital stock will consist of shares of Class A common stock, \$0.001 par value per share, of which shares will be issued and outstanding, shares of Class B-1 common stock, \$0.001 par value per share, of which shares will be issued and outstanding, shares of Class B-2 common stock, \$0.001 par value per share, of which shares will be issued and outstanding, and shares of preferred stock, par value \$0.001 per share, all of which shares of preferred stock are undesignated. Our board of directors will be able to establish one or more series of preferred stock and fix the powers, designations, rights, and preferences of each such series from time to time. Immediately following this offering, we expect that no shares of preferred stock will be issued and outstanding. Our Sponsors will beneficially own all outstanding shares of Class B-1 common stock and Class B-2 common stock. Unless the context otherwise requires, references to “common stock” refer to our Class A common stock, our Class B-1 common stock, and our Class B-2 common stock, collectively.

The following description of the anticipated certificate of incorporation and bylaws does not purport to be complete and is qualified in its entirety by reference to the provisions of applicable law and to our anticipated certificate of incorporation and bylaws, which are filed as exhibits to the registration statement of which this prospectus is a part.

### Class A Common Stock

Pursuant to our certificate of incorporation, holders of our Class A common stock will be entitled to one vote on all matters submitted to a vote of stockholders; provided, however, that, except as otherwise required by law, holders of Class A common stock, as such, shall not be entitled to vote on any amendment to our certificate of incorporation that relates solely to the terms of one or more outstanding series of preferred stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to our certificate of incorporation. Pursuant to our certificate of incorporation, holders of Class A common stock will not be entitled to cumulative voting.

Each share of Class A common stock will be convertible into one share of Class B-1 common stock and one share of Class B-2 common stock at any time and from time to time, at the option of the holder, so long as such holder holds one or more shares of Class B-1 common stock or Class B-2 common stock at the time of conversion. No public stockholders will have conversion rights because they will not be eligible to hold shares of Class B-1 common stock or Class B-2 common stock.

Subject to the rights, if any, of the holders of any outstanding series of preferred stock, holders of our Class A common stock shall be entitled to receive dividends out of any of our funds legally available when, as, and if declared by our board of directors. Upon the dissolution, liquidation, or winding up of our company, subject to the rights, if any, of the holders of our preferred stock, the holders of our Class A common stock shall be entitled to receive the assets of our company available for distribution to its stockholders ratably in proportion to the number of shares held by them and the holders of our Class B-1 and Class B-2 common stock; provided, however, that the distribution to holders of Class B-2 common stock shall be limited to the aggregate par value of such holders' then outstanding shares of Class B-2 common stock. Holders of Class A common stock will not have preemptive or conversion rights, other than as described above, or other subscription rights. There will be no redemption or sinking fund provisions applicable to our Class A common stock.

### **Class B-1 and Class B-2 Common Stock**

Pursuant to our certificate of incorporation, our Class B-1 common stock will have the same rights as our Class A common stock, except that holders of our Class B-1 common stock will not be entitled to vote in the election or removal of directors. Holders of our Class B-2 common stock will only have the right to vote in the election or removal of directors. Pursuant to our certificate of incorporation, holders of Class B-1 and Class B-2 common stock will not be entitled to cumulative voting.

Each share of our Class B-1 common stock will be convertible into one share of Class A common stock at the option of the holder. As a condition to such conversion, the holder of the shares of Class B-1 common stock to be converted must direct a holder of Class B-2 common stock to transfer an equal number of shares to our company. No public stockholders will have conversion rights because they will not be eligible to hold shares of Class B-1 common stock or Class B-2 common stock.

Subject to the rights, if any, of the holders of any outstanding series of preferred stock, holders of our Class B-1 common stock shall be entitled to receive dividends out of any of our funds legally available when, as, and if declared by our board of directors. Upon our dissolution, liquidation, or winding up, subject to the rights, if any, of the holders of our preferred stock, the holders of shares of our Class B-1 common stock and Class B-2 common stock shall be entitled to receive the assets of our company available for distribution to its stockholders ratably in proportion to the number of shares held by them and the holders of our Class A common stock; provided, however, that the distribution to holders of Class B-2 common stock shall be limited to the aggregate par value of such holders' then-outstanding shares of Class B-2 common stock. Holders of Class B-1 and Class B-2 common stock will not have preemptive or conversion rights, other than as described above, or other subscription rights. There will be no redemption or sinking fund provisions applicable to our Class B-1 and Class B-2 common stock.

We divided the voting rights between Class B-1 common stock and Class B-2 common stock as described above in order to maintain CPP Investments' compliance with certain regulations under the Canada Pension Plan Investment Board Act, which restrict CPP Investments from investing in securities of a corporation that carry more than 30% of the votes that may be cast for the election of directors of such corporation. We will issue such number of shares of Class B-1 common stock and B-2 common stock as is necessary to facilitate CPP Investments' compliance with such regulations. For more information on the shares of Class B-2 common stock subject to such regulations, please read footnote (6) to the table in "Principal Stockholders."

### **Preferred Stock**

Under the terms of our certificate of incorporation, our board of directors will be authorized, subject to limitations prescribed by the DGCL and by our certificate of incorporation, to issue up to shares of preferred stock in one or more series without further action by the holders of our common stock. Our board of directors will have the discretion, subject to limitations prescribed by the DGCL and by our certificate of incorporation, to determine the powers (including voting powers), preferences, and relative, participating, optional or other rights, if any, and the qualifications, limitations, or restrictions, if any, of the shares of each such series.

### **Dividends**

The DGCL permits a corporation to declare and pay dividends out of "surplus" or, if there is no "surplus," out of its net profits for the fiscal year in which the dividend is declared or the preceding fiscal year. "Surplus" is defined as the excess of the net assets of the corporation over the amount determined to be the capital of the corporation by its board of directors. The capital of the corporation is typically calculated to be (and cannot be less than) the aggregate par value of all issued shares of our common stock. Net assets equals the fair value of the total assets minus total liabilities. The DGCL

also provides that dividends may not be paid out of net profits if, after the payment of the dividend, remaining capital would be less than the capital represented by the outstanding stock of all classes having a preference upon the distribution of assets. Declaration and payment of any dividend will be subject to the discretion of our board of directors.

### **Anti-Takeover Effects of Provisions of Our Certificate of Incorporation, our Bylaws, and Delaware Law**

Some provisions of Delaware law, our certificate of incorporation, and our bylaws, which will be in effect upon the completion of the Corporate Conversion, will contain provisions that could make the following transactions more difficult: acquisitions of us by means of a tender offer, a proxy contest, or otherwise, or removal of our directors. These provisions may also have the effect of preventing changes in our executive team. It is possible that these provisions could make it more difficult to accomplish or could deter transactions that stockholders may otherwise consider to be in their best interest or in our best interests, including transactions that might result in a premium over the market price for the shares of our Class A common stock.

These provisions are expected to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with us. We believe that the benefits of increased protection and our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging these proposals because, among other things, negotiation of these proposals could result in an improvement of their terms.

### ***Stockholder Meetings***

Our certificate of incorporation and bylaws will provide that annual stockholder meetings will be held at a date, time, and place, if any, as exclusively selected by our board of directors. Prior to the Trigger Date (as defined below) special meetings of the stockholders of our company may be called only by the Chairman of the board of directors and by our board of directors and shall be called by the Chairman of our board of directors or by the Secretary at the request of our Principal Stockholder. From and after the Trigger Date, our certificate of incorporation and bylaws will provide that special meetings of the stockholders may be called only by the Chairman of our board of directors or by our board of directors. "Trigger Date" means the first date on which the Principal Stockholder (including its permitted transferees under the stockholder's agreement) ceases to beneficially own (directly or indirectly) at least 50% of the shares of our outstanding Class A common stock and Class B-1 common stock.

### ***Stockholder Action by Written Consent***

Our certificate of incorporation will provide that from and after the Trigger Date, any action by stockholders must be taken only at an annual meeting or special meeting rather than by a written consent of the stockholders, subject to the rights of any series of preferred stock with respect to such rights (prior to the Trigger Date, any action required or permitted to be taken at any annual meeting or special meeting may be taken without a meeting, without prior notice and without a vote of stockholders, if a consent or consents in writing, setting forth the action so taken, is or are signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted).

### ***Board of Directors***

Our certificate of incorporation will provide that our board of directors will be divided into three classes, each class serving three-year staggered terms. Our board of directors will have the exclusive power to fix the number of directors in each class. In addition, the stockholder's agreement will give our

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Principal Stockholder the right to designate a certain number of nominees for election to our board of directors and certain committee nomination and observer rights so long as the Principal Stockholder does not sell below, or beneficially owns (directly or indirectly), as applicable, a specified percentage of our outstanding Class A common stock and Class B-1 common stock. Please read “Management—Board of Directors and Committees—Composition of Our Board of Directors After This Offering.”

Prior to the Trigger Date, any director may be removed at any time, with or without cause, by the holders of at least a majority of the voting power of the outstanding shares of our common stock entitled to vote on the election and removal of directors in the manner permitted by the stockholder’s agreement. In all other cases and at any other time, our certificate of incorporation will provide that directors may only be removed from our board of directors only for cause and only by the affirmative vote of the holders of at least a majority of the voting power of the stock outstanding and entitled to vote on the election and removal of directors. Except in the case of a vacancy arising with respect to a director designated by our Principal Stockholder, our board of directors will have the sole power to fill any vacancy on our board of directors, whether such vacancy occurs as a result of an increase in the number of directors or otherwise.

### ***Supermajority Provisions***

Our certificate of incorporation and our bylaws will provide that the board of directors is expressly authorized to adopt, make, alter, amend or repeal our bylaws. From and after the Trigger Date, any adoption, alteration, amendment or repeal of our bylaws by our stockholders will require the affirmative vote of holders of at least 66 2/3% of the voting power of our outstanding common stock entitled to vote thereon. In addition, our certificate of incorporation will provide that from and after the Trigger Date, certain articles of the certificate of incorporation, including those relating to (i) the board size, classification, removal and vacancies, (ii) stockholder action by written consent, (iii) special meetings of stockholders, (iv) amendment of certificate and bylaws, (v) business combinations with interested stockholders, (vi) liability of directors, (vii) forum selection and (viii) waiver of corporate opportunity, may be amended only by a vote of at least 66 2/3% of the voting power of our outstanding common stock entitled to vote thereon.

### ***Business Combination with Interested Stockholder***

In general, Section 203 of the DGCL, an anti-takeover provision, prohibits a publicly held Delaware corporation from engaging in a business combination, such as a merger, with an interested stockholder, or person or group owning 15% or more of the corporation’s voting stock, for a period of three years following the date the person became an interested stockholder, unless (with certain exceptions) the business combination or the transaction in which the person became an interested stockholder is approved in the manner prescribed by the DGCL and Delaware Court of Chancery.

We intend to elect in our certificate of incorporation not to be subject to Section 203. Although our certificate of incorporation will contain provisions that have generally the same effect as Section 203, our Sponsors, our Principal Stockholder, 9314601 Canada Inc., their respective affiliates and successors, and their respective direct and indirect transferees will not be subject to such provisions regardless of the percentage of our voting stock owned by them.

### ***No Cumulative Voting***

The DGCL provides that stockholders are not entitled to the right to cumulative votes in the election of directors unless our certificate of incorporation provides otherwise. Our certificate of incorporation will not provide for cumulative voting.

### ***Requirements for Advance Notification of Stockholder Meetings, Nominations, and Proposals***

Our bylaws will establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the

direction of our board of directors or a committee of our board of directors. For any matter to be “properly brought” before a meeting, a stockholder will have to comply with advance notice requirements and provide us with certain information related to the stockholder giving the notice, the beneficial owner (if any) on whose behalf the nomination is made, and information about the proposal or nominee for election to our board of directors.

### **Forum Selection**

Our certificate of incorporation will provide that, unless we select or consent in writing to the selection of another forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court or a federal court located within the State of Delaware) shall be the exclusive forum for any complaints asserting any “internal corporate claims,” which include claims in the right of our company (i) that are based upon a violation of a duty by a current or former director, officer, employee, or stockholder in such capacity or (ii) as to which the DGCL confers jurisdiction upon the Court of Chancery. Further, unless we select or consent to the selection of an alternative forum, the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. Our exclusive forum provision will not apply to suits brought to enforce any liability or duty created by the Exchange Act, and investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. Any person or entity purchasing or otherwise acquiring an interest in any shares of our capital stock shall be deemed to have notice of and to have consented to the forum provisions in our certificate of incorporation. It is possible that a court could find our exclusive forum provision to be inapplicable or unenforceable. Although we believe this provision benefits us by providing increased consistency in the application of Delaware law in the types of lawsuits to which it applies, the provision may have the effect of discouraging lawsuits against our directors and officers.

### **Provisions of Our Certificate of Incorporation Relating to Corporate Opportunities**

Delaware law permits corporations to adopt provisions renouncing any interest or expectancy in certain opportunities that are presented to the corporation or its officers, directors, or stockholders. Our certificate of incorporation will, to the maximum extent permitted from time to time by Delaware law, renounce any interest or expectancy that we have in, or right to be offered an opportunity to participate in, specified business opportunities that are from time to time presented to certain of our directors or stockholders or their respective affiliates. Specifically, our certificate of incorporation will provide that, to the fullest extent permitted by law, none of our Principal Stockholder, our Sponsors, 9314601 Canada Inc., or any of their affiliates, including any directors designated for nomination and election to our board of directors by our Principal Stockholder under the Stockholder’s Agreement (together, the “Identified Persons”) will have any duty to refrain from (i) engaging in a corporate opportunity in the same or similar lines of business in which we or our affiliates now engage or propose to engage or (ii) otherwise competing with us or our affiliates. In addition, to the fullest extent permitted by law, in the event that any Identified Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for itself or himself or its or his affiliates or for us or our affiliates, such person will have no duty to communicate or offer such transaction or business opportunity to us or any of our affiliates and they may take any such opportunity for themselves or offer it to another person or entity. To the fullest extent permitted by law, a corporate opportunity shall not be deemed to be a potential corporate opportunity for our company if it is a business opportunity that (i) our company is neither financially or legally able, nor contractually permitted, to undertake, (ii) from its nature, is not in the line of our company’s business or is of no practical advantage to our company, or (iii) is one in which our company has no interest or reasonable expectancy. To the fullest extent permitted by law, any person purchasing or otherwise acquiring or holding any interest in any shares of our capital stock will be deemed to have notice of and to have consented to the above-summarized provisions.

### ***Dissenters' Rights of Appraisal and Payment***

Under the DGCL, with certain exceptions, our stockholders will have appraisal rights in connection with a merger or consolidation of our company. Pursuant to the DGCL, stockholders who properly request and perfect appraisal rights in connection with such merger or consolidation will have the right to receive payment of the fair value of their shares as determined by the Delaware Court of Chancery.

### ***Stockholders' Derivative Actions***

Under the DGCL, any of our stockholders may bring an action in our name to procure a judgment in our favor, also known as a derivative action, provided that the stockholder bringing the action is a holder of our common stock at the time of the transaction to which the action relates or such stockholder's stock thereafter devolved by operation of law.

### ***Limitations on Liability and Indemnification of Officers and Directors***

The DGCL authorizes corporations to limit or eliminate the personal liability of directors to corporations and their stockholders for monetary damages for breaches of directors' fiduciary duties, subject to certain exceptions. Our certificate of incorporation will include a provision that eliminates the personal liability of directors for monetary damages for any breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL. The effect of these provisions is to eliminate the rights of us and our stockholders, through stockholders' derivative suits on our behalf, to recover monetary damages from a director for breach of fiduciary duty as a director, including breaches resulting from grossly negligent behavior. However, exculpation does not apply to any director if the director has acted in bad faith, knowingly or intentionally violated the law, authorized illegal dividends or redemptions, or derived an improper benefit from his or her actions as a director.

Our bylaws will provide that we must indemnify and advance expenses to our directors and officers to the fullest extent authorized by the DGCL, subject to reimbursement in the event it is ultimately determined that the individual was not entitled to indemnification under the DGCL or the indemnification agreement. We also are expressly authorized to carry directors' and officers' liability insurance providing indemnification for our directors, officers, and certain employees for some liabilities. We believe that these indemnification and advancement provisions and insurance are useful to attract and retain qualified directors and executive officers. In addition, we intend to enter into separate indemnification agreements with our directors and certain other officers. Such indemnification agreements will provide, among other things, for indemnification to the fullest extent permitted by law and our bylaws against any and all expenses, liabilities, judgments, fines, penalties, and amounts paid in settlement of any claim, subject to certain exceptions contained in those agreements. The indemnification agreements will also provide for the advancement or payment of all expenses to the indemnitee and for the repayment to us if it is found that such indemnitee is not entitled to such indemnification under applicable law and our bylaws.

The limitation of liability, indemnification, and advancement provisions to be included in our certificate of incorporation and bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duty. These provisions also may have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders. In addition, your investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

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There is currently no pending material litigation or proceeding involving any of our directors, officers, or employees for which indemnification is sought.

***Registration Rights***

For a description of registration rights with respect to our Sponsors, please read “Certain Relationships and Related Party Transactions—Registration Rights Agreement.”

***Transfer Agent and Registrar***

The transfer agent and registrar for our Class A common stock is .

***Listing***

We have applied to list our Class A common stock for quotation on Nasdaq under the symbol “WOOF.”

## SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our Class A common stock. Future sales of our Class A common stock in the public market, or the availability of such shares for sale in the public market, could adversely affect the market price of our Class A common stock prevailing from time to time. As described below, only a limited number of shares will be available for sale shortly after this offering due to contractual and legal restrictions on resale. Nevertheless, sales of a substantial number of shares of our Class A common stock in the public market after such restrictions lapse, or the perception that those sales may occur, could adversely affect the prevailing market price of our Class A common stock at such time and our ability to raise equity-related capital at a time and price we deem appropriate.

### Sales of Restricted Shares

After giving effect to the Corporate Conversion and the completion of this offering, we will have outstanding an aggregate of \_\_\_\_\_ shares of Class A common stock. Of these shares, all of the \_\_\_\_\_ shares of Class A common stock to be sold in this offering (or \_\_\_\_\_ shares assuming the underwriters exercise the option to purchase additional shares in full) will be freely tradable without restriction or further registration under the Securities Act, unless the shares of Class A common stock are held by any of our "affiliates" as such term is defined in Rule 144 under the Securities Act. All remaining shares of Class A common stock will be deemed "restricted securities" as such term is defined under Rule 144. The restricted securities were, or will be, issued and sold by us in private transactions and are eligible for public sale only if registered under the Securities Act or if they qualify for an exemption from registration under Rule 144 or Rule 701 under the Securities Act, which rules are summarized below.

As a result of the lock-up agreements described below and the provisions of Rule 144 and Rule 701 under the Securities Act, all of our Class A common stock (excluding our Class A common stock to be sold in this offering) will be available for sale in the public market upon the expiration of the lock-up agreements, beginning 180 days after the date of this prospectus (subject to extension) and when permitted under Rule 144 or Rule 701.

### Lock-up Agreements

We, all of our directors and executive officers, and certain affiliates will agree not to sell any Class A common stock or securities convertible into or exchangeable for shares of our Class A common stock for a period of 180 days from the date of this prospectus, subject to certain exceptions.

### Rule 144

In general, under Rule 144 under the Securities Act as currently in effect, a person (or persons whose shares are aggregated) 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 restricted securities within the meaning of Rule 144 for at least six months (including any period of consecutive ownership of preceding non-affiliated holders) would be entitled to sell those shares, subject only to the availability of current public information about us. A non-affiliated person who has beneficially owned restricted securities within the meaning of Rule 144 for at least one year would be entitled to sell those shares without regard to the provisions of Rule 144.

A person (or persons whose shares are aggregated) who is deemed to be an affiliate of ours and who has beneficially owned restricted securities within the meaning of Rule 144 for at least six months would be entitled to sell within any three-month period a number of shares that does not exceed the greater of 1% of the then-outstanding shares of our Class A common stock or the average weekly

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trading volume of our Class A common stock reported through Nasdaq during the four calendar weeks preceding the filing of notice of the sale. Such sales are also subject to certain manner of sale provisions, notice requirements, and the availability of current public information about us.

### **Rule 701**

In general, under Rule 701 under the Securities Act, any of our employees, directors, officers, consultants, or advisors who purchases shares from us in connection with a compensatory stock or option plan or other written agreement before the effective date of this offering is entitled to sell such shares 90 days after the effective date of this offering in reliance on Rule 144, without having to comply with the holding period requirement of Rule 144 and, in the case of non-affiliates, without having to comply with the public information, volume limitation, or notice filing provisions of Rule 144. The SEC has indicated that Rule 701 will apply to typical stock 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 the date of this prospectus.

### **Stock Issued Under Employee Plans**

We intend to file a registration statement on Form S-8 under the Securities Act to register Class A common stock issuable under the 2020 Plan and ESPP. This registration statement on Form S-8 is expected to be filed following the effective date of the registration statement of which this prospectus is a part and will be effective upon filing. Accordingly, shares registered under such registration statement will be available for sale in the open market following the effective date, unless such shares are subject to vesting restrictions with us, Rule 144 restrictions applicable to our affiliates, or the lock-up restrictions described above.

### **Registration Rights Agreement**

In connection with the completion of this offering, we will enter into a registration rights agreement with the Principal Stockholder. Please read "Certain Relationships and Related Party Transactions—Registration Rights Agreement."

### **Stockholder's Agreement**

In connection with the completion of this offering, we will enter into a stockholder's agreement with an entity controlled by our Sponsors. Please read "Certain Relationships and Related Party Transactions—Stockholder's Agreement."

## CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS

The following is a general discussion of certain U.S. federal income tax considerations with respect to the ownership and disposition of our Class A common stock applicable to non-U.S. Holders who acquire such shares in this offering and hold such shares as a capital asset (generally, property held for investment). For purposes of this discussion, a “non-U.S. Holder” generally means a beneficial owner of our Class A common stock that is not or is not treated as, for U.S. federal income tax purposes, a partnership or any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation created or organized under the laws of the United States, any state thereof or the District of Columbia;
- an estate, the income of which is includible in gross income for U.S. federal income tax purposes, regardless of its source; or
- a trust if (a) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more “United States persons” (as defined in the Internal Revenue Code of 1986, as amended (the “Code”)) have the authority to control all substantial decisions of the trust or (b) such trust has in effect a valid election to be treated as a U.S. person for U.S. federal income tax purposes.

This discussion is based on current provisions of the Code, Treasury regulations promulgated thereunder, judicial opinions, published positions of the Internal Revenue Service (the “IRS”), and other applicable authorities, all of which are subject to change or differing interpretations (possibly with retroactive effect). This discussion does not address all aspects of U.S. federal income taxation that may be important to a particular non-U.S. Holder in light of that non-U.S. Holder’s circumstances, including Medicare taxes imposed on net investment income and the alternative minimum tax, nor does it address any aspect of U.S. federal taxation other than U.S. federal income taxation (such as U.S. federal estate and gift taxation) or state, local, or non-U.S. taxation. This discussion does not address tax considerations applicable to investors that may be subject to special treatment under the U.S. federal income tax laws, such as:

- banks, insurance companies, and other financial institutions;
- tax-exempt entities;
- brokers, dealers, or traders in securities or foreign currencies;
- controlled foreign corporations and corporations that accumulate earnings to avoid U.S. federal income tax;
- passive foreign investment companies;
- persons that hold our Class A common stock as part of a straddle, hedge, conversion transaction, or other integrated investment;
- persons required to accelerate the recognition of any item of gross income with respect to our Class A common stock as a result of such income being included in an applicable financial statement;
- entities or arrangements treated as partnerships for U.S. federal income tax purposes and investors therein;
- persons that own or are deemed to own, actually or constructively, more than 5% of our Class A common stock for U.S. federal income tax purposes (except as described below under “—Gain on Sale or Other Taxable Disposition of Class A Common Stock”);
- persons deemed to sell our Class A common stock under the constructive sale provisions of the Code;

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- persons who hold or receive our Class A common stock pursuant to the exercise of any employee stock option or otherwise as compensation;
- tax-qualified retirement plans;
- “qualified foreign pension funds” as defined in Section 897(l)(2) of the Code and entities all of the interests of which are held by qualified foreign pension funds; and
- U.S. expatriates and former citizens or long-term residents of the United States.

If an entity or arrangement treated as a partnership for U.S. federal income tax purposes holds our Class A common stock, the tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. Partners of a partnership considering an investment in our Class A common stock should consult their tax adviser as to the particular U.S. federal income tax consequences applicable to them of the ownership and disposition of our Class A common stock.

We have not sought, and will not seek, any ruling from the IRS with respect to the tax consequences discussed herein, and there can be no assurance that the IRS will not take a position contrary to the tax consequences discussed below or that any position taken by the IRS would not be sustained.

**THIS DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. EACH NON-U.S. HOLDER SHOULD CONSULT ITS TAX ADVISER REGARDING THE U.S. FEDERAL, STATE, LOCAL, AND NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE OWNERSHIP AND DISPOSITION OF OUR CLASS A COMMON STOCK.**

### Dividends

As described in the section entitled “Dividend Policy,” we do not anticipate declaring or paying dividends to holders of our common stock in the foreseeable future. However, in general, any distributions we make to a non-U.S. Holder with respect to such holder’s shares of our Class A common stock that constitute dividends for U.S. federal income tax purposes will be subject to U.S. withholding tax at a rate of 30% of the gross amount, unless the non-U.S. Holder is eligible for a reduced rate of withholding tax under an applicable tax treaty and the non-U.S. Holder provides proper certification of its eligibility for such reduced rate (including providing a valid IRS Form W-8BEN or W-8BEN-E (or other applicable documentation)) to us or our paying agent prior to the payment of dividends. If a non-U.S. Holder holds stock through a financial institution or other agent acting on the non-U.S. Holder’s behalf, the non-U.S. Holder will be required to provide appropriate documentation to such agent. The non-U.S. Holder’s agent will then be required to provide such certification to us or our paying agent, either directly or through other intermediaries. A non-U.S. Holder that does not timely furnish the required documentation, but that qualifies for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. Holders should consult their tax adviser regarding their entitlement to benefits under any applicable income tax treaty. A distribution will constitute a dividend for U.S. federal income tax purposes to the extent of our current or accumulated earnings and profits as determined for U.S. federal income tax purposes. Any distribution not constituting a dividend will be treated first as reducing the adjusted basis in the non-U.S. Holder’s shares of our Class A common stock and, to the extent it exceeds the adjusted basis in the non-U.S. Holder’s shares of our Class A common stock, as gain from the sale or exchange of such stock and will be treated as described below under “—Gain on Sale or Other Taxable Disposition of Class A Common Stock.”

Dividends we pay to a non-U.S. Holder that are effectively connected with its conduct of a trade or business within the United States will not be subject to U.S. withholding tax, as described above, if the non-U.S. Holder complies with applicable certification and disclosure requirements (including providing a valid IRS Form W-8EC1). Instead, unless an applicable tax treaty provides otherwise, such dividends generally will be subject to U.S. federal income tax on a net income basis, in the

same manner as if the non-U.S. Holder were a United States person for U.S. federal income tax purposes. In addition, if the non-U.S. Holder receiving effectively connected dividends is an entity treated as a corporation for U.S. federal income tax purposes, such holder's effectively connected earnings and profits (subject to adjustments) may be subject to a U.S. federal branch profits tax at a rate of 30% (or such lower rate as may be specified by an applicable tax treaty). Non-U.S. Holders should consult their tax adviser regarding any applicable income tax treaties that may provide for different rules.

Any distributions we make to a non-U.S. Holder with respect to such holder's shares of our Class A common stock will also be subject to the rules discussed below under the headings "Backup Withholding, Information Reporting and Other Reporting Requirements" and "Foreign Account Tax Compliance Act."

### **Gain on Sale or Other Taxable Disposition of Class A Common Stock**

In general, subject to the discussions below under the headings "Backup Withholding, Information Reporting and Other Reporting Requirements" and "Foreign Account Tax Compliance Act," a non-U.S. Holder will not be subject to U.S. federal income tax on any gain recognized upon the sale or other taxable disposition of the non-U.S. Holder's shares of our Class A common stock unless:

- the gain is effectively connected with a trade or business carried on by the non-U.S. Holder within the United States;
- the non-U.S. Holder is an individual and is present in the United States for 183 days or more in the taxable year of disposition and certain other conditions are met; or
- we are or have been a U.S. real property holding corporation (a "USRPHC") for U.S. federal income tax purposes at any time within the shorter of the five-year period preceding such disposition or such non-U.S. Holder's holding period in such shares (the "Relevant Period").

Unless an applicable tax treaty provides otherwise, gain that is effectively connected with the conduct of a trade or business in the United States (or so treated) will generally be subject to U.S. federal income tax on a net basis, in the same manner as if the non-U.S. Holder were a United States person for U.S. federal income tax purposes. In addition, if the non-U.S. Holder realizing the gain is a corporation, the branch profits tax described above also may apply to such holder's effectively connected earnings and profits (subject to adjustments).

An individual non-U.S. Holder who is subject to U.S. federal income tax because the non-U.S. Holder was present in the United States for 183 days or more during the year of sale or other taxable disposition of our Class A common stock will generally be subject to a flat 30% tax on the gain recognized on such disposition, which may be offset by certain U.S.-source capital losses (assuming certain requirements are met, including timely filing of U.S. federal income tax returns with respect to such losses).

Generally, a corporation is a USRPHC if the fair market value of its United States real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests and its other assets used or held for use in a trade or business. We do not believe that we are, and do not anticipate that we will become, a USRPHC for U.S. federal income tax purposes. Even if we are or become a USRPHC, as long as our Class A common stock continues to be regularly traded on an established securities market in the United States within the meaning of applicable Treasury regulations, a non-U.S. Holder will not be subject to U.S. federal income tax on any gain recognized as a result of the disposition of our Class A common stock if such non-U.S. Holder has not held (actually or constructively) more than 5% of our outstanding Class A common stock at any time within the Relevant Period. If we are or become a USRPHC and a non-U.S. Holder has held (actually or constructively) more than 5% of our outstanding Class A common stock at any time within the Relevant Period, then (A) such non-U.S. Holder will generally be subject to tax on the net gain derived

from the disposition on a net basis, in the same manner as if the non-U.S. Holder were a United States person for U.S. federal income tax purposes, unless an applicable income tax treaty provides otherwise, and (B) a purchaser may be required to withhold 15% of the proceeds payable to such non-U.S. Holder from a sale or other taxable disposition of our Class A common stock. Non-U.S. Holders should consult their tax advisers regarding the application of these rules to them, including if we are or become a USRPHC.

Non-U.S. Holders should consult their tax adviser regarding the application of these rules to them, and any potentially applicable income tax treaties that may provide for different rules than those set forth in this discussion.

### **Backup Withholding, Information Reporting, and Other Reporting Requirements**

We must report annually to the IRS, and to each non-U.S. Holder, the amount of distributions paid to, and the tax withheld with respect to, each non-U.S. Holder. These reporting requirements apply regardless of whether such distributions constitute dividends or whether withholding was reduced or eliminated by an applicable tax treaty. Copies of this information reporting may also be made available under the provisions of a specific tax treaty or agreement with the tax authorities in the country in which the non-U.S. Holder resides or is established.

A non-U.S. Holder will generally be subject to backup withholding for dividends on our Class A common stock paid to such holder, unless such non-U.S. Holder certifies under penalties of perjury that, among other things, it is a non-U.S. Holder, and otherwise complies with all applicable legal requirements.

Information reporting and backup withholding generally are not required with respect to the amount of any proceeds from the sale or other disposition of our Class A common stock by a non-U.S. Holder outside the United States through a foreign office of a foreign broker that does not have certain specified connections to the United States. However, if a non-U.S. Holder sells or otherwise disposes of its shares of our Class A common stock through a U.S. broker or the U.S. office of a foreign broker, the broker will generally be required to report the amount of proceeds paid to the non-U.S. Holder to the IRS and also backup withhold on that amount, unless such non-U.S. Holder provides appropriate certification to the broker of its status as a non-U.S. person or otherwise establishes an exemption. Information reporting will also apply if a non-U.S. Holder sells its shares of our Class A common stock through a foreign broker deriving more than a specified percentage of its income from U.S. sources or having certain other connections to the United States, unless such broker has documentary evidence in its records that such non-U.S. Holder is a non-U.S. person and certain other conditions are met, or such non-U.S. Holder otherwise establishes an exemption.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a non-U.S. Holder generally can be credited against the non-U.S. Holder's U.S. federal income tax liability, if any, or refunded, provided that the required information is furnished to the IRS in a timely manner. Non-U.S. Holders should consult their tax advisers regarding the application of the information reporting and backup withholding rules to them.

### **Foreign Account Tax Compliance Act**

Withholding taxes may be imposed under Sections 1471 to 1474 of the Code, the Treasury regulations promulgated thereunder and other official guidance (commonly referred to as "FATCA") on certain types of payments made to non-U.S. financial institutions and certain other non-U.S. entities. Specifically, a 30% withholding tax may be imposed on dividends on, or (subject to the proposed Treasury Regulations discussed below) gross proceeds from the sale or other disposition of, our Class A common stock paid to a "foreign financial institution" or a "non-financial foreign entity" (each as defined in the Code and whether such institution or entity is the beneficial owner or an intermediary),

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unless those entities comply with certain requirements under the Code and applicable Treasury regulations, which requirements may be modified by an “intergovernmental agreement” entered into between the United States and an applicable foreign country. Future Treasury regulations or other official guidance may modify these requirements.

Pursuant to recently proposed regulations, the Treasury Department has indicated its intent to eliminate the requirements under FATCA of withholding on gross proceeds from the sale or other disposition of certain financial instruments (which would include our stock). The Treasury Department has indicated that taxpayers may rely on these proposed regulations pending their finalization. There can be no assurance that final regulations would provide an exemption from withholding taxes under FATCA for gross proceeds from the disposition of property such as our Class A common stock.

Any applicable FATCA withholding tax will apply to all withholdable payments without regard to whether the beneficial owner of the payment would otherwise be entitled to an exemption from imposition of withholding tax pursuant to an applicable tax treaty with the United States or U.S. domestic law. Prospective investors should consult their tax advisers regarding the potential application of withholding under FATCA to their investment in our Class A common stock.

### UNDERWRITING (CONFLICTS OF INTEREST)

We and the underwriters named below have entered into an underwriting agreement with respect to our Class A common stock 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 and BofA Securities, Inc. are the representatives of the underwriters.

<u>Underwriters</u>	<u>Number of Shares</u>
Goldman Sachs & Co. LLC	
BofA Securities, Inc.	
Citigroup Global Markets Inc.	
Evercore Group L.L.C.	
Credit Suisse Securities (USA) LLC	
UBS Securities LLC	
Wells Fargo Securities, LLC	
Robert W. Baird & Co. Incorporated	
Guggenheim Securities LLC	
Total	

The underwriters are committed to take and pay for all of the shares of our Class A common stock 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 \_\_\_\_\_ shares from us 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. Such amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase \_\_\_\_\_ additional shares.

#### Paid by Petco

	<u>No Exercise</u>	<u>Full Exercise</u>
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 our Class A common stock, the representatives may change the offering price and the other selling terms. The offering of our Class A common stock by the underwriters is subject to receipt and acceptance and subject to the underwriters' right to reject any order in whole or in part.

We and our officers, directors, and holders of substantially all of the shares of our Class A common stock have agreed or will agree with the underwriters, subject to certain exceptions, not to dispose of or hedge any of their Class A common stock or securities convertible into or exchangeable for shares of our Class A common stock during the period from the date of this prospectus continuing through the date \_\_\_\_\_ days after the date of this prospectus, except with the prior written consent of \_\_\_\_\_. This agreement does not apply to any existing employee benefit plans. Please read "Shares Eligible for Future Sale" for a discussion of certain transfer restrictions.

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Prior to the offering, there has been no public market for the shares of Class A common stock. The initial public offering price will be negotiated between us and the representatives. Among the factors to be considered in determining the initial public offering price of our Class A common stock, 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 estimate that our share of the total expenses of this offering, excluding underwriting discounts and commissions, will be approximately \$ . We have agreed to reimburse the underwriters for certain expenses in an amount up to \$ .

An application has been made to list the Class A common stock on Nasdaq under the symbol "WOOF." In order to meet one of the requirements for listing the Class A common stock on Nasdaq, the underwriters have undertaken to sell lots of 100 or more shares to a minimum of 400 beneficial holders.

In connection with this offering, the underwriters may purchase and sell shares of our Class A 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 this 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 Class A common stock in the open market after pricing that could adversely affect investors who purchase in this offering. Stabilizing transactions consist of various bids for or purchases of Class A common stock made by the underwriters in the open market prior to the completion of this 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 Class A common stock, and together with the imposition of the penalty bid, may stabilize, maintain, or otherwise affect the market price of the Class A common stock. As a result, the price of the Class A 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.

### **Directed Share Program**

At our request, affiliates of BofA Securities, Inc., a participating underwriter, has reserved for sale, at the initial public offering price, up to 5% of the shares offered by this prospectus for sale to certain of

our directors, officers, and employees. Any shares purchased by our directors, officers, or employees pursuant to our directed share program will be subject to the lock-up agreements described above. If these persons purchase reserved shares it will reduce the number of shares available for sale to the general public. Any reserved shares that are not so purchased will be offered by the underwriters to the general public on the same terms as the other shares offered by this prospectus.

### **Relationships**

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.

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 customers, 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.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make because of any of those liabilities. Some of the underwriters and their affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings in the ordinary course of business with us or our affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions.

### **Conflicts of Interest**

The GS Noteholders hold a portion of the Floating Rate Senior Notes. The GS Noteholders receive interest payments and, upon the redemption of the Floating Rate Notes, will receive a pro rata portion of the redemption payment. As described in "Use of Proceeds," the GS Noteholders will receive 5% or more of the net proceeds of this offering. Therefore, such underwriter is deemed to have a conflict of interest within the meaning of FINRA Rule 5121. Accordingly, this offering is being conducted in compliance 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. BofA 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, specifically including those inherent in Section 11 thereof. BofA will not receive any additional fees for serving as a qualified independent underwriter in connection with this offering. We have agreed to indemnify BofA 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. Please read "Use of Proceeds" for additional information.

## Selling Restrictions

### **European Economic Area & The United Kingdom**

In relation to each Member State of the European Economic Area (each a “Member State”), no offer of Class A shares of our common stock (the “Shares”) may be made to the public in that Member State other than:

- (a) to any legal entity which is a qualified investor as defined in the Prospectus Regulation;
- (b) 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
- (c) in any other circumstances falling within Article 1(4) of the Prospectus Regulation, provided that no such offer of Shares shall require our company or any of the representatives to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation and each person who initially acquires any Shares or to whom any offer is made will be deemed to have represented, acknowledged, and agreed to and with each of the representatives and our company that it is a qualified investor as defined in the Prospectus Regulation.

In the case of any Shares being offered to a financial intermediary as that term is used in Article 5 of the Prospectus Regulation, each 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 non-discretionary 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 of any Shares to the public, other than their offer or resale in a Member State to qualified investors as so defined or in circumstances in which the prior consent of the representatives has been obtained to each such proposed offer or resale.

For the purposes of this provision, the expression an “offer to the public” in relation to any Shares in any Member 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 Shares, and the expression “Prospectus Regulation” means Regulation (EU) 2017/1129 (as amended).

This European Economic Area selling restriction is in addition to any other selling restrictions set out below.

### **United Kingdom**

In the United Kingdom, this prospectus is only addressed to and directed at qualified investors who are (i) investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the Order); or (ii) high net worth entities and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as “relevant persons”). Any investment or investment activity to which this prospectus relates is available only to relevant persons and will only be engaged in with relevant persons. Any person who is not a relevant person should not act or rely on this prospectus or any of its contents.

### **Canada**

The securities may be sold in Canada 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 securities must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

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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 thereto) 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 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.

### ***Hong Kong***

The shares may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong) (the "Companies (Winding Up and Miscellaneous Provisions) Ordinance") or which do not constitute an invitation to the public within the meaning of the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) (the "Securities and Futures Ordinance"), (ii) to "professional investors" as defined in the Securities and Futures Ordinance and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance, and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case 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 in 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" in Hong Kong as defined in the Securities and Futures Ordinance and any rules made thereunder.

### ***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 the shares may not be circulated or distributed, nor may the 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 (as defined under Section 4A of the Securities and Futures Act, Chapter 289 of Singapore (the "SFA")) under Section 274 of the SFA, (ii) to a "relevant person" (as defined in Section 275(2) of the SFA) 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, in each case subject to conditions set forth in the SFA.

Where the 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, the "securities" (as defined in Section 239(1) of the SFA) of that corporation shall not be transferable for six months after that corporation has acquired the shares under Section 275 of the SFA except: (1) to an institutional investor under Section 274 of the SFA or to a "relevant person" (as defined in Section 275(2) of the SFA), (2) where such transfer arises from an offer in that corporation's securities pursuant to Section 275(1A) of the SFA, (3) where no consideration is or will be given for the transfer, (4) where the transfer is by operation of law, (5) as specified in Section 276(7) of the SFA, or (6) as specified in Regulation 32 of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 of Singapore ("Regulation 32"). Where the shares are subscribed or purchased

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under Section 275 of the SFA by a relevant person which is a trust (where the trustee is not an “accredited investor” (as defined in Section 4A of the SFA)) whose sole purpose is to hold investments and each beneficiary of the trust is an accredited investor, the beneficiaries’ rights and interest (howsoever described) in that trust shall not be transferable for six months after that trust has acquired the shares under Section 275 of the SFA except: (1) to an institutional investor under Section 274 of the SFA or to a “relevant person” (as defined in Section 275(2) of the SFA), (2) where such transfer arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than S\$200,000 (or its equivalent in a foreign currency) for each transaction (whether such amount is to be paid for in cash or by exchange of securities or other assets), (3) where no consideration is or will be given for the transfer, (4) where the transfer is by operation of law, (5) as specified in Section 276(7) of the SFA, or (6) as specified in Regulation 32.

### ***Japan***

The securities have not been and will not be registered under the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended) (the “FIEA”). The securities may not be offered or sold, directly or indirectly, in Japan or to or for the benefit of any resident of Japan (including any person resident in Japan or any corporation or other entity organized under the laws of Japan) or to others for reoffering or resale, directly or indirectly, in Japan or to or for the benefit of any resident of Japan, except pursuant to an exemption from the registration requirements of the FIEA and otherwise in compliance with any relevant laws and regulations of Japan.

### ***Switzerland***

We have not and will not register with the Swiss Financial Market Supervisory Authority (“FINMA”) as a foreign collective investment scheme pursuant to Article 119 of the Federal Act on Collective Investment Scheme of 23 June 2006, as amended (“CISA”), and accordingly the securities being offered pursuant to this prospectus have not and will not be approved, and may not be licenseable, with FINMA. Therefore, the securities have not been authorized for distribution by FINMA as a foreign collective investment scheme pursuant to Article 119 CISA and the securities offered hereby may not be offered to the public (as this term is defined in Article 3 CISA) in or from Switzerland. The securities may solely be offered to “qualified investors,” as this term is defined in Article 10 CISA, and in the circumstances set out in Article 3 of the Ordinance on Collective Investment Scheme of 22 November 2006, as amended (“CISO”), such that there is no public offer. Investors, however, do not benefit from protection under CISA or CISO or supervision by FINMA. This prospectus and any other materials relating to the securities are strictly personal and confidential to each offeree and do not constitute an offer to any other person. This prospectus may only be used by those qualified investors to whom it has been handed out in connection with the offer described herein and may neither directly or indirectly be distributed or made available to any person or entity other than its recipients. It may not be used in connection with any other offer and shall in particular not be copied and/or distributed to the public in Switzerland or from Switzerland. This prospectus does not constitute an issue prospectus as that term is understood pursuant to Article 652a and/or 1156 of the Swiss Federal Code of Obligations. We have not applied for a listing of the securities on the SIX Swiss Exchange or any other regulated securities market in Switzerland, and consequently, the information presented in this prospectus does not necessarily comply with the information standards set out in the listing rules of the SIX Swiss Exchange and corresponding prospectus schemes annexed to the listing rules of the SIX Swiss Exchange.

### ***Dubai International Financial Centre***

This prospectus relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority (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.

### **Australia**

No placement document, prospectus, product disclosure statement, or other disclosure document has been lodged with the Australian Securities and Investments Commission in relation to the offering. This prospectus does not constitute a prospectus, product disclosure statement, or other disclosure document under the Corporations Act 2001 (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 (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 the 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.

**LEGAL MATTERS**

The validity of the shares of Petco Class A common stock offered by this prospectus will be passed upon for us by Gibson, Dunn & Crutcher, 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

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements at February 1, 2020, February 2, 2019, and October 31, 2020 and for the years ended February 1, 2020 and February 2, 2019, and for the thirty-nine week period ended October 31, 2020, as set forth in their report. We have included our consolidated financial statements in the prospectus and elsewhere in the registration statement in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

## CHANGE IN AUDITOR

On July 17, 2020, our Audit Committee approved the appointment of Ernst & Young LLP ("Ernst & Young") as the independent registered public accounting firm for Petco Holdings, Inc. LLC, our consolidated, wholly owned subsidiary ("Petco Holdings"), to audit Petco Holdings' consolidated financial statements under PCAOB standards as of and for the fiscal years ended February 2, 2019 and February 1, 2020. On September 30, 2020, the appointment was updated to reflect Ernst & Young as the independent registered public accounting firm for PET Acquisition LLC. KPMG LLP ("KPMG") had previously audited, in accordance with American Institute of Certified Public Accountant standards, the consolidated financial statements of Petco Holdings as of and for the fiscal years ended February 2, 2019 and February 1, 2020. We informed KPMG on July 6, 2020 that it would be dismissed as the auditor of Petco Holdings. KPMG was never engaged to audit any of PET Acquisition LLC's consolidated financial statements.

The audit reports of KPMG on Petco Holdings' consolidated financial statements as of and for the fiscal years ended February 2, 2019 and February 1, 2020 did not contain an adverse opinion or disclaimer of opinion and were not qualified or modified as to uncertainties, audit scope or accounting principles.

During the fiscal years ended February 2, 2019 and February 1, 2020 and the subsequent interim period through the date of KPMG's dismissal as Petco Holdings' auditor, there were no "disagreements" (as defined in Item 304(a)(1)(iv) of Regulation S-K under the Exchange Act) between Petco Holdings and KPMG on any matter of accounting principles or practices, financial disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of KPMG would have caused it to make reference to the subject matter of the disagreements in its reports on Petco Holdings' consolidated financial statements for such fiscal years.

During the fiscal years ended February 2, 2019 and February 1, 2020 and the subsequent interim period through the date of KPMG's dismissal as Petco Holdings' auditor, there were no "reportable events" (as defined in Item 304(a)(1)(v) of Regulation S-K under the Exchange Act).

During the fiscal years ended February 2, 2019 and February 1, 2020 and the subsequent interim period through the date of KPMG's dismissal as Petco Holdings' auditor, we did not consult with Ernst & Young regarding the application of accounting principles to a specified transaction, either completed or proposed; or the type of audit opinion that might be rendered on Petco Holdings' consolidated financial statements, and no written report or oral advice was provided that Ernst & Young concluded was an important factor considered by us in reaching a decision as to the accounting, auditing, or financial reporting issue for Petco Holdings.

We have provided KPMG with a copy of the disclosure set forth in this section and requested that KPMG furnish us with a letter addressed to the SEC stating whether or not KPMG agrees with the statements made herein, each as required by applicable SEC rules. A copy of KPMG's letter, dated November 20, 2020, is attached hereto as Exhibit 16.1.

## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act relating to the shares of our Class A common stock offered by this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules thereto. For more information regarding us and the shares of our Class A common stock offered by this prospectus, we refer you to the full registration statement, including the exhibits and schedules filed therewith. This prospectus summarizes provisions that we consider material of certain contracts and other documents to which we refer you. Because the summaries may not contain all of the information that you may find important, you should review the full text of those documents.

The SEC maintains a website at [www.sec.gov](http://www.sec.gov) that contains reports, information statements, and other information regarding issuers that file electronically with the SEC. Our registration statement, of which this prospectus constitutes a part, can be downloaded from the SEC's website. As a result of this offering, we will become subject to the full information requirements of the Exchange Act and will file with or furnish to the SEC periodic reports and other information. We intend to furnish or make available to our stockholders annual reports containing our audited financial statements prepared in accordance with GAAP. We also intend to furnish or make available to our stockholders quarterly reports containing our unaudited interim financial information, including the information required by Form 10-Q, for the first three fiscal quarters of each fiscal year. Following the completion of this offering, our website will be located at [www.petco.com](http://www.petco.com). We intend to make our periodic reports and other information filed with or furnished to the SEC available, free of charge, through our website, as soon as reasonably practicable after those reports and other information are electronically filed with or furnished to the SEC. Information on our website or any other website is not incorporated by reference into this prospectus and does not constitute a part of this prospectus.

PET ACQUISITION LLC

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**PET ACQUISITION LLC**

**Report of Independent Registered Public Accounting Firm**

To the Members and the Board of Managers of PET Acquisition LLC

***Opinion on the Financial Statements***

We have audited the accompanying consolidated balance sheets of PET Acquisition LLC (the Company) as of February 1, 2020, February 2, 2019, and October 31, 2020, the related consolidated statements of loss and comprehensive loss, members' equity and cash flows for the years ended February 1, 2020 and February 2, 2019, and for the thirty-nine week period ended October 31, 2020, and the related notes and the financial statement schedule listed in the Index at Item 16(b) (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 February 1, 2020, February 2, 2019, and October 31, 2020, and the results of its operations and its cash flows for the years ended February 1, 2020 and February 2, 2019, and for the thirty-nine week period ended October 31, 2020, in conformity with U.S. generally accepted accounting principles.

***Adoption of ASU No. 2016-02***

As discussed in Note 1 to the consolidated financial statements, the Company changed its method of accounting for leases in 2019 due to the adoption of ASU No. 2016-02, *Leases (Topic 842)* and related amendments.

***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 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 2020.

San Diego, California  
December 3, 2020

**PET ACQUISITION LLC**  
**CONSOLIDATED BALANCE SHEETS**  
(In thousands)

	February 1, 2020	February 2, 2019	October 31, 2020
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	\$ 148,785	\$ 180,649	\$ 195,832
Receivables, less allowance for credit losses (\$1,982, \$1,940 and \$3,085, respectively)	31,516	27,879	40,454
Merchandise inventories, net	478,968	470,144	541,352
Prepaid expenses	24,854	48,762	38,007
Other current assets	26,882	34,174	57,950
Total current assets	<u>711,005</u>	<u>761,608</u>	<u>873,595</u>
Fixed assets, net	656,256	683,547	618,930
Operating lease right-of-use assets	1,459,604	—	1,377,682
Goodwill	2,179,310	2,176,290	2,179,310
Trade name	1,025,000	1,044,000	1,025,000
Other intangible assets, net	1,553	128,006	869
Other long-term assets	122,390	130,928	128,428
Total assets	<u>\$ 6,155,118</u>	<u>\$ 4,924,379</u>	<u>\$ 6,203,814</u>
<b>LIABILITIES AND EQUITY</b>			
Current liabilities:			
Accounts payable and book overdrafts	\$ 293,203	\$ 276,932	\$ 347,789
Accrued salaries and employee benefits	93,685	94,267	129,288
Accrued expenses and other liabilities	148,181	143,917	182,502
Current portion of operating lease liabilities	278,229	—	246,319
Current portion of long-term debt and other lease liabilities	28,643	28,354	27,399
Total current liabilities	<u>841,941</u>	<u>543,470</u>	<u>933,297</u>
Senior secured credit facilities, net, excluding current portion	2,362,302	2,338,175	2,330,176
Senior notes, net	866,145	859,244	868,624
Operating lease liabilities, excluding current portion	1,156,742	—	1,127,717
Deferred taxes, net	265,276	304,203	272,821
Other long-term liabilities	101,651	241,378	125,562
Total liabilities	<u>5,594,057</u>	<u>4,286,470</u>	<u>5,658,197</u>
Commitments and contingencies (Notes 8, 9 and 16)			
Members' equity:			
Members' interest	1,358,130	1,347,622	1,365,490
Accumulated deficit	(780,466)	(707,518)	(800,790)
Accumulated other comprehensive loss	(8,273)	(2,195)	(6,251)
Total members' equity	<u>569,391</u>	<u>637,909</u>	<u>558,449</u>
Noncontrolling interest	(8,330)	—	(12,832)
Total equity	<u>561,061</u>	<u>637,909</u>	<u>545,617</u>
Total liabilities and equity	<u>\$ 6,155,118</u>	<u>\$ 4,924,379</u>	<u>\$ 6,203,814</u>

See accompanying notes to consolidated financial statements.

**PET ACQUISITION LLC**  
**CONSOLIDATED STATEMENTS OF LOSS AND COMPREHENSIVE LOSS**  
(In thousands, except per unit amounts)

	Fiscal years ended		Thirty-nine weeks ended	
	February 1, 2020 (52 weeks)	February 2, 2019 (52 weeks)	October 31, 2020	November 2, 2019 (unaudited)
Net sales	\$ 4,434,514	\$ 4,392,173	\$ 3,582,489	\$ 3,285,858
Cost of sales	2,527,995	2,487,334	2,045,016	1,877,237
Gross profit	1,906,519	1,904,839	1,537,473	1,408,621
Selling, general and administrative expenses	1,776,919	1,746,387	1,410,024	1,339,154
Goodwill and indefinite-lived intangible impairment	19,000	373,172	—	—
Operating income (loss)	110,600	(214,720)	127,449	69,467
Interest income	(335)	(420)	(332)	(201)
Interest expense	253,018	243,744	169,096	192,222
Loss on extinguishment of debt	—	460	—	—
Loss before income taxes and (income) loss from equity method investees	(142,083)	(458,504)	(41,315)	(122,554)
Income tax benefit	(35,658)	(45,840)	(13,537)	(28,263)
(Income) loss from equity method investees	(2,441)	1,124	(2,952)	(326)
Net loss	(103,984)	(413,788)	(24,826)	(93,965)
Net loss attributable to noncontrolling interest	(8,111)	—	(4,502)	(5,263)
Net loss attributable to members	(95,873)	(413,788)	(20,324)	(88,702)
Other comprehensive (loss) income, net of tax:				
Foreign currency translation adjustment	952	(79)	(3,747)	(143)
Unrealized loss on derivatives	(9,088)	(3,434)	(77)	(9,030)
Losses on derivatives reclassified to income	2,058	1,215	5,846	694
Total other comprehensive (loss) income, net of tax	(6,078)	(2,298)	2,022	(8,479)
Comprehensive loss	(110,062)	(416,086)	(22,804)	(102,444)
Comprehensive loss attributable to noncontrolling interest	(8,111)	—	(4,502)	(5,263)
Comprehensive loss attributable to members	<u>\$ (101,951)</u>	<u>\$ (416,086)</u>	<u>\$ (18,302)</u>	<u>\$ (97,181)</u>
Loss per unit attributable to Common Series A and Common Series B members, basic and diluted	\$ (0.07)	\$ (0.28)	\$ (0.01)	\$ (0.06)
Weighted average units used in computing loss per unit attributable to Common Series A and Common Series B members	1,457,985	1,457,164	1,458,558	1,457,794

See accompanying notes to consolidated financial statements.

**PET ACQUISITION LLC**  
**CONSOLIDATED STATEMENTS OF MEMBERS' EQUITY**  
(In thousands)

	Members' interest	Accumulated deficit	Accumulated other comprehensive income (loss)	Total members' equity	Noncontrolling interest	Total equity
Balance at February 3, 2018	\$1,339,272	\$ (295,337)	\$ 1,710	\$1,045,645	\$ —	\$1,045,645
Equity-based compensation expense (Note 13)	8,452	—	—	8,452	—	8,452
Repurchase of equity	(102)	—	—	(102)	—	(102)
Net loss	—	(413,788)	—	(413,788)	—	(413,788)
Foreign currency translation adjustment, net of tax of \$(28)	—	—	(79)	(79)	—	(79)
Unrealized loss on derivatives, net of tax of \$(1,211)	—	—	(3,434)	(3,434)	—	(3,434)
Losses on derivatives reclassified to income, net of tax of \$427	—	—	1,215	1,215	—	1,215
Cumulative effect adjustments	—	1,607	(1,607)	—	—	—
Balance at February 2, 2019	<u>1,347,622</u>	<u>(707,518)</u>	<u>(2,195)</u>	<u>637,909</u>	<u>—</u>	<u>637,909</u>
Consolidation of joint venture	—	—	—	—	(462)	(462)
Equity-based compensation expense (Note 13)	9,489	—	—	9,489	—	9,489
Partial settlement of member note	1,019	—	—	1,019	—	1,019
Net loss	—	(95,873)	—	(95,873)	(8,111)	(103,984)
Contributions from noncontrolling interest	—	—	—	—	243	243
Foreign currency translation adjustment, net of tax of \$335	—	—	952	952	—	952
Unrealized loss on derivatives, net of tax of \$(3,184)	—	—	(9,088)	(9,088)	—	(9,088)
Losses on derivatives reclassified to income, net of tax of \$721	—	—	2,058	2,058	—	2,058
Cumulative effect adjustments	—	22,925	—	22,925	—	22,925
Balance at February 1, 2020	<u>\$1,358,130</u>	<u>\$ (780,466)</u>	<u>\$ (8,273)</u>	<u>\$ 569,391</u>	<u>\$ (8,330)</u>	<u>\$ 561,061</u>

	Members' interest	Accumulated deficit	Accumulated other comprehensive loss	Total members' equity	Noncontrolling interest	Total equity
Balance at February 1, 2020	\$1,358,130	\$ (780,466)	\$ (8,273)	\$ 569,391	\$ (8,330)	\$561,061
Equity-based compensation expense (Note 13)	7,464	—	—	7,464	—	7,464
Repurchase of equity	(104)	—	—	(104)	—	(104)
Net loss	—	(20,324)	—	(20,324)	(4,502)	(24,826)
Foreign currency translation adjustment, net of tax of \$(1,316)	—	—	(3,747)	(3,747)	—	(3,747)
Unrealized loss on derivatives, net of tax of \$(27)	—	—	(77)	(77)	—	(77)
Losses on derivatives reclassified to income, net of tax of \$2,052	—	—	5,846	5,846	—	5,846
Balance at October 31, 2020	<u>\$1,365,490</u>	<u>\$ (800,790)</u>	<u>\$ (6,251)</u>	<u>\$ 558,449</u>	<u>\$ (12,832)</u>	<u>\$545,617</u>

	Members' interest	Accumulated deficit	Accumulated other comprehensive loss	Total members' equity	Noncontrolling interest	Total equity
Balance at February 2, 2019	\$1,347,622	\$ (707,518)	\$ (2,195)	\$ 637,909	\$ —	\$637,909
Consolidation of joint venture (unaudited)	—	—	—	—	(462)	(462)
Equity-based compensation expense (unaudited) (Note 13)	7,002	—	—	7,002	—	7,002
Partial settlement of member note (unaudited)	1,019	—	—	1,019	—	1,019
Net loss (unaudited)	—	(88,702)	—	(88,702)	(5,263)	(93,965)
Contributions from noncontrolling interest (unaudited)	—	—	—	—	243	243
Foreign currency translation adjustment, net of tax of \$(53) (unaudited)	—	—	(143)	(143)	—	(143)
Unrealized loss on derivatives, net of tax of \$(3,193) (unaudited)	—	—	(9,030)	(9,030)	—	(9,030)
Losses on derivatives reclassified to income, net of tax of \$247 (unaudited)	—	—	694	694	—	694
Cumulative effect adjustments (unaudited)	—	22,925	—	22,925	—	22,925
Balance at November 2, 2019 (unaudited)	<u>\$1,355,643</u>	<u>\$ (773,295)</u>	<u>\$ (10,674)</u>	<u>\$ 571,674</u>	<u>\$ (5,482)</u>	<u>\$566,192</u>

See accompanying notes to consolidated financial statements.

**PET ACQUISITION LLC**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)

	Fiscal years ended		Thirty-nine weeks ended	
	February 1, 2020 (52 weeks)	February 2, 2019 (52 weeks)	October 31, 2020	November 2, 2019 (unaudited)
<b>Cash flows from operating activities:</b>				
Net loss	\$ (103,984)	\$ (413,788)	\$ (24,826)	\$ (93,965)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:				
Depreciation and amortization	173,544	186,997	128,961	129,600
Amortization of debt discounts and issuance costs	23,455	22,588	18,291	17,494
Provision for deferred taxes	(45,087)	(51,748)	6,889	(26,305)
Equity-based compensation	9,489	8,452	7,464	7,002
Impairments, write-offs and losses on sale of fixed and other assets	11,871	17,677	7,651	9,256
Loss on extinguishment of debt	—	460	—	—
(Income) loss from equity method investees	(2,441)	1,124	(2,952)	(326)
Amounts reclassified out of accumulated other comprehensive income (loss) (Note 10)	2,806	1,642	7,898	939
Change in contingent consideration obligation	883	(4)	(425)	871
Goodwill and indefinite-lived intangible impairment	19,000	373,172	—	—
Non-cash operating lease costs	441,981	—	324,477	333,162
Changes in assets and liabilities:				
Receivables	(3,845)	23,630	(8,938)	(8,809)
Merchandise inventories	(8,193)	644	(63,313)	(48,438)
Prepaid expenses and other assets	(5,223)	9,663	(18,651)	(15,593)
Accounts payable and book overdrafts	15,928	23,771	54,523	(30,567)
Accrued salaries and employee benefits	(1,395)	18,006	34,100	8,409
Accrued expenses and other liabilities	(3,043)	(21,861)	7,654	(7,986)
Operating lease liabilities	(408,562)	—	(304,426)	(312,933)
Other long-term liabilities	(6,847)	2,777	27,103	3,941
Net cash provided by (used in) operating activities	<u>110,337</u>	<u>203,202</u>	<u>201,480</u>	<u>(34,248)</u>
<b>Cash flows from investing activities:</b>				
Cash paid for fixed assets	(156,906)	(148,063)	(96,289)	(119,200)
Cash paid for intangible assets	(450)	(300)	—	(450)
Insurance recoveries	489	—	—	130
Cash paid for other acquisitions, net of cash acquired (Note 4)	(2,813)	—	—	—
Cash from consolidation of joint venture (Note 1)	1,205	—	—	1,205
Cash paid for investments	(585)	(9,912)	(1,000)	(905)
Proceeds from sale of investment	—	9,145	—	—
Distributions from equity investees	—	—	73	—
Proceeds from sale of assets	—	—	1,296	—
Proceeds from sale-leasebacks, net (Note 3)	18,549	2,298	—	—
Proceeds from partial surrender of officers' life insurance	1,470	4,150	—	—
Net cash used in investing activities	<u>(139,041)</u>	<u>(142,682)</u>	<u>(95,920)</u>	<u>(119,220)</u>
<b>Cash flows from financing activities:</b>				
Borrowings under long-term debt agreements	1,297,000	313,000	440,000	949,000
Repayments of long-term debt	(1,293,250)	(338,250)	(487,938)	(826,938)
Debt prepayment, issuance and refinancing costs	(58)	(3,098)	—	(58)
Payments for finance and capital lease liabilities	(3,447)	(2,890)	(2,831)	(2,593)
Partial settlement of member note	(809)	—	—	(809)
Cash received from noncontrolling interest	243	—	—	243
Repurchase of equity	—	(111)	(105)	—
Payment of contingent consideration	(2,750)	(750)	(250)	(1,250)
Net cash (used in) provided by financing activities	<u>(3,071)</u>	<u>(32,099)</u>	<u>(51,124)</u>	<u>117,595</u>
Net (decrease) increase in cash, cash equivalents and restricted cash	(31,775)	28,421	54,436	(35,873)
Cash, cash equivalents and restricted cash at beginning of year	186,493	158,072	154,718	186,493
Cash, cash equivalents and restricted cash at end of year	<u>\$ 154,718</u>	<u>\$ 186,493</u>	<u>\$ 209,154</u>	<u>\$ 150,620</u>
<b>Supplemental cash flow disclosures:</b>				
Interest paid, net	\$ 217,664	\$ 213,254	\$ 121,516	\$ 165,124
Capitalized interest	\$ 953	\$ 83	\$ 330	\$ 509
Income taxes paid	\$ 15,036	\$ 11,379	\$ 1,992	\$ 14,864
<b>Supplemental non-cash investing and financing activities disclosure:</b>				
Accounts payable and accrued expenses for capital expenditures	\$ 21,962	\$ 17,132	\$ 24,227	\$ 25,429

See accompanying notes to consolidated financial statements.

**PET ACQUISITION LLC**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)**

**1. Summary of Significant Accounting Policies**

***Description of Business and Basis of Presentation***

PET Acquisition LLC (together with its consolidated subsidiaries, “the Company”) is a national specialty retailer of premium pet consumables, supplies and companion animals and services with 1,468 retail locations in 50 states, the District of Columbia and Puerto Rico as of October 31, 2020. The Company also offers an expanded range of consumables, supplies and services through its [www.petco.com](http://www.petco.com), [www.petcoach.co](http://www.petcoach.co), [www.petinsurancequotes.com](http://www.petinsurancequotes.com), and [www.pupbox.com](http://www.pupbox.com) websites.

The Company is a Delaware limited liability company that was formed on November 19, 2015 as an acquisition entity controlled by Scooby LP, which is indirectly owned by funds affiliated with CVC Capital Partners, CPP Investments, a Canadian company (together with CVC Capital Partners, the “Sponsors”), and certain co-investors. On January 26, 2016, the Company completed a merger (the “Acquisition”) whereby Petco Holdings, Inc. converted from a Delaware corporation to a Delaware limited liability company and became a wholly owned subsidiary of the Company.

The Company is owned by (i) its Common Series A Unit holders, (ii) its Common Series B Unit holders, (iii) its Common Series C Unit holders, and (iv) its Voting Common Unit holders. Voting Common Units have exclusive voting rights with regards to the election and removal of managers on the Company’s board of managers. Common Series A Units have exclusive voting rights with regards to all other matters to be voted on. The Voting Common Units do not represent an economic interest in the Company.

***Principles of Consolidation***

The accompanying consolidated financial statements include the accounts of PET Acquisition LLC, its wholly owned subsidiaries, and a variable interest entity for which it is the primary beneficiary. All intercompany accounts and transactions have been eliminated in consolidation.

***Use of Estimates***

The preparation of these consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting periods. These estimates are based on information that is currently available and on various other assumptions that are believed to be reasonable under the circumstances. Actual results could vary from those estimates under different assumptions or conditions.

***Unaudited Interim Consolidated Financial Information***

The accompanying interim consolidated statements of loss and comprehensive loss, members’ equity and cash flows for the thirty-nine weeks ended November 2, 2019 are unaudited. These unaudited interim consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. In management’s opinion, the unaudited interim consolidated financial statements have been prepared on the same basis as the audited financial statements and include all adjustments, which include only normal recurring adjustments, necessary for the fair presentation of the Company’s consolidated results of operations and cash flows for the thirty-nine weeks ended November 2, 2019. The financial data and other information disclosed in these notes related to the thirty-nine weeks ended November 2, 2019 are also unaudited.

**PET ACQUISITION LLC****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
**(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)*****Fiscal Year***

The Company's fiscal year ends on the Saturday closest to January 31, resulting in years of either 52 or 53 weeks. All references to a fiscal year refer to the fiscal year ending on the Saturday closest to January 31 of the following year. For example, references to fiscal 2019 refer to the fiscal year beginning on February 3, 2019 and ending on February 1, 2020. Fiscal 2019 and 2018 included 52 weeks.

***Subsequent Events***

The Company evaluated subsequent events through December 3, 2020, the date the consolidated financial statements were available to be issued.

***Segment Reporting***

Operating segments are components of an enterprise about which separate financial information is available and is evaluated regularly by the chief operating decision maker ("CODM") in deciding how to allocate resources and in assessing performance. A select group of senior executives collectively serves as the Company's CODM. The Company manages its business as one reportable operating segment which is designed to sell pet food, supplies and companion animals, and services to pet parents across store and online channels.

***Cash and Cash Equivalents***

Cash equivalents represent all liquid investments with original maturities of three months or less and include money market mutual funds. The Company maintains cash and cash equivalent balances with financial institutions that exceed federally insured limits. The Company has not experienced any losses related to these balances. Included in the Company's cash and cash equivalents are credit and debit card receivables from banks, which typically settle within five business days, of \$31.1 million and \$29.8 million at February 1, 2020 and February 2, 2019, respectively. At October 31, 2020, credit and debit card receivables were \$31.3 million. The following table provides a reconciliation of cash, cash equivalents and restricted cash reported in the consolidated balance sheets to the total amounts reported in the consolidated statements of cash flows. Restricted cash is held in a trust used for certain employee benefit costs.

	February 1, 2020	February 2, 2019	October 31, 2020
Cash and cash equivalents	\$ 148,785	\$ 180,649	\$ 195,832
Restricted cash included in other current assets	5,933	5,844	13,322
<b>Total cash, cash equivalents and restricted cash in the statement of cash flows</b>	<b>\$ 154,718</b>	<b>\$ 186,493</b>	<b>\$ 209,154</b>

Outstanding checks in excess of funds on deposit (book overdrafts) totaled \$52.4 million and \$43.3 million for the Company at February 1, 2020 and February 2, 2019, respectively, and are reflected in accounts payable and book overdrafts in the consolidated balance sheets. At October 31, 2020, excess funds on deposit (book overdrafts) totaled \$61.5 million.

***Vendor Rebates and Allowances***

Most of the Company's receivables are due from vendors. Receivables are stated net of an allowance for estimated credit losses, which is determined by continually evaluating individual

**PET ACQUISITION LLC**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
**(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)**

receivables, the vendor's financial condition and current and expected economic conditions. The additions and deductions to the allowance for estimated credit losses were not material for all periods presented.

The Company receives vendor allowances, primarily in the form of cooperative advertising reimbursements, rebate incentives, prompt purchase discounts, and vendor compliance charges pursuant to agreements with certain vendors. Substantially all vendor allowances are initially deferred as a reduction of the cost of inventory purchased and recorded as a reduction to cost of sales in the consolidated statements of loss and comprehensive loss as the inventory is sold. Vendor rebates and allowances that are identified as specific, incremental and identifiable costs incurred by the Company in selling the vendors' products are classified as a reduction of selling, general and administrative expenses in the consolidated statements of loss and comprehensive loss as the costs are incurred, as the related costs are also classified as selling, general and administrative expenses.

**Merchandise Inventories**

Merchandise inventories represent finished goods and are stated at the lower of cost or net realizable value. Cost is determined by the average-cost method and includes inbound freight charges. Physical inventories are performed on a regular basis at store locations and cycle counts are performed for inventory at distribution centers. During the period between counts at store and distribution center locations, the Company accrues for estimated losses related to inventory shrinkage based on historical inventory shrinkage results and current trends in the business. Inventory shrinkage may occur due to theft, loss, or the deterioration of goods, among other reasons. The Company assesses its inventory for estimated obsolescence or unmarketable inventory and writes down the difference between the cost of inventory and the estimated market value based upon historical mark-downs, supply on-hand and assumptions about future sales.

**Fixed Assets**

Fixed assets are stated at cost less accumulated depreciation and amortization or at fair value as of the date of the Acquisition. Store facilities and equipment under finance leases are recorded at the present value of minimum lease payments at the inception of the lease. Maintenance and minor repairs are expensed as incurred.

Buildings, equipment, furniture and fixtures are depreciated using the straight-line method over the estimated useful life of the asset. Leasehold and building improvements are amortized using the straight-line method over the term of the lease or the estimated useful life of the improvement, whichever is shorter. Land is not depreciated. Amortization of fixed assets financed through finance leases is included in depreciation and amortization expense.

The Company's fixed assets are generally depreciated or amortized using the following estimated useful lives:

Buildings	30 years
Equipment	3 to 7 years
Furniture and fixtures	4 to 7 years
Leasehold and building improvements	5 to 10 years

Costs incurred to develop internal-use software during the application development stage, which include costs to design the software configuration and interfaces, coding, installation and testing, are

**PET ACQUISITION LLC**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
**(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)**

capitalized and reported at cost, less accumulated amortization. Costs of significant upgrades and enhancements that result in additional functionality are also capitalized, whereas costs incurred for maintenance and minor upgrades and enhancements are expensed as incurred. Software and capitalized development costs are included in the Company's equipment fixed asset category and are amortized using the straight-line method over the estimated useful life of the asset.

The Company assesses its fixed assets, including internal-use software, for impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable. The review of recoverability is based on estimates of the undiscounted future cash flows expected to be generated by an asset (or group of assets) at a store level. If impairment exists due to the inability to recover the asset's carrying value, impairment losses are measured as the amount by which the asset's carrying value exceeds its fair value using the income approach and are recorded as a reduction of the related asset and charged to the consolidated statements of loss and comprehensive loss.

***Goodwill***

Goodwill represents the excess of the cost of acquired businesses over the fair value of the tangible and identifiable intangible assets acquired and liabilities assumed. Goodwill is not amortized. The Company performs its annual impairment test during the fourth quarter of each fiscal year, or more frequently when warranted by events or changes in circumstances. The Company has the option to first perform a qualitative assessment of its goodwill to determine whether it is necessary to perform a quantitative impairment test. If the Company concludes it is more likely than not that its goodwill is impaired, management evaluates the recoverability of goodwill by comparing the carrying value of the Company's reporting unit to the fair value. An impairment charge is recorded for the amount by which the carrying amount exceeds the reporting unit's fair value, with the loss recognized not exceeding the total amount of goodwill allocated to that reporting unit.

The Company has one reporting unit. The fair value of the Company's reporting unit is estimated by a third party valuation firm. Fair value estimates used in the quantitative impairment test were calculated using a discounted cash flow analysis and a public company analysis. The discounted cash flow analysis measures the value of an asset by the present value of its future estimated cash flows. The public company analysis analyzes transactional and financial data of publicly traded companies to develop valuation multiples. These multiples are then applied to the Company to develop an indication of fair value. Significant assumptions inherent in the valuation methodologies for goodwill are employed and include, but are not limited to, prospective financial information, growth rates, discount rates and comparable multiples from publicly traded companies in similar industries.

***Other Intangible Assets***

Other intangible assets represent the Company's trade name, educational website content, certain contract costs, and customer lists. The Company's trade name has an indefinite life. All other intangibles have finite lives and are amortized using the straight-line method over their estimated useful lives. Prior to the adoption of Accounting Standards Update No. 2016-02 – Leases in fiscal 2019, other intangible assets also included favorable lease rights.

The Company reviews its amortizable intangible assets with finite lives for impairment whenever events or changes in circumstances indicate that the carrying value of its intangible assets may not be recoverable. The amount of impairment, if any, is measured based on fair value, which is determined using future projected discounted operating cash flows.

**PET ACQUISITION LLC**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
**(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)**

The Company performs its annual impairment test during the fourth quarter of each fiscal year, or more frequently when warranted by events or changes in circumstances. The Company also has the option to first perform a qualitative assessment of its indefinite-lived intangible assets to determine whether it is necessary to perform a quantitative impairment test. The fair value of the Company's indefinite-lived trade name is estimated by a third party valuation firm using the relief from royalty valuation method. Significant assumptions inherent in the valuation methodologies for the indefinite-lived trade name are employed and include, but are not limited to, prospective financial information, royalty rates and discount rates. An impairment charge is recorded for the amount by which the carrying amount of the indefinite-lived trade name exceeds its fair value.

***Joint Ventures, Equity Method Investments, and Variable Interest Entities***

Investments for which the Company exercises significant influence but does not have control are accounted for under the equity method. These investments have primarily consisted of a 50% joint venture with Grupo Gigante, S.A.B. de C.V. (the "Mexico joint venture") to establish Petco locations in Mexico and a 45% joint venture with a domestic partner to sell over-the-counter and prescription pet medications. The Company's share of the investees' results is presented as either income or loss from equity method investees in the accompanying consolidated statements of loss and comprehensive loss.

The joint ventures are not material to the Company's consolidated financial statements. The equity method of accounting is applicable as the Company is not the primary beneficiary but has significant influence over the operation and financial policies of the pet medication joint venture. The equity method of accounting is applicable for the Mexico joint venture as the Company does not own more than 50% of voting power, but has significant influence over the operation and financial policies of the investee.

The Mexico joint venture purchases certain inventory items and store assets from the Company. The Company also receives royalties from the Mexico joint venture for the use of its trademarks. Revenues generated from these transactions were not material in fiscal 2019 and 2018 and the thirty-nine weeks ended October 31, 2020 and November 2, 2019. The cumulative unrealized foreign currency adjustment on the translation of the Company's investment in the joint venture and the foreign currency translation impact of the royalty receivable are recorded in accumulated other comprehensive income ("AOCI"), net of tax.

The Company consolidates variable interest entities ("VIEs") where it has been determined that the Company is the primary beneficiary of those entities' operations. The Company holds a 50% investment in a joint venture with a domestic partner to build and operate veterinary clinics in Petco locations, which was previously accounted for under the equity method. In March 2019, the Company entered into an amended agreement governing the joint venture's operations and determined that the Company had the power to direct the activities most important to the VIE. As a result, the joint venture is a VIE for which the Company is now the primary beneficiary. Accordingly, the assets, liabilities, and noncontrolling interest of the VIE, which were not material, were measured at fair value as of the date the Company became the primary beneficiary in accordance with ASC 805 – Business Combinations. The results of operations and statements of financial position of the VIE, which are not material, are included in the Company's consolidated financial statements beginning in March 2019. Under the amended agreement, the domestic partner provides certain management and support services to the joint venture. These services include administrative, financial reporting, compliance, and technology support services in connection with the operation and growth of the joint venture. As compensation for these services, the joint venture pays the domestic partner a quarterly joint venture management fee

**PET ACQUISITION LLC**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
**(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)**

equal to a portion of clinic revenues, subject to a minimum fixed fee. The Company incurred and recorded \$1.4 million of joint venture management fees under this agreement in fiscal 2019, which are included in selling, general and administrative expenses in the consolidated statements of loss and comprehensive loss. Joint venture management fees for the thirty-nine weeks ended October 31, 2020 and November 2, 2019 were \$1.5 million and \$1.0 million, respectively.

The Company also has an investment in a pet specialty company, which was previously accounted for under the equity method. In October 2019, the Company concluded that it no longer holds significant influence over the operation and financial policies of this investee. Accordingly, the Company discontinued the equity method of accounting for this investee. Since this investment does not have a readily determinable fair value, the Company now measures its investment at cost minus impairment, if any, with adjustments resulting from observable price changes (the "cost method"). Additionally, the carrying value of this investment was reduced from \$0.9 million to \$0.0 million, as the Company no longer considers the investment to be recoverable.

***Fair Value Measurements***

Fair value represents the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants on the measurement date. When determining fair value, the Company considers the principal or most advantageous market in which the Company would conduct a transaction, in addition to the assumptions that market participants would use when pricing the related assets or liabilities, including non-performance risk.

A three-level hierarchy prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to measurements involving significant unobservable inputs (Level 3 measurements).

The three levels of the fair value hierarchy are as follows:

- Level 1 — Quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.
- Level 2 — Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.
- Level 3 — Unobservable inputs for the asset or liability.

Refer to Notes 8, 9, 10 and 11 for fair value disclosures for the senior secured term credit facilities, senior notes, derivatives, and other types of assets and liabilities measured at fair value, respectively.

***Self-Insurance Reserves***

The Company is self-insured for workers' compensation, general, auto liability and employee-related health care benefits, a portion of which is paid by the Company's employees. Additionally, the Company has insurance coverage to limit its exposure above a per occurrence retention limit. These insurance policies have stated maximum coverage limits after which the Company bears the risk of loss. The Company determines the related liabilities using a number of factors including historical experience and trends related to claims and payments, information provided by the Company's insurance brokers and actuaries, an estimate of incurred but not reported claims and industry experience and trends. Estimates of future claim costs for workers' compensation, general, auto

**PET ACQUISITION LLC****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
**(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)**

liability and employee-related health care benefits are recorded on an undiscounted basis. All estimates of ultimate loss and loss adjustment expense and resulting reserves are subject to inherent variability caused by the nature of the insurance process. The potentially long period of time between the reporting of an occurrence of an incident and the final resolution of a claim and the possible effects of changes in the legal, social and economic environments contribute to this variability. The Company reports self-insurance liabilities gross of insurance recoveries. As of February 1, 2020, insurance recoveries of \$6.0 million and \$18.4 million were recorded in other current assets and other long-term assets, respectively. As of February 2, 2019, insurance recoveries of \$6.9 million and \$22.0 million were recorded in other current assets and other long-term assets, respectively. As of October 31, 2020, insurance recoveries of \$5.6 million and \$17.0 million were recorded in other current assets and other long-term assets, respectively.

Self-insurance reserves are reflected in the consolidated balance sheets as follows (in thousands):

	February 1, 2020	February 2, 2019	October 31, 2020
<b>Current:</b>			
Workers' compensation and employee-related health care benefits	\$ 21,443	\$ 22,763	\$ 26,430
General and auto liability reserves	5,135	6,222	4,159
	<u>\$ 26,578</u>	<u>\$ 28,985</u>	<u>\$ 30,589</u>
<b>Non-current:</b>			
Workers' compensation reserve	\$ 46,834	\$ 57,157	\$ 45,552
General and auto liability reserves	13,188	16,601	10,588
	<u>\$ 60,022</u>	<u>\$ 73,758</u>	<u>\$ 56,140</u>

The current portion and non-current portion of self-insurance reserves for workers' compensation and employee-related health care benefits are included in accrued salaries and employee benefits and other long-term liabilities, respectively, in the consolidated balance sheets. The current portion and non-current portion of self-insurance reserves for general and auto liability costs are included in accrued expenses and other liabilities and other long-term liabilities, respectively, in the consolidated balance sheets.

**Revenue Recognition**

The Company recognizes revenue when control of promised goods or services is transferred to customers, in an amount that reflects the consideration to which the Company expects to be entitled to in exchange for those goods or services.

See Note 2 for further discussion on revenue recognition.

**Cost of Sales**

Cost of sales includes the following types of expenses:

- Direct costs (net of vendor rebates, allowances and discounts for products sold) including inbound freight charges;
- Shipping and handling costs associated with sales to customers;
- Freight costs associated with moving merchandise inventories;

**PET ACQUISITION LLC**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
**(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)**

- Inventory shrinkage costs and write-downs;
- Payroll costs of pet groomers, trainers, veterinarians and other direct costs of services; and
- Costs associated with operating the Company's distribution centers including payroll, occupancy costs and depreciation

***Selling, General and Administrative Expenses***

Selling, general and administrative expenses include the following types of expenses:

- Payroll and benefit costs of store and corporate employees;
- Occupancy and operating costs of store and corporate facilities;
- Depreciation and amortization related to store and corporate assets;
- Credit card fees;
- Store pre-opening and remodeling costs;
- Advertising costs; and
- Other administrative costs

***Advertising Expenses***

The Company records advertising expense as incurred and classifies advertising costs within selling, general and administrative expenses in the consolidated statements of loss and comprehensive loss. The Company's advertising expenses, net of cooperative advertising reimbursements, were \$97.7 million, \$79.6 million, \$124.6 million and \$67.7 million for fiscal 2019 and 2018 and the thirty-nine weeks ended October 31, 2020 and November 2, 2019, respectively. Vendor cooperative advertising reimbursements reduced total advertising expense by \$18.4 million, \$13.3 million, \$15.8 million and \$13.9 million for fiscal 2019 and 2018 and the thirty-nine weeks ended October 31, 2020 and November 2, 2019, respectively.

***Leases***

The majority of the Company's lease liabilities are real estate operating leases from which store, corporate support, and distribution operations are conducted. The Company also leases equipment and certain store locations under finance leases. Lease terms generally do not include options to extend or terminate the lease unless it is reasonably certain that the option will be exercised. Effective fiscal 2019, for any lease with an initial term in excess of 12 months, the related lease assets and liabilities are recognized on the consolidated balance sheet as an operating or finance lease at the commencement of the lease agreement. Leases with an initial term of 12 months or less are not recorded on the consolidated balance sheet. The Company recognizes lease expense for these short-term leases on a straight-line basis over the lease term.

Operating lease assets represent the right to use an underlying asset for the lease term, and operating lease liabilities represent the obligation to make lease payments arising from the lease. These assets and liabilities are recognized based on the present value of future payments over the lease term at the commencement date. The Company uses a collateralized incremental borrowing rate based on the information available at the commencement date to determine the present value of future payments. Operating leases typically require payment of certain non-lease costs, such as real estate taxes, common area maintenance and insurance. These components comprise the majority of the

**PET ACQUISITION LLC**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
**(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)**

Company's variable lease costs and are excluded from the present value of lease liabilities unless an event occurs that results in the payments becoming fixed for the remaining term. The remaining lease and non-lease components are accounted for together as a single lease component for all underlying classes of assets. Operating lease assets are adjusted for lease incentives, initial direct costs, impairments, and exit or disposal costs.

Operating lease costs are recognized on a straight-line basis from the commencement date to the end of the lease term. Operating lease costs relating to distribution centers are included in cost of sales, and operating lease costs relating to store and corporate support locations are included in selling, general and administrative expenses in the consolidated statements of loss and comprehensive loss. Amortization on finance lease right-of-use assets relating to distribution centers are included in cost of sales, and amortization on finance lease right-of-use assets relating to store and corporate support locations are included in selling, general and administrative expenses in the consolidated statements of loss and comprehensive loss. Interest on finance lease right-of-use assets is included in interest expense in the consolidated statements of loss and comprehensive loss. The Company's lease agreements do not contain any material residual value guarantees or material restrictive covenants.

The Company's sublease portfolio consists mainly of operating leases with a domestic partner to operate dog boarding and daycare facilities, which are not material.

The Company records contractual obligations associated with the retirement of long-lived assets at their fair value at the time the obligations are incurred. These obligations arise from certain leases and primarily relate to the cost of removing leasehold improvements and certain fixtures from such lease sites and restoring the sites to their original condition. Upon initial recognition of the liability, that cost is capitalized as part of the related long-lived asset and depreciated on a straight-line basis over the estimated useful life of the asset. Activity related to these obligations in fiscal 2019 and 2018 and the thirty-nine weeks ended October 31, 2020 and November 2, 2019 was not material. The Company's asset retirement obligation was \$5.5 million, \$4.3 million, and \$5.8 million at February 1, 2020, February 2, 2019, and October 31, 2020, respectively, and is included in other long-term liabilities in the consolidated balance sheets.

***Income Taxes***

Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the consolidated statements of loss and comprehensive loss in the period that includes the enactment date. Valuation allowances, if any, are recorded against net deferred tax assets when it is considered more likely than not that some portion or all of a deferred tax asset may not be recoverable. Deferred tax assets and liabilities are recorded as either net non-current assets or net non-current liabilities on the consolidated balance sheets. Refer to Note 14 for further disclosures of the Company's income taxes.

Management regularly evaluates the likelihood of recognizing the benefit for income tax positions it has taken in various federal and state filings by considering relevant facts, circumstances and information available. The authoritative guidance clarifies the accounting for income taxes by prescribing a minimum probability threshold that a tax position must meet before a financial statement

**PET ACQUISITION LLC**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
**(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)**

benefit is recognized. The minimum threshold for recognizing benefit of a tax position is that such position is more likely than not to be sustained upon examination by the taxing authority, including resolution of any related appeals or litigation processes, and is based on the technical merits of the position.

***Equity-Based Compensation***

Equity-based compensation cost is measured at the grant date, based on the estimated fair value of the award, and is recognized as expense over the vesting period of the award, which is also the requisite service period, based upon the corresponding vesting method and probability of vesting (Note 13). The Company recognizes the effect of pre-vesting forfeitures as they occur. The Company's equity-based compensation charges relate to partnership unit awards.

***Equity Valuation***

The per unit fair value of equity was determined by the Company's board of directors based on enterprise valuations performed by management with the assistance of a third-party valuation firm, taking into consideration any recent market transactions involving the Company's equity. The valuation of the equity of any private company involves various estimates and assumptions that may differ from actual values.

In fiscal 2018, the Company's equity value was determined using a combination of three valuation approaches:

Income Approach – estimates the fair value based on the present value of the Company's future estimated cash flows and the residual value of the Company beyond the forecast period. These future cash flows, including the cash flows beyond the forecast period for the residual value, are discounted to their present values using an appropriate discount rate, to reflect the risks inherent in the Company achieving these estimated cash flows.

Market Approach (specifically, the guideline public company method) – estimates fair value based upon the observed valuation multiples of comparable public companies, the equity of which is freely-traded by investors in the public securities markets.

Market Transaction Approach – utilizes enterprise value relative to EBITDA ratios of recent acquisitions that involve companies comparable to the Company.

Beginning in fiscal 2019, the market transaction approach was not used due to the limited number of recent transactions of comparable companies. Additionally, beginning in the third quarter of fiscal 2020, the Company determined its equity value using the probability weighted expected return method ("PWERM"), or the hybrid method. Under the hybrid method, multiple valuation approaches are used and then combined into a single probability weighted valuation using a PWERM, which considers the probability of an initial public offering scenario.

The results of the valuation approaches were weighted based on a variety of factors including: current macroeconomic environment, current industry conditions and length of time since arms-length market transaction events. Additionally, a discount for lack of marketability was applied to account for the lack of access to an active public market. The resulting value was then allocated to outstanding equity using an option-pricing model.

**PET ACQUISITION LLC****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
**(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)****Membership Units**

At October 31, 2020, there were 1,297,999,923 Common Series A Units, 342,710,243 Common Series B Units, 239,361,146 Common Series C Units, and 100 Voting Common Units authorized for issuance. Issued and outstanding membership units consisted of the following:

	February 1, 2020	February 2, 2019	October 31, 2020
Common Series A Units issued and outstanding	1,118,999,923	1,118,999,923	1,118,999,923
Common Series B Units issued and outstanding	339,558,148	338,158,148	339,558,148
Common Series C Units issued and outstanding	183,389,373	143,081,289	214,848,873
Voting Common Units issued and outstanding	100	100	100

Loss per unit is presented in conformity with the two-class method required for participating securities. The Common Series C Units are held by Scooby LP. The Company considered the impact of presenting a separate earnings per unit calculation for Common Series C Units. However, as earnings and losses are only allocable to Common Series C Units after certain applicable thresholds have been met, and such thresholds have not been met for loss per unit purposes, no losses were allocated to Common Series C Units.

**Pre-Opening Costs**

Costs incurred in connection with opening new stores are expensed as incurred and are included in selling, general and administrative expenses in the Company's consolidated statements of loss and comprehensive loss. Such costs include advertising, payroll, initial store supplies and utilities.

**Management Services Agreement**

On January 26, 2016, in connection with the Acquisition, the Company entered into a management services agreement with certain affiliates and/or investment advisors of the Sponsors (the "Sponsor MSA Parties"), pursuant to which the Sponsor MSA Parties agreed to provide certain management and financial services. The services include management, consulting, and financial planning services in connection with the operation and growth of the Company. As compensation for such services, the Company agreed to reimburse the Sponsor MSA Parties' costs for services rendered, including expenses relating to maintaining the holding company structure through which the Sponsors own the Company indirectly, plus reimbursement of reasonable out-of-pocket expenses incurred in connection with the services rendered. The Company also agreed to provide customary indemnification to the Sponsor MSA Parties. The agreement has a term of ten years and is automatically renewed in one-year increments thereafter, unless otherwise earlier terminated. Management fees incurred and recorded by the Company during fiscal 2019 and 2018 and the thirty-nine weeks ended October 31, 2020 and November 2, 2019 were not material. These fees are included in selling, general and administrative expenses in the consolidated statements of loss and comprehensive loss.

**Derivative Instruments**

In March 2016, the Company entered into a series of five interest rate cap agreements with four counterparties totaling \$1,950.0 million to limit the maximum interest rate on a portion of the Company's variable-rate debt and limit its exposure to interest rate variability when three-month LIBOR exceeds 2.25%. The interest rate caps are accounted for as cash flow hedges, and changes in the fair value of the interest rate caps are reported as a component of AOCI.

Refer to Note 10 for further disclosures of the Company's derivative instruments and hedging activities.

**PET ACQUISITION LLC**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
**(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)**

***Recent Accounting Pronouncements***

In February 2016, the FASB issued Accounting Standards Update No. 2016-02 – Leases (“ASU 2016-02” or “ASC 842”), which requires leases to be recognized on the balance sheet as assets and liabilities for the rights and obligations created by leased assets. The Company adopted this accounting policy at the beginning of fiscal 2019 and recognized a cumulative effect adjustment to retained earnings, as permitted under Accounting Standards Update No. 2018-11 – Leases: Targeted Improvements. The Company set an accounting policy election not to capitalize leases with a term of twelve months or less. In addition, the Company elected the transition package of practical expedients, which allowed the Company to carry forward for its existing leases: i) the historical lease classification as either operating or finance; ii) the assessment of whether any expired or existing contracts are or contain leases; and iii) capitalization of initial direct costs. Additionally, the Company elected the practical expedients to account for certain leases at a portfolio level and to not separate lease and non-lease components.

Previously designated capital leases are now considered finance leases under the new guidance. The designation of operating leases remains substantially unchanged under the new guidance.

Adoption of this accounting policy resulted in the recognition of \$1.61 billion of operating lease right-of-use assets, along with \$1.54 billion of corresponding lease liabilities on February 3, 2019. As part of the adoption, \$91.6 million of other long-term liabilities, which included existing deferred rent, tenant improvement allowances, reserves for closed stores, and unfavorable lease rights, were derecognized with a corresponding adjustment to operating lease right-of-use assets. Also, \$33.8 million in prepaid rent, previously included within prepaid expenses, was reclassified as a reduction to the current portion of operating lease liabilities. Additionally, \$125.2 million of existing favorable lease rights, which were previously recorded within other intangible assets, were also derecognized with a corresponding adjustment to operating lease right-of-use assets. The Company recorded a \$22.9 million cumulative-effect adjustment to retained earnings, primarily related to the derecognition of a deferred gain on the sale-leaseback of its corporate headquarters, which was previously being recognized over the initial lease term as a reduction of selling, general, and administrative expenses. The adoption did not have a material impact on the Company’s liquidity. Refer to Note 6, Leases, for additional information regarding the Company’s accounting policy for leases and additional disclosures.

In April 2020, the FASB issued clarifying guidance on accounting for certain lease concessions related to the effects of the COVID-19 pandemic under ASC 842. The FASB staff indicated that it would be acceptable for entities to make an election to account for lease concessions related to the effects of the COVID-19 pandemic consistent with how they would be accounted for as though enforceable rights and obligations for those concessions existed in the original contract. Consequently, for such lease concessions, an entity will not need to reassess each existing contract to determine whether enforceable rights and obligations for concessions exist, and an entity can elect to apply or not to apply the lease modification guidance in ASC 842 to those contracts. The election is available for concessions related to the effects of the COVID-19 pandemic that result in the total payments required by the modified contract being substantially the same as or less than total payments required by the original contract. In accordance with this guidance, the Company made a policy election to account for such lease concessions related to the effects of the COVID-19 pandemic that resulted in the total payments required by the modified contract being substantially the same as or less than total payments required by the original contract as though enforceable rights and obligations to make those concessions existed in the original contract. Consequently, for such lease concessions, the Company did not reassess each existing contract to determine whether enforceable rights and obligations for concessions existed and elected not to apply the lease modification guidance in ASC 842 to those

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contracts. The Company accounted for COVID-19 lease abatements, which were not material, as reductions to variable lease expense and accounted for lease deferrals as a resolution of a contingency that fixes previously variable lease payments which resulted in a remeasurement of the lease liability with a corresponding adjustment to the right of use asset.

In June 2016, the FASB issued Accounting Standards Update No. 2016-13 – Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments, which amends the accounting for recognizing impairments of financial assets. Under the new accounting guidance, credit losses for financial assets held at amortized cost will be estimated based on expected losses rather than the current incurred loss impairment model. The new accounting guidance also modifies the impairment model for available-for-sale debt securities. The Company adopted this accounting policy on February 2, 2020. The adoption did not have a material impact on the Company's consolidated financial statements and related disclosures.

In August 2018, the FASB issued Accounting Standards Update No. 2018-15 – Intangibles— Goodwill and Other—Internal-Use Software (Subtopic 350-40), which amends ASC 350-40 to address a customer's accounting for implementation costs incurred in a cloud computing arrangement that is a service contract. The Company adopted this accounting policy on February 2, 2020. The adoption did not have a material impact on the Company's consolidated financial statements and related disclosures.

**2. Revenue Recognition**

The Company generates revenue primarily from the sale of products and services. Revenue is recognized when the control of promised goods or services is transferred to customers, in an amount that reflects the consideration to which the Company expects to be entitled to in exchange for those goods or services. Control refers to the ability of the customer to direct the use of, and obtain substantially all of, the remaining benefits from the goods or services.

Net sales by product type and services were as follows (in thousands):

	<u>Fiscal years ended</u>		<u>Thirty-nine weeks ended</u>	
	<u>February 1, 2020</u> (52 weeks)	<u>February 2, 2019</u> (52 weeks)	<u>October 31, 2020</u>	<u>November 2, 2019</u>
Dog and cat food	\$ 2,054,280	\$ 2,045,593	\$ 1,548,015	\$ 1,523,847
Supplies and companion animals	1,938,904	1,967,996	1,707,884	1,433,176
Services and other	441,330	378,584	326,590	328,835
Net sales	<u>\$ 4,434,514</u>	<u>\$ 4,392,173</u>	<u>\$ 3,582,489</u>	<u>\$ 3,285,858</u>

For all contracts with customers, the Company evaluates whether it is the principal (i.e. to report revenue on a gross basis) or agent (i.e. to report revenue on a net basis). Generally, the Company is the principal in its contracts with customers as it controls the related goods or services before they are transferred to the customer.

Revenue from product sales and services is reported net of sales refunds, which includes an estimate of future returns based on historical refund rates, with a corresponding reduction to cost of sales. The Company records a refund liability for sales returns, which is included in accrued expenses and other liabilities, and a corresponding asset for anticipated cost recoveries, which is included in other current assets. There is inherent judgment in estimating future refunds as they are susceptible to factors outside of the Company's influence. The Company has significant experience in estimating the amount of refunds based primarily on historical data.

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Revenue is recognized net of applicable sales tax in the consolidated statements of loss and comprehensive loss. Sales tax liability is included in accrued expenses and other liabilities in the consolidated balance sheets.

The Company's contract liabilities primarily relate to product merchandise not yet delivered to customers, unredeemed gift cards, services not yet completed, and options that provide a material right to customers, such as its customer loyalty program. The Company did not have any material contract assets or contract liabilities as of February 1, 2020, February 2, 2019 or October 31, 2020.

***Product Revenue***

Product revenue is recognized when control passes, which generally occurs at a point in time when the customer completes a transaction in the store and receives the merchandise. The Company's payment terms are typically at the point of sale.

For transactions initiated online, customers choose whether to have it delivered to them (using third-party parcel delivery companies) or to collect their merchandise from one of the Company's stores ("buy online, pick up in store," or "BOPUS"). For items delivered directly to the customer, control passes and revenue is recognized when delivery has been completed to the customer, as title has passed and possession has transferred to the customer. For BOPUS sales, control passes and revenue is recognized once the customer has taken possession of the merchandise. Any fees charged to customers for delivery (such as shipping and handling) are a component of the transaction price and are recognized when delivery has been completed. The Company uses delivery information to determine when to recognize revenue for products and any related delivery fee revenue.

***Service Revenue***

The Company recognizes service revenue from pet grooming, veterinary care, and certain other in-store services once the service is completed, as this is when the customer has the ability to direct the use of and obtain the benefits of the service. Payment terms are typically at the point of sale, but may also occur upon completion of the service. The Company's service contracts are primarily with retail and veterinary customers.

The Company recognizes service revenue from dog training ratably over the life of the contract, as this pattern best depicts when customers use the services provided and, accordingly, when delivery of the performance obligation occurs.

***Gift Cards***

The Company sells its own gift cards to customers in its retail stores, online, and through select third parties. The Company recognizes revenue from gift cards when gift cards are redeemed by the customer. The Company also recognizes revenue for the portion of gift card values that is not expected to be redeemed ("breakage"). Breakage is estimated based upon historical redemption patterns and other factors, such as laws and regulations applicable to each jurisdiction. There is judgment in assessing redemption patterns and the ultimate value of gift cards that is not expected to be redeemed.

***Sales Incentives and Customer Loyalty Program***

The Company has a customer loyalty program that allows members to earn points for each qualifying purchase. Points earned enable members to receive a certificate that may be redeemed on

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future purchases within 45 days of the issuance date. The loyalty program points represent customer options that provide a material right and, accordingly, are performance obligations for each applicable contract. The relative standalone selling price of points earned by loyalty program members is deferred and included as part of accrued expenses and other liabilities in the consolidated balance sheets based on the amount of points that are projected to be redeemed, subject to breakage. Revenue is recognized for these performance obligations as actual redemptions occur and the Company updates its estimate of the amount of points that are projected to be redeemed. There is judgment in assessing redemption patterns and the ultimate value of points that is not expected to be redeemed.

The Company issues coupons that are not earned in conjunction with a purchase of a product or service, typically as part of targeted marketing activities. Additionally, the Company issues coupons in conjunction with the purchase of products or services. However, these coupons typically do not materially exceed the range of discounts given to similar customers and do not confer a material right. In both of these cases, these are not performance obligations and are instead recognized as a reduction of the transaction price when redeemed by the customer.

***Practical Expedients and Exemptions***

The Company does not present certain qualitative and quantitative information relating to its remaining performance obligations, as substantially all of the Company's remaining performance obligations have an original expected duration of one year or less. The Company's remaining performance obligations are not material.

**3. Sale-Leaseback Transaction**

In January 2020, the Company sold and leased back its San Antonio, Texas corporate support center for \$19.0 million with net cash proceeds of \$18.5 million. The transaction qualified for sale-leaseback accounting, in which the Company recognized the sale, resulting in an initial gain of \$3.1 million, which is reflected as a reduction of selling, general, and administrative expenses. The lease has been classified as an operating lease and contains a 10 year initial term plus renewal options.

**4. Other Acquisitions**

During fiscal 2019, the Company completed the acquisition of a small, regional veterinary business for total consideration of approximately \$3.0 million. Net tangible and identifiable intangible assets acquired and liabilities assumed were not material. The acquisition resulted in the recognition of \$3.0 million of goodwill, which is deductible for tax purposes.

Pro forma results of operations for the acquisition have not been presented because they are not material to the consolidated results of operations.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
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**5. Composition of Balance Sheet Accounts**

**Prepaid Expenses**

Prepaid expenses consisted of the following (in thousands):

	February 1, 2020	February 2, 2019	October 31, 2020
Prepaid occupancy-related costs	\$ 4,500	\$ 29,536	\$ 5,917
Other prepaid expenses	20,354	19,226	32,090
	<u>\$ 24,854</u>	<u>\$ 48,762</u>	<u>\$ 38,007</u>

**Fixed Assets, Net**

Fixed assets, net, consisted of the following (in thousands):

	February 1, 2020	February 2, 2019	October 31, 2020
Equipment	\$ 578,842	\$ 509,557	\$ 615,066
Leasehold improvements	490,506	429,586	524,785
Furniture and fixtures	267,458	244,547	280,440
Buildings and related improvements	23,134	38,490	23,114
Land	3,904	6,888	3,889
	<u>1,363,844</u>	<u>1,229,068</u>	<u>1,447,294</u>
Less accumulated depreciation	<u>(707,588)</u>	<u>(545,521)</u>	<u>(828,364)</u>
	<u>\$ 656,256</u>	<u>\$ 683,547</u>	<u>\$ 618,930</u>

The Company's depreciation and amortization expense for fixed assets, net was \$172.5 million, \$184.6 million, \$128.3 million and \$128.8 million for fiscal 2019 and 2018 and the thirty-nine weeks ended October 31, 2020 and November 2, 2019, respectively.

**Other Intangible Assets, Net**

Components of other intangible assets, net were as follows (dollar amounts in thousands):

	February 1, 2020				
	Estimated useful lives (years)	Weighted average remaining estimated life (years)	Gross amount	Accumulated amortization	Net amount
Customer lists	3-7	2.4	\$ 3,944	\$ (2,512)	\$ 1,432
Proprietary technology	5-17	4.2	848	(727)	121
Total intangible assets subject to amortization	3-17	2.5	4,792	(3,239)	1,553
Indefinite-lived intangible trade name	—	—	1,025,000	—	1,025,000
Total intangible assets			<u>\$1,029,792</u>	<u>\$ (3,239)</u>	<u>\$ 1,026,553</u>

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
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February 2, 2019					
	Estimated useful lives (years)	Weighted average remaining estimated life (years)	Gross amount	Accumulated amortization	Net amount
Favorable lease rights	3-34	14.8	\$ 160,340	\$ (35,162)	\$ 125,178
Customer lists	3-7	3.2	3,944	(1,722)	2,222
Proprietary technology	5-17	1.3	858	(546)	312
Contract costs	9	8.9	300	(6)	294
Total intangible assets subject to amortization	3-34	14.6	165,442	(37,436)	128,006
Indefinite-lived intangible trade name	—	—	1,044,000	—	1,044,000
Total intangible assets			\$ 1,209,442	\$ (37,436)	\$ 1,172,006

October 31, 2020					
	Estimated useful lives (years)	Weighted average remaining estimated life (years)	Gross amount	Accumulated amortization	Net amount
Customer lists	3-7	2.1	\$ 3,944	\$ (3,105)	\$ 839
Proprietary technology	5-17	14.1	848	(818)	30
Total intangible assets subject to amortization	3-17	2.5	4,792	(3,923)	869
Indefinite-lived intangible trade name	—	—	1,025,000	—	1,025,000
Total intangible assets			\$ 1,029,792	\$ (3,923)	\$ 1,025,869

Quantitative impairment tests were performed on the Company's trade name in the fourth quarter of fiscal 2019 and 2018. The fair value of the Company's indefinite-lived trade name was determined by a third party valuation firm using the relief from royalty valuation method. As a result of the quantitative impairment tests performed, trade name impairment charges of \$19.0 million and \$83.0 million were recorded in the fiscal 2019 and 2018 financial statements, respectively. There were no triggering events identified and no indications of impairment of the Company's indefinite lived trade name or other intangible assets during the thirty-nine week periods ended October 31, 2020 and November 2, 2019.

The Company's amortization expense for other intangible assets was \$1.0 million, \$15.5 million, \$0.7 million and \$0.8 million for fiscal 2019 and 2018 and the thirty-nine weeks ended October 31, 2020 and November 2, 2019, respectively, and is included in selling, general and administrative expenses in the accompanying consolidated statements of loss and comprehensive loss. As a result of the adoption of ASU 2016-02 in fiscal 2019, favorable lease rights were derecognized with a corresponding adjustment to operating lease right-of-use assets (Note 1).

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At October 31, 2020, the Company's scheduled intangible asset amortization expense was as follows (in thousands):

<u>Fiscal years</u>	<u>Amortization expense</u>
Remainder of 2020	\$ 155
2021	344
2022	344
2023	4
2024	2
Thereafter	20
Total intangible asset amortization	<u>\$ 869</u>

**Accrued Salaries and Employee Benefits**

Accrued salaries and employee benefits consisted of the following (in thousands):

	<u>February 1, 2020</u>	<u>February 2, 2019</u>	<u>October 31, 2020</u>
Accrued compensation	\$ 45,209	\$ 41,727	\$ 75,675
Accrued paid time-off	27,033	29,777	27,183
Self-insurance reserves	21,443	22,763	26,430
	<u>\$ 93,685</u>	<u>\$ 94,267</u>	<u>\$ 129,288</u>

**Accrued Expenses and Other Liabilities**

Accrued expenses and other liabilities consisted of the following (in thousands):

	<u>February 1, 2020</u>	<u>February 2, 2019</u>	<u>October 31, 2020</u>
Accrued real estate taxes	\$ 29,659	\$ 25,379	\$ 30,731
Accrued capital expenditures	21,962	17,132	24,227
Sales taxes payable	16,753	15,992	19,892
Accrued income taxes	5,701	9,276	11,527
Accrued advertising	6,164	7,192	16,045
Other accrued expenses and liabilities	67,942	68,946	80,080
	<u>\$ 148,181</u>	<u>\$ 143,917</u>	<u>\$ 182,502</u>

**Other Long-Term Liabilities**

Other long-term liabilities consisted of the following (in thousands):

	<u>February 1, 2020</u>	<u>February 2, 2019</u>	<u>October 31, 2020</u>
Self-insurance reserves	\$ 60,022	\$ 73,758	\$ 56,140
Deferred rent	—	50,894	—
Unfavorable lease rights	—	30,812	—
Other liabilities	41,629	85,914	69,422
	<u>\$ 101,651</u>	<u>\$ 241,378</u>	<u>\$ 125,562</u>

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As a result of the adoption of ASU 2016-02 in fiscal 2019, deferred rent, tenant improvement allowances, reserves for closed stores, and unfavorable lease rights were derecognized with a corresponding adjustment to operating lease right-of-use assets (Note 1).

6. Leases

Lease assets and liabilities are reflected in the Company's consolidated balance sheets as follows (in thousands):

Leases	Balance sheet location	February 1, 2020	October 31, 2020
<b>Assets</b>			
Operating leases	Operating lease right-of-use assets	\$ 1,459,604	\$ 1,377,682
Finance leases	Fixed assets, net(1)	11,976	9,476
Total lease assets		<u>\$ 1,471,580</u>	<u>\$ 1,387,158</u>
<b>Liabilities</b>			
Current			
Operating leases	Current portion of operating lease liabilities	\$ 278,229	\$ 246,319
Finance leases	Current portion of long-term debt and other lease liabilities	3,393	2,149
Non-current			
Operating leases	Operating lease liabilities, excluding current portion	1,156,742	1,127,717
Finance leases	Other long-term liabilities	13,041	11,465
Total lease liabilities		<u>\$ 1,451,405</u>	<u>\$ 1,387,650</u>

(1) Finance lease right-of-use assets are recorded net of accumulated amortization of \$13.4 million and \$16.7 million as of February 1, 2020 and October 31, 2020, respectively.

The components of total lease cost are as follows (in thousands):

	Fiscal year ended	Thirty-nine weeks ended	
	February 1, 2020	October 31, 2020	November 2, 2019
Operating lease cost	\$ 441,981	\$ 324,477	\$ 333,162
Finance lease cost:			
Amortization of right-of-use lease assets	3,919	2,583	3,664
Interest on lease liabilities	973	693	720
Variable lease cost	112,709	81,599	86,720
Sublease income	(5,450)	(3,711)	(4,229)
Total lease cost	<u>\$ 554,132</u>	<u>\$ 405,641</u>	<u>\$ 420,037</u>

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Rent expense prior to the adoption of ASU 2016-02 totaled \$413.9 million for fiscal year 2018. The Company had approximately \$24.1 million in fixed assets financed through capital leases at February 2, 2019. The Company's related accumulated amortization for these fixed assets was \$10.6 million at February 2, 2019.

Other information for the Company's leases is as follows (in thousands):

	<u>Fiscal year ended</u> <u>February 1, 2020</u>	<u>Thirty-nine weeks ended</u>	
		<u>October 31, 2020</u>	<u>November 2, 2019</u>
Cash paid for amounts included in the measurement of lease liabilities:			
Operating cash flows from operating leases	\$ 408,562	\$ 304,426	\$ 312,933
Operating cash flows from finance leases	\$ 973	\$ 727	\$ 759
Financing cash flows from finance leases	\$ 3,447	\$ 2,831	\$ 2,593
Lease assets obtained in exchange for lease liabilities:			
Operating leases	\$ 133,219	\$ 105,754	\$ 88,757
Finance leases	\$ 3,695	\$ 15	\$ 3,210
		<u>February 1, 2020</u>	<u>October 31, 2020</u>
Weighted average remaining lease term:			
Operating leases		6.3 years	6.0 years
Finance leases		6.8 years	6.8 years
Weighted average discount rate:			
Operating leases		10.6%	10.5%
Finance leases		6.2%	6.2%

At February 2, 2019, prior to the adoption of ASU 2016-02, the Company's future minimum lease payments under non-cancellable operating and capital leases were as follows (in thousands):

<u>Fiscal years</u>	<u>Operating leases</u>	<u>Capital leases</u>
2019	\$ 401,160	\$ 4,041
2020	372,055	3,805
2021	328,344	2,342
2022	276,683	2,115
2023	224,818	1,715
Thereafter	567,961	6,560
Total minimum payments	<u>\$ 2,171,021</u>	<u>\$ 20,578</u>
Less amount representing interest		(4,080)
Present value of capital lease payments		16,498
Less current portion of capital leases		(3,104)
Capital lease obligations, excluding current portion		<u>\$ 13,394</u>

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At October 31, 2020, the Company's future minimum lease payments under non-cancellable operating and finance leases are as follows (in thousands):

Fiscal years	Operating leases	Finance leases
Remainder of 2020	\$ 70,541	\$ 767
2021	404,015	2,871
2022	339,651	2,648
2023	288,222	2,296
2024	232,856	2,027
Thereafter	542,544	6,164
<b>Total minimum payments</b>	<b>\$ 1,877,829</b>	<b>\$ 16,773</b>
Less imputed interest	(503,793)	(3,159)
Present value of lease payments	1,374,036	13,614
Less current portion	(246,319)	(2,149)
<b>Lease liabilities, excluding current portion</b>	<b>\$ 1,127,717</b>	<b>\$ 11,465</b>

**7. Goodwill**

The changes in the carrying amount of the Company's goodwill were as follows (in thousands):

	February 1, 2020	February 2, 2019	October 31, 2020
Beginning balance:			
Goodwill	\$ 2,984,253	\$ 2,984,245	\$ 2,987,273
Accumulated impairment	(807,963)	(517,791)	(807,963)
Goodwill, net	<u>\$ 2,176,290</u>	<u>\$ 2,466,454</u>	<u>\$ 2,179,310</u>
Additions from acquisitions	\$ 3,020	\$ —	\$ —
Purchase price adjustments	—	8	—
Impairment	—	(290,172)	—
Ending balance:			
Goodwill	\$ 2,987,273	\$ 2,984,253	\$ 2,987,273
Accumulated impairment	(807,963)	(807,963)	(807,963)
Goodwill, net	<u>\$ 2,179,310</u>	<u>\$ 2,176,290</u>	<u>\$ 2,179,310</u>

A quantitative impairment test was performed on the Company's goodwill in the fourth quarter of fiscal 2019. The result of the quantitative impairment test indicated that the fair value of the reporting unit was higher than its carrying value, and therefore no goodwill impairment charge was recorded for fiscal 2019. A quantitative impairment test was performed on the Company's goodwill in the fourth quarter of fiscal 2018, and a goodwill impairment charge of \$290.2 million was recognized. There were no triggering events identified and no indications of impairment of the Company's goodwill during the thirty-nine week periods ended October 31, 2020 and November 2, 2019.

**8. Senior Secured Credit Facilities**

The Company has a \$2,525.0 million senior secured term loan facility maturing on January 26, 2023 ("Term Loan Facility"), which was most recently amended on January 27, 2017 ("Amended Term Loan Facility"), and a senior secured asset-based revolving credit facility (the "Amended Revolving

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Credit Facility”), providing for senior secured financing of up to \$500.0 million expiring on the earlier of 91 days prior to the maturity of the Amended Term Loan Facility (currently October 27, 2022 or five years from the most recent amendment), subject to a borrowing base. The Amended Term Loan Facility and the Amended Revolving Credit Facility are collectively referred to as the “Senior Secured Credit Facilities.”

As of February 1, 2020, the outstanding principal balance of the Amended Term Loan Facility was \$2,424.0 million (\$2,363.4 million, net of the unamortized discount and debt issuance costs). As of February 2, 2019, the outstanding principal balance of the Amended Term Loan Facility was \$2,449.3 million (\$2,370.0 million, net of the unamortized discount and debt issuance costs). The weighted average interest rate on the borrowings outstanding was 5.1% and 6.1% as of February 1, 2020 and February 2, 2019, respectively. As of October 31, 2020, the outstanding principal balance of the Amended Term Loan Facility was \$2,405.1 million (\$2,359.0 million, net of the unamortized discount and debt issuance costs). At October 31, 2020, the weighted average interest rate on the borrowings outstanding was 4.3%. Debt issuance costs are being amortized over the contractual term to interest expense using the effective interest rate in effect at issuance. As of February 1, 2020, February 2, 2019 and October 31, 2020, the estimated fair value of the Amended Term Loan Facility was approximately \$2,011.9 million, \$1,910.4 million, and \$2,190.3 million, respectively, based upon Level 2 fair value hierarchy inputs (Note 1).

As of February 1, 2020, \$29.0 million was outstanding, with a weighted average interest rate of 5.3%, under the Amended Revolving Credit Facility. As of February 2, 2019 and October 31, 2020, no amounts were outstanding under the Amended Revolving Credit Facility. At October 31, 2020, \$390.2 million was available under the Amended Revolving Credit Facility, which is net of \$61.5 million of outstanding letters of credit issued in the normal course of business and a \$48.3 million borrowing base reduction for a shortfall in qualifying assets, net of reserves. Unamortized debt issuance costs of \$4.9 million, \$6.6 million and \$3.5 million relating to the Amended Revolving Credit Facility were outstanding and were being amortized using the straight-line method over the remaining term of the agreement as of February 1, 2020, February 2, 2019 and October 31, 2020, respectively.

The Company's obligations under the Senior Secured Credit Facilities are secured by substantially all of the personal property assets of the Company with differing priority rights to the various personal property assets ascribed to each facility. Both credit facility agreements, while not identical, contain certain affirmative and negative covenants related to indebtedness, liens, fundamental changes in the business, investments, restricted payments and agreements and a fixed charge coverage ratio, among other things. As of October 31, 2020, the Company is in compliance with its covenants on the agreements.

The credit agreements governing the Senior Secured Credit Facilities contain customary default provisions including, among others, the failure to make payments when due, defaults under other material indebtedness, non-compliance with covenants, change of control and bankruptcy, the occurrence of any of which would limit the Company's ability to draw on the Amended Revolving Credit Facility and could result in the applicable lenders under the Senior Secured Credit Facilities accelerating the maturity of such indebtedness and foreclosing upon the collateral pledged thereunder.

***Amended Term Loan Facility***

On June 17, 2016, the Company amended the Term Loan Facility, which consisted of two tranches (“Tranche B-1” and “Tranche B-2”). The covenants of the amended facility were substantially

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similar to those of the original facility, while the interest rate spread declined. Interest under the amended facility was at the Company's option the bank's alternative base rate ("ABR") or the London Interbank Offered Rate ("LIBOR"), adjusted for statutory reserve requirements ("Adjusted LIBOR"), with Tranche B-1 subject to a 1.00% floor, payable upon maturity of the LIBOR contract, in either case plus the applicable rate. The ABR was the greater of the bank prime rate, federal funds effective rate plus 0.5% or the LIBOR quoted rate plus 1.0% (or 2.0% for Tranche B-1). The applicable rate was 3.00% (previously 3.75%) per annum for Tranche B-1 and 3.25% (previously 4.00%) for Tranche B-2 for an ABR loan or 4.00% (previously 4.75%) per annum for Tranche B-1 and 4.25% (previously 5.00%) for Tranche B-2 for an Adjusted LIBOR loan. Additionally, when the Company's senior secured first lien net leverage ratio falls below 4.00, each of the applicable rate options will be reduced by 0.25%.

On January 27, 2017, the Company amended the Amended Term Loan Facility further and consolidated Tranche B-2 into Tranche B-1. The covenants of the amended facility are substantially similar to those of the existing facility, while the interest rate spread declined. Interest under the Amended Term Loan Facility continues to be at the Company's option the bank's ABR or Adjusted LIBOR subject to a 1.00% floor, payable upon maturity of the LIBOR contract, in either case plus the applicable rate. The ABR is the greater of the bank prime rate, federal funds effective rate plus 0.5% or the LIBOR quoted rate plus 2.0%. The applicable rate is 2.25% (previously 3.00%) per annum for an ABR loan or 3.25% (previously 4.00%) per annum for an Adjusted LIBOR loan. Additionally, when the Company's senior secured first lien net leverage ratio falls below 4.00, each of the applicable rate options will be reduced by 0.25%. Principal payments under the Amended Term Loan Facility are \$6.3 million quarterly.

***Amended Revolving Credit Facility***

On August 23, 2018, the Company amended its Revolving Credit Facility to increase the total availability to \$555.0 million and to extend the maturity on \$500.0 million of this availability from January 26, 2021 to the earlier of 91 days prior to the maturity of the Amended Term Loan Facility (currently October 27, 2022) or five years from closing. The remaining \$55.0 million of availability was set to expire on the original maturity date of January 26, 2021. All other key terms of the Amended Revolving Credit Facility remained unchanged.

Fees relating to the August 23, 2018 amendment consisted of arranger fees and other third party expenses. Approximately \$3.1 million of the Amended Revolving Credit Facility fees under the August 23, 2018 amendment were capitalized in the accompanying consolidated balance sheet as a contra-liability, and no loss on debt extinguishment was recognized. The remaining portion of debt issuance costs of the Amended Revolving Credit Facility previously capitalized were set to amortize over the expected remaining term to interest expense using the effective interest rate in effect on the date of issuance.

On December 14, 2018, the Company terminated the \$55.0 million additional availability relating to the January 26, 2021 tranche of the Amended Revolving Credit Facility. All other key terms of the Amended Revolving Credit Facility remain unchanged.

The Amended Revolving Credit Facility has availability up to \$500.0 million and a \$150.0 million letter of credit sub-facility. The availability is limited to a borrowing base, which allows borrowings of up to 90% of eligible accounts receivable plus 90% of the net orderly liquidation value of eligible inventory plus up to \$50 million of qualified cash of the Company to which the Company and guarantors have no access, less reserves as determined by the administrative agent. Letters of credit reduce the amount available to borrow under the Amended Revolving Credit Facility by their face value.

**PET ACQUISITION LLC****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
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Interest on the Amended Revolving Credit Facility is based on either ABR or Adjusted LIBOR subject to a floor of zero percent, in either case, plus an applicable margin. The applicable margin is currently equal to 25 basis points in the case of ABR loans and 125 basis points in the case of Adjusted LIBOR loans.

The applicable margin is adjusted quarterly based on the average historical excess availability as a percentage of the Line Cap, which represents the lesser of the aggregate Amended Revolving Credit Facility and the borrowing base, as follows:

<b>Average Historical Excess Availability</b>	<b>Applicable Margin for Adjusted LIBOR Loans</b>	<b>Applicable Margin for ABR Loans</b>
Less than 33.3% of the Line Cap	1.75%	0.75%
Less than 66.7% but greater than or equal to 33.3% of the Line Cap	1.50%	0.50%
Greater than or equal to 66.7% of the Line Cap	1.25%	0.25%

The Amended Revolving Credit Facility is subject to an unused commitment fee. If the actual daily utilized portion exceeds 50%, the unused commitment fee is 0.25%. Otherwise, the unused commitment fee is 0.375% and is not dependent upon excess availability.

**9. Senior Notes*****Floating Rate Senior Notes***

On January 26, 2016, the Company issued unsecured senior notes maturing on January 26, 2024 in a private offering (the "Floating Rate Senior Notes"). Debt issuance costs of \$26.2 million related to the Floating Rate Senior Notes are being amortized over the contractual term to interest expense using the effective interest rate in effect at issuance. The Floating Rate Senior Notes bear interest at a floating rate equal to three-month LIBOR, subject to a 1.00% floor, plus 8.0% per annum (the "Applicable Margin") payable quarterly in arrears.

At February 1, 2020, the outstanding principal balance of the Floating Rate Senior Notes was \$750.0 million and the carrying amount was \$734.4 million, net of the unamortized debt issuance costs. The weighted average interest rate on the borrowings outstanding was 9.9% as of February 1, 2020. At February 2, 2019, the outstanding principal balance of the Floating Rate Senior Notes was \$750.0 million and the carrying amount was \$731.4 million, net of the unamortized debt issuance costs. The weighted average interest rate on the borrowings outstanding was 10.9% as of February 2, 2019. At October 31, 2020, the outstanding principal balance of the Floating Rate Senior Notes was \$750.0 million and the carrying amount was \$736.9 million, net of the unamortized debt issuance costs. The weighted average interest rate on the borrowings outstanding was 9.1% as of October 31, 2020. At February 1, 2020, February 2, 2019 and October 31, 2020, the estimated fair value of the Floating Rate Senior Notes was approximately \$701.7 million, \$696.2 million and \$750.0 million, respectively, based upon Level 2 fair value hierarchy inputs (Note 1) and the expected timing of repayment or settlement as of each reporting date.

The Company may redeem the Floating Rate Senior Notes at its option, in whole or in part, at par value. The indenture governing the Floating Rate Senior Notes specifies a number of events of default (many of which are subject to applicable cure periods), including, among others, the failure to make payments when due, defaults under other agreements or instruments of indebtedness and non-compliance with covenants. Upon the occurrence of an event of default, the holders of the Floating Rate Senior Notes may declare all amounts outstanding to be immediately due and payable. As of October 31, 2020, the Company is in compliance with its debt covenants.

**PET ACQUISITION LLC**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
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**3.00% Senior Notes**

On January 26, 2016, the Company issued senior unsecured notes maturing on January 25, 2019 in a private offering to its members. Interest on the notes was originally 0.75% per annum, payable semi-annually either in cash or by means of capitalizing such interest and adding it to the then outstanding principal amount of the notes.

On April 6, 2019, the Company amended the notes to extend their maturity to July 25, 2019. Interest under these notes (the "3.00% Senior Notes") is now 3.00% per annum, payable upon maturity. On July 25, 2019, February 3, 2020, and September 28, 2020, the Company further amended the notes to extend their maturity to January 25, 2020, January 25, 2021, and January 25, 2023, respectively. At February 1, 2020, February 2, 2019 and October 31, 2020, the outstanding principal balance of the 3.00% Senior Notes was \$131.7 million, \$127.8 million and \$131.7 million, respectively. At February 1, 2020, February 2, 2019 and October 31, 2020, the estimated fair value of the 3.00% Senior Notes was approximately \$121.4 million, \$127.9 million and \$131.7 million, respectively, based upon debt yields and the redemption option, which are considered Level 2 fair value hierarchy inputs (Note 1), and the expected timing of repayment or settlement as of each reporting date. The borrowings are classified as long-term obligations due to the Company's intent and ability to refinance these obligations on a long-term basis.

The Company may redeem the 3.00% Senior Notes at any time, in whole or in part, by paying the then outstanding principal balance plus accrued interest up to the redemption date. The indentures governing the notes specify a number of events of default (subject to applicable cure periods), including, among others, the failure to make payments when due, defaults under other instruments of indebtedness and non-compliance with covenants. Upon the occurrence of an event of default, the holders of the 3.00% Senior Notes may declare all amounts outstanding to be immediately due and payable. The Company is currently in compliance with its covenants under the note indentures.

**10. Derivative Instruments**

In March 2016, the Company entered into a series of five interest rate cap agreements with four counterparties totaling \$1,950.0 million to limit the maximum interest rate on a portion of the Company's variable-rate debt and limit its exposure to interest rate variability when three-month LIBOR exceeds 2.25%.

Terms of the Company's interest rate caps and their fair values are as follows (in thousands):

	Notional amount	Effective date	Expiration date	Derivative (liability) asset fair value		
				February 1, 2020	February 2, 2019	October 31, 2020
	\$ 975,000	January 31, 2017	January 31, 2021	\$ (2,849)	\$ 2,430	\$ (720)
	243,750	January 31, 2017	January 31, 2021	(666)	702	(168)
	243,750	January 31, 2017	January 31, 2021	(686)	663	(173)
	243,750	January 31, 2017	January 31, 2021	(664)	701	(168)
	243,750	January 31, 2017	January 31, 2021	(646)	736	(165)
Total	<u>\$ 1,950,000</u>			<u>\$ (5,511)</u>	<u>\$ 5,232</u>	<u>\$ (1,394)</u>

## PET ACQUISITION LLC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd  
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Interest rate caps are reflected in the Company's consolidated balance sheets as follows (in thousands):

<u>(Liabilities) Assets</u>	<u>Balance sheet location</u>	<u>February 1, 2020</u>	<u>February 2, 2019</u>	<u>October 31, 2020</u>
Current asset portion of interest rate caps	Other current assets	\$ —	\$ 2,865	\$ —
Current liability portion of interest rate caps	Accrued expenses and other liabilities	(5,511)	—	(1,394)
Non-current asset portion of interest rate caps	Other long-term assets	—	2,367	—
Total interest rate caps		<u>\$ (5,511)</u>	<u>\$ 5,232</u>	<u>\$ (1,394)</u>

Although the Company is exposed to credit loss in the event of nonperformance by its counterparties, credit risk is considered limited due to the credit ratings of the counterparties and the use of a master netting agreement, which permits the netting of derivative payables and receivables. The Company has not historically incurred, and does not expect to incur in the future any losses as a result of counterparty default. The notional amount of the Company's outstanding derivatives is not an indicator of the magnitude of potential exposure.

The interest rate cap agreements contain provisions that would be triggered in the event the Company defaults on its debt agreements (Note 8 and Note 9), which in turn could impact the assessment of hedge effectiveness or cause termination of the underlying cap agreements. As of October 31, 2020, no events of default have occurred. There is no collateral posting requirement outside the provisions in the debt agreements.

The interest rate caps are accounted for as cash flow hedges because the interest rate caps are expected to be highly effective in hedging variable rate interest payments. Changes in the fair value of the interest rate caps are reported as a component of AOCI. As of February 1, 2020, February 2, 2019 and October 31, 2020, AOCI included unrealized losses of \$10.7 million (\$7.9 million, net of tax), \$1.2 million (\$0.9 million, net of tax) and \$2.9 million (\$2.1 million, net of tax), respectively. Approximately \$2.8 million and \$1.6 million of pre-tax losses deferred in AOCI were reclassified to interest expense during fiscal 2019 and 2018, respectively. Approximately \$7.9 million of pre-tax losses and \$0.9 million of pre-tax losses deferred in AOCI were reclassified to interest expense during the thirty-nine weeks ended October 31, 2020 and November 2, 2019, respectively. The Company currently estimates that \$2.9 million of pre-tax losses related to trade date costs on its interest rate caps that are currently deferred in AOCI will be reclassified to interest expense in the consolidated statement of operations within the next twelve months. This estimate could vary based on actual amounts as a result of changes in market conditions.

**PET ACQUISITION LLC**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
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**11. Fair Value Measurements**

**Assets and Liabilities Measured on a Recurring Basis**

The following table presents information about assets and liabilities that are measured at fair value on a recurring basis and indicate the fair value hierarchy of the valuation techniques utilized to determine such fair value (in thousands):

	February 1, 2020		
	Level 1	Level 2	Level 3
<b>Assets (liabilities):</b>			
Money market mutual funds	\$ 5,919	\$ —	\$ —
Investments of officer's life insurance	\$ —	\$ 12,142	\$ —
Interest rate caps	\$ —	\$ (5,511)	\$ —
Non-qualified deferred compensation plan	\$ —	\$ (12,075)	\$ —
<b>February 2, 2019</b>			
	Level 1	Level 2	Level 3
<b>Assets (liabilities):</b>			
Money market mutual funds	\$40,953	\$ —	\$ —
Investments of officer's life insurance	\$ —	\$ 11,676	\$ —
Interest rate caps	\$ —	\$ 5,232	\$ —
Non-qualified deferred compensation plan	\$ —	\$ (11,523)	\$ —
<b>October 31, 2020</b>			
	Level 1	Level 2	Level 3
<b>Assets (liabilities):</b>			
Money market mutual funds	\$58,299	\$ —	\$ —
Investments of officer's life insurance	\$ —	\$ 12,428	\$ —
Interest rate caps	\$ —	\$ (1,394)	\$ —
Non-qualified deferred compensation plan	\$ —	\$ (13,225)	\$ —

The fair value of money market mutual funds is based on quoted market prices, such as quoted net asset values published by the fund as supported in an active market. Money market mutual funds included in the Company's cash and cash equivalents were \$0.0 million and \$35.2 million as of February 1, 2020 and February 2, 2019, respectively. Money market mutual funds included in the Company's cash and cash equivalents were \$45.2 million as of October 31, 2020. Also included in the Company's money market mutual funds balances were \$5.9 million, \$5.8 million and \$13.1 million as of February 1, 2020, February 2, 2019 and October 31, 2020, respectively, which relate to the Company's restricted cash, and are included in other current assets in the consolidated balance sheets.

The fair values of the interest rate caps are determined using a discounted cash flow analysis on the expected cash flows of each interest rate cap (Note 10). This analysis reflects the contractual terms, including the period to maturity, and uses observable market-based inputs, including interest rate curves. The fair values are determined by netting the discounted future fixed cash receipts payments and the discounted expected variable cash receipts. The variable cash receipts are based on an expectation of future interest rates (forward curves) derived from observable market interest rate yield curves. The Company qualitatively assesses both its own nonperformance risk and the respective counterparties' nonperformance risk in the fair value measurements. The valuations also consider credit risk adjustments, including nonperformance risk, that are necessary to reflect the probability of default by the counterparties' or the Company. As of February 1, 2020, February 2, 2019, and October 31, 2020, the credit risk adjustments were not material.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
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The Company maintains a deferred compensation plan for key executives and other members of management, which is fully funded by investments in officers' life insurance. The fair value of this obligation is based on participants' elected investments, which reflect the closing market prices of similar assets.

***Assets Measured on a Non-Recurring Basis***

The Company's non-financial assets, which primarily consist of goodwill, other intangible assets, fixed assets and equity and cost method investments, are reported at carrying value, or at fair value as of the date of the Acquisition, and are not required to be measured at fair value on a recurring basis. However, on a periodic basis (at least annually for goodwill and indefinite-lived intangibles or whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable), non-financial assets are assessed for impairment. If impaired, the carrying values of the assets are written down to fair value using Level 3 inputs.

The Company holds an investment in a pet specialty company, which was previously accounted for under the equity method. In October 2019, the Company concluded that it no longer holds significant influence over the operation and financial policies of this investee. Accordingly, the Company discontinued the equity method of accounting for this investee. Additionally, the carrying value of this investment was reduced from \$0.9 million to \$0.0 million, as the Company no longer considers the investment to be recoverable. The related loss is included in selling, general, and administrative expenses in the accompanying consolidated statements of loss and comprehensive loss.

In fiscal 2019, the Company determined that the fair value of its reporting unit was greater than its carrying amount, and therefore no goodwill impairment charge was recorded (Note 7). In fiscal 2019, the Company determined that the carrying amount of its trade name exceeded its fair value, resulting in a trade name impairment charge of \$19.0 million. The Company recorded impairment charges of \$0.7 million on other intangible assets and \$3.2 million on its other cost method investments in fiscal 2019. The related losses are included in selling, general, and administrative expenses in the accompanying consolidated statements of loss and comprehensive loss. There were no other indications of impairment of the Company's other intangible assets or equity and cost method investments in fiscal 2019.

In fiscal 2018, the Company determined that the carrying amount of its reporting unit and trade name exceeded their fair values, resulting in impairment charges of \$290.2 million and \$83.0 million, respectively. There were no other indications of impairment of the Company's indefinite-lived trade name, other intangible assets or equity and cost method investments in fiscal 2018.

The Company recorded fixed asset and right-of-use asset impairment charges of \$13.0 million, \$7.0 million and \$6.0 million in fiscal year 2019 and for the thirty-nine weeks ended October 31, 2020 and November 2, 2019, respectively. Prior to the adoption of ASU 2016-02, the Company recorded fixed asset impairment charges of \$15.0 million in fiscal year 2018. Impairment charges related to distribution centers are recorded in cost of sales, whereas impairment charges related to store and corporate locations are recorded in selling, general and administrative expense in the accompanying consolidated statements of loss and comprehensive loss.

**12. Employee Benefit Plans**

The Company has employee savings plans that permits eligible participants to make contributions by salary reduction pursuant to either section 401(k) of the Internal Revenue Code or under the Company's non-qualified deferred compensation plan.

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
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Prior to January 1, 2019, the Company generally matched 50% of the first 6% of compensation that was contributed by each participating employee to the 401(k) plan. Prior to January 1, 2019, eligible participants that held positions as director and above were limited to a matching contribution of 50% of the first 3% of compensation contributed to the plan. Under the 401(k) plan, the Company match was subject to a 5-year vesting schedule. Employees were required to complete twelve months of service with the Company to participate in the plan.

On January 1, 2019, the Company amended its 401(k) plan. The Company now generally matches 100% of the first 1% plus 50% of the next 5% of compensation contributed by each participating employee. For eligible participants that hold positions as director and above, the Company matches, at its discretion, 100% of the first 1% plus 50% of the next 2% of compensation that is contributed by each participating employee to the plan. The Company match is subject to a 3-year vesting schedule. Employees are now required to complete six months of service with the Company to participate in the amended plan.

Under the Company's non-qualified deferred compensation plan, the Company matches 50% of the first 6% of compensation contributed by each participating employee to the plan from the date of eligibility until the point of time that the participating employee is eligible to participate in the Company's 401(k) plan. Once a participating employee is eligible to participate in the 401(k) plan, the Company match is 50% of the first 3% of compensation contributed by the employee to the plan.

In connection with the required matches, Company contributions to the plans were \$6.9 million and \$4.9 million for fiscal years 2019 and 2018, respectively. Company contributions to the plans were \$4.5 million and \$5.1 million for the thirty-nine weeks ended October 31, 2020 and November 2, 2019, respectively.

**13. Equity-Based Compensation Expense**

Subsequent to the Acquisition, Scooby LP established an incentive plan ("the 2016 Incentive Plan") pursuant to which eligible employees, consultants and non-employee directors of the Company are eligible to receive partnership unit awards ("Series C Units"). Series C Unit awards are restricted profit interests in Scooby LP subject to a distribution threshold and were originally based upon attainment of certain criteria or events as follows:

- (1) 50% time-based units that vest in equal installments on each anniversary of the grant date. Upon a change in control, all time-based units become fully vested.
- (2) 30% EBITDA-based units that would have vested each year based on specified annual and cumulative EBITDA targets. Upon a change in control, the number of unvested EBITDA-based units that would have vested was dependent upon whether the proceeds resulting from the change in control were greater than the EBITDA-based unit acceleration amount with respect to the investment.
- (3) 20% internal rate of return ("IRR")-based units that would have vested upon a change in control if the change in control resulted in an IRR to the Sponsors greater than or equal to 23% and a multiple of invested capital greater than or equal to 2.0.

In July 2018, the Company effected a modification for current employees as follows:

- (1) The distribution threshold for time-based units was reduced.
- (2) EBITDA-based and IRR-based units were converted to time-based units with a reduced distribution threshold that will vest in five equal installments beginning on the anniversary of the original grant date beginning in calendar year 2019.

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Based on the modified distribution thresholds, the incremental compensation cost related to the modification was \$11.0 million, which is being recognized over the remaining term of the grants. Series C Unit awards following the modification are generally issued in the form of time-based units that vest in equal annual installments. Upon a change in control, these units become fully vested.

In October 2018, the Company accelerated the vesting of a portion of Series C Units held by an executive in connection with their separation of employment and in December 2018, the Company accelerated the vesting of Series C Units held by a former board member in connection with their separation from the board. These modifications resulted in \$2.1 million of incremental compensation expense recognized during fiscal 2018.

For the Series C Units granted during fiscal 2019 and 2018, the weighted average fair value per unit was estimated to be \$0.25 and \$0.35, respectively. For the Series C Units granted during the thirty-nine weeks ended October 31, 2020 and November 2, 2019, the weighted average fair value per unit was estimated to be \$0.44 and \$0.25, respectively.

The weighted average fair value per Series C Unit was calculated at the date of grant using the Black-Scholes option pricing model with the following assumptions:

	Fiscal years ended		Thirty-nine weeks ended	
	February 1, 2020 (52 weeks)	February 2, 2019 (52 weeks)	October 31, 2020	November 2, 2019
Dividend yield	0.0%	0.0%	0.0%	0.0%
Expected volatility(1)	60.0%	45.0% - 65.0%	60.0 - 81.9%	60.0%
Weighted average volatility (1)	60.0%	58.5%	81.1%	60.0%
Risk-free interest rate(2)	1.4% - 2.3%	2.5% - 3.0%	0.1% - 1.3%	1.4% - 2.3%
Expected term(3)	5.0 years	4.0 to 5.5 years	2.0 to 4.0 years	5.0 years

- (1) The expected volatility is estimated based on the historical volatility of a select peer group of similar publicly traded companies for a term that is consistent with the expected term of the Series C Units.
- (2) The risk-free interest rates are based on the U.S. Treasury constant maturity interest rate whose term is consistent with the expected term of the Series C Units.
- (3) The expected term of the Series C Units is based on estimated liquidity event timing.

Prior to the modification, the Company's IRR-based Series C Units were not valued because they were not deemed probable of vesting.

Series C Unit activity under the 2016 Incentive Plan was as follows (in thousands):

	Units
Series C Units outstanding, February 2, 2019	143,081
Granted	59,120
Forfeited	(18,812)
Series C Units outstanding, February 1, 2020	183,389
Granted	41,685
Forfeited	(10,225)
Series C Units outstanding, October 31, 2020	<u>214,849</u>
Series C Units vested, October 31, 2020	<u>76,402</u>
Series C Units available for future grant, October 31, 2020	<u>24,512</u>

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Charges with respect to awards issued pursuant to the 2016 Incentive Plan are reflected in the Company's consolidated financial statements. The Company recorded \$9.5 million and \$8.5 million of compensation expense in fiscal 2019 and 2018, respectively. The Company recorded \$7.5 million and \$7.0 million of compensation expense for the thirty-nine weeks ending October 31, 2020 and November 2, 2019, respectively. Compensation expense related to the Company's Series C Units is generally not tax deductible.

In July 2019, 1.4 million Series B Units of Scooby LP were granted to an executive, resulting in \$0.7 million of compensation expense and a corresponding income tax benefit of \$0.2 million recognized during fiscal 2019. Vested Series B Units and Series C Units of Scooby LP contain provisions whereby the holder may require Scooby LP to repurchase these units upon a termination event due to death or disability. The Company is not required to repurchase its own membership units upon the occurrence of such an event.

As of October 31, 2020, unrecognized compensation expense related to the unvested portion of the Company's Series C Units was \$27.8 million, which is expected to be recognized over a weighted average period of 3.1 years.

**14. Income Taxes**

Income tax benefit consisted of the following (in thousands):

	<b>Fiscal years ended</b>		<b>Thirty-nine weeks ended</b>	
	<b>February 1, 2020</b> <b>(52 weeks)</b>	<b>February 2, 2019</b> <b>(52 weeks)</b>	<b>October 31, 2020</b>	<b>November 2, 2019</b>
<b>Current:</b>				
Federal	\$ 4,273	\$ 2,504	\$ (29,439)	\$ (4,048)
State	5,156	3,404	9,013	2,090
	<u>\$ 9,429</u>	<u>\$ 5,908</u>	<u>\$ (20,426)</u>	<u>\$ (1,958)</u>
<b>Deferred:</b>				
Federal	\$ (34,814)	\$ (43,657)	\$ 13,950	\$ (20,379)
State	(10,273)	(8,091)	(7,061)	(5,926)
	<u>\$ (45,087)</u>	<u>\$ (51,748)</u>	<u>\$ 6,889</u>	<u>\$ (26,305)</u>
<b>Income tax benefit</b>	<u>\$ (35,658)</u>	<u>\$ (45,840)</u>	<u>\$ (13,537)</u>	<u>\$ (28,263)</u>

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd  
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A reconciliation of income tax benefit at the federal statutory rate with the provision for income taxes is as follows (in thousands):

	Fiscal years ended			
	February 1, 2020 (52 weeks)		February 2, 2019 (52 weeks)	
Income tax benefit at federal statutory rate	\$ (27,524)	21.0%	\$ (96,473)	21.0%
Non-deductible expenses	1,986	(1.5)	60,691	(13.3)
State taxes, net of federal tax benefit	(4,073)	3.1	(3,714)	0.8
U.S. tax reform	—	—	(2,252)	0.5
Tax credits	(4,150)	3.2	(3,616)	0.8
Other, net	(1,897)	1.5	(476)	0.1
	<u>\$ (35,658)</u>	<u>27.3%</u>	<u>\$ (45,840)</u>	<u>9.9%</u>

	Thirty-nine weeks ended			
	October 31, 2020		November 2, 2019	
Income tax benefit at federal statutory rate	\$ (6,938)	21.0%	\$ (24,479)	21.0%
Non-deductible expenses	1,858	(5.6)	1,358	(1.1)
State taxes, net of federal tax benefit	1,542	(4.7)	(3,842)	3.3
Tax credits	(1,500)	4.6	(1,334)	1.1
Transition impact of CARES Act	(8,499)	25.7	—	—
Other, net	—	—	34	(0.1)
	<u>\$ (13,537)</u>	<u>41.0%</u>	<u>\$ (28,263)</u>	<u>24.2%</u>

Income tax expense for fiscal 2018 was impacted by the adjustment of deferred tax assets and liabilities related to the reduction in the U.S. federal statutory income tax rate from 35% to 21% under the U.S. Tax Cuts and Jobs Act ("Tax Act"), which was enacted on December 22, 2017. The Company re-measured certain deferred tax assets and liabilities based on the federal rate at which they are expected to reverse in the future, which is generally 21%.

The increase in the effective tax rate in fiscal 2019 is primarily due to the non-deductible goodwill impairment charge impacting the rate in fiscal 2018 (Note 7). The decrease in the federal statutory rate in fiscal 2018 is due to changes in the federal tax rate, as applied to fiscal year taxpayers, as a result of the Tax Act. In accordance with the Tax Act, as a fiscal year taxpayer, a blended tax rate should be determined based on the applicable rates before and after the change and the number of days in the period within the taxable year before and after the effective date of the change in tax rate.

On March 27, 2020, in response to the COVID-19 pandemic, the "Coronavirus Aid, Relief and Economic Security Act" ("CARES Act") was signed into law by the President of the United States. The CARES Act includes, among other things, U.S. corporate income tax provisions related to net operating loss carryback periods, alternative minimum tax credits, modifications to interest deduction limitations and technical corrections on tax depreciation methods for qualified improvement property. The Company re-measured deferred tax assets related to \$67.4 million net operating losses available under the CARES Act that are expected to be carried back to the fiscal year(s) before the Tax Act was enacted, which resulted in a benefit of \$8.5 million that increased the effective tax rate in the thirty-nine weeks ended October 31, 2020 when compared to the thirty-nine weeks ended November 2, 2019.

**PET ACQUISITION LLC**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
**(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)**

Significant components of the Company's deferred tax assets and liabilities were as follows (in thousands):

	February 1, 2020	February 2, 2019	October 31, 2020
<b>Deferred tax assets:</b>			
Inventory	\$ 17,449	\$ 16,124	\$ 19,683
Deferred rent	—	8,868	—
Accrued employee benefits	31,203	34,301	39,677
Net operating losses, state tax credit carryforwards	6,539	2,659	6,811
Interest expense limitation carry-forward under IRC §163(j)	54,330	26,015	19,263
Store closure reserves	—	5,276	—
Lease-related items	332,546	—	365,753
Other	6,339	4,177	5,201
<b>Total deferred tax assets</b>	<b>448,406</b>	<b>97,420</b>	<b>456,388</b>
Valuation allowance	(5,068)	(428)	(6,755)
<b>Net deferred tax assets</b>	<b>443,338</b>	<b>96,992</b>	<b>449,633</b>
<b>Deferred tax liabilities:</b>			
Fixed assets	(73,159)	(73,467)	(71,132)
Intangible assets	(261,773)	(265,468)	(264,198)
Debt restructuring	(15,551)	(20,023)	(12,112)
Lease-related items	(341,278)	(24,646)	(358,038)
Investments in joint ventures	(14,942)	(15,567)	(15,874)
Other	(1,911)	(2,024)	(1,100)
<b>Total deferred tax liabilities</b>	<b>(708,614)</b>	<b>(401,195)</b>	<b>(722,454)</b>
	<b>\$ (265,276)</b>	<b>\$ (304,203)</b>	<b>\$ (272,821)</b>

Effective fiscal 2018, the Tax Act includes changes to the amount of tax deductible business interest expense available in a taxable year. Generally, the amount of deductible business interest that can be deducted in a current taxable year cannot exceed the sum of 30% of the taxpayer's adjusted taxable income for the year, plus the taxpayer's business interest income for the year. Effective fiscal 2020, the CARES Act amended the amount of deductible business interest that can be deducted in a current taxable year to not exceed 50% of the taxpayers adjusted taxable income for tax years 2019 and 2020. The amount of business interest expense disallowed as a deduction in the current year may be carried forward indefinitely. As of October 31, 2020, the Company has recorded a deferred tax asset of \$19.3 million reflecting the benefit of \$83.9 million in interest limitation carryforwards.

In assessing the realizability of deferred tax assets, the Company considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. With the exception to certain state net operating losses discussed below, management believes that it is more likely than not that the Company will realize the benefits of these deductible differences. This is based upon future reversals of existing taxable temporary differences and projections for future taxable income over the periods in which the deferred tax assets are deductible. The Company considers the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies in making this assessment.

As of October 31, 2020, the Company has recorded a deferred tax asset of \$2.5 million reflecting the benefit of \$45.6 million in state income tax net operating loss carryforwards, which will begin to expire in fiscal 2020. The Company has recorded a deferred tax asset of \$0.9 million reflecting the benefit of \$3.8 million of federal income tax net operating loss carryforwards, which will begin to expire

**PET ACQUISITION LLC**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
**(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)**

in fiscal 2033. The Company believes that it is more likely than not that the state net operating loss carryforward will not be realized. In recognition of this risk, the Company recorded a valuation allowance of \$2.5 million on the deferred tax asset related to these state net operating loss carryforwards as of October 31, 2020. The Company recorded a deferred tax asset of \$3.4 million for certain state tax credits as of October 31, 2020. The Company believes it is more likely than not that these credits will not be realized and has recorded a \$2.8 million valuation allowance related to these credits. If or when recognized, the tax benefits related to any reversal of the valuation allowance on deferred tax assets will be accounted for as a reduction of income tax expense.

Unrecognized tax benefits were not material as of February 1, 2020, February 2, 2019, and October 31, 2020. Changes in unrecognized tax benefits were not material during fiscal 2019 and 2018, and the thirty-nine week periods ended October 31, 2020 and November 2, 2019. The Company does not anticipate that unrecognized tax benefits will significantly increase or decrease over the next 12 months. The Company recognizes interest and penalties related to unrecognized tax benefits as a component of income tax expense.

The Company is no longer subject to examination for U.S. federal income tax for periods prior to fiscal 2015. The Company is no longer subject to examination by state tax authorities for tax periods prior to fiscal 2012. The Company is currently under audit by various state jurisdictions for various years. Though the estimated completion dates of these audits are not known, it is possible that these audits will be completed within the next 12 months. In addition, the Company does not foresee other material changes to the federal or state uncertain tax positions affecting income tax expense within the next 12 months. The Company has no material foreign operations.

PET ACQUISITION LLC

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd  
(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)

15. Accumulated Other Comprehensive Income (Loss)

Changes in the balances of each component included in AOCI are presented below (net of tax, in thousands):

	Derivatives	Equity securities	Foreign currency translation adjustment	Total
Balance at February 3, 2018	\$ 2,572	\$ 158	\$ (1,020)	\$ 1,710
Other comprehensive loss before reclassifications	(3,434)	—	(79)	(3,513)
Amounts reclassified from AOCI	1,215	—	—	1,215
Other comprehensive loss	(2,219)	—	(79)	(2,298)
Cumulative effect adjustments	(1,226)	(158)	(223)	(1,607)
Balance at February 2, 2019	\$ (873)	\$ —	\$ (1,322)	\$ (2,195)
Other comprehensive (loss) income before reclassifications	(9,088)	—	952	(8,136)
Amounts reclassified from AOCI	2,058	—	—	2,058
Other comprehensive (loss) income	(7,030)	—	952	(6,078)
Balance at February 1, 2020	<u>\$ (7,903)</u>	<u>\$ —</u>	<u>\$ (370)</u>	<u>\$ (8,273)</u>

	Derivatives	Equity securities	Foreign currency translation adjustment	Total
Balance at February 1, 2020	\$ (7,903)	\$ —	\$ (370)	\$ (8,273)
Other comprehensive loss before reclassifications	(77)	—	(3,747)	(3,824)
Amounts reclassified from AOCI	5,846	—	—	5,846
Other comprehensive income (loss)	5,769	—	(3,747)	2,022
Balance at October 31, 2020	<u>\$ (2,134)</u>	<u>\$ —</u>	<u>\$ (4,117)</u>	<u>\$ (6,251)</u>

	Derivatives	Equity securities	Foreign currency translation adjustment	Total
Balance at February 2, 2019	\$ (873)	\$ —	\$ (1,322)	\$ (2,195)
Other comprehensive loss before reclassifications (unaudited)	(9,030)	—	(143)	(9,173)
Amounts reclassified from AOCI (unaudited)	694	—	—	694
Other comprehensive loss (unaudited)	(8,336)	—	(143)	(8,479)
Balance at November 2, 2019 (unaudited)	<u>\$ (9,209)</u>	<u>\$ —</u>	<u>\$ (1,465)</u>	<u>\$ (10,674)</u>

**PET ACQUISITION LLC**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS, Cont'd**  
**(Information for the thirty-nine weeks ended November 2, 2019 is unaudited)**

**16. Commitments and Contingencies**

***Baseball Stadium Naming Rights Commitment***

In March 2003, the Company entered into an agreement with San Diego Ballpark Funding LLC and Padres L.P. to name the San Diego Padres' new stadium Petco Park. The naming rights include signage, advertising and other promotional benefits. The agreement term is 22 years. Pursuant to the agreement, the Company pays an annual contract fee. Fees for fiscal 2019 and 2018 were \$4.0 million and \$3.8 million, respectively. Fees for both of the thirty-nine weeks ended October 31, 2020 and November 2, 2019 were \$3.0 million. These fees are included in selling, general and administrative expenses in the consolidated statements of loss and comprehensive loss, and will be adjusted by the maximum annual change related to the San Diego consumer price index per year through 2026.

***COVID-19***

The COVID-19 pandemic has been a highly disruptive economic and societal event that has affected the business and has had a significant impact on consumer shopping behavior. To serve pet parents while also providing for the safety of employees, the Company has adapted certain aspects of the business. Throughout the crisis, the Company continues to monitor the rapidly evolving situation and will continue to adapt its operations to address federal, state and local standards, meet the needs of pets and pet parents, and implement standards that the Company believes to be in the best interest of the safety and well-being of its employees. The duration and severity of the pandemic remains uncertain.

***Litigation***

The Company is involved in the legal proceedings and is subject to other claims and litigation arising in the ordinary course of its business. The Company has made accruals with respect to certain of these matters, where appropriate, which are reflected in the Company's consolidated financial statements but are not, individually or in the aggregate, considered material. For other matters, the Company has not made accruals because management has not yet determined that a loss is probable or because the amount of loss cannot be reasonably estimated. While the ultimate outcome of the matters cannot be determined, the Company currently does not expect that these matters will have a material adverse effect on its consolidated financial statements. The outcome of any litigation is inherently uncertain, however, and if decided adversely to the Company, or if the Company determines that settlement of particular litigation is appropriate, the Company may be subject to liability that could have a material adverse effect on its consolidated financial statements.

**PET ACQUISITION LLC**  
**SCHEDULE I – CONDENSED FINANCIAL INFORMATION OF**  
**PET ACQUISITION LLC**  
**(PARENT COMPANY)**

All operating activities of the Company are conducted by the subsidiaries. PET Acquisition LLC is a holding company and does not have any material assets or conduct business operations other than investments in subsidiaries. The Senior Secured Credit Facilities and Floating Rate Senior Notes of Petco Animal Supplies, Inc., a wholly owned subsidiary of PET Acquisition LLC, contain provisions whereby Petco Animal Supplies, Inc. has restrictions on the ability to pay dividends, loan funds and make other upstream distributions to PET Acquisition LLC.

These condensed parent company financial statements have been prepared using the same accounting principles and policies described in the notes to the consolidated financial statements. Refer to the consolidated financial statements and notes presented above for additional information and disclosures with respect to these condensed financial statements.

**PET ACQUISITION LLC**  
**SCHEDULE I – CONDENSED FINANCIAL INFORMATION OF**  
**PET ACQUISITION LLC**  
**(PARENT COMPANY)**  
**BALANCE SHEETS**  
**(In thousands)**

	February 1, 2020	February 2, 2019	October 31, 2020
<b>ASSETS</b>			
Cash and cash equivalents	\$ 100,002	\$ 100,002	\$ 100,002
Other current assets	1,487	538	2,217
Other long-term assets	139	135	142
Investment in subsidiary	599,549	665,161	590,844
Total assets	<u>\$ 701,177</u>	<u>\$ 765,836</u>	<u>\$ 693,205</u>
<b>LIABILITIES AND MEMBERS' EQUITY</b>			
Current liabilities	\$ 17	\$ —	\$ 24
Senior notes	131,703	127,839	131,703
Other liabilities	66	88	3,029
Total liabilities	<u>131,786</u>	<u>127,927</u>	<u>134,756</u>
Members' equity:			
Members' interest	1,358,130	1,347,622	1,365,490
Accumulated deficit	(780,466)	(707,518)	(800,790)
Accumulated other comprehensive loss	(8,273)	(2,195)	(6,251)
Total members' equity	<u>569,391</u>	<u>637,909</u>	<u>558,449</u>
Total liabilities and members' equity	<u>\$ 701,177</u>	<u>\$ 765,836</u>	<u>\$ 693,205</u>

**PET ACQUISITION LLC**  
**SCHEDULE I – CONDENSED FINANCIAL INFORMATION OF**  
**PET ACQUISITION LLC**  
**(PARENT COMPANY)**  
**STATEMENTS OF LOSS**  
**(In thousands)**

	<b>Fiscal years ended</b>		<b>Thirty-nine weeks ended</b>	
	<b>February 1, 2020</b>	<b>February 2, 2019</b>	<b>October 31, 2020</b>	<b>November 2, 2019</b>
	<b>(52 weeks)</b>	<b>(52 weeks)</b>		<b>(unaudited)</b>
Equity in loss of subsidiary	\$ (92,967)	\$ (412,989)	\$ (18,087)	\$ (86,422)
Selling, general, and administrative expenses	(4)	(4)	(6)	(3)
Interest expense, net	(3,851)	(1,008)	(2,961)	(2,889)
Loss before income taxes	(96,822)	(414,001)	(21,054)	(89,314)
Income tax benefit	(949)	(213)	(730)	(612)
Net loss	<u>\$ (95,873)</u>	<u>\$ (413,788)</u>	<u>\$ (20,324)</u>	<u>\$ (88,702)</u>

**PET ACQUISITION LLC**  
**SCHEDULE I – CONDENSED FINANCIAL INFORMATION OF**  
**PET ACQUISITION LLC**  
**(PARENT COMPANY)**  
**STATEMENTS OF CASH FLOWS**  
**(In thousands)**

	Fiscal years ended		Thirty-nine weeks ended	
	February 1, 2020 (52 weeks)	February 2, 2019 (52 weeks)	October 31, 2020	November 2, 2019 (unaudited)
Cash flows from operating activities:				
Net loss	\$ (95,873)	\$ (413,788)	\$ (20,324)	\$ (88,702)
Adjustments to reconcile net income to net cash provided in operating activities:				
Equity in loss of subsidiary	92,967	412,989	18,087	86,422
Changes in assets and liabilities	2,906	799	2,237	2,280
Net cash provided by operating activities	—	—	—	—
Net change in cash and cash equivalents	—	—	—	—
Cash and cash equivalents at beginning of year	100,002	100,002	100,002	100,002
Cash and cash equivalents at end of year	<u>\$ 100,002</u>	<u>\$ 100,002</u>	<u>\$ 100,002</u>	<u>\$ 100,002</u>

Shares

Class A Common Stock



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**PROSPECTUS**

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**Goldman Sachs & Co. LLC**

**BofA Securities**

**Citigroup**

**Evercore ISI**

**Credit Suisse**

**UBS Investment Bank**

**Wells Fargo Securities**

**Baird**

**Guggenheim Securities**

Through and including \_\_\_\_\_, 2020 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

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**PART II**  
**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 13. Other Expenses of Issuance and Distribution**

Set forth below are the expenses (other than underwriting discounts) expected to be incurred in connection with the issuance and distribution of the securities registered hereby. With the exception of the SEC registration fee and the FINRA filing fee, the amounts set forth below are estimates.

SEC registration fee	\$ 10,910
FINRA filing fee	15,500
Nasdaq listing fee	*
Printing and engraving expenses	*
Fees and expenses of legal counsel	*
Accounting and consulting fees and expenses	*
Transfer agent and registrar fees	*
Total	\$ *

\* To be filed by amendment.

**Item 14. Indemnification of Directors and Officers**

We are currently organized as a Delaware limited liability company. Prior to the effectiveness of this registration statement, we will convert into a Delaware corporation pursuant to a statutory conversion and change its name to Petco Health and Wellness Company, Inc. Our certificate of incorporation will provide that a director will not be liable to the corporation or its stockholders for monetary damages to the fullest extent permitted by the DGCL. In addition, if the DGCL is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the corporation, in addition to the limitation on personal liability provided for in our certificate of incorporation, will be limited to the fullest extent permitted by the amended DGCL. Our bylaws will provide that the corporation will indemnify, and advance expenses to, any officer or director to the fullest extent authorized by the DGCL.

Section 145 of the DGCL provides that a corporation may indemnify directors and officers and other employees and individuals against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement in connection with specified actions, suits, and proceedings whether civil, criminal, administrative, or investigative, other than a derivative action by or in the right of the corporation, if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. A similar standard is applicable in the case of derivative actions, except that indemnification extends only to expenses, including attorneys' fees, incurred in connection with the defense or settlement of such action and the statute requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation. The statute provides that it is not exclusive of other indemnification that may be granted by a corporation's certificate of incorporation, bylaws, disinterested director vote, stockholder vote, agreement, or otherwise.

Our bylaws will also contain indemnification rights for our directors and our officers. Specifically, our bylaws will provide that we shall indemnify our officers and directors to the fullest extent authorized by the DGCL.

Further, we expect to obtain and maintain directors' and officers' insurance to cover our directors, officers, and some of our employees for certain liabilities.

We expect to enter into written indemnification agreements with our directors and executive officers. The indemnification agreements will provide our directors and executive officers with

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contractual rights to indemnification, and expense advancement and reimbursement, to the fullest extent permitted under the DGCL, subject to certain exceptions contained in those agreements.

The underwriting agreement provides for indemnification by the underwriters of us and our officers and directors, and by us of the underwriters, for certain liabilities arising under the Securities Act or otherwise in connection with this offering. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, or persons controlling us pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

### **Item 15. Recent Sales of Unregistered Securities**

#### **3.00% Senior Notes**

In January 2016, we issued 0.75% Senior Unsecured Notes in an initial aggregate principal amount of \$125,000,000 to Scooby LP and other noteholders. On April 16, 2019, the notes were extended, amended, and restated with an interest rate of 3.00% (with effectiveness from January 26, 2019). The notes were issued pursuant to the exemption from registration afforded by Section 4(a)(2) of the Securities Act and were subsequently extended, amended, and restated on July 25, 2019, February 3, 2020, and September 28, 2020.

### **Item 16. Exhibits and Financial Statement Schedules**

(a) The following documents are filed as exhibits to this Registration Statement:

<u>Exhibit Number</u>	<u>Description of Document</u>
1.1*	Form of Underwriting Agreement
3.1	<a href="#">Form of Second Amended and Restated Certificate of Incorporation</a>
3.2	<a href="#">Form of Second Amended and Restated Bylaws</a>
4.1	<a href="#">Form of Registration Rights Agreement</a>
4.2	<a href="#">Form of Stockholder's Agreement</a>
5.1	<a href="#">Form of Opinion of Gibson, Dunn &amp; Crutcher LLP as to the legality of the securities being registered</a>
10.1†	<a href="#">Form of Petco Health and Wellness Company, Inc. 2020 Equity Incentive Plan</a>
10.2†	<a href="#">Form of Indemnification Agreement</a>
10.3†	<a href="#">Employment Agreement between Petco Animal Supplies, Inc. and Ronald Coughlin, Jr. dated June 4, 2018</a>
10.4†	<a href="#">Employment Agreement between Petco Animal Supplies Stores, Inc. and Michael Nuzzo dated April 8, 2015</a>
10.5†	<a href="#">Amendment to Employment Agreement between Petco Animal Supplies Stores, Inc., Scooby LP, and Michael Nuzzo dated January 26, 2016</a>
10.6†	<a href="#">Employment Agreement between Petco Animal Supplies, Inc. and Darren MacDonald dated May 25, 2019</a>
10.7†	<a href="#">Employment Letter between Petco Animal Supplies Stores, Inc. and Justin Tichy dated September 17, 2018</a>
10.8†	<a href="#">Employment Letter between Petco Animal Supplies Stores, Inc. and Michelle Bonfilio dated October 3, 2018</a>
10.9†	<a href="#">Employment Letter between Petco Animal Supplies Stores, Inc. and Laura Wilkin dated May 2, 2018</a>
10.10†	<a href="#">Release of Claims Agreement between Petco Animal Supplies Stores, Inc., Scooby LP, PET Acquisition LLC, and Laura Wilkin dated August 13, 2019</a>

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<u>Exhibit Number</u>	<u>Description of Document</u>
10.11†	<a href="#">Form of Common Series C Unit Award Agreement</a>
10.12†	<a href="#">Retention Bonus Agreement between Petco Animal Supplies Stores, Inc. and Michelle Bonfilio dated April 1, 2020</a>
10.13†	<a href="#">Second Amended and Restated Special Retention Bonus Agreement between Petco Animal Supplies, Inc. and Michael Nuzzo dated December 3, 2020</a>
10.14	<a href="#">Term Loan Credit Agreement, dated as of January 26, 2016, among Pet Acquisition Merger Sub LLC, as initial borrower, Petco Animal Supplies, Inc., as successor borrower, the Lenders party thereto and Citibank, N.A., as Administrative Agent and Collateral Agent</a>
10.15	<a href="#">Revolving Credit Agreement, dated as of January 26, 2016, among Pet Acquisition Merger Sub LLC, as initial borrower, Petco Animal Supplies, Inc., as successor borrower, the Lenders party thereto and Citibank, N.A., as Administrative Agent and Collateral Agent</a>
10.16	<a href="#">Term Loan Guarantee and Collateral Agreement, dated as of January 26, 2016, among Pet Acquisition Merger Sub LLC, as initial borrower, Petco Animal Supplies, Inc., as successor borrower, each other Grantor party thereto and Citibank, N.A., as Administrative Agent and Collateral Agent</a>
10.17	<a href="#">ABL Guarantee and Collateral Agreement, dated as of January 26, 2016, among Pet Acquisition Merger Sub LLC, as initial borrower, Petco Animal Supplies, Inc., as successor borrower, each other Grantor party thereto and Citibank, N.A., as Administrative Agent and Collateral Agent</a>
10.18	<a href="#">Intercreditor Agreement, dated as of January 26, 2016, among Citibank, N.A., as ABL Agent and Initial Term Loan Agent, Pet Acquisition Merger Sub LLC, as the initial borrower under the Initial Term Loan Credit Agreement and the ABL Credit Agreement, Petco Animal Supplies, Inc., as the borrower under the Initial term Loan Credit Agreement and the ABL Credit Agreement and each subsidiary of Petco Holdings, Inc. that is a party thereto</a>
10.19	<a href="#">First Amendment Agreement, dated as of June 17, 2016, to the Term Loan Credit Agreement, dated as of January 26, 2016, among, inter alios, Petco Holdings, Inc. LLC (f/k/a Petco Holdings, Inc.), Petco Animal Supplies, Inc., the Lenders from time to time party thereto and Citibank, N.A., as Administrative Agent and Collateral Agent</a>
10.20	<a href="#">Second Amendment Agreement, dated as of January 27, 2017, to the Term Loan Credit Agreement, dated as of January 26, 2016 (as amended by the First Amendment Agreement dated as of June 17, 2016), among, inter alios, Petco Holdings, Inc. LLC (f/k/a Petco Holdings, Inc.), Petco Animal Supplies, Inc., the Lenders from time to time party thereto and Citibank, N.A., as Administrative Agent and Collateral Agent</a>
10.21	<a href="#">First Amendment Agreement, dated as of August 23, 2018, to the Revolving Credit Agreement, dated as of January 26, 2016, among, inter alios, Petco Holdings, Inc. LLC (f/k/a Petco Holdings, Inc.), Petco Animal Supplies, Inc., the Guarantor signatories thereto, the Lenders from time to time party thereto and Citibank, N.A., as Administrative Agent and Collateral Agent</a>
10.22†	<a href="#">Form of Petco Health and Wellness Company, Inc. 2020 Employee Stock Purchase Plan</a>
10.23†	<a href="#">Amended and Restated Employment Agreement between Petco Animal Supplies Stores, Inc. and Ronald Coughlin, Jr. dated December 3, 2020</a>
16.1	<a href="#">Letter from KPMG LLP to SEC, dated November 20, 2020</a>
21.1*	List of Subsidiaries
23.1	<a href="#">Form of Consent of Gibson, Dunn &amp; Crutcher LLP (included in 5.1 above)</a>
23.2	<a href="#">Consent of Ernst &amp; Young LLP, Independent Registered Public Accounting Firm</a>
24.1	<a href="#">Power of Attorney (included on the signature page of this Registration Statement)</a>

\* To be filed by amendment.

† Management contract or compensatory plan or arrangement.

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(b) Financial Statement Schedules:

Schedule I

Parent Company Condensed Financial Information required to be filed under this item are set forth on pages F-43 through F-46.

**Item 17. Undertakings**

The undersigned registrant hereby undertakes to provide to the underwriter at the completion specified in the underwriting agreements certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 of 1933 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 of whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that,

(1) For purposes of determining any liability under the Securities Act of 1933, 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 of 1933, 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.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in San Diego, State of California, on the 3rd day of December, 2020.

**PET Acquisition LLC**

By: /s/ Ronald Coughlin, Jr.

Name: Ronald Coughlin, Jr.

Title: Chief Executive Officer

## POWER OF ATTORNEY

Each person whose signature appears below hereby constitutes and appoints Ronald Coughlin, Jr., Michael Nuzzo, and Ilene Eskenazi, and each of them, any of whom may act without joinder of the other, the individual's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for the person and in his or her name, place, and stead, in any and all capacities, to sign this Registration Statement and any or all amendments, including post-effective amendments to the Registration Statement, including a prospectus or an amended prospectus therein and any Registration Statement for the same offering that is to be effective upon filing pursuant to Rule 462 under the Securities Act, and all other documents in connection therewith to be filed with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact as agents or any of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement and Power of Attorney have been signed by the following persons in the capacities indicated on the 3rd day of December, 2020.

<u>Signature</u>	<u>Title</u>
<u>/s/ Ronald Coughlin, Jr.</u> Ronald Coughlin, Jr.	Chief Executive Officer (principal executive officer)
<u>/s/ Michael Nuzzo</u> Michael Nuzzo	Chief Financial Officer and Chief Operating Officer (principal financial and accounting officer)
<u>/s/ Maximilian Biagosch</u> Maximilian Biagosch	Director
<u>/s/ Cameron Breitner</u> Cameron Breitner	Director
<u>/s/ Gary Briggs</u> Gary Briggs	Director
<u>/s/ Nishad Chande</u> Nishad Chande	Director
<u>/s/ Lars Haegg</u> Lars Haegg	Director
<u>/s/ Christy Lake</u> Christy Lake	Director
<u>/s/ Jennifer Pereira</u> Jennifer Pereira	Director
<u>/s/ Christopher J. Stadler</u> Christopher J. Stadler	Director

**FORM OF  
SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF**

**Petco Health and Wellness Company, Inc.  
(a Delaware corporation)**

Petco Health and Wellness Company, Inc., organized and existing under the laws of the State of Delaware, DOES HEREBY CERTIFY AS FOLLOWS:

1. The name of the corporation is Petco Health and Wellness Company, Inc.
2. The original certificate of incorporation was filed with the Secretary of State of the State of Delaware on \_\_\_\_\_, \_\_\_\_\_, 2020 under the name “Petco Health and Wellness Company, Inc.”
3. This Second Amended and Restated Certificate of Incorporation (the “Certificate of Incorporation”) restates, integrates and amends the certificate of incorporation of the Corporation, as amended and/or restated. This Certificate of Incorporation has been duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware (the “DGCL”).
4. The text of the certificate of incorporation of the Corporation is hereby amended and restated by this Certificate of Incorporation to read in its entirety as follows:

**ARTICLE I  
NAME**

The name of the corporation is Petco Health and Wellness Company, Inc. (the “Corporation”).

**ARTICLE II  
AGENT**

The address of the Corporation’s registered office in the State of Delaware is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE III  
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

**ARTICLE IV  
STOCK**

Section 4.1 Authorized Stock. The total number of shares of all classes of capital stock that the Corporation shall have authority to issue is \_\_\_\_\_, consisting of:

\_\_\_\_\_ shares of Class A Common Stock, par value \$0.001 per share ("Class A Common Stock"), \_\_\_\_\_ shares of Class B-1 Common Stock, par value \$0.001 per share ("Class B-1 Common Stock"), \_\_\_\_\_ shares of Class B-2 Common Stock, par value \$0.000001 per share ("Class B-2 Common Stock") and, together with Class A Common Stock and Class B-1 Common Stock, the "Common Stock") and \_\_\_\_\_ shares of Preferred Stock, par value \$0.001 per share (the "Preferred Stock"). The number of outstanding shares of Class B-1 Common Stock and Class B-2 Common Stock must be equal to each other at all times.

#### Section 4.2 Common Stock.

##### (a) Voting.

(i) Generally. Except as otherwise required by the DGCL or as set forth in this Certificate of Incorporation: (A) each holder of record of Class A Common Stock, as such, shall be entitled to vote on all matters on which stockholders generally are entitled to vote, including, without limitation, the election, removal or replacement of directors, (B) each holder of record of Class B-1 Common Stock, as such, shall be entitled to vote on all matters on which stockholders generally are entitled to vote, other than the election, removal or replacement of directors, and (C) each holder of record of Class B-2 Common Stock, as such, shall be entitled to vote only on the election, removal or replacement of directors and shall not be entitled to vote on any other matter. Subject to the foregoing limitation on the voting rights of the Class B-1 Common Stock and the Class B-2 Common Stock, each holder of Class A Common Stock, each holder of Class B-1 Common Stock and each holder of Class B-2 Common Stock shall be entitled to one vote for each share of Common Stock held on any matter upon which they are entitled to vote. There shall be no cumulative voting.

(ii) Class Voting. Except as required by the DGCL or as set forth in this Certificate of Incorporation, on any matter submitted to a vote of the holders of Common Stock, the holders of the Class A Common Stock, the Class B-1 Common Stock and/or the Class B-2 Common Stock, as applicable, entitled to vote on such matter shall vote together as a single class, and not separately as single classes, at any annual meeting or special meeting of the stockholders of the Corporation, or in connection with any action taken by written consent.

(iii) Vote on Amendment to Terms of Preferred Stock. Unless otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation, including any certificate of designations relating to any series of Preferred Stock (each hereinafter referred to as a "Preferred Stock Designation"), that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Preferred Stock Designation).

(b) Dividends. Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Class A Common Stock, the Class B-1 Common Stock and Class B-2 Common Stock with respect to the payment of dividends and other distributions in cash, property or shares of capital stock of the Corporation, dividends and other distributions may be declared and paid on the Class A Common Stock and the Class B-1 Common Stock equally, on a per share basis, out of the assets of the Corporation that are by law available therefor at such times and in such amounts as the Board of Directors in its discretion shall

determine; provided, however, that in the event that such dividend or other distribution is paid in the form of shares of Common Stock or rights to acquire Common Stock, (i) the holders of Class A Common Stock shall receive Class A Common Stock or rights to acquire Class A Common Stock, as the case may be, and (ii) the holders of Class B-1 Common Stock shall receive Class B-1 Common Stock or rights to acquire Class B-1 Common Stock, as the case may be. In the event that any shares of Class B-1 Common Stock or any right to acquire any shares of Class B-1 Common Stock are issued as a dividend or other distribution to the holders of Class B-1 Common Stock, a corresponding number of shares of Class B-2 Common Stock or right to acquire a corresponding number of shares of Class B-2 Common Stock, respectively, shall be issued pro rata to the holders of Class B-2 Common Stock as a dividend or distribution. Except as otherwise provided under this Certificate of Incorporation, dividends and other distributions shall not be declared by the Board of Directors or paid in respect of Class B-2 Common Stock. Notwithstanding the foregoing, the Board of Directors may declare and pay a dividend or other distribution per share of Class A Common Stock or Class B-1 Common Stock that is not equal to the dividend or other distribution declared and paid (whether in the amount of such dividend or distribution payable per share, the form in which such dividend or distribution is payable, the timing of the payment, or otherwise) if the declaration and payment of such unequal dividend or distribution are approved in advance by the affirmative vote (or written consent) of the holders of a majority of the outstanding shares of Class A Common Stock and Class B-1 Common Stock, each voting separately as a class.

(c) Conversion.

(i) Conversion Rights.

(A) Shares of Class A Common Stock shall be convertible at any time at the option of the holder of such shares into an equal number of shares of both Class B-1 Common Stock and Class B-2 Common Stock but only at such time that such holder is, without giving effect to the applicable conversion in question, the record owner of shares of Class B-1 Common Stock or Class B-2 Common Stock. Any such holder converting any of its shares of Class A Common Stock may require that any such shares of Class B-2 Common Stock (that would otherwise be issued to such holder pursuant to such conversion) be issued to any of its Affiliates (as defined in the Stockholder's Agreement) or any holder of Class B-2 Common Stock as may be designated by such requesting holder. Shares of Class B-1 Common Stock shall be convertible at any time into an equal number of shares of Class A Common Stock at the option of the holder of such shares of Class B-1 Common Stock, with a corresponding number of shares of Class B-2 Common Stock being transferred to the Corporation pursuant to Section 4.2(c)(ii)(C) as a condition of such conversion.

(B) Upon any transfer (excluding the grant of a pledge, lien, charge or grant of a security interest, except as provided in the next succeeding sentence) of shares of Class B-1 Common Stock by the Principal Stockholder (as defined in the Stockholder's Agreement to be entered into by and between the Corporation and \_\_\_\_\_ (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "Stockholder's Agreement")), which is, as of \_\_\_\_\_, indirectly controlled by (1) certain funds or vehicles (the "CVC Funds") advised and/or managed by CVC (as defined in the Stockholder's Agreement) and (2) Canada Pension Plan Investment Board, a Canadian company ("CPP Investments," and together with CVC, the CVC Funds and their respective Affiliates (as defined in the Stockholder's Agreement) and successors, the "Sponsors"), to any person other than the Sponsors, such shares of Class B-1 Common Stock shall automatically

convert into shares of Class A Common Stock, effective immediately upon such transfer, provided, however, that as a condition of the shares of Class B-1 Common Stock being transferred and converted as provided in this subsection (B), a corresponding number of shares of Class B-2 Common Stock must be transferred to the Corporation pursuant to Section 4.2(c)(ii)(C). Any transfer of shares of Class B-1 Common Stock in violation of this subsection (B) shall be void ab initio, and no conversion of the Class B-1 Common Stock shall occur. The Principal Stockholder may elect for the automatic conversion provisions of this subsection (B) to apply to any Affiliate (as defined in the Stockholder's Agreement) of the Principal Stockholder, in each case by written notice delivered to the Corporation at its principal office prior to such pledge, lien, charge, grant of a security interest or transfer, as applicable.

(ii) Conversion Mechanics.

(A) Each conversion of shares pursuant to Section 4.2(c)(i)(A) shall be effected, in the case of certificated shares, by the surrender of the certificate or certificates representing the shares to be converted at the principal office of the Corporation at any time during normal business hours and, in the case of both certificated and uncertificated shares, by delivery to the Corporation at its principal office of prior written notice by the holder of such shares stating the number of shares that any such holder desires to so convert and identifying the holder of Class B-2 Common Stock that will transfer a corresponding number of Class B-2 Common Stock to the Corporation in connection with such conversion. Such conversion shall be deemed to have been effected as of the close of business on the date on which such certificate or certificates representing the shares of Class B-1 Common Stock being converted, if applicable, have been surrendered to the Corporation and the same number of shares of Class B-2 Common Stock have been transferred to the Corporation (in accordance with Section 4.2(c)(ii)(C)), and at such time, the rights of any such holder with respect to the converted class of Common Stock shall cease. In the case of any conversion pursuant to Section 4.2(c)(i)(B), such conversion shall be deemed to occur automatically, and without any further action by the Corporation, the transferee or the transferor (except that, prior to the conversion, such transferor must cause an equal number of shares of Class B-2 Common Stock to be transferred and delivered to the Corporation at its principal office in accordance with Section 4.2(c)(ii)(C) hereof), simultaneously with the transfer of the relevant shares of Class B-1 Common Stock to the transferee. Simultaneously with the conversion, the person or persons in whose name or names the new shares of Common Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of such new shares.

(B) In the case of certificated shares, promptly after such surrender and the receipt by the Corporation of the written notice from such holder, the Corporation shall issue and deliver, in accordance with the surrendering holder's instructions, the certificate or certificates for the Common Stock issuable upon such conversion and a certificate representing any shares of Common Stock that were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but that were not converted. The issuance of certificates for the Common Stock upon conversion shall be made without charge to the holder or holders of such shares. Notwithstanding the previous sentence, the holder shall pay (or reimburse the Corporation for) any and all documentary, stamp or similar issue or transfer taxes in respect of the conversion or other cost incurred by the Corporation or the holder in connection with such conversion.

(C) As a condition precedent to any conversion or transfer of Class B-1 Common Stock pursuant to Section 4.2(c)(i)(A) or Section 4.2(c)(i)(B), respectively,

the converting or transferring holder, as applicable, shall cause an equal number of shares of Class B-2 Common Stock to be transferred to the Corporation. Any transfer of Class B-2 Common Stock that occurs pursuant to this Section 4.2(c)(ii)(C) shall be deemed effective at the time that the corresponding conversion is deemed to be effective or transfer is deemed to occur, and at such time, the rights of any holder of Class B-2 Common Stock with respect to such stock shall cease.

(iii) Amendment to Conversion Rights. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, Section 4.2(c) may be amended, altered, repealed or rescinded, in whole or in part, or any provision inconsistent with Section 4.2(c) may be adopted, in addition to any other vote required by the DGCL or this Certificate of Incorporation, only by the affirmative vote of the holders of at least a majority of the shares of Class B-1 Common Stock then outstanding.

(d) Transfers. The Corporation shall not close its books against the transfer of any share of Common Stock, or of any share of Common Stock issued or issuable upon conversion of shares of Common Stock, in any manner that would interfere with the timely conversion of such shares of Common Stock.

(e) Liquidation. Upon the dissolution, liquidation or winding up of the Corporation, subject to the rights of the holders of any outstanding series of Preferred Stock, the holders of shares of Class A Common Stock, Class B-1 Common Stock and Class B-2 Common Stock shall be entitled to receive the assets of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares of Common Stock held by them, provided, however, that the aggregate distribution to the holders of Class B-2 Common Stock, as such, shall be limited to the aggregate par value of such holders' then-outstanding shares of Class B-2 Common Stock.

Section 4.3 Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. Subject to limitations prescribed by law and the provisions of this Article IV (including any Preferred Stock Designation), the Board of Directors is hereby authorized to provide by resolution and by causing the filing of a Preferred Stock Designation for the issuance of the shares of Preferred Stock in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designations, powers, preferences, and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions, if any, of the shares of each such series.

Section 4.4 No Class Vote on Changes in Authorized Number of Shares of Stock. Subject to the rights of the holders of any outstanding series of Preferred Stock, the requirements of this Certificate of Incorporation with respect to the outstanding number of shares of Class B-1 Common Stock and Class B-2 Common Stock being equal in number, and Section 4.6, the number of authorized shares of Class A Common Stock, Class B-1 Common Stock, Class B-2 Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of at least a majority of the voting power of the stock outstanding and entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL.

Section 4.5 Redemption; Cancellation. The Class A Common Stock, the Class B-1 Common Stock and the Class B-2 Common Stock are not redeemable. Subject to the requirements of this Certificate of Incorporation with respect to the outstanding number of shares

of Class B-1 Common Stock and Class B-2 Common Stock being equal in number, nothing in this Section 4.5 shall prevent the Corporation from repurchasing shares of Class A Common Stock, Class B-1 Common Stock or Class B-2 Common Stock.

Section 4.6 Reservation of Stock. The Corporation will at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock such number of shares of Class A Common Stock as will from time to time be sufficient to effect the conversion of all outstanding Class B-1 Common Stock for Class A Common Stock.

Section 4.7 Reclassifications, Mergers and Other Transactions.

(a) Proportional Treatment. If the Corporation in any manner subdivides, combines or reclassifies the outstanding shares of Class A Common Stock, Class B-1 Common Stock or Class B-2 Common Stock, the outstanding shares of the other such class shall, concurrently therewith, be subdivided, combined or reclassified in the same proportion and manner such that the same proportionate equity ownership between the holders of outstanding Class A Common Stock, Class B-1 Common Stock and Class B-2 Common Stock on the record date for such subdivision, combination or reclassification is preserved, unless different treatment of the shares of each such class, subject to the requirements of this Certificate of Incorporation with respect to the outstanding number of shares of Class B-1 Common Stock and Class B-2 Common Stock being equal in number, is approved by (i) the holders of a majority of the outstanding Class A Common Stock, (ii) the holders of a majority of the outstanding Class B-1 Common Stock and (iii) the holders of a majority of the outstanding Class B-2 Common Stock, each of (i), (ii) and (iii) voting as separate classes.

(b) Maintenance.

(i) The Corporation shall undertake all actions, including, without limitation, a reclassification, dividend, subdivision, combination or recapitalization, with respect to the shares of Class B-1 Common Stock and Class B-2 Common Stock necessary to maintain at all times a one-to-one ratio between such classes of stock.

(ii) The Corporation shall not consolidate, merge, combine or consummate any other transaction in which shares of Class A Common Stock are exchanged for or converted into other stock or securities, or the right to receive cash and/or any other property, unless in connection with any such consolidation, merger, combination or other transaction each share of Class B-1 Common Stock and each share of Class B-2 Common Stock, on a combined basis, shall be entitled to be exchanged for or converted into the same kind and amount of stock or securities, cash and/or any other property, as the case may be, into which or for which each share of Class A Common Stock is exchanged or converted; provided, that the consideration for each share of Class B-1 Common Stock and Class B-2 Common Stock on a combined basis shall be deemed the same kind and amount into which or for which each share of Class A Common Stock is exchanged or converted, so long as any differences in the kind and amount of stock or securities, cash and/or any other property are intended (as determined by the Board of Directors in good faith) to maintain the relative voting and economic rights of the Class B-1 Common Stock and the Class B-2 Common Stock relative to each other and the Class A Common Stock; provided, further, that the foregoing provisions of this Section 4.7(b)(ii) shall not apply to any action or transaction (including any consolidation, merger or combination) approved by (A) the holders of a majority of the outstanding Class A Common Stock and (B) the holders of a

majority of the outstanding Class B-1 Common Stock, each of (A) and (B) voting as separate classes.

Section 4.8 Class B-2 Transfer Restriction. No holder of shares of Class B-2 Common Stock may, directly or indirectly, offer, sell, gift, assign or transfer (whether by merger, consolidation, conversion, operation of law or otherwise) (a “Transfer”) any shares of Class B-2 Common Stock other than to the Corporation or to any Affiliate (as defined in the Stockholder’s Agreement) of such holder, the Principal Stockholder, a Sponsor or any other person designated by the Principal Stockholder. Transfer shall include the grant of a pledge, lien, charge or grant of a security interest in shares of Class B-2 Common Stock but shall not include any such pledge, lien, charge or grant in favor of any person to whom the Principal Stockholder pledged or otherwise granted a security interest in any of the Principal Stockholder’s shares of Common Stock (or any transfer of such shares in connection with any foreclosure thereon). Any attempt by a holder of Class B-2 Common Stock to Transfer all or any part of its shares of Class B-2 Common Stock in violation of this Section 4.8 shall be void ab initio and shall not be effective to Transfer any such shares or any interest therein.

Section 4.9 Legends. All certificates or book entries representing shares of Class B-1 Common Stock and Class B-2 Common Stock shall bear a legend substantially in the following form (or in such other form as the Board of Directors may determine):

THE SECURITIES REPRESENTED BY THIS [CERTIFICATE] [BOOK ENTRY] ARE SUBJECT TO THE RESTRICTIONS (INCLUDING RESTRICTIONS ON TRANSFER, IF ANY) SET FORTH IN THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF THE CORPORATION AS IT MAY BE AMENDED AND/OR RESTATED (A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE CORPORATION AND SHALL BE PROVIDED FREE OF CHARGE TO ANY STOCKHOLDER MAKING A REQUEST THEREFOR).

## ARTICLE V BOARD OF DIRECTORS

Section 5.1 Number. Except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), the Board of Directors shall consist of not fewer than three nor more than 15 directors, the exact number to be determined from time to time solely by resolution of the Board of Directors, subject to the rights granted to the Principal Stockholder pursuant to the Stockholder’s Agreement.

Section 5.2 Classification; Vacancies and Newly Created Directorships; Removal.

(a) Except as may be otherwise provided with respect to directors elected by the separate vote of the holders of one or more series of Preferred Stock provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation) (the “Preferred Stock Directors”), the Board of Directors shall be divided into three classes, designated Class I, Class II and Class III. The Board of Directors shall have the exclusive power to fix the number of directors in each class, subject to the rights granted to the Principal Stockholder pursuant to the Stockholder’s Agreement. Class I directors shall initially serve until the first annual meeting of stockholders following the initial effectiveness of this Section 5.2; Class II directors shall initially serve until the second annual meeting of stockholders following

the initial effectiveness of this Section 5.2; and Class III directors shall initially serve until the third annual meeting of stockholders following the initial effectiveness of this Section 5.2. Commencing with the first annual meeting of stockholders following the initial effectiveness of this Section 5.2, directors of each class, the term of which shall then expire, shall be elected to hold office for a three-year term and until the election and qualification of their respective successors in office or until any such director's earlier death, resignation, removal, retirement or disqualification. In case of any increase or decrease, from time to time, in the number of directors (other than Preferred Stock Directors), the number of directors in each class shall be fixed solely by the Board of Directors (as determined solely by the Board of Directors), subject to the rights granted to the Principal Stockholder pursuant to the Stockholder's Agreement. The Board of Directors is authorized to assign members of the Board of Directors already in office to Class I, Class II or Class III, subject to the rights granted to the Principal Stockholder pursuant to the Stockholder's Agreement.

(b) Subject to the rights of the holders of any outstanding series of Preferred Stock, and unless otherwise required by law, newly created directorships resulting from any increase in the authorized number of directors and any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors, or by the sole remaining director, in each case, in the manner permitted by the Stockholder's Agreement. Any director so chosen shall hold office until the next election of the class, for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified or until any such director's earlier death, resignation, removal, retirement or disqualification. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

(c) Any director (other than any Preferred Stock Director) may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least a majority of the voting power of the stock outstanding and entitled to vote on the election and removal of directors; provided, however, that prior to the Trigger Date (as defined below), any such director may be removed at any time, with or without cause, by the holders of at least a majority of the voting power of the outstanding shares of Common Stock entitled to vote on the election and removal of directors in the manner permitted by the Stockholder's Agreement. Notwithstanding the foregoing, whenever the holders of any class or series are entitled to elect one or more directors by this Certificate of Incorporation (including any Preferred Stock Designation), with respect to the removal without cause of a director or directors so elected, the vote of the holders of the outstanding shares of that class or series, and not the vote of the outstanding shares as a whole, shall apply. For purposes of this Certificate of Incorporation, the "Trigger Date" means the first date on which the Principal Stockholder ceases to beneficially own (directly or indirectly) shares representing at least 50% of the aggregate number of shares of Class A Common Stock and Class B-1 Common Stock issued and outstanding (as adjusted for stock splits, combinations, reclassifications and similar transactions), with such beneficial ownership to be determined in accordance with Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

(d) During any period when the holders of one or more series of Preferred Stock have the separate right to elect additional directors as provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), and upon commencement and for the duration of the period during which such right continues: (i) the then

otherwise total authorized number of directors of the Corporation shall automatically be increased by such number of directors that the holders of any series of Preferred Stock have a right to elect, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions; and (ii) each Preferred Stock Director shall serve until such Preferred Stock Director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, disqualification, resignation or removal. Except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), whenever the holders of one or more series of Preferred Stock having a separate right to elect additional directors cease to have or are otherwise divested of such right pursuant to said provisions, the terms of office of all Preferred Stock Directors elected by the holders of such series of Preferred Stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such Preferred Stock Director shall cease to be qualified as a director and shall cease to be a director) and the total authorized number of directors of the Corporation shall be automatically reduced accordingly.

Section 5.3 Powers. Except as otherwise required by the DGCL or as provided in this Certificate of Incorporation (including any Preferred Stock Designation), the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 5.4 Election; Annual Meeting of Stockholders.

(a) Written Ballot Not Required. The directors of the Corporation need not be elected by written ballot unless the Bylaws of the Corporation (as amended from time to time, the "Bylaws") so provide.

(b) Notice. Advance notice of nominations for the election of directors, and of business other than nominations, to be proposed by stockholders for consideration at a meeting of stockholders of the Corporation shall be given in the manner and to the extent provided in or contemplated by the Bylaws.

(c) Annual Meeting. Any annual meeting of stockholders, for the election of directors and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, either within or without the State of Delaware, on such date, and at such time as the Board of Directors shall fix. The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

## **ARTICLE VI STOCKHOLDER ACTION**

Prior to the Trigger Date, any action required or permitted to be taken at any annual or special meeting of the stockholders of the Corporation may be taken upon a vote of the stockholders at an annual or special meeting duly called or by consent of the stockholders in lieu of a meeting of stockholders. From and after the Trigger Date, any action required or permitted to be taken at any annual or special meeting of the stockholders of the Corporation may be taken only at an annual or special meeting of stockholders duly called and may not be taken by consent of the stockholders in lieu of such a meeting. Notwithstanding the foregoing, any action required or permitted to be taken by the holders of Preferred Stock, voting separately as a series

or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable Preferred Stock Designation relating to such series of Preferred Stock.

## **ARTICLE VII SPECIAL MEETINGS OF STOCKHOLDERS**

Except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), prior to the Trigger Date, a special meeting of the stockholders of the Corporation may be called at any time by the Board of Directors or the Chairman of the Board of Directors and shall be called by the Chairman of the Board of Directors or by the Secretary of the Corporation at the request of the Principal Stockholder and may not be called by any other person or persons. From and after the Trigger Date, except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), a special meeting of the stockholders of the Corporation may be called at any time only by the Board of Directors or the Chairman of the Board of Directors, and may not be called by any other person or persons. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the Board of Directors.

## **ARTICLE VIII BUSINESS COMBINATIONS WITH INTERESTED STOCKHOLDERS**

Section 8.1 Opt Out. The Corporation hereby expressly elects that it shall not be governed by, or otherwise subject to, Section 203 of the DGCL.

Section 8.2 Applicable Restrictions to Business Combinations. Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in time at which any class of Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act with any interested stockholder (as defined below) for a period of three years following the time that such stockholder became an interested stockholder, unless:

(a) prior to such time, the Board of Directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder, or

(b) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (A) persons who are directors and also officers and (B) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer, or

(c) at or subsequent to such time, the business combination is approved by the Board of Directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 $\frac{2}{3}$ % of the outstanding voting stock of the Corporation which is not owned by the interested stockholder.

Section 8.3 Certain Definitions. For purposes of this Article VIII, references to:

(a) “affiliate” means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

(b) “associate,” when used to indicate a relationship with any person, means: (i) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock; (ii) any trust or other estate in which such person has at least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

(c) “business combination,” when used in reference to the Corporation and any interested stockholder of the Corporation, means:

(i) any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (A) with the interested stockholder, or (B) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation this Article VIII is not applicable to the surviving entity;

(ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;

(iii) any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (A) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (B) pursuant to a merger under Section 251(g) of the DGCL; (C) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (D) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (E) any issuance or transfer of stock by the Corporation; provided, however, that in no case under items (C) through (E) of this subsection (iii) shall there be an increase in the interested stockholder’s proportionate share of the stock of any class or series of the Corporation or of the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);

(iv) any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into

the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or

(v) any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in subsections (i) through (iv) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

(d) “control,” including the terms “controlling,” “controlled by” and “under common control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of a corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing this Article VIII, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

(e) “interested stockholder” means any person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (i) is the owner of 15% or more of the outstanding voting stock of the Corporation, or (ii) is an affiliate or associate of the Corporation and was the owner of 15% or more of the outstanding voting stock of the Corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder; and the affiliates and associates of such person; provided, however, that the term “interested stockholder” shall not include (A) any Principal Holder, Principal Holder Direct Transferee or Principal Holder Indirect Transferee, (B) a stockholder that becomes an interested stockholder inadvertently and (x) as soon as practicable divests itself of ownership of sufficient shares so that such stockholder ceases to be an interested stockholder and (y) would not, at any time within the three-year period immediately prior to a business combination between the Corporation and such stockholder, have been an interested stockholder but for the inadvertent acquisition of ownership or (C) any person whose ownership of shares in excess of the 15% limitation set forth herein is the result of any action taken solely by the Corporation; provided, however, that such person specified in this clause (C) shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of the definition of “owner” below but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(f) “owner,” including the terms “own” and “owned,” when used with respect to any stock, means a person that individually or with or through any of its affiliates or associates:

(i) beneficially owns such stock, directly or indirectly; or

(ii) has (A) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange; or (B) the right to vote such stock pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to 10 or more persons; or

(iii) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in clause (B) of subsection (ii) above), or disposing of such stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

(g) "person" means any individual, corporation, partnership, unincorporated association or other entity.

(h) "Principal Holder Direct Transferee" means any person that acquires (other than in a registered public offering), directly from one or more of the Principal Holders, beneficial ownership of 15% or more of the then-outstanding voting stock of the Corporation.

(i) "Principal Holder Indirect Transferee" means any person that acquires (other than in a registered public offering) directly from any Principal Holder Direct Transferee or any other Principal Holder Indirect Transferee beneficial ownership of 15% or more of the then-outstanding voting stock of the Corporation.

(j) "Principal Holders" means the Principal Stockholder, the Sponsors, affiliates of the Sponsors and the Principal Stockholder, [9314601 Canada Inc.], a \_\_\_\_\_ ("9314601 Canada Inc."), affiliates of [9314601 Canada Inc.], and their respective successors; provided, however, that the term "Principal Holders" shall not include (i) the Corporation or any of the Corporation's direct or indirect subsidiaries and (ii) any of the Principal Holders' respective portfolio companies (as such term is commonly understood).

(k) "stock" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(l) "voting stock" means stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity. Every reference in this Article VIII to a percentage or proportion of voting stock shall refer to such percentage or other proportion of the votes of such voting stock.

**ARTICLE IX  
EXISTENCE**

The Corporation shall have perpetual existence.

**ARTICLE X  
AMENDMENT**

Section 10.1 Amendment of the Certificate of Incorporation. Subject to the rights granted to the Principal Stockholder pursuant to the Stockholder's Agreement, the Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Certificate of Incorporation (including any Preferred Stock Designation), and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all powers, preferences and rights of any nature conferred upon stockholders, directors or any other persons by and pursuant to this Certificate of Incorporation (including any Preferred Stock Designation) in its present form or as hereafter amended are granted subject to this reservation. Notwithstanding the foregoing, from and after the Trigger Date, subject to the rights granted to the Principal Stockholder pursuant to the Stockholder's Agreement and except as otherwise provided in this Certificate of Incorporation (including any provision of a Preferred Stock Designation that provides for a greater or lesser vote) and in addition to any other vote required by law, the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal, or adopt any provision inconsistent with, Articles V, VI, VII, VIII, X, XI, XII and XIII of this Certificate of Incorporation.

Section 10.2 Amendment of the Bylaws. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, but subject to the terms of any series of Preferred Stock then outstanding and to the rights granted to the Principal Stockholder pursuant to the Stockholder's Agreement, the Board of Directors is expressly authorized to adopt, amend or repeal the Bylaws. Except as otherwise provided in this Certificate of Incorporation (including the terms of any Preferred Stock Designation that require an additional vote) or the Bylaws, and in addition to any requirements of applicable law and subject to the rights granted to the Principal Stockholder pursuant to the Stockholder's Agreement, (a) prior to the Trigger Date, the affirmative vote of the holders of at least a majority of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal, or adopt any provision inconsistent with, any provision of the Bylaws, and (b) from and after the Trigger Date, the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal, or adopt any provision inconsistent with, any provision of the Bylaws.

**ARTICLE XI  
LIABILITY OF DIRECTORS**

Section 11.1 No Personal Liability. To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

Section 11.2 Amendment or Repeal. Any amendment, repeal or elimination of this Article XI, or the adoption of any provision of this Certificate of Incorporation inconsistent with this Article XI, shall not affect its application with respect to an act or omission by a director occurring before such amendment, adoption, repeal or elimination. If the DGCL hereafter is amended to eliminate or limit the liability of a director, then a director of the Corporation, in addition to the circumstances in which a director is not personally liable as set forth in the preceding sentence, shall not be liable to the fullest extent permitted by the amended DGCL.

## **ARTICLE XII FORUM FOR ADJUDICATION OF DISPUTES**

Section 12.1 Forum. Unless the Corporation, in writing, selects or consents to the selection of an alternative forum: (a) the sole and exclusive forum for any complaint asserting any internal corporate claims (as defined below), to the fullest extent permitted by law, and subject to applicable jurisdictional requirements, shall be the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have, or declines to accept, jurisdiction, another state court or a federal court located within the State of Delaware); and (b) the sole and exclusive forum for any complaint asserting a cause of action arising under the Securities Act of 1933, to the fullest extent permitted by law, shall be the federal district courts of the United States of America. For purposes of this Article XII, “internal corporate claims” means claims, including claims in the right of the Corporation that are based upon a violation of a duty by a current or former director, officer, employee or stockholder in such capacity, or as to which the DGCL confers jurisdiction upon the Court of Chancery. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XII.

Section 12.2 Enforceability. If any provision of this Article XII shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Article XII (including, without limitation, each portion of any sentence of this Article XII containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby.

## **ARTICLE XIII CERTAIN STOCKHOLDER RELATIONSHIPS**

Section 13.1 General. In recognition and anticipation that (a) certain directors, principals, officers, employees and/or other representatives, including any directors designated for nomination and election to the Board of Directors by the Principal Stockholder pursuant to the Stockholder’s Agreement, of the Principal Stockholder, Sponsors and their respective Affiliates (as defined below) may serve as directors, officers or agents of the Corporation, and (b) the Principal Stockholder, Sponsors, [9314601 Canada Inc.] and their respective Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article XIII are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve any of the Principal Stockholder, Sponsors, [9314601

Canada Inc.] or their respective Affiliates and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

Section 13.2 Renunciation of Certain Corporate Opportunities; No Duty to Refrain. To the fullest extent permitted by law, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for the Principal Stockholder, Sponsors, [9314601 Canada Inc.] or any of their respective Affiliates (such Persons (as defined below) being referred to, collectively, as “Identified Persons” and, individually, as an “Identified Person”) and the Corporation or any of its Affiliates. To the fullest extent permitted by law, none of the Identified Persons shall have any duty to refrain from directly or indirectly (a) engaging in the same or similar business activities or lines of business in which the Corporation or any of its Affiliates now engages or proposes to engage or (b) otherwise competing with the Corporation or any of its Affiliates, and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. In the event that any Identified Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for itself, herself or himself and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no duty to communicate or offer such transaction or other business opportunity to the Corporation or any of its Affiliates and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, or offers or directs such corporate opportunity to another Person.

Section 13.3 Opportunities Not Deemed Corporate Opportunities. In addition to and notwithstanding the foregoing provisions of this Article XIII, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (a) the Corporation is neither financially or legally able, nor contractually permitted, to undertake, (b) from its nature, is not in the line of the Corporation’s business or is of no practical advantage to the Corporation or (c) is one in which the Corporation has no interest or reasonable expectancy.

Section 13.4 Definitions. For purposes of this Article XIII, (a) “Affiliate” means, (i) in respect of the Principal Stockholder, any Sponsor or [9314601 Canada Inc.], any Person that, directly or indirectly, is controlled by such Principal Stockholder, Sponsor or [9314601 Canada Inc.], controls such Principal Stockholder, Sponsor or [9314601 Canada Inc.], or is under common control with such Principal Stockholder, Sponsor or [9314601 Canada Inc.] and shall include (A) any principal, member, director, partner, manager, stockholder, officer, employee or other representative, including any directors designated for nomination and election to the Board of Directors by the Principal Stockholder pursuant to the Stockholder’s Agreement, of any of the foregoing (other than the Corporation and any entity that is controlled by the Corporation and any of the respective portfolio companies (as such term is commonly understood) of the Principal Stockholder, any Sponsor or [9314601 Canada Inc.]) and (B) any funds or vehicles advised by respective Affiliates of such Principal Stockholder, Sponsor or [9314601 Canada Inc.] and (ii) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation; and (b) “Person” shall mean any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

Section 13.5 Notice and Consent. To the fullest extent permitted by law, any Person purchasing or otherwise acquiring or holding any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article XIII.

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[This Certificate of Incorporation shall become effective at \_\_\_\_\_ Eastern Time on \_\_\_\_\_, 202\_.]

*[The remainder of this page has been intentionally left blank.]*

IN WITNESS WHEREOF, this Second Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of the Corporation on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

Petco Health and Wellness Company, Inc.

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

SIGNATURE PAGE TO SECOND AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

**FORM OF SECOND AMENDED AND RESTATED BYLAWS****OF****Petco Health and Wellness Company, Inc.  
(a Delaware corporation)****ARTICLE I  
CORPORATE OFFICES**

Section 1.1 Registered Office. The registered office of Petco Health and Wellness Company, Inc. (the “Corporation”) shall be fixed in the Certificate of Incorporation of the Corporation (as amended and/or restated from time to time, the “Certificate of Incorporation”).

Section 1.2 Other Offices. The Corporation may also have an office or offices, and keep the books and records of the Corporation, except as otherwise required by law, at such other place or places, either within or without the State of Delaware, as the Corporation may from time to time determine or the business of the Corporation may require.

**ARTICLE II  
MEETINGS OF STOCKHOLDERS**

Section 2.1 Annual Meeting. Any annual meeting of stockholders, for the election of directors and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, either within or without the State of Delaware, on such date, and at such time as the Board of Directors shall fix. The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

Section 2.2 Special Meeting. Except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the Certificate of Incorporation, including any certificate of designations relating to any series of Preferred Stock (each hereinafter referred to as a “Preferred Stock Designation”), prior to the Trigger Date (as defined in the Certificate of Incorporation), a special meeting of the stockholders of the Corporation may be called at any time by the Board of Directors or the Chairman of the Board of Directors and shall be called by the Chairman of the Board of Directors or by the Secretary of the Corporation at the request of the Principal Stockholder (as defined in the Certificate of Incorporation) and may not be called by any other person or persons. From and after the Trigger Date, except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), a special meeting of the stockholders of the Corporation may be called at any time only by the Board of Directors or the Chairman of the Board of Directors and may not be called by any other person or persons. The Board of Directors may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board of Directors. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the Board of Directors.

Section 2.3 Notice of Stockholders' Meetings.

(a) Whenever stockholders are required or permitted to take any action at a meeting, notice of the place, if any, date, and time of the meeting of stockholders, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining the stockholders entitled to notice of the meeting), the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting and, if the meeting is to be held solely by means of remote communications, the means for accessing the list of stockholders contemplated by Section 2.5 of these Bylaws, shall be given. The notice shall be given not less than 10 nor more than 60 days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, except as otherwise provided by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws. In the case of a special meeting, the purpose or purposes for which the meeting is called also shall be set forth in the notice.

(b) Except as otherwise required by law, notice may be given in writing directed to a stockholder's mailing address as it appears on the records of the Corporation and shall be given: (i) if mailed, when notice is deposited in the U.S. mail, postage prepaid; and (ii) if delivered by courier service, the earlier of when the notice is received or left at such stockholder's address.

(c) So long as the Corporation is subject to the Securities and Exchange Commission's proxy rules set forth in Regulation 14A under the Securities Exchange Act of 1934 (the "Exchange Act"), notice shall be given in the manner required by such rules. To the extent permitted by such rules, notice may be given by electronic transmission directed to the stockholder's electronic mail address, and if so given, shall be given when directed to such stockholder's electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by Section 232(e) of the General Corporation Law of the State of Delaware (the "DGCL"). If notice is given by electronic mail, such notice shall comply with the applicable provisions of Sections 232(a) and 232(d) of the DGCL.

(d) Notice may be given by other forms of electronic transmission with the consent of a stockholder in the manner permitted by Section 232(b) of the DGCL and shall be deemed given as provided therein.

(e) An affidavit that notice has been given, executed by the Secretary of the Corporation, Assistant Secretary or any transfer agent or other agent of the Corporation, shall be *prima facie* evidence of the facts stated in the notice in the absence of fraud. Notice shall be deemed to have been given to all stockholders who share an address if notice is given in accordance with the "householding" rules set forth in Rule 14a-3(e) under the Exchange Act and Section 233 of the DGCL.

(f) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the place, if any, date and time thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be

present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 7.6(a), and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

#### Section 2.4 Organization.

(a) Unless otherwise determined by the Board of Directors, meetings of stockholders shall be presided over by the Chairman of the Board of Directors, or in his or her absence, by another person designated by the Board of Directors. The Secretary of the Corporation, or in his or her absence, an Assistant Secretary, or in the absence of the Secretary and all Assistant Secretaries, a person whom the chairman of the meeting shall appoint, shall act as secretary of the meeting and keep a record of the proceedings thereof.

(b) The date and time of the opening and the closing of the polls for each matter upon which the stockholders shall vote at a meeting of stockholders shall be announced at the meeting by the chairman of the meeting. The Board of Directors may adopt such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of the meeting shall have the authority to adopt and enforce such rules and regulations for the conduct of any meeting of stockholders and the safety of those in attendance as, in the judgment of the chairman, are necessary, appropriate or convenient for the conduct of the meeting. Rules and regulations for the conduct of meetings of stockholders, whether adopted by the Board of Directors or by the chairman of the meeting, may include, without limitation, establishing: (i) an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies and such other persons as the chairman of the meeting shall permit; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; (v) limitations on the time allotted for consideration of each agenda item and for questions and comments by participants; (vi) regulations for the opening and closing of the polls for balloting and matters which are to be voted on by ballot (if any); and (vii) procedures (if any) requiring attendees to provide the Corporation advance notice of their intent to attend the meeting. Subject to any rules and regulations adopted by the Board of Directors, the chairman of the meeting may convene and, for any or no reason, from time to time, adjourn and/or recess any meeting of stockholders pursuant to Section 2.7. The chairman of the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power to declare that a nomination or other business was not properly brought before the meeting if the facts warrant (including if a determination is made, pursuant to Section 2.10(c)(i) of these Bylaws, that a nomination or other business was not made or proposed, as the case may be, in accordance with Section 2.10 of these Bylaws), and if such chairman should so declare, such nomination shall be disregarded or such other business shall not be transacted.

Section 2.5 List of Stockholders. The Corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, that if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the 10th day before the meeting date. Such list shall be arranged in alphabetical order and shall show the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing in this Section 2.5 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting at least 10 days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting; or (b) during ordinary business hours at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise required by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.5 or to vote in person or by proxy at any meeting of stockholders.

Section 2.6 Quorum. Except as otherwise required by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws, at any meeting of stockholders, the holders of a majority of the voting power of the stock outstanding and entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business; provided, however, that where a separate vote by a class or series or classes or series is required, the holders of a majority of the voting power of the stock of such class or series or classes or series outstanding and entitled to vote on that matter, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to such matter. If a quorum is not present or represented at any meeting of stockholders, then the chairman of the meeting, or the holders of a majority of the voting power of the stock present in person or represented by proxy at the meeting and entitled to vote thereon, shall have power to adjourn or recess the meeting from time to time in accordance with Section 2.7, until a quorum is present or represented. Subject to applicable law, if a quorum initially is present at any meeting of stockholders, the stockholders may continue to transact business until adjournment or recess, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, but if a quorum is not present at least initially, no business other than adjournment or recess may be transacted.

Section 2.7 Adjourned or Recessed Meeting. Any annual or special meeting of stockholders, whether or not a quorum is present, may be adjourned or recessed for any or no reason from time to time by the chairman of the meeting, subject to any rules and regulations adopted by the Board of Directors pursuant to Section 2.4(b). Any such meeting may be

adjourned for any or no reason (and may be recessed if a quorum is not present or represented) from time to time by the holders of a majority of the voting power of the stock present in person or represented by proxy at the meeting and entitled to vote thereon. At any such adjourned or recessed meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting as originally called.

Section 2.8 Voting; Proxies.

(a) Except as otherwise required by law or the Certificate of Incorporation (including any Preferred Stock Designation), each holder of stock of the Corporation entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of such stock held of record by such holder that has voting power upon the subject matter in question.

(b) Except as otherwise required by law, the Certificate of Incorporation (including any Preferred Stock Designation), these Bylaws or any law, rule or regulation applicable to the Corporation or its securities, at each meeting of stockholders at which a quorum is present, all corporate actions to be taken by vote of the stockholders shall be authorized by the affirmative vote of at least a majority of the votes cast, and where a separate vote by a class or series or classes or series is required, if a quorum of such class or series or classes or series is present, such act shall be authorized by the affirmative vote of at least a majority of the votes cast by such class or series or classes or series. Voting at meetings of stockholders need not be by written ballot.

(c) Every stockholder entitled to vote for directors, or on any other matter, shall have the right to do so either in person or by one or more persons authorized to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or an executed new proxy bearing a later date.

Section 2.9 Submission of Information by Director Nominees.

(a) To be eligible to be a nominee for election or re-election as a director of the Corporation under Section 2.10 below, a person must deliver to the Secretary of the Corporation at the principal executive offices of the Corporation the following information:

(i) a written representation and agreement, which shall be signed by such person and pursuant to which such person shall represent and agree that such person: (A) consents to serving as a director if elected and (if applicable) to being named in the Corporation's proxy statement and form of proxy as a nominee, and currently intends to serve as a director for the full term for which such person is standing for election; (B) is not and will not become a party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity: (1) as to how the person, if elected as a

director, will act or vote on any issue or question that has not been disclosed to the Corporation; or (2) that could limit or interfere with the person's ability to comply, if elected as a director, with such person's fiduciary duties under applicable law; (C) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director or nominee that has not been disclosed to the Corporation; and (D) if elected as a director, will comply with all of the Corporation's corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines, and any other Corporation policies and guidelines applicable to directors (which will be promptly provided following a request therefor); and

(ii) all completed and signed questionnaires prepared by the Corporation (including those questionnaires required of the Corporation's directors and any other questionnaire the Corporation determines is necessary or advisable to assess whether a nominee will satisfy any qualifications or requirements imposed by the Certificate of Incorporation or these Bylaws, any law, rule, regulation or listing standard that may be applicable to the Corporation, and the Corporation's corporate governance policies and guidelines) (all of the foregoing, "Questionnaires"). The Questionnaires will be promptly provided following a request therefor.

(b) A nominee for election or re-election as a director of the Corporation under Section 2.10 shall also provide to the Corporation such other information as it may reasonably request. The Corporation may request such additional information as necessary to permit the Corporation to determine the eligibility of such person to serve as a director of the Corporation, including information relevant to a determination whether such person can be considered an independent director.

(c) All written and signed representations and agreements, and the Questionnaires described in Section 2.9(a)(ii) above, shall be considered timely for a nominee for election or re-election as a director of the Corporation under Section 2.10, if provided to the Corporation by the deadlines specified in Section 2.10. All information provided pursuant to this Section 2.9 shall be deemed part of the stockholder's notice submitted pursuant to Section 2.10.

#### Section 2.10 Notice of Stockholder Business and Nominations.

##### (a) Annual Meeting.

(i) Nominations of persons for election to the Board of Directors and the proposal of business other than nominations to be considered by the stockholders may be made at an annual meeting of stockholders only: (A) pursuant to the Corporation's notice of meeting (or any supplement thereto); (B) by or at the direction of the Board of Directors (or any authorized committee thereof); or (C) by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.10(a) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 2.10(a). For the avoidance of doubt, the foregoing clause (C) shall be the exclusive means for a stockholder to make nominations or propose other business at an annual meeting of stockholders (other than a proposal included in the

Corporation's proxy statement pursuant to and in compliance with Rule 14a-8 under the Exchange Act). Notwithstanding anything to the contrary contained in this Section 2.10, for as long as the Stockholder's Agreement (as defined in the Certificate of Incorporation) remains in effect with respect to the Principal Stockholder, the Principal Stockholder shall not be subject to the notice procedures set forth in this Section 2.10 with respect to any annual or special meeting of stockholders.

(ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of the foregoing paragraph, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and, in the case of business other than nominations, such business must be a proper subject for stockholder action. To be timely, a stockholder's notice must be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business (as defined in Section 2.10(c)(ii) below) on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 30 days after such anniversary date, or if no annual meeting was held or deemed to have been held in the preceding year, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the date on which public announcement (as defined in Section 2.10(c)(ii) below) of the date of such meeting is first made by the Corporation. In no event shall an adjournment or recess of an annual meeting, or a postponement of an annual meeting for which notice of the meeting has already been given to stockholders or a public announcement of the meeting date has already been made, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. The number of nominees a stockholder may nominate for election at the annual meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the annual meeting on behalf of the beneficial owner) shall not exceed the number of directors to be elected at such annual meeting. For purposes of this Section 2.10, the fiscal 2020 annual meeting of stockholders shall be deemed to have been held on \_\_\_\_\_, 2020. Such stockholder's notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or re-election as a director: (1) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act; and (2) the information required to be submitted by nominees pursuant to Section 2.9(a) above, including all completed and signed Questionnaires described in Section 2.9(a)(ii) above, which will be promptly provided following a request thereof;

(B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange

Act) in such business of such stockholder and the beneficial owner (within the meaning of Section 13(d) of the Exchange Act), if any, on whose behalf the proposal is made;

(C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made or the other business is proposed:

(1) the name and address of such stockholder, as they appear on the Corporation's books, and the name and address of such beneficial owner;

(2) the class or series and number of shares of stock of the Corporation which are owned of record by such stockholder and such beneficial owner as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of the class or series and number of shares of stock of the Corporation owned of record by the stockholder and such beneficial owner as of the record date for the meeting; and

(3) a representation that the stockholder (or a qualified representative of the stockholder) intends to appear at the meeting to make such nomination or propose such business;

(D) as to the stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the nomination is made or the other business is proposed, as to such beneficial owner, and if such stockholder or beneficial owner is an entity, as to each director, executive, managing member or control person of such entity (any such individual or control person, a "control person"):

(1) the class or series and number of shares of stock of the Corporation which are beneficially owned (as defined in Section 2.10(c)(ii) below) by such stockholder or beneficial owner and by any control person as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of the class or series and number of shares of stock of the Corporation beneficially owned by such stockholder or beneficial owner and by any control person as of the record date for the meeting;

(2) a description of any agreement, arrangement or understanding with respect to the nomination or other business between or among such stockholder, beneficial owner or control person and any other person, including, without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable) and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting;

(3) a description of any agreement, arrangement or understanding (including, without limitation, any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder, beneficial owner or control person, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in

the share price of any class or series of the Corporation's stock, or maintain, increase or decrease the voting power of the stockholder, beneficial owner or control person with respect to securities of the Corporation, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting; and

(4) a representation whether the stockholder or the beneficial owner, if any, will engage in a solicitation with respect to the nomination or other business and, if so, the name of each participant in such solicitation (as defined in Item 4 of Schedule 14A under the Exchange Act) and whether such person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of shares representing at least 50% of the voting power of the stock entitled to vote generally in the election of directors in the case of a nomination, or holders of at least the percentage of the Corporation's stock required to approve or adopt the business to be proposed in the case of other business.

(iii) Notwithstanding anything in Section 2.10(a)(ii) above or Section 2.10(b) below to the contrary, if the record date for determining the stockholders entitled to vote at any meeting of stockholders is different from the record date for determining the stockholders entitled to notice of the meeting, a stockholder's notice required by this Section 2.10 shall set forth a representation that the stockholder will notify the Corporation in writing within five business days after the record date for determining the stockholders entitled to vote at the meeting, or by the opening of business on the date of the meeting (whichever is earlier), of the information required under clauses (ii)(C)(2) and (ii)(D)(1)-(3) of this Section 2.10(a), and such information when provided to the Corporation shall be current as of the record date for determining the stockholders entitled to vote at the meeting.

(iv) This Section 2.10(a) shall not apply to a proposal proposed to be made by a stockholder if the stockholder has notified the Corporation of his or her intention to present the proposal at an annual or special meeting only pursuant to and in compliance with Rule 14a-8 under the Exchange Act and such proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such meeting.

(v) Notwithstanding anything in this Section 2.10(a) to the contrary, in the event that the number of directors to be elected to the Board of Directors at an annual meeting is increased and there is no public announcement by the Corporation naming all of the nominees for directors or specifying the size of the increased Board of Directors made by the Corporation at least 10 days prior to the last day a stockholder may deliver a notice in accordance with Section 2.10(a)(ii) above, a stockholder's notice required by this Section 2.10(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(b) Special Meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting: (i) by or at the direction of the Board of Directors (or any authorized committee thereof); or (ii) provided that one or more directors are to

be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.10(b) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who delivers notice thereof in writing setting forth the information required by Section 2.10(a) above and provides the additional information required by Section 2.9 above. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the notice required by this Section 2.10(b) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the date on which public announcement of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting is first made by the Corporation. The number of nominees a stockholder may nominate for election at the special meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such special meeting. In no event shall an adjournment, recess or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General.

(i) Except as otherwise required by law, only such persons who are nominated in accordance with the procedures set forth in this Section 2.10 shall be eligible to be elected at any meeting of stockholders of the Corporation to serve as directors and only such other business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.10. Except as otherwise required by law, each of the Chairman of the Board of Directors, the Board of Directors or the chairman of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 2.10 (including whether a stockholder or beneficial owner solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in compliance with such stockholder's representation as required by clause (a)(ii)(D)(4) of this Section 2.10). If any proposed nomination or other business is not in compliance with this Section 2.10, then except as otherwise required by law, the chairman of the meeting shall have the power to declare that such nomination shall be disregarded or that such other business shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.10, unless otherwise required by law, or otherwise determined by the Chairman of the Board of Directors, the Board of Directors or the chairman of the meeting, if the stockholder does not provide the information required under Section 2.9 or clauses (a)(ii)(C)(2) and (a)(ii)(D)(1)-(3) of this Section 2.10 to the Corporation within the time frames specified herein, any such nomination shall be disregarded and any such other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. Notwithstanding the foregoing provisions of this Section 2.10, unless otherwise required by law, or otherwise determined by the Chairman of the Board of Directors, the Board of Directors or the chairman of the meeting, if the stockholder (or a qualified representative of the stockholder) does

not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or other business (whether pursuant to the requirements of these Bylaws or in accordance with Rule 14a-8 under the Exchange Act), such nomination shall be disregarded and such other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. To be considered a qualified representative of a stockholder pursuant to the preceding sentence and for purposes of these Bylaws, a person must be a duly authorized officer, manager or partner of such stockholder or authorized by a writing executed by such stockholder (or a reliable reproduction of the writing) delivered to the Corporation prior to the making of such nomination or proposal at such meeting (and in any event not fewer than five days before the meeting) stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders.

(ii) For purposes of this Section 2.10, the “close of business” shall mean 6:00 p.m. local time at the principal executive offices of the Corporation on any calendar day, whether or not the day is a business day, and a “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act. For purposes of clause (a)(ii)(D)(1) of this Section 2.10, shares shall be treated as “beneficially owned” by a person if the person beneficially owns such shares, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder or has shares pursuant to any agreement, arrangement or understanding (whether or not in writing): (A) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both); (B) the right to vote such shares, alone or in concert with others; and/or (C) investment power with respect to such shares, including the power to dispose of, or to direct the disposition of, such shares.

(iii) Nothing in this Section 2.10 shall be deemed to affect any rights of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation (including any Preferred Stock Designation).

Section 2.11 No Action by Written Consent. Prior to the Trigger Date, any action required or permitted to be taken at any annual or special meeting of the stockholders of the Corporation may be taken upon a vote of the stockholders at an annual or special meeting duly called or by consent of the stockholders in lieu of a meeting. From and after the Trigger Date, any action required or permitted to be taken at any annual or special meeting of the stockholders of the Corporation may be taken only at an annual or special meeting of stockholders duly called and may not be taken by written consent of the stockholders in lieu of such a meeting. Notwithstanding the foregoing, any action required or permitted to be taken by the holders of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable Preferred Stock Designation relating to such series of Preferred Stock.

Section 2.12 Inspectors of Election. Before any meeting of stockholders, the Corporation may, and shall if required by law, appoint one or more inspectors of election to act at the meeting and make a written report thereof. Inspectors may be employees of the

Corporation. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chairman of the meeting may, and shall if required by law, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. Inspectors need not be stockholders. No director or nominee for the office of director at an election shall be appointed as an inspector at such election.

Such inspectors shall:

- (a) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the validity of proxies and ballots;
- (b) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors;
- (c) count and tabulate all votes and ballots; and
- (d) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots.

Section 2.13 Meetings by Remote Communications. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211(a)(2) of the DGCL. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication: (a) participate in a meeting of stockholders; and (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that: (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder; (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 2.14 Delivery to the Corporation. Whenever this Article II (or, if applicable, Section 7.6(b)) requires one or more persons (including a record or beneficial owner of stock) to deliver a document or information to the Corporation or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation or other document or agreement), the Corporation shall not be required to accept delivery of such document or information unless the document or information is in writing exclusively (and not in an

electronic transmission) and delivered exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested. For the avoidance of doubt, the Corporation expressly opts out of Section 116 of the DGCL with respect to the delivery of information and documents to the Corporation required by Article II of these Bylaws.

### **ARTICLE III DIRECTORS**

Section 3.1 Powers. Except as otherwise required by the DGCL or as provided in the Certificate of Incorporation (including any Preferred Stock Designation), the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authorities these Bylaws expressly confer upon it, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or the Certificate of Incorporation (including any Preferred Stock Designation) required to be exercised or done by the stockholders.

Section 3.2 Number, Term of Office and Election. Except as otherwise provided for or fixed pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), the Board of Directors shall consist of not fewer than three nor more than 15 directors, the exact number to be determined from time to time solely by resolution of the Board of Directors, subject to the rights granted to the Principal Stockholder pursuant to the Stockholder's Agreement. At any meeting of stockholders at which directors are to be elected, directors shall be elected by a plurality of the votes cast. Directors need not be stockholders unless so required by the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws, wherein other qualifications for directors may be prescribed.

Section 3.3 Vacancies and Newly Created Directorships. Subject to the rights of the holders of any outstanding series of Preferred Stock, and unless otherwise required by law or provided for or fixed pursuant to the Certificate of Incorporation, newly created directorships resulting from any increase in the authorized number of directors and any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled only in the manner provided in and to the extent permitted under the Certificate of Incorporation and the Stockholder's Agreement.

Section 3.4 Resignations and Removal.

(a) Any director may resign at any time upon notice given in writing or by electronic transmission to the Board of Directors, the Chairman of the Board of Directors or the Secretary of the Corporation. Such resignation shall take effect upon delivery, unless the resignation specifies a later effective date or time or an effective date or time determined upon the happening of an event or events. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Directors of the Corporation may only be removed from office in the manner provided in and to the extent permitted in the Certificate of Incorporation and the Stockholder's Agreement.

Section 3.5 Regular Meetings. Regular meetings of the Board of Directors shall be held at such place or places, within or without the State of Delaware, on such date or dates and at such time or times, as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

Section 3.6 Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chairman of the Board of Directors or a majority of the directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the place, within or without the State of Delaware, date and time of such meetings. Notice of each such meeting shall be given to each director, if by mail, addressed to such director at his or her residence or usual place of business, at least five days before the day on which such meeting is to be held, or shall be sent to such director by electronic transmission, or be delivered personally or by telephone, in each case at least 24 hours prior to the time set for such meeting. A notice of special meeting need not state the purpose of such meeting, and, unless indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 3.7 Remote Participation in Meetings. Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.8 Quorum and Voting. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, a majority of the total number of directors then authorized shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and the vote of a majority of the directors present at a duly held meeting at which a quorum is present shall be the act of the Board of Directors. The chairman of the meeting or a majority of the directors present may adjourn the meeting to another time and place whether or not a quorum is present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 3.9 Board of Directors Action by Written Consent Without a Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting, provided that all members of the Board of Directors or committee, as the case may be, consent in writing or by electronic transmission to such action. After an action is taken, the consent or consents relating thereto shall be filed with the minutes or proceedings of the Board of Directors or committee in the same paper or electronic form as the minutes are maintained. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action shall be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

Section 3.10 Chairman of the Board of Directors. The Chairman of the Board of Directors shall preside at meetings of stockholders (or, in his or her absence, another person designated by the Board of Directors) and at meetings of directors and shall perform such other duties as the Board of Directors may from time to time determine. If the Chairman of the Board of Directors is not present at a meeting of the Board of Directors, another director chosen by the Board of Directors shall preside.

Section 3.11 Rules and Regulations. The Board of Directors shall adopt such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings and management of the affairs of the Corporation as the Board of Directors shall deem proper.

Section 3.12 Fees and Compensation of Directors. Unless otherwise restricted by the Certificate of Incorporation, directors may receive such compensation, if any, for their services on the Board of Directors and its committees, and such reimbursement of expenses, as may be fixed or determined by resolution of the Board of Directors.

Section 3.13 Emergency Bylaws. This Section 3.13 shall be operative during any emergency condition as contemplated by Section 110 of the DGCL (an “Emergency”), notwithstanding any different or conflicting provisions in these Bylaws, the Certificate of Incorporation or the DGCL. In the event of any Emergency, or other similar emergency condition, the director or directors in attendance at a meeting of the Board of Directors or a standing committee thereof shall constitute a quorum. Such director or directors in attendance may further take action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the Board of Directors as they shall deem necessary and appropriate. Except as the Board of Directors may otherwise determine, during any Emergency, the Corporation and its directors and officers, may exercise any authority and take any action or measure contemplated by Section 110 of the DGCL.

#### **ARTICLE IV COMMITTEES**

Section 4.1 Committees of the Board of Directors. The Board of Directors may designate one or more committees, each such committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for

approval; or (b) adopting, amending or repealing any bylaw of the Corporation. All committees of the Board of Directors shall keep minutes of their meetings and shall report their proceedings to the Board of Directors when requested or required by the Board of Directors.

Section 4.2 Meetings and Action of Committees. Unless the Board of Directors provides otherwise by resolution, any committee of the Board of Directors may adopt, alter and repeal such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings as such committee may deem proper. A majority of the directors then serving on a committee shall constitute a quorum for the transaction of business by the committee except as otherwise required by law, the Certificate of Incorporation or these Bylaws, and except as otherwise provided in a resolution of the Board of Directors; provided, however, that in no case shall a quorum be less than one-third of the directors then serving on the committee. Unless the Certificate of Incorporation, these Bylaws or a resolution of the Board of Directors requires a greater number, the vote of a majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee.

## **ARTICLE V OFFICERS**

Section 5.1 Officers. The officers of the Corporation shall consist of a Chief Executive Officer and a Secretary of the Corporation. Subject to the terms of the Stockholder's Agreement, the Board of Directors, in its sole discretion, may also elect one or more Chief Financial Officers, Chief Operating Officers, Presidents, Chief Legal Officers, Treasurers, Controllers, Assistant Secretaries, Assistant Treasurers (or officers with similar titles) and such other officers as the Board of Directors may from time to time determine, each of whom shall be elected by the Board of Directors, each to have such authority, functions or duties as set forth in these Bylaws or as determined by the Board of Directors. Each officer shall be elected by the Board of Directors and shall hold office for such term as may be prescribed by the Board of Directors and until such person's successor shall have been duly elected and qualified, or until such person's earlier death, disqualification, resignation or removal. Any number of offices may be held by the same person; provided, however, that no officer shall execute, acknowledge or verify any instrument in more than one capacity if such instrument is required by law, the Certificate of Incorporation or these Bylaws to be executed, acknowledged or verified by two or more officers.

Section 5.2 Compensation. The salaries of the officers of the Corporation and the manner and time of the payment of such salaries shall be fixed and determined by the Board of Directors or by a duly authorized officer and may be altered by the Board of Directors from time to time as it deems appropriate, subject to the rights, if any, of such officers under any contract of employment.

Section 5.3 Removal, Resignation and Vacancies. Subject to the terms of the Stockholder's Agreement, any officer of the Corporation may be removed, with or without cause, by the Board of Directors or by a duly authorized officer, without prejudice to the rights, if any, of such officer under any contract to which it is a party. Any officer may resign at any time upon notice given in writing or by electronic transmission to the Corporation, without

prejudice to the rights, if any, of the Corporation under any contract to which such officer is a party. If any vacancy occurs in any office of the Corporation, the Board of Directors may elect a successor to fill such vacancy for the remainder of the unexpired term and until a successor shall have been duly elected and qualified.

Section 5.4 Chief Executive Officer. The Chief Executive Officer shall have general supervision and direction of the business and affairs of the Corporation, shall be responsible for corporate policy and strategy, and shall report directly to the Board of Directors. Unless otherwise provided in these Bylaws or determined by the Board of Directors, all other officers of the Corporation shall report directly to the Chief Executive Officer or as otherwise determined by the Chief Executive Officer. The Chief Executive Officer shall, if present and in the absence of the Chairman of the Board of Directors, preside at meetings of the stockholders.

Section 5.5 Chief Financial Officer. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors or the Chief Executive Officer may from time to time determine.

Section 5.6 Chief Operating Officer. The Chief Operating Officer shall have general responsibility for the management and control of the operations of the Corporation. The Chief Operating Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors or the Chief Executive Officer may from time to time determine.

Section 5.7 President. The President shall have such powers and perform such duties as are incident to the office of President. The President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors or the Chief Executive Officer may from time to time determine.

Section 5.8 Chief Legal Officer. The Chief Legal Officer shall have such powers and perform such duties as are incident to the office of Chief Legal Officer. The Chief Legal Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors or the Chief Executive Officer may from time to time determine.

Section 5.9 Treasurer. The Treasurer shall supervise and be responsible for all the funds and securities of the Corporation, the deposit of all monies and other valuables to the credit of the Corporation in depositories of the Corporation, borrowings and compliance with the provisions of all indentures, agreements and instruments governing such borrowings to which the Corporation is a party, the disbursement of funds of the Corporation and the investment of its funds, and in general shall perform all of the duties incident to the office of the Treasurer. The Treasurer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer or the Chief Financial Officer may from time to time determine.

Section 5.10 Controller. The Controller shall be the chief accounting officer of the Corporation. The Controller shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer, the Chief Financial Officer or the Treasurer may from time to time determine.

Section 5.11 Secretary. The powers and duties of the Secretary are: (i) to act as Secretary at all meetings of the Board of Directors, of the committees of the Board of Directors and of the stockholders and to record the proceedings of such meetings in a book or books to be kept for that purpose; (ii) to see that all notices required to be given by the Corporation are duly given and served; (iii) to act as custodian of the seal of the Corporation and affix the seal or cause it to be affixed to all certificates of stock of the Corporation and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; (iv) to have charge of the books, records and papers of the Corporation and see that the reports, statements and other documents required by law to be kept and filed are properly kept and filed; and (v) to perform all of the duties incident to the office of Secretary. The Secretary shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors or the Chief Executive Officer may from time to time determine.

Section 5.12 Additional Matters. The Chief Executive Officer and the Chief Financial Officer of the Corporation shall have the authority to designate employees of the Corporation to have the title of Vice President, Assistant Vice President, Assistant Treasurer or Assistant Secretary. Any employee so designated shall have the powers and duties determined by the officer making such designation. The persons upon whom such titles are conferred shall not be deemed officers of the Corporation unless elected by the Board of Directors.

Section 5.13 Checks; Drafts; Evidences of Indebtedness. From time to time, the Board of Directors shall determine the method, and designate (or authorize officers of the Corporation to designate) the person or persons who shall have authority, to sign or endorse all checks, drafts, other orders for payment of money and notes, bonds, debentures or other evidences of indebtedness that are issued in the name of or payable by the Corporation, and only the persons so authorized shall sign or endorse such instruments.

Section 5.14 Corporate Contracts and Instruments; How Executed. Except as otherwise provided in these Bylaws, the Board of Directors may determine the method, and designate (or authorize officers of the Corporation to designate) the person or persons who shall have authority to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances. Unless so authorized, or within the power incident to a person's office or other position with the Corporation, no person shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 5.15 Signature Authority. Unless otherwise determined by the Board of Directors or otherwise provided by law or these Bylaws, contracts, evidences of indebtedness and other instruments or documents of the Corporation may be executed, signed or endorsed: (i) by the Chief Executive Officer or the Chief Operating Officer; or (ii) by the Chief Financial

Officer, Treasurer, Secretary or Controller, in each case only with regard to such instruments or documents that pertain to or relate to such person's duties or business functions.

Section 5.16 Action with Respect to Securities of Other Corporations or Entities. The Chief Executive Officer or any other officer of the Corporation authorized by the Board of Directors or the Chief Executive Officer is authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to any and all shares or other equity interests of any other corporation or entity or corporations or entities, standing in the name of the Corporation. The authority herein granted may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

Section 5.17 Delegation. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding the foregoing provisions of this Article V.

## **ARTICLE VI INDEMNIFICATION AND ADVANCEMENT OF EXPENSES**

### Section 6.1 Right to Indemnification.

(a) Each person who was or is a party or is threatened to be made a party to, or was or is otherwise involved in, any action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative or legislative hearing, or any other threatened, pending or completed proceeding, whether brought by or in the right of the Corporation or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative or other nature (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer (as defined below) of the Corporation or while a director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), or by reason of anything done or not done by him or her in any such capacity, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes, penalties and amounts paid in settlement by or on behalf of the indemnitee) actually and reasonably incurred by such indemnitee in connection therewith, all on the terms and conditions set forth in these Bylaws. Notwithstanding anything in this Article VI to the contrary, (i) except as otherwise required by law or by Section 6.3, no indemnification shall be paid to any such indemnitee with respect to any proceeding brought by or in the right of the Corporation against the indemnitee that is authorized or ratified by the Board of Directors of the Corporation, unless the Board of Directors otherwise determines that indemnification is appropriate; and (ii) except as otherwise required by law or provided in Section 6.4 with respect to suits to enforce rights under this Article VI, the Corporation shall indemnify any such indemnitee in connection with a proceeding, or part thereof, voluntarily initiated by such indemnitee (including claims and counterclaims, whether such counterclaims are asserted by such indemnitee or the Corporation in a proceeding initiated by such indemnitee) only if such proceeding, or part thereof, was

authorized or ratified by the Board of Directors or the Board of Directors otherwise determines that indemnification is appropriate.

(b) To receive indemnification under this Article VI, an indemnitee shall submit a written request to the Secretary of the Corporation. Such request shall include documentation or information that is necessary to determine the entitlement of the indemnitee to indemnification and that is reasonably available to the indemnitee. Upon receipt by the Secretary of the Corporation of such a written request, unless indemnification is required by Section 6.3, the entitlement of the indemnitee to indemnification shall be determined by the following person or persons who shall be empowered to make such determination, as selected by the Board of Directors (except with respect to clause (v) of this Section 6.1(b)): (i) the Board of Directors by a majority vote of the directors who are not parties to such proceeding, whether or not such majority constitutes a quorum; (ii) a committee of such directors designated by a majority vote of such directors, whether or not such majority constitutes a quorum; (iii) if there are no such directors, or if such directors so direct, by independent legal counsel selected by the Corporation in a written opinion to the Board of Directors, a copy of which shall be delivered to the indemnitee; (iv) the stockholders of the Corporation; or (v) in the event that a change of control (as defined below) has occurred, by independent legal counsel (to be mutually agreed upon by the Corporation and the indemnitee, with such agreement not to be unreasonably withheld) in a written opinion to the Board of Directors, a copy of which shall be delivered to the indemnitee. The determination of entitlement to indemnification shall be made and, unless a contrary determination is made, such indemnification shall be paid in full by the Corporation not later than 60 days after receipt by the Secretary of the Corporation of a written request for indemnification. For purposes of this Section 6.1(b), a “change of control” will be deemed to have occurred if, with respect to any particular 24-month period, the individuals who, at the beginning of such 24-month period, constituted the Board of Directors (the “incumbent board”), cease for any reason to constitute at least a majority of the Board of Directors; provided, however, that any individual becoming a director subsequent to the beginning of such 24-month period whose election, or nomination for election by the stockholders of the Corporation, was approved by a vote of at least a majority of the directors then comprising the incumbent board shall be considered as though such individual were a member of the incumbent board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a person other than the Board of Directors. For the avoidance of doubt, a “change of control” for purposes of this Article VI shall not include the initial public offering of the Class A common stock, par value \$0.001 per share, of the Corporation. Furthermore, any reference to an officer of the Corporation in this Article VI shall be deemed to refer exclusively to the Chief Executive Officer and Secretary and any Chief Financial Officer, Chief Operating Officer, President, Chief Legal Officer, Treasurer, Controller, Assistant Secretary, Assistant Treasurer or other officer of the Corporation appointed by the Board of Directors pursuant to Section 5.1, and any reference to an officer of any other enterprise shall be deemed to refer exclusively to an officer appointed by the board of directors or equivalent governing body of such other enterprise pursuant to the certificate of incorporation and bylaws (or equivalent organizational documents) of such other enterprise. The fact that any person who is or was an employee of the Corporation or an employee of any other enterprise has been given or has used the title of “Vice President” or any other title that could be construed to suggest or imply that such person is or may be an officer of

the Corporation or of such other enterprise shall not, by itself, result in such person being constituted as, or being deemed to be, an officer of the Corporation or of such other enterprise for purposes of this Article VI.

Section 6.2 Right to Advancement of Expenses.

(a) In addition to the right to indemnification conferred in Section 6.1, an indemnitee shall, to the fullest extent permitted by law, also have the right to be paid by the Corporation the expenses (including attorneys' fees) incurred in defending any proceeding in advance of its final disposition (hereinafter an "advancement of expenses"), other than a proceeding brought by or in the right of the Corporation against the indemnitee that is authorized or ratified by the Board of Directors; provided, however, that an advancement of expenses shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Article VI or otherwise.

(b) To receive an advancement of expenses under this Section 6.2, an indemnitee shall submit a written request to the Secretary of the Corporation. Such request shall reasonably evidence the expenses incurred by the indemnitee and shall include or be accompanied by the undertaking required by Section 6.2(a). Each such advancement of expenses shall be made within 20 days after the receipt by the Secretary of the Corporation of a written request for advancement of expenses.

Section 6.3 Indemnification for Successful Defense. To the extent that an indemnitee has been successful on the merits or otherwise in defense of any proceeding (or in defense of any claim, issue or matter therein), such indemnitee shall be indemnified under this Section 6.3 against expenses (including attorneys' fees) actually and reasonably incurred in connection with such defense. Indemnification under this Section 6.3 shall not be subject to satisfaction of a standard of conduct, and the Corporation may not assert the failure to satisfy a standard of conduct as a basis to deny indemnification or recover amounts advanced, including in a suit brought pursuant to Section 6.4 (notwithstanding anything to the contrary therein).

Section 6.4 Right of Indemnitee to Bring Suit. In the event that a determination is made that the indemnitee is not entitled to indemnification or if payment is not timely made following a determination of entitlement to indemnification pursuant to Section 6.1(b), if a request for indemnification under Section 6.3 is not paid in full by the Corporation within 60 days after a written request has been received by the Secretary of the Corporation, or if an advancement of expenses is not timely made under Section 6.2(b), the indemnitee may at any time thereafter bring suit against the Corporation in a court of competent jurisdiction in the State of Delaware seeking an adjudication of entitlement to such indemnification or advancement of expenses. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit to the fullest extent permitted by law. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an

advancement of expenses) it shall be a defense that the indemnitee has not met any applicable standard of conduct for indemnification set forth in Section 145(a) or Section 145(b) of the DGCL. Further, in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met any applicable standard of conduct for indemnification set forth in Section 145(a) or Section 145(b) of the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under applicable law, this Article VI or otherwise shall be on the Corporation.

Section 6.5 Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any law, agreement (including any partnership agreement or limited liability company agreement), vote of stockholders or disinterested directors, provisions of an entity's organizational documents (including the Corporation's), or otherwise. Further, the Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of expenses and/or insurance provided by one or more direct or indirect equityholders that have invested in the Corporation and/or certain Affiliates (as defined in the Stockholder's Agreement) of such equityholders (collectively, the "Sponsor"). The Company hereby agrees that, in connection with any Proceeding, it: (i) is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Sponsor to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary); (ii) shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by these Bylaws (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Sponsor; and (iii) irrevocably waives, relinquishes and releases the Sponsor from any and all claims against the Sponsor for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Sponsor on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company hereunder shall affect the foregoing and that the Sponsor shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Sponsor is an express third party beneficiary of this Section 6.5.

Section 6.6 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 6.7 Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent and in the manner permitted by law, and to the extent authorized from time to time, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation.

Section 6.8 Nature of Rights. The rights conferred upon indemnitees in this Article VI shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VI that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

Section 6.9 Settlement of Claims. Notwithstanding anything in this Article VI to the contrary, the Corporation shall not be liable to indemnify any indemnitee under this Article VI for any amounts paid in settlement of any proceeding effected without the Corporation's written consent, which consent shall not be unreasonably withheld.

Section 6.10 Subrogation. In the event of payment under this Article VI, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee (excluding insurance obtained on the indemnitee's own behalf and subject to Section 6.5 above), and the indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.

Section 6.11 Severability. If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law: (a) the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not by themselves invalid, illegal or unenforceable) and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent of the parties that the Corporation provide protection to the indemnitee to the fullest extent set forth in this Article VI.

**ARTICLE VII  
CAPITAL STOCK**

Section 7.1 Certificates of Stock. The shares of the Corporation shall be represented by certificates; provided, however, that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by any two authorized officers of the Corporation certifying the number of shares owned by such holder in the Corporation. Each of the Chief Executive Officer, the President, the Chief Financial Officer, the Chief Operating Officer, the Treasurer, the Controller, the Secretary, or an Assistant Treasurer or Assistant Secretary shall be deemed to have the authority to sign stock certificates. Any or all such signatures may be facsimiles or otherwise electronic signatures. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 7.2 Special Designation on Certificates. If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the registered owner thereof shall be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to this Section 7.2 or Section 151, 156, 202(a) or 218(a) of the DGCL or with respect to this Section 7.2 and Section 151 of the DGCL a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 7.3 Transfers of Stock. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation upon authorization by the registered holder thereof or by such holder's attorney thereunto authorized by a power of attorney duly executed and filed with the Secretary of the Corporation or a transfer agent for such stock, and if such shares are

represented by a certificate, upon surrender of the certificate or certificates for such shares properly endorsed or accompanied by a duly executed stock transfer power and the payment of any taxes thereon; provided, however, that the Corporation shall be entitled to recognize and enforce any lawful restriction on transfer. Transfers may also be made in any manner authorized by the Corporation (or its authorized transfer agent) and permitted by Section 224 of the DGCL.

Section 7.4 Lost Certificates. The Corporation may issue a new share certificate or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate or the owner's legal representative to give the Corporation a bond (or other adequate security) sufficient to indemnify it against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares. The Board of Directors may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

Section 7.5 Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 7.6 Record Date for Determining Stockholders.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjourned meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business (as defined in Section 2.10(c)(ii) above) on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjourned meeting; provided, however, that the Board of Directors may fix a new record date for the determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose

of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(c) Unless otherwise restricted by the Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date for determining stockholders entitled to express consent to corporate action without a meeting is fixed by the Board of Directors, (i) when no prior action of the Board of Directors is required by law, the record date for such purpose shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board of Directors is required by law, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 7.7 Regulations. To the extent permitted by applicable law, the Board of Directors may make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of shares of stock of the Corporation.

Section 7.8 Waiver of Notice. Whenever notice is required to be given under any provision of the DGCL or the Certificate of Incorporation or these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, the Board of Directors or a committee of the Board of Directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these Bylaws.

## **ARTICLE VIII GENERAL MATTERS**

Section 8.1 Fiscal Year. The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board. Unless otherwise fixed by the Board, the fiscal year of the Corporation shall end on the Saturday closest to January 31.

Section 8.2 Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary of the Corporation. If and when so directed by the Board of Directors or a committee thereof,

duplicates of the seal may be kept and used by the Treasurer, the Secretary or by an Assistant Secretary or Assistant Treasurer.

Section 8.3 Reliance Upon Books, Reports and Records. Each director and each member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee member 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 Corporation.

Section 8.4 Subject to Law and Certificate of Incorporation. All powers, duties and responsibilities provided for in these Bylaws, whether or not explicitly so qualified, are qualified by the Certificate of Incorporation (including any Preferred Stock Designation) and applicable law.

Section 8.5 Electronic Signatures, etc. Except as otherwise required by the Certificate of Incorporation (including as otherwise required by any Preferred Stock Designation) or these Bylaws (including, without limitation, as otherwise required by Section 2.14), any document, including, without limitation, any consent, agreement, certificate or instrument, required by the DGCL, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws to be executed by any officer, director, stockholder, employee or agent of the Corporation may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law. All other contracts, agreements, certificates or instruments to be executed on behalf of the Corporation may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law. The terms "electronic mail," "electronic mail address," "electronic signature" and "electronic transmission" as used herein shall have the meanings ascribed thereto in the DGCL.

## **ARTICLE IX AMENDMENTS**

Section 9.1 Amendments. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, but subject to the terms of any series of Preferred Stock then outstanding and to the rights granted to the Principal Stockholder pursuant to the Stockholder's Agreement, the Board of Directors is expressly authorized to adopt, amend or repeal these Bylaws. Except as otherwise provided in the Certificate of Incorporation (including the terms of any Preferred Stock Designation that provides for a greater or lesser vote) or these Bylaws, and in addition to any other vote required by law and subject to the rights granted to the Principal Stockholder pursuant to the Stockholder's Agreement, (a) prior to the Trigger Date, the affirmative vote of the holders of at least a majority of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal, or adopt any provision inconsistent with, any provision of these Bylaws, and (b) from and after the Trigger Date, the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class,

shall be required for the stockholders to adopt, amend or repeal, or adopt any provision inconsistent with, any provision of the Bylaws.

*The foregoing Second Amended and Restated Bylaws were adopted by the Board of Directors on \_\_\_\_\_, 202\_\_, effective as of \_\_\_\_\_, 202\_\_.*

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**REGISTRATION RIGHTS AGREEMENT**

**BY AND AMONG**

**Petco Health and Wellness Company, Inc.**

**AND**

**[Principal Stockholder]**

**DATED AS OF \_\_\_\_\_, 2020**

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This REGISTRATION RIGHTS AGREEMENT (as it may be amended from time to time in accordance with the terms hereof, the "Agreement"), dated as of \_\_\_\_\_, 2020, is made by and among:

- i. Petco Health and Wellness Company, Inc., a Delaware corporation (together with any predecessor entities, the "Company"); and
- ii. \_\_\_\_\_, a \_\_\_\_\_ (together with its Permitted Transferees, the "Principal Stockholder") and, as of the date hereof, a wholly owned subsidiary of Scooby LP, a Delaware limited partnership ("Scooby").

#### RECITALS

WHEREAS, the Company has effected the initial public offering (the "IPO") of the Company's Class A common stock, par value \$0.001 per share (the "Class A Common Stock") and the transactions contemplated by the Company's Registration Statement on Form S-1 (File No. 333- \_\_\_\_\_);

WHEREAS, prior to the completion of the IPO, the Company was controlled by Scooby, an entity owned by certain funds advised and/or managed CVC (as defined herein), Canada Pension Plan Investment Board, a Canadian company (together with its affiliates, "CPPIB"), and certain co-investors ("Scooby Equity Holders");

WHEREAS, in connection with the IPO, the Company, Scooby, and the Scooby Equity Holders effected a series of transactions prior to the IPO through which certain direct equity interests in the Company were transferred to the Principal Stockholder (the "Pre-IPO Transactions");

WHEREAS, after giving effect to the Pre-IPO Transactions and upon completion of the IPO, the Principal Stockholder will directly hold shares of the Company's Class A Common Stock and shares of the Company's Class B-1 common stock, par value \$0.001 per share (the "Class B-1 Common Stock"), which, along with a corresponding number of shares of the Company's Class B-2 common stock, par value \$0.000001 per share (the "Class B-2 Common Stock"), are convertible into an equal number of shares of the Company's Class A Common Stock;

WHEREAS, the Principal Stockholder has requested, and the Company has agreed to provide, registration rights with respect to the Registrable Securities (as hereinafter defined) as set forth in this agreement.

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

**ARTICLE I**

**EFFECTIVENESS**

1.1 Effectiveness. This Agreement shall become effective upon the Closing.

**ARTICLE II**

**DEFINITIONS**

2.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

“Adverse Disclosure” means public disclosure of material non-public information that, in the good faith judgment of the Board of Directors:

(i) would be required to be made in any Registration Statement filed with the SEC by the Company so that such Registration Statement, from and after its effective date, does 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 not misleading when the Company has a bona fide business purpose for preserving such information as confidential; (ii) would reasonably be expected to adversely affect or interfere with any material financing or other material transaction under consideration by the Company; or (iii) would not be required to be made at such time but for the filing, effectiveness or continued use of such Registration Statement when the Company has a bona fide business purpose for preserving such information as confidential.

“Affiliate” means, with respect to any specified Person, (a) any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person. For purposes hereof, (a) the Company and its subsidiaries will not be deemed to be an Affiliate of the Principal Stockholder or any of its parent entities and (b) in no event shall any Affiliate of the Principal Stockholder, CPPIB or CVC include any of their respective portfolio companies (as such term is commonly understood). As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” shall have the meaning set forth in the preamble.

“Beneficial Ownership” has the same meaning given to it in Section 13(d) under the Exchange Act and the rules thereunder, except that, for purposes of this Agreement, (i) Beneficial Ownership shall not be attributed to any Person as a result of any “group” deemed to form as a result of the Stockholder’s Agreement (as defined herein) and (ii) no Person shall be deemed to Beneficially Own any Common Stock to be issued upon the exercise of options, warrants, restricted stock units or similar rights granted pursuant to the Company’s equity compensation plans, unless and until such shares are actually issued. The terms “Beneficially Own” and “Beneficial Owner” shall have correlative meanings.

“Board of Directors” 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 are authorized or required to close.

“Class A Common Stock” shall have the meaning set forth in the recitals.

“Class B-1 Common Stock” shall have the meaning set forth in the recitals.

“Class B-2 Common Stock” shall have the meaning set forth in the recitals.

“Closing” means the closing of the IPO.

“Closing Registrable Securities” means the total number of Registrable Securities as of the Closing, as adjusted for stock splits, recapitalizations and similar transactions.

“Common Stock” means, collectively, all shares of Class A Common Stock, Class B-1 Common Stock and Class B-2 Common Stock.

“Conversion” means the conversion of shares of Class B-1 Common, together with an equal number of shares of Class B-2 Common Stock, into an equal number of shares of Class A Common Stock pursuant to the Company’s Second Amended and Restated Certificate of Incorporation, as it may be further amended from time to time.

“CPPIB” shall have the meaning set forth in the recitals.

“CVC” means CVC as defined in the Stockholder’s Agreement.

“Demand Notice” shall have the meaning set forth in Section 3.1(c).

“Demand Registration” shall have the meaning set forth in Section 3.1(a)(i).

“Demand Registration Request” shall have the meaning set forth in Section 3.1(a)(i).

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

“FINRA” means the Financial Industry Regulatory Authority.

“IPO” shall have the meaning set forth in the Recitals.

“Issuer Free Writing Prospectus” means an issuer free writing prospectus, as defined in Rule 433 under the Securities Act, relating to an offer of the Registrable Securities.

“Loss” shall have the meaning set forth in Section 3.9(a).

“Permitted Transferee” means Permitted Transferee as defined in the Stockholder’s Agreement.

“Person” means and includes an individual, a corporation, a partnership, a limited liability company, a trust, an unincorporated organization, a government or any department or agency thereof, or any entity similar to any of the foregoing.

“Piggyback Notice” shall have the meaning set forth in Section 3.3(a).

“Piggyback Registration” shall have the meaning set forth in Section 3.3(a).

“Prospectus” means (i) the prospectus included in any Registration Statement, all amendments and supplements to such prospectus, including post-effective amendments and supplements, and all other material incorporated by reference in such prospectus, and (ii) any Issuer Free Writing Prospectus.

“Public Offering” means the offer and sale of Registrable Securities for cash pursuant to an effective Registration Statement under the Securities Act (other than a Registration Statement on Form S-4 or Form S-8 or any successor form).

“Registrable Securities” means shall mean any Class A Common Stock currently owned or hereafter acquired by a party hereto, including any Class A Common Stock that may be issued in connection with a Conversion. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (x) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such Registration Statement, (y) such securities shall have been transferred pursuant to Rule 144, or (z) such securities shall have ceased to be outstanding.

“Registration” means registration under the Securities Act of the offer and sale of shares of Class A Common Stock under a Registration Statement. The terms “register,” “registered” and “registering” shall have correlative meanings.

“Registration Expenses” shall have the meaning set forth in Section 3.8.

“Registration Statement” means any registration statement of the Company filed with, or to be filed with, the SEC under the Securities Act, including the related Prospectus, amendments and supplements to such registration statement, including pre- and post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement other than a registration statement (and related Prospectus) filed on Form S-4 or Form S-8 or any successor forms thereto.

“Representatives” means, with respect to any Person, any of such Person’s officers, directors, employees, agents, attorneys, accountants, actuaries, consultants, equity financing partners, advisors or other Person associated with, or acting on behalf of, such Person.

“Rule 144” means Rule 144 under the Securities Act (or any successor rule).

“SEC” means the United States Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and any successor thereto, and any rules or regulations promulgated thereunder, all as the same shall be in effect from time to time.

“Selling Stockholder Information” shall have the meaning set forth in Section 3.9(a).

“Shelf Registration” means any Registration pursuant to Rule 415 under the Securities Act.

“Shelf Registration Request” shall have the meaning set forth in Section 3.1(a)(ii).

“Shelf Registration Statement” means a Registration Statement filed with the SEC pursuant to Rule 415 under the Securities Act.

“Shelf Takedown Request” shall have the meaning set forth in Section 3.2(a).

“Stockholder’s Agreement” means the Stockholder’s Agreement, dated the date hereof, by and among (i) the Company and (ii) the Principal Stockholder.

“Suspension” shall have the meaning set forth in Section 3.1(f).

“Trading Day” means a day on which the principal U.S. securities exchange on which the Class A Common Stock is listed or admitted to trading is open for the transaction of business (unless such trading shall have been suspended for the entire day) or, if the Class A Common Stock is not listed or admitted to trading on such an exchange, Trading Day shall mean a Business Day.

“Transfer” means, with respect to any Registrable Security, any interest therein, or any other securities or equity interests relating thereto, a direct or indirect transfer, sale, exchange, assignment, pledge, hypothecation or other encumbrance or other disposition thereof, including the grant of an option or other right, whether directly or indirectly, whether voluntarily, involuntarily, by operation of law, pursuant to judicial process or otherwise. “Transferred” shall have a correlative meaning.

“Underwritten Offering” means an underwritten offering, including any bought deal or block sale to a financial institution conducted as an Underwritten Offering.

“Underwritten Shelf Takedown” means an Underwritten Offering pursuant to an effective Shelf Registration Statement.

“WKSI” means any Securities Act registrant that is a well-known seasoned issuer as defined in Rule 405 under the Securities Act at the most recent eligibility determination date specified in paragraph (2) of that definition.

## 2.2 Other Interpretive Provisions.

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

(ii) The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and any subsection and Section references are to this Agreement unless otherwise specified.

(iii) The term “including” is not limiting and means “including without limitation.”

(iv) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(v) Whenever the context requires, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

### ARTICLE III

#### REGISTRATION RIGHTS

The Company will perform and comply, and cause each of its subsidiaries to perform and comply, with such of the following provisions as are applicable to them. The Principal Stockholder will perform and comply with such of the following provisions as are applicable thereto.

##### 3.1 Demand Registration.

###### (a) Request for Demand Registration.

(i) Following the occurrence of the IPO, subject to Section 3.4, the Principal Stockholder shall have the right to make a written request from time to time (a “Demand Registration Request”) to the Company for Registration of all or part of the Registrable Securities held by the Principal Stockholder (a “Demand Registration”).

(ii) Each Demand Registration Request shall specify (w) the aggregate amount of Registrable Securities proposed to be registered, (x) the intended method or methods of disposition thereof and (y) whether the Demand Registration Request is for an Underwritten Offering or a Shelf Registration (a “Shelf Registration Request”).

(iii) If a Demand Registration Request is for a Shelf Registration, and the Company is eligible to file a Registration Statement on Form S-3, the Company shall promptly file with the SEC a shelf Registration Statement on Form S-3 pursuant to Rule 415 under the Securities Act relating to the offer and sale of Registrable Securities from time to time in accordance with the intended methods of distribution, subject to all applicable provisions of this Agreement.

(iv) If the Demand Registration Request is for a Shelf Registration and the Company is not eligible to file a Registration Statement on Form S-3, the Company shall promptly file with the SEC a Shelf Registration Statement on Form S-1 or any other form that the Company is then permitted to use pursuant to Rule 415 under the Securities Act (or such other Registration Statement as the Board of Directors may determine to be appropriate) relating to the offer and sale of Registrable Securities from time to time in accordance with the intended methods of distribution.

(v) If on the date of the Shelf Registration Request the Company is a WKSI, then any Shelf Registration Statement may (if the Board of Directors determines it to be appropriate to do so) include an unspecified amount of Registrable Securities to be sold by unspecified beneficial holders; if on the date of the Shelf Registration Request the Company is not a WKSI, then the Shelf Registration Request shall specify the aggregate amount of Registrable Securities to be registered.

(b) Limitation on Registrations. The Company shall not be obligated to take any action to effect any Demand Registration if (i) a Demand Registration or Piggyback Registration was declared effective or an Underwritten Offering was consummated by either the Company or the Principal Stockholder within the preceding 90 days; (ii) the Company has filed another Registration Statement (other than on Form S-8 or Form S-4 or any successor thereto) that has not yet become effective; (iii) the value of the Registrable Securities proposed to be sold is not reasonably expected (in the good faith judgment of the Board of Directors) to yield net proceeds of at least \$25 million, in the case of a Shelf Registration on Form S-3, or in the case of an Underwritten Offering, of at least \$50 million; provided, that, for the purposes of clauses (i) and (ii), any Registration Statement withdrawn pursuant to Section 3.1(c) shall not affect the Company's obligation to effect any Demand Registration.

(c) Demand Withdrawal. The Principal Stockholder may withdraw all or any portion of the Registrable Securities from any registration requested pursuant to Section 3.1(a) at any time prior to the effectiveness of the applicable Registration Statement by delivering written notice to the Company. Upon receipt of a notice or notices withdrawing (i) all of the Registrable Securities included in that Registration Statement or (ii) a number of such Registrable Securities so as to cause the expected net proceeds to fall below the applicable threshold set forth in Section 3.1(b), the Company shall cease all efforts to secure effectiveness of the applicable Registration Statement.

(d) Effectiveness.

(i) The Company shall use reasonable best efforts to cause any Registration Statement filed by it pursuant to this Agreement to become effective as promptly as practicable, subject to all applicable provisions of this Agreement.

(ii) The Company shall use reasonable best efforts to keep any Shelf Registration Statement filed on Form S-3 continuously effective under the Securities Act to permit the Prospectus forming a part of it to be usable by the Principal Stockholder until the earlier of: (A) the date as of which all Registrable Securities have been sold pursuant to that Shelf Registration Statement or another Registration Statement filed under the Securities Act (but in no event prior to the applicable period referred to in Section 4(a)(3) of the Securities Act and Rule 174 thereunder); (B) any date reasonably determined by the Board of Directors of the Company to be appropriate, excluding any date that is fewer than 180 days after the effectiveness of the Registration Statement; and (C) the third anniversary of the effectiveness of the Registration Statement.

(iii) If the Registration Statement filed is a Shelf Registration Statement on any form other than Form S-3 and such Registration Statement was not filed in connection with an Underwritten Offering, the Company shall use reasonable best efforts to keep the Registration Statement continuously effective under the Securities Act until such time as the Company is eligible to file a Shelf Registration Statement filed on Form S-3 covering the Registrable Securities thereon or such shorter period during which all Registrable Securities included in the Registration Statement have actually been sold.

(iv) If the Registration Statement filed is a Shelf Registration Statement on any form other than Form S-3 and such Registration Statement was filed in connection with an Underwritten Offering, the Company shall use reasonable best efforts to keep the Registration Statement continuously effective under the Securities Act, for a period of at least 180 days after the effective date thereof or such other period as the underwriters for any Underwritten Offering may determine to be appropriate, or such shorter period during which all Registrable Securities included in the Registration Statement have actually been sold; provided that such period shall be extended for a period of time equal to the period the Principal Stockholder may be required to refrain from selling any securities included in the Registration Statement at either the request of the Company or an underwriter of the Company pursuant to the provisions of this Agreement.

(e) Delay in Filing; Suspension of Registration. If the filing, initial effectiveness or continued use of a Registration Statement at any time would require the Company to make an Adverse Disclosure, the Company may, upon giving prompt written notice of such action to the Principal Stockholder, delay the filing or initial effectiveness of, or suspend use of, the Registration Statement (a “Suspension”); provided, however, that the Company shall use its reasonable best efforts to avoid exercising a Suspension (i) for a period exceeding 60 days on any one occasion or (ii) for an aggregate of more than 120 days in any 12-month period. In the case of a Suspension, the Principal Stockholder agrees to suspend use of the applicable Prospectus in connection with any sale or purchase, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above. The Company shall immediately notify the Principal Stockholder in writing upon the termination of any Suspension. The Company shall, if necessary, amend or supplement the Prospectus so it does not contain any untrue statement or omission and furnish to the Principal Stockholder such numbers of copies of the Prospectus as so amended or supplemented as the Principal Stockholder may reasonably request. The Company shall, if necessary, supplement or amend the Registration Statement, if required by the registration form used by the Company for the Registration Statement or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder or as may reasonably be requested by the Principal Stockholder.

(f) Priority of Securities in Underwritten Offerings. If the managing underwriter or underwriters of any proposed Underwritten Offering advise the Company in writing that, in its or their opinion, the number of securities requested to be included in the proposed offering exceeds the number that can be sold in that offering without being likely to

have an adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, the number of Registrable Securities to be included shall be reduced to number of other securities that, in the opinion of such managing underwriter or underwriters, can be sold without having such adverse effect.

(g) Participation in Underwritten Offerings. No Person may participate in any Underwritten Offering hereunder unless that Person agrees to sell the Registrable Securities it desires to have covered by the applicable Registration Statement on the basis provided in any underwriting arrangements in customary form and completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements, and other documents required under the terms of the underwriting arrangements; provided that no Person shall be required to make representations and warranties other than those related to title and ownership of their shares and as to the accuracy and completeness of statements made in a Registration Statement, prospectus, offering circular, or other document in reliance upon and conformity with written information furnished to the Company or the managing underwriter by such Person.

3.2 Shelf Takedowns. At any time the Company has an effective Shelf Registration Statement with respect to Registrable Securities, the Principal Stockholder, by notice to the Company specifying the intended method or methods of disposition thereof, may make a written request (a "Shelf Takedown Request") that the Company effect an Underwritten Shelf Takedown of all or a portion of the Registrable Securities that are registered on such Shelf Registration Statement, and as soon as practicable thereafter, the Company shall amend or supplement the Shelf Registration Statement as necessary for such purpose, subject to all applicable provisions of this Agreement.

### 3.3 Piggyback Registration

(a) Participation. If the Company at any time proposes to file a Registration Statement under the Securities Act or to conduct a Public Offering with respect to any offering of its equity securities for its own account or for the account of any other Persons (other than (i) a Registration under Sections 3.1 or 3.2, (ii) a Registration on Form S-4 or Form S-8 or any successor form to such forms, (iii) a Registration of securities solely relating to an offering and sale to employees or directors of the Company or its subsidiaries pursuant to any employee stock plan, employee stock purchase plan, or other employee benefit plan arrangement, (iv) a Registration solely for the registration of securities issuable upon the conversion, exchange or exercise of any then outstanding security of the Company or (v) a Registration relating to a dividend reinvestment plan), then as soon as practicable (but in no event less than 10 Business Days prior to the proposed date of filing of such Registration Statement or, in the case of a Public Offering under a Shelf Registration Statement, the anticipated pricing or trade date), the Company shall give written notice (a "Piggyback Notice") of such proposed filing or Public Offering to the Principal Stockholder, and such Piggyback Notice shall offer the Principal Stockholder the opportunity to register under such Registration Statement, or to sell in such Public Offering, such number of Registrable Securities the Principal Stockholder may request in writing (a "Piggyback Registration"). Subject to Section (b), the Company shall include in such Registration Statement or in such Public Offering as applicable, all such Registrable Securities that are requested to be included therein within five Business Days after the receipt by the Principal Stockholder of any such notice; provided, however, that if at any time after giving

written notice of its intention to register or sell any securities and prior to the effective date of the Registration Statement filed in connection with such Registration, or the pricing or trade date of a Public Offering under a Shelf Registration Statement, the Company determines for any reason not to register or sell or to delay Registration or the sale of such securities, the Company shall give written notice of such determination to the Principal Stockholder and, thereupon, (i) in the case of a determination not to register or sell, shall be relieved of its obligation to register or sell any Registrable Securities in connection with such Registration or Public Offering (but not from its obligation to pay the Registration Expenses in connection therewith), without prejudice, however, to the rights of the Principal Stockholder under Section 3.1 or an Underwritten Shelf Takedown, as the case may be, and (ii) in the case of a determination to delay Registration or sale, in the absence of a request for a Demand Registration or an Underwritten Shelf Takedown, as the case may be, shall also be permitted to delay registering or selling any Registrable Securities. The Principal Stockholder shall have the right to withdraw all or part of its request for inclusion of its Registrable Securities in a Piggyback Registration by giving written notice to the Company of its request to withdraw prior to such Registration the securities being registered in such Piggyback Registration.

(b) Priority of Piggyback Registration. If the managing underwriter or underwriters of any proposed offering of Registrable Securities included in a Piggyback Registration informs the Company and the Principal Stockholder in writing that, in its or their opinion, the number of securities that the Principal Stockholder and any other Persons intend to include in such offering exceeds the number that can be sold in such offering without being likely to have a significant adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, then the securities to be included in such Registration shall be (i) first, one hundred percent (100%) of the securities that the Company proposes to sell, and (ii) second, and only if all the securities referred to in clause (i) have been included, the number of Registrable Securities that, in the opinion of such managing underwriter or underwriters, can be sold without having such adverse effect, with such number to be allocated to the Principal Stockholder and (iii) third, and only if all of the Registrable Securities referred to in clause (ii) have been included in such Registration, any other securities eligible for inclusion in such Registration.

(c) No Effect on Other Registrations. No Registration of Registrable Securities effected pursuant to a request under this Section 3.3 shall be deemed to have been effected pursuant to Section 3.1 or shall relieve the Company of its obligations under Section 3.1.

3.4 Lock-Up Agreements. In connection with each Registration or sale of Registrable Securities pursuant to Section 3.1 or 3.3 conducted as an Underwritten Offering, to the extent required by the applicable managing underwriter, the Principal Stockholder agrees hereby not to, and agrees to execute and deliver a lock-up agreement with the underwriter(s) of such Public Offering restricting its right to, (a) transfer, directly or indirectly, any equity securities of the Company, or (b) enter into any swap or other arrangement that transfers to another any of the economic consequences of ownership of such securities during the period commencing on the date of the final Prospectus relating to such Public Offering and ending on the date specified by the underwriters (such period not to exceed 90 days), in each case, excluding transfers pursuant to any carve-outs in the applicable lock-up agreement. The terms of such lock-up agreements shall be negotiated among the Principal Stockholder, the Company and the underwriters and

shall include customary carve-outs from the restrictions on Transfer set forth therein (it being understood and agreed that the parties shall use commercially reasonable efforts to negotiate carve-outs that would permit any conversion of Class A Common Stock into Class B-1 Common Stock and Class B-2 Common Stock in accordance with the Company's Second Amended and Restated Certificate of Incorporation, as it may be further amended from time to time, including any related issuance of the converted Class B-2 Common Stock to any Principal Holder (as defined under such certificate of incorporation)).

### 3.5 Registration Procedures.

(a) Requirements. In connection with the Company's obligations under Sections 3.1 and 3.3, the Company shall use its reasonable best efforts to effect such Registration and to permit the sale of such Registrable Securities in accordance with the intended method or methods of distribution thereof as expeditiously as reasonably practicable, and in connection therewith the Company shall use its reasonable best efforts to:

(i) as promptly as practicable, prepare the required Registration Statement, including all exhibits and financial statements required under the Securities Act to be filed therewith and Prospectus, and, before filing a Registration Statement or Prospectus or any amendments or supplements thereto, (x) furnish to the underwriters, if any, and to the Principal Stockholder, copies of all documents prepared to be filed, which documents shall be subject to the review of such underwriters and the Principal Stockholder and their respective counsel, (y) make such changes in such documents concerning the Principal Stockholder prior to the filing thereof as it, or its counsel, may reasonably request and (z) except in the case of a Registration under Section 3.3, not file any Registration Statement or Prospectus or amendments or supplements thereto to which the Principal Stockholder, or the underwriters, if any, shall reasonably object;

(ii) prepare and file with the SEC such amendments and post-effective amendments to such Registration Statement and supplements to the Prospectus as may be (x) reasonably requested by the Principal Stockholder with Registrable Securities covered by such Registration Statement or (y) necessary to keep such Registration Statement effective for the period of time required by this Agreement, and comply with provisions of the applicable securities laws with respect to the sale or other disposition of all securities covered by such Registration Statement during such period in accordance with the intended method or methods of disposition by the sellers thereof set forth in such Registration Statement;

(iii) notify the Principal Stockholder and the managing underwriter or underwriters, if any, and (if requested) confirm such notice in writing and provide copies of the relevant documents, as soon as reasonably practicable after notice thereof is received by the Company (a) when the applicable Registration Statement or any amendment thereto has been filed or becomes effective, and when the applicable Prospectus or any amendment or supplement thereto has been filed, (b) of any written comments by the SEC, or any request by the SEC or other federal or state governmental authority for amendments or supplements to such Registration Statement or such Prospectus, or for additional information (whether before or after the effective date of the

Registration Statement) or any other correspondence with the SEC relating to, or which may affect, the Registration, (c) of the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement or any order by the SEC or any other regulatory authority preventing or suspending the use of any preliminary or final Prospectus or the initiation or threatening of any proceedings for such purposes, (d) if, at any time, the representations and warranties of the Company in any applicable underwriting agreement cease to be true and correct in all material respects and (e) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for offering or sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(iv) promptly notify the Principal Stockholder and the managing underwriter or underwriters, if any, when the Company becomes aware of the happening of any event as a result of which the applicable Registration Statement or the Prospectus included in such Registration Statement (as then in effect) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein (in the case of such Prospectus or any preliminary Prospectus, in light of the circumstances under which they were made) not misleading, when any Issuer Free Writing Prospectus includes information that may conflict with the information contained in the Registration Statement, or, if for any other reason it shall be necessary during such time period to amend or supplement such Registration Statement or Prospectus in order to comply with the Securities Act and, as promptly as reasonably practicable thereafter, prepare and file with the SEC, and furnish without charge to the Principal Stockholder and the managing underwriter or underwriters, if any, an amendment or supplement to such Registration Statement or Prospectus, which shall correct such misstatement or omission or effect such compliance;

(v) to the extent the Company is eligible under the relevant provisions of Rule 430B under the Securities Act, if the Company files any Shelf Registration Statement, the Company shall include in such Shelf Registration Statement such disclosures as may be required by Rule 430B under the Securities Act (referring to the unnamed selling security holders in a generic manner by identifying the initial offering of the securities to the Principal Stockholder) in order to ensure that the Principal Stockholder 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;

(vi) prevent, or obtain the withdrawal of, any stop order or other order or notice preventing or suspending the use of any preliminary or final Prospectus;

(vii) promptly incorporate in a Prospectus supplement, Issuer Free Writing Prospectus or post-effective amendment such information as the managing underwriter or underwriters and the Principal Stockholder agree should be included therein relating to the plan of distribution with respect to such Registrable Securities; and make all required filings of such Prospectus supplement, Issuer Free Writing Prospectus or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such Prospectus supplement, Issuer Free Writing Prospectus or post-effective amendment;

(viii) furnish to the Principal Stockholder and each underwriter, if any, without charge, as many conformed copies as the Principal Stockholder or underwriter may reasonably request of the applicable Registration Statement and any amendment or post-effective amendment or supplement thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits (including those incorporated by reference);

(ix) deliver to the Principal Stockholder and each underwriter, if any, without charge, as many copies of the applicable Prospectus (including each preliminary Prospectus) and any amendment or supplement thereto and such other documents as the Principal Stockholder or underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities by the Principal Stockholder or underwriter (it being understood that the Company shall consent to the use of such Prospectus or any amendment or supplement thereto by the Principal Stockholder and the underwriters, if any, in connection with the offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto);

(x) on or prior to the date on which the applicable Registration Statement becomes effective, use its commercially reasonable efforts to register or qualify, and cooperate with the Principal Stockholder, the managing underwriter or underwriters, if any, and their respective counsel, in connection with the Registration or qualification of such Registrable Securities for offer and sale under the securities or “**Blue Sky**” laws of each state and other jurisdiction as the Principal Stockholder or managing underwriter or underwriters, if any, or their respective counsel reasonably request in writing and do any and all other acts or things reasonably necessary or advisable to keep such Registration or qualification in effect for such period as required by Section 3.1, as applicable, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action which would subject it to taxation or general service of process in any such jurisdiction where it is not then so subject;

(xi) cooperate with the Principal Stockholder and the managing underwriter or underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends; and enable such Registrable Securities to be in such denominations and registered in such names as the managing underwriters may request prior to any sale of Registrable Securities to the underwriters;

(xii) cause the Registrable Securities covered by the applicable Registration Statement to be registered with or approved by such other U.S. governmental agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter or underwriters, if any, to consummate the disposition of such Registrable Securities;

(xiii) make such representations and warranties to the Principal Stockholder, and the underwriters or agents, if any, in form, substance and scope as are customarily made by issuers in public offerings similar to the offering then being undertaken;

(xiv) enter into such customary agreements (including underwriting and indemnification agreements) and take all such other actions as the Principal Stockholder or the managing underwriter or underwriters, if any, reasonably request in order to expedite or facilitate the Registration and disposition of such Registrable Securities;

(xv) in the case of an Underwritten Offering, obtain for delivery to the underwriter or underwriters, if any, an opinion or opinions from counsel for the Company dated the date of the closing under the underwriting agreement, in customary form, scope and substance, which opinions shall be reasonably satisfactory to such underwriters and their counsel;

(xvi) in the case of an Underwritten Offering, obtain for delivery to the Company and the managing underwriter or underwriters, with copies to the Principal Stockholder included in such Registration or sale, a comfort letter from the Company's independent certified public accountants or independent auditors (and, if necessary, any other independent certified public accountants or independent auditors of any subsidiary of the Company or any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Registration Statement) in customary form and covering such matters of the type customarily covered by comfort letters as the managing underwriter or underwriters reasonably request, dated the date of execution of the underwriting agreement and brought down to the closing under the underwriting agreement;

(xvii) cooperate with each seller of Registrable Securities and each underwriter, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA;

(xviii) comply with all applicable securities laws and, if a Registration Statement was filed, make available to its security holders, as soon as reasonably practicable, an earnings statement satisfying the provisions of Section 11(a) of the Securities Act and the rules and regulations promulgated thereunder;

(xix) provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by the applicable Registration Statement;

(xx) to cause all Registrable Securities covered by the applicable Registration Statement to be listed on each securities exchange on which any of the Company's equity securities are then listed or quoted and on each inter-dealer quotation system on which any of the Company's equity securities are then quoted.

(xxi) make available upon reasonable notice at reasonable times and for reasonable periods for inspection by any underwriter participating in any disposition to be effected pursuant to such Registration Statement and by any attorney, accountant or other agent retained by any such underwriter, all pertinent financial and other records and pertinent corporate documents and properties of the Company, and cause all of the

Company's officers, directors and employees and the independent public accountants who have certified its financial statements to make themselves available to discuss the business of the Company and to supply all information reasonably requested by any such Person in connection with such Registration Statement;

(xxii) in the case of an Underwritten Offering, cause the senior executive officers of the Company to participate in the customary "road show" presentations that may be reasonably requested by the managing underwriter or underwriters in any such offering and otherwise to facilitate, cooperate with, and participate in each proposed offering contemplated herein and customary selling efforts related thereto;

(xxiii) take no direct or indirect action prohibited by Regulation M under the Exchange Act; and

(xxiv) take all such other commercially reasonable actions as are necessary or advisable in order to expedite or facilitate the disposition of such Registrable Securities in accordance with the terms of this Agreement.

(b) Company Information Requests. The Company may require the Principal Stockholder to furnish to the Company such information regarding the distribution of such securities and such other information relating to the Principal Stockholder as the Company may from time to time reasonably request in writing and the Company may delay the applicable Registration until such time as such information is furnished by the Principal Stockholder. The Principal Stockholder agrees to furnish such information to the Company and to cooperate with the Company as reasonably necessary to enable the Company to comply with the provisions of this Agreement.

(c) Discontinuing Registration. The Principal Stockholder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 3.5(a)(iv), it will discontinue disposition of Registrable Securities pursuant to such Registration Statement until receipt of the copies of the supplemented or amended Prospectus contemplated by Section 3.5(a)(iv), or until it is advised in writing by the Company that the use of the Prospectus may be resumed, and has received copies of any additional or supplemental filings that are incorporated by reference in the Prospectus, or any amendments or supplements thereto, and if so directed by the Company, the Principal Stockholder shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in its possession, of the Prospectus covering such Registrable Securities current at the time of receipt of such notice. In the event the Company shall give any such notice, the period during which the applicable Registration Statement is required to be maintained effective shall be extended by the number of days during the period from and including the date of the giving of such notice to and including the date when each seller of Registrable Securities covered by such Registration Statement either receives the copies of the supplemented or amended Prospectus contemplated by Section 3.5(a)(iv) or is advised in writing by the Company that the use of the Prospectus may be resumed.

### 3.6 Underwritten Offerings.

(a) Shelf and Demand Registrations. If requested by the underwriters for any Underwritten Offering, pursuant to a Registration or sale under Section 3.1, the Company shall enter into an underwriting agreement with such underwriters, such agreement to be reasonably satisfactory in substance and form to each of the Company, the Principal Stockholder and the underwriters, and to contain such representations and warranties by the Company and such other terms as are generally prevailing in agreements of that type, including indemnities no less favorable to the recipient thereof than those provided in Section 3.9. The Principal Stockholder shall cooperate with the Company in the negotiation of the underwriting agreement and shall give consideration to the reasonable suggestions of the Company regarding the form thereof, and such parties shall complete and execute all questionnaires, powers of attorney and other documents reasonably requested by the underwriters and required under the terms of such underwriting arrangements. The Principal Stockholder shall not be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding itself, its title to the Registrable Securities, the intended method of distribution and any other representations as are generally prevailing in agreements of that type, and the aggregate amount of the liability of the Principal Stockholder under such agreement shall not exceed the aggregate amount of proceeds received by such parties from the sale of Registrable Securities in the offering, net of underwriting discounts and commissions but before expenses.

(b) Piggyback Registrations. If the Company proposes to register or sell any of its securities under the Securities Act as contemplated by Section 3.3 and such securities are to be distributed through one or more underwriters, the Company shall, if requested by the Principal Stockholder pursuant to Section 3.3, and subject to the provisions of Section 3.3(b), use its commercially reasonable efforts to arrange for such underwriters to include on the same terms and conditions that apply to the other sellers in such Registration or sale all the Registrable Securities to be offered and sold by the Principal Stockholder among the securities of the Company to be distributed by such underwriters in such Registration or sale. The Principal Stockholder shall be party to the underwriting agreement between the Company and such underwriters and shall complete and execute all questionnaires, powers of attorney and other documents reasonably requested by the underwriters and required under the terms of such underwriting arrangements. The Principal Stockholder shall not be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding itself, its title to the Registrable Securities, the intended method of distribution and any other representations as are generally prevailing in agreements of that type, and the aggregate amount of the liability of the Principal Stockholder under such agreement shall not exceed the aggregate amount of proceeds received by such parties from the sale of Registrable Securities in the offering, net of underwriting discounts and commissions but before expenses.

(c) Selection of Underwriters. In the case of an Underwritten Offering under Section 3.1 or Section 3.2, the managing underwriter or underwriters to administer the offering shall be determined by the Principal Stockholder; provided that such underwriter or underwriters shall be reasonably acceptable to the Company and the Board of Directors.

3.7 No Inconsistent Agreements. Neither the Company nor any of its subsidiaries shall hereafter enter into, and neither the Company nor any of its subsidiaries is currently a party to, any agreement with respect to its securities that is inconsistent with the rights granted to the Principal Stockholder by this Agreement.

3.8 Registration Expenses. All expenses incident to the Company's performance of or compliance with this Agreement shall be paid by the Company, including (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 (including reasonable fees and disbursements of counsel for the underwriters in connection with blue sky qualifications of the Registrable Securities), (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 and of printing prospectuses), (iv) all fees and disbursements of counsel for the Company and of all independent certified public accountants or independent auditors of the Company and any subsidiaries of the Company (including the expenses of any special audit and comfort letters required by or incident to such performance), (v) all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange or quotation of the Registrable Securities on any inter-dealer quotation system, (vi) all fees and expenses of any special experts or other Persons retained by the Company in connection with any Registration or sale, (vii) all of the Company's internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties) and (viii) all expenses related to the "road show" for any Underwritten Offering (including the reasonable out-of-pocket expenses of the Principal Stockholder and underwriters, if so requested). All such expenses are referred to herein as "Registration Expenses." The Company shall not be required to pay any fees and disbursements to underwriters not customarily paid by the issuers of securities in an offering similar to the applicable offering, including underwriting discounts and commissions and transfer taxes, if any, attributable to the sale of Registrable Securities.

3.9 Indemnification.

(a) Indemnification by the Company. The Company shall indemnify and hold harmless, to the full extent permitted by law, the Principal Stockholder, each shareholder, member, limited or general partner of the Principal Stockholder, each shareholder, member, limited or general partner of each such shareholder, member, limited or general partner, each of any of the foregoing entities' respective Affiliates, officers, directors, shareholders, employees, advisors, and agents and each Person who controls (within the meaning of the Securities Act or the Exchange Act) such Persons and each of their respective Representatives from and against any and all losses, penalties, judgments, suits, costs, claims, damages, liabilities and expenses, joint or several (including reasonable costs of investigation and legal expenses) (each, a "Loss" and collectively "Losses") arising out of or based upon (i) any untrue or alleged untrue statement of a material fact contained in any Registration Statement under which such Registrable Securities are registered or sold under the Securities Act (including any final, preliminary or summary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein), or (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus or preliminary Prospectus, in light of the circumstances under which they were made) not misleading; provided, that the Principal Stockholder shall not be entitled to indemnification pursuant to this Section 3.9(a) in respect of any untrue statement or omission

contained in any information relating to such party furnished in writing by such party to the Company specifically for inclusion in a Registration Statement and used by the Company in conformity therewith (such information, "Selling Stockholder Information"). This indemnity shall be in addition to any liability the Company may otherwise have. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such party or any indemnified party and shall survive the Transfer of such securities by such party and regardless of any indemnity agreed to in the underwriting agreement that is less favorable to the Principal Stockholder. The Company shall also indemnify underwriters, selling brokers, dealer managers and similar securities industry professionals participating in the distribution, their officers and directors and each Person who controls such Persons (within the meaning of the Securities Act and the Exchange Act) to the same extent as provided above (with appropriate modification) with respect to the indemnification of the indemnified parties.

(b) Indemnification by the Principal Stockholder. The Principal Stockholder agrees to indemnify and hold harmless, to the fullest extent permitted by law, the Company, its directors and officers and each Person who controls the Company (within the meaning of the Securities Act or the Exchange Act) from and against any Losses resulting from (i) any untrue statement of a material fact in any Registration Statement under which such Registrable Securities were registered or sold under the Securities Act (including any final, preliminary or summary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein) or (ii) any omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus or preliminary Prospectus, in light of the circumstances under which they were made) not misleading, in each case to the extent, but only to the extent, that such untrue statement or omission is contained in the Selling Stockholder Information. In no event shall the liability of the Principal Stockholder hereunder be greater in amount than the dollar amount of the proceeds from the sale of Registrable Securities in the offering giving rise to such indemnification obligation, net of underwriting discounts and commissions but before expenses, less any amounts paid by the Principal Stockholder pursuant to Section 3.9(d) and any amounts paid by the Principal Stockholder as a result of liabilities incurred under the underwriting agreement, if any, related to such sale.

(c) Conduct of Indemnification Proceedings. Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that any delay or failure to so notify the indemnifying party shall relieve the indemnifying party of its obligations hereunder only to the extent, if at all, that it is actually and materially prejudiced by reason of such delay or failure) and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided, however, that any Person entitled to indemnification hereunder shall have the right to select and employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such Person unless (i) the indemnifying party has agreed in writing to pay such fees or expenses, (ii) the indemnifying party shall have failed to assume the defense of such claim within a reasonable time after receipt of notice of such claim from the Person entitled to indemnification hereunder and employ counsel reasonably satisfactory to such Person, (iii) the indemnified party has reasonably concluded (based upon advice of its counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to

those available to the indemnifying party, or (iv) in the reasonable judgment of any such Person (based upon advice of its counsel) a conflict of interest may exist between such Person and the indemnifying party with respect to such claims (in which case, if the Person notifies the indemnifying party in writing that such Person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such Person). If the indemnifying party assumes the defense, then 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. If such defense is not assumed by the indemnifying party, the indemnifying party will not be subject to any liability for any settlement made without its prior written consent, but such consent may not be unreasonably withheld. It is understood that the indemnifying party or parties shall not, except as specifically set forth in this Section 3.9(c), in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements or other charges of more than one separate firm admitted to practice in such jurisdiction at any one time unless (x) the employment of more than one counsel has been authorized in writing by the indemnifying party or parties, (y) an indemnified party has reasonably concluded (based on the advice of counsel) that there may be legal defenses available to it that are different from or in addition to those available to the other indemnified parties or (z) a conflict or potential conflict exists or may exist (based upon advice of counsel to an indemnified party) between such indemnified party and the other indemnified parties, in each of which cases the indemnifying party shall be obligated to pay the reasonable fees and expenses of such additional counsel or counsels.

(d) Contribution. If for any reason the indemnification provided for in Sections 3.9(a) and (b) is unavailable to an indemnified party or insufficient in respect of any Losses referred to therein (other than as a result of exceptions or limitations on indemnification contained in Sections 3.9(a) and (b)), then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such Loss in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and the indemnified party or parties on the other hand in connection with the acts, statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. In connection with any Registration Statement filed with the SEC by the Company, the relative fault of the indemnifying party on the one hand and the indemnified party on the other hand shall be determined by reference to, among other things, whether any 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 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 contribution pursuant to this Section 3.9(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in this Section 3.9(d). No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not

guilty of such fraudulent misrepresentation. The amount paid or payable by an indemnified party as a result of the Losses referred to in Sections 3.9(a) and (b) shall be deemed to include, subject to the limitations set forth above, 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 Section 3.9(d), in connection with any Registration Statement filed by the Company, the Principal Stockholder shall not be required to contribute any amount in excess of the dollar amount of the proceeds from the sale of its Registrable Securities in the offering giving rise to such contribution obligation, net of underwriting discounts and commissions but before expenses, less any amounts paid by the Principal Stockholder pursuant to Section 3.9(b) and any amounts paid by the Principal Stockholder as a result of liabilities incurred under the underwriting agreement, if any, related to such sale. If indemnification is available under this Section 3.9, the indemnifying parties shall indemnify each indemnified party to the full extent provided in Sections 3.9(a) and (b) hereof without regard to the provisions of this Section 3.9(d). The remedies provided for in this Section 3.9 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

3.10 Section 4(a)(7) and Rule 144. The Company shall 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 request of the Principal Stockholder, make publicly available such necessary information for so long as necessary to permit sales that would otherwise be permitted by this Agreement pursuant to Section 4(a)(7) of the Securities Act or Rule 144 promulgated under the Securities Act, as such rules may be amended from time to time or any similar rule or regulation hereafter adopted by the SEC), and it will take such further action as the Principal Stockholder may reasonably request, all to the extent required from time to time to enable the Principal Stockholder to sell Registrable Securities without Registration under the Securities Act in transactions that would otherwise be permitted by this Agreement and within the limitation of the exemptions provided by (i) Section 4(a)(7) of the Securities Act or Rule 144 promulgated 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 request of the Principal Stockholder, the Company will deliver to a written statement as to whether it has complied with such requirements and, if not, the specifics thereof.

3.11 Existing Registration Statements. Notwithstanding anything herein to the contrary and subject to applicable law and regulation, the Company may satisfy any obligation hereunder to file a Registration Statement or to have a Registration Statement become effective by a specified date by designating, by notice to the Principal Stockholder, a Registration Statement that previously has been filed with the SEC or become effective, as the case may be, as the relevant Registration Statement for purposes of satisfying such obligation, and all references to any such obligation shall be construed accordingly; provided that such previously filed Registration Statement may be, and is, amended or, subject to applicable securities laws, supplemented to add the number of Registrable Securities, and, to the extent necessary, to identify the Principal Stockholder as selling stockholders demanding the filing of a Registration Statement pursuant to the terms of this Agreement. To the extent this Agreement refers to the filing or effectiveness of other Registration Statements, by or at a specified time and the Company has, in lieu of then filing such Registration Statements or having such Registration

Statements become effective, designated a previously filed or effective Registration Statement as the relevant Registration Statement for such purposes, in accordance with the preceding sentence, such references shall be construed to refer to such designated Registration Statement, as amended or supplemented in the manner contemplated by the immediately preceding sentence.

3.12 Company Stockholder Information. Upon the request of the Principal Stockholder, the Company shall furnish to the Principal Stockholder a list of beneficial owners of the Company's Common Stock and their jurisdictions of residence with sufficient detail to determine the percentage of the Company's Common Stock beneficially owned by residents of Canada (based on inquiries consistent with Rule 14a-13 under the Exchange Act). In addition, the Company hereby agrees to use its commercially reasonable efforts to provide any required documentation to the Canadian securities regulatory authorities as may be required by the Principal Stockholder in order to facilitate the resale of any securities of the Company beneficially owned by CPPIB pursuant to applicable Canadian securities laws.

3.13 Repurchases by the Company. The Company shall not repurchase, redeem or otherwise acquire any of its securities from the Principal Stockholder (or make any offer to do so) unless such repurchase, redemption, acquisition or offer is structured and conducted in compliance with any applicable Canadian securities laws (including Canadian issuer bid requirements applicable to the Company).

## ARTICLE IV

### MISCELLANEOUS

4.1 Authority: Effect. Each party hereto represents and warrants to and agrees with each other party that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized on behalf of such party and do not violate any agreement or other instrument applicable to such party or by which its assets are bound. This Agreement does not, and shall not be construed to, give rise to the creation of a partnership among any of the parties hereto, or to constitute any of such parties members of a joint venture or other association. The Company and its subsidiaries shall be jointly and severally liable for all obligations of each such party pursuant to this Agreement.

4.2 Notices. Any notices, requests, demands and other communications required or permitted in this Agreement shall be effective if in writing and (i) delivered personally, (ii) sent by facsimile or e-mail, or (iii) sent by overnight courier, in each case, addressed as follows:

If to the Company to:

Petco Health and Wellness Company, Inc.  
10850 Via Frontera  
San Diego, California 92127  
Telephone: (858) 453-7845  
Attention: Chief Legal Officer

with a copy (which shall not constitute notice to the Company) to:

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166  
Telephone: (212) 351-4000  
Facsimile: (212) 351-4035  
Attention: Andrew Fabens

If to the Principal Stockholder, to the address on file in the Company's records.

Notice to the holder of record of any Registrable Securities shall be deemed to be notice to the holder of such securities for all purposes hereof.

Unless otherwise specified herein, such notices or other communications shall be deemed effective (i) on the date received, if personally delivered, (ii) on the date received if delivered by facsimile or e-mail on a Business Day, or if not delivered on a Business Day, on the first Business Day thereafter and (iii) two Business Days after being sent by overnight courier. Each of the parties hereto shall be entitled to specify a different address by giving notice as aforesaid to each of the other parties hereto.

4.3 Termination and Effect of Termination. This Agreement shall terminate upon the date on which the Principal Stockholder no longer holds any Registrable Securities, except for the provisions of Sections 3.9 and 3.10, which shall survive any such termination. No termination under this Agreement shall relieve any Person of liability for breach or Registration Expenses incurred prior to termination. In the event this Agreement is terminated, each Person entitled to indemnification rights pursuant to Section 3.9 hereof shall retain such indemnification rights with respect to any matter that (i) may be an indemnified liability thereunder and (ii) occurred prior to such termination.

4.4 Permitted Transferees. The rights of the Principal Stockholder hereunder may be assigned (but only with all related obligations as set forth below) in connection with a Transfer of Registrable Securities to a Permitted Transferee. Without prejudice to any other or similar conditions imposed hereunder with respect to any such Transfer, no assignment permitted under the terms of this Section 4.4 will be effective unless the Permitted Transferee to which the assignment is being made, has delivered to the Company a written acknowledgment and agreement in form and substance reasonably satisfactory to the Company that the Permitted Transferee will be bound by, and will be a party to, this Agreement. A Permitted Transferee to whom rights are transferred pursuant to this Section 4.4 may not again transfer those rights to any other Permitted Transferee, other than as provided in this Section 4.4.

4.5 Remedies. The parties to this Agreement shall have all remedies available at law, in equity or otherwise in the event of any breach or violation of this Agreement or any default hereunder. The parties acknowledge and agree that in the event of any breach of this Agreement, in addition to any other remedies that may be available, each of the parties hereto shall be entitled to specific performance of the obligations of the other parties hereto and, in addition, to such other equitable remedies (including preliminary or temporary relief) as may be appropriate in the circumstances. No delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement

shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later; nor shall any such delay, omission nor waiver of any single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

4.6 Amendments. This Agreement may not be orally amended, modified, extended or terminated, nor shall any oral waiver of any of its terms be effective. This Agreement may be amended, modified, extended or terminated, and the provisions hereof may be waived, only by an agreement in writing signed by the Company and the Principal Stockholder. Each such amendment, modification, extension or termination shall be binding upon each party hereto. In addition, each party hereto may waive any right hereunder by an instrument in writing signed by such party.

4.7 Governing Law. This Agreement and all claims arising out of or based upon this Agreement or relating to the subject matter hereof shall be governed by and construed in accordance with the domestic substantive laws of the State of Delaware without giving effect to any choice or conflict of laws provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

4.8 Consent to Jurisdiction. Each party to this Agreement, by its execution hereof, (i) hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of Delaware and the County of New Castle for the purpose of any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement or relating to the subject matter hereof, (ii) hereby waives to the extent not prohibited by applicable law, and agrees not to assert, and agrees not to allow any of its subsidiaries to assert, by way of motion, as a defense or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that any such proceeding brought in one of the above-named courts is improper, or that this Agreement or the subject matter hereof or thereof may not be enforced in or by such court and (iii) hereby agrees not to commence or maintain any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement or relating to the subject matter hereof or thereof other than before one of the above-named courts nor to make any motion or take any other action seeking or intending to cause the transfer or removal of any such action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation to any court other than one of the above-named courts whether on the grounds of inconvenient forum or otherwise. Notwithstanding the foregoing, to the extent that any party hereto is or becomes a party in any litigation in connection with which it may assert indemnification rights set forth in this Agreement, the court in which such litigation is being heard shall be deemed to be included in clause (i) above. Notwithstanding the foregoing, any party to this Agreement may commence and maintain an action to enforce a judgment of any of the above-named courts in any court of competent jurisdiction. Each party hereto hereby consents to service of process in any such proceeding in any manner permitted by Delaware law, and agrees that service of process by registered or certified mail, return receipt requested, at its address specified pursuant to Section 4.2 hereof is reasonably calculated to give actual notice.

4.9 WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH PARTY HERETO HEREBY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE OR ACTION, CLAIM, CAUSE OF ACTION OR SUIT (IN CONTRACT, TORT OR OTHERWISE), INQUIRY, PROCEEDING OR INVESTIGATION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE TRANSACTIONS CONTEMPLATED HEREBY, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY THE OTHER PARTIES HERETO THAT THIS SECTION 4.9 CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH THEY ARE RELYING AND WILL RELY IN ENTERING INTO THIS AGREEMENT. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 4.9 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

4.10 Merger; Binding Effect, Etc. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, supersedes all prior or contemporaneous oral or written agreements or discussions with respect to such subject matter, and shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective heirs, representatives, successors and permitted assigns. Except as otherwise expressly provided herein, no party hereto may assign any of its respective rights or delegate any of its respective obligations under this Agreement without the prior written consent of the other parties hereto, and any attempted assignment or delegation in violation of the foregoing shall be null and void.

4.11 Counterparts. This Agreement may be signed in counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier, facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart thereof. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement or any document to be signed in connection with this Agreement shall be deemed to include electronic signatures, deliveries 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, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means.

4.12 Severability. In the event that any provision hereof would, under applicable law, be invalid or unenforceable in any respect, such provision shall be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable law. The provisions hereof are severable, and in the event any provision hereof should be held invalid or unenforceable in any respect, it shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

*[Signature pages follow]*

IN WITNESS WHEREOF, each of the undersigned has duly executed this Agreement as of the date first above written.

**Petco Health and Wellness Company, Inc.**

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

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**[Principal Stockholder]**

By: \_\_\_\_\_

Name:

Title:

## FORM OF STOCKHOLDER'S AGREEMENT

This **STOCKHOLDER'S AGREEMENT** (this "*Agreement*"), dated as of \_\_\_\_\_, 202\_1 is entered into by and among Petco Health and Wellness Company, Inc., a Delaware corporation (the "*Company*"), and \_\_\_\_\_, a Delaware limited partnership (together with its Permitted Transferees (as defined below) who are assignees pursuant to Section 5.9 hereof, the "*Principal Stockholder*").

### RECITALS

**WHEREAS**, the Company has conducted an underwritten initial public offering ("*IPO*") of shares of Common Stock (as defined below); and

**WHEREAS**, in connection with, and effective upon, the closing of the IPO, the Company and the Principal Stockholder have entered into this Agreement to set forth certain understandings among themselves, including with respect to certain corporate governance matters.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### AGREEMENTS

#### ARTICLE I DEFINITIONS

**1.1 Certain Definitions.** As used in this Agreement, the following terms will have the following meanings:

"*Affiliate*" means, with respect to any specified Person, a Person that directly or indirectly through one or more intermediaries Controls or is Controlled by, or is under common Control with, such specified Person. For purposes hereof, (a) the Company and its subsidiaries will not be deemed to be an Affiliate of the Principal Stockholder or any of its parent entities and (b) in no event shall any Affiliate of the Principal Stockholder, CVC, the CVC Funds or CPP Investments include any of their respective portfolio companies (as such term is commonly understood).

"*Beneficial Owner*" means, with respect to any security, any Person who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares (a) voting power, which includes the power to vote, or to direct the voting of, such security and/or (b) investment power, which includes the power to dispose, or to direct the disposition of, such security. The terms "*Beneficially Own*" and "*Beneficial Ownership*" will have correlative meanings.

"*Board*" means the Board of Directors of the Company.

"*Bylaws*" means the Company's bylaws, as they may be amended from time to time.

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<sup>1</sup> To be dated date of pricing of IPO.

“**Certificate of Incorporation**” means the Company’s second amended and restated certificate of incorporation, as it may be amended from time to time.

“**Change in Control**” shall be deemed to have occurred if or upon:

(a) any Person or any group of Persons acting together which would constitute a “group” for purposes of Section 13(d) of the Exchange Act (other than the Principal Stockholder, CVC, CPP Investments and their respective Affiliates), is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company’s then outstanding voting securities entitled to vote in the election of directors generally;

(b) a merger or consolidation of the Company with any other corporation or other entity and, immediately after the consummation or as a result of such transaction, either (i) the members of the Board immediately prior to the merger or consolidation do not constitute at least a majority of the members of the board of directors of the company surviving the merger, or if the surviving company is a subsidiary, the ultimate parent thereof, or (ii) the voting securities of the Company immediately prior to such merger or consolidation do not continue to represent or are not converted into more than 50% of the combined voting power of the then-outstanding voting securities of the Person resulting from such merger or consolidation, or if the surviving company is a subsidiary, the ultimate parent thereof;

(c) a sale of all or substantially all of the assets of the Company to another Person, other than such sale by the Company of all or substantially all of the Company’s assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned by stockholders of the Company in substantially the same proportions as their ownership of the Company immediately prior to such sale; or

(d) the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company.

Notwithstanding the foregoing, except with respect to clause (b)(i) above, a “Change in Control” shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the stockholders of the Company immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in, and own substantially all of the shares of, an entity which owns, either directly or through a subsidiary, all or substantially all of the assets of the Company immediately following such transaction or series of transactions.

“**Class A Common Stock**” means the Class A common stock, par value \$0.001 per share, of the Company.

“**Class B-1 Common Stock**” means the Class B-1 common stock, par value \$0.001 per share, of the Company.

“**Class B-2 Common Stock**” means the Class B-2 common stock, par value \$0.000001 per share, of the Company.

“**Common Stock**” means, collectively, Class A Common Stock, Class B-1 Common Stock and Class B-2 Common Stock.

“**Control**” (including the terms “**Controls**,” “**Controlled by**” and “**under common Control with**”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**CPP Investments**” means Canada Pension Plan Investment Board, a Canadian company, and its Affiliates.

“**CVC**” means CVC Advisors (U.S) Inc. and its Affiliates and CVC Capital Partners SICAV-FIS S.A. and its direct and indirect subsidiaries.

“**CVC Funds**” means funds or vehicles advised or managed by CVC.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Fair Market Value**” means, with respect to property (other than cash), the fair market value of such property as determined in good faith by the Board.

“**GAAP**” means generally accepted accounting principles, as in effect in the United States of America from time to time.

“**Necessary Action**” means, with respect to a specified result, all actions (to the extent such actions are permitted by applicable law and, in the case of any action by the Company that requires a vote or other action on the part of the Board, to the extent such action is consistent with the fiduciary duties that the Company’s directors have in such capacity) necessary to cause such result, including (a) voting or providing a written consent or proxy with respect to shares of Common Stock or other securities entitled to vote with respect to such specified result, (b) causing the adoption of stockholders’ resolutions and amendments to the organizational documents of the Company, (c) causing members of the Board (to the extent such members were designated by the Person obligated to undertake the Necessary Action) to act (subject to any applicable fiduciary duties) in a certain manner or causing them to be removed in the event they do not act in such a manner, (d) executing agreements and instruments and (e) making or causing to be made, with governmental, administrative or regulatory authorities, all filings, registrations or similar actions that are required to achieve such result.

“**Permitted Transferee**” means (a) CPP Investments, CVC or any Affiliate of the Principal Stockholder, (b) any partner, shareholder or member of the Principal Stockholder (or any Affiliate of any such partner, shareholder or member), (c) any successor entity of the Principal Stockholder, (d) any Person established for the benefit of, and Beneficially Owned solely by, the Principal Stockholder or the direct or indirect owner(s) of the Principal Stockholder, and (e) CVC Funds.

“**Person**” means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, any court, administrative agency, regulatory body, commission or other governmental authority, board, bureau or

instrumentality, domestic or foreign and any subdivision thereof or other entity, and also includes any managed investment account.

**1.2 Rules of Construction.**

(a) Unless the context requires otherwise: (i) any pronoun used in this Agreement will include the corresponding masculine, feminine or neuter forms; (ii) references to Articles and Sections refer to articles and sections of this Agreement; (iii) the terms “include,” “includes,” “including” and words of like import will be deemed to be followed by the words “without limitation”; (iv) the terms “hereof,” “hereto,” “herein” or “hereunder” refer to this Agreement as a whole and not to any particular provision of this Agreement; (v) unless the context otherwise requires, the term “or” is not exclusive and will have the inclusive meaning of “and/or”; (vi) defined terms herein will apply equally to both the singular and plural forms and derivative forms of defined terms will have correlative meanings; (vii) references to any law or statute will include all rules and regulations promulgated thereunder, and references to any law or statute will be construed as including any legal and statutory provisions consolidating, amending, succeeding or replacing the applicable law or statute; (viii) references to any Person include such Person’s successors and permitted assigns; and (ix) references to “days” are to calendar days unless otherwise indicated.

(b) The headings in this Agreement are for convenience and identification only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision thereof.

(c) This Agreement will be construed without regard to any presumption or other rule requiring construction against the party that drafted or caused this Agreement to be drafted.

**ARTICLE II  
GOVERNANCE MATTERS**

**2.1 Board Designees.**

(a) As of the closing of the IPO (the “**Closing**”), the Company shall take all Necessary Action, and, if applicable, the Principal Stockholder shall vote its shares, to cause the total number of directors constituting the Board to be fixed at \_\_\_\_\_ directors, initially consisting of (i) Ronald Coughlin, Jr., the Company’s Chief Executive Officer and Chairman, (ii) \_\_\_\_\_ directors designated for nomination and election to the Board by the Principal Stockholder (each, a “**Stockholder Designee**”); and (iii) \_\_\_\_\_ “independent” directors, as defined by the rules of Nasdaq Global Select Market.

The following \_\_\_\_\_ directors shall initially be deemed to be Stockholder Designees as of the Closing: Cameron Breitner, Nishad Chande, Christopher J. Stadler, Maximilian Biagosch, Jennifer Pereira and \_\_\_\_\_. The foregoing directors shall initially be divided into three classes of directors, each of whose members shall serve for staggered three-year terms, subject to the terms of the Certificate of Incorporation, as follows:

(i) the class I directors shall initially include: \_\_\_\_\_ ;

(ii) the class II directors shall initially include: ; and

(iii) the class III directors shall initially include:

(b) Until the Principal Stockholder has sold, in the aggregate, a number of shares of Class A Common Stock and Class B-1 Common Stock representing the percentages shown below of shares of Class A Common Stock and Class B-1 Common Stock Beneficially Owned, in the aggregate, by the Principal Stockholder upon the consummation of the IPO (as adjusted for stock splits, combinations, reclassifications and similar transactions), the Company shall take all Necessary Action, and, if applicable, the Principal Stockholder shall vote its shares, to include in the slate of nominees recommended by the Board for election as directors at each applicable annual or special meeting of stockholders at which directors are to be elected that number of Stockholder Designees that, if elected, will result in the number of Stockholder Designees serving on the Board that is shown below:

<u>Percentage</u>	<u>Number of Directors</u>
50% or less	6
More than 50% but less than or equal to 75%	4
More than 75% but less than or equal to 90%	2
More than 90%	0

The Company agrees that, in addition to the foregoing, to the fullest extent permitted by applicable law (including any applicable fiduciary duties), taking all Necessary Action to effectuate the above will include, among other things, (A) nominating and recommending each Stockholder Designee to be elected as a director and included in the slate of nominees in the class to be elected or appointed to the Board at the next (and each applicable subsequent) annual or special meeting of stockholders, (B) recommending that stockholders vote in favor of any such Stockholder Designee, (C) soliciting proxies or consents in favor of each Stockholder Designee, and (D) without limiting the foregoing, otherwise using its best efforts to cause such nominees who are Stockholder Designees to be elected to the Board, including providing at least as high a level of support for the election of such nominees as it provides to any other individual standing for election as a director. For the avoidance of doubt, the rights granted to the Principal Stockholder to designate members of the Board are additive to, and not intended to limit in any way, the rights that the Principal Stockholder may have to nominate, elect or remove directors under the Certificate of Incorporation, the Bylaws or the Delaware General Corporation Law.

(c) At any time when the members of the Board are allocated among separate classes of directors, the Company shall take all Necessary Action, and, if applicable, the Principal Stockholder shall vote its shares, so that the Stockholder Designees will be the applicable class(es) of directors designated by the Principal Stockholder. If the size of the Board shall, with the Principal Stockholder's prior written consent pursuant to Section 2.2 below, be increased, the Principal Stockholder shall have the right to designate a proportional number of persons for nomination and election to the Board (rounded up to the nearest whole, even number). For the avoidance of doubt, if the size of the Board shall, with the Principal Stockholder's prior written consent pursuant to Section 2.2 below be decreased, the Principal Stockholder shall have the right to designate the same number of persons for nomination and election to the Board as set forth in Section 2.1(b) above.

(d) So long as the Principal Stockholder has the right to designate Stockholder Designees for nomination and election to the Board under Section 2.1(b) above, the Company shall take all Necessary Action, and, if applicable, the Principal Stockholder shall vote its shares, to cause the Board to include at least two (2) Stockholder Designees on each committee of the Board as designated by the Principal Stockholder (subject to any requirements, including independence requirements, for such committee members imposed by applicable law or by the applicable rules of any national securities exchange on which the Class A Common Stock may be listed or traded).

(e) Except as provided in Section 2.1(b) with respect to decreases in ownership of the Principal Stockholder, the Principal Stockholder shall have the exclusive right to (i) request the removal of one or more of its Stockholder Designees from the Board in accordance with the Certificate of Incorporation and the Bylaws, and the Company and the Principal Stockholder shall take all Necessary Action to cause the removal (whether for or without cause) of any such Stockholder Designee at the request of the Principal Stockholder and (ii) designate directors for nomination and election to the Board to fill vacancies (for the remainder of the then current term) created by reason of death, disability, removal or resignation or otherwise of its Stockholder Designees to the Board, and the Company and the Principal Stockholder shall take all Necessary Action to cause any such vacancies to be filled by replacement directors nominated by the Principal Stockholder as promptly as reasonably practicable.

(f) For the avoidance of doubt, the Company shall avail itself of all available “controlled company” exceptions to the corporate governance listing standards of any securities exchange on which shares of Class A Common Stock are listed, unless waived in writing by the Principal Stockholder.

(g) So long as the Principal Stockholder has the right to designate Stockholder Designees for nomination and election to the Board under Section 2.1(b) above, the Principal Stockholder shall have the right to designate, and the Company shall take all Necessary Action to appoint, four (4) non-voting representatives (the “**Observers**”) to attend and observe all meetings of the Board and any committees thereof. Until the Observer ceases to serve in such capacity, any such Observer shall, at the same time and in the same manner as provided to the directors of the Board, be entitled to (i) be given notice of all meetings (whether in person, telephonic or otherwise) of the Board, including all committee meetings; (ii) receive copies of all notices, agendas, consents, Board and committee minutes and other materials distributed to the Board and any committees thereof, whether provided to directors in advance or, during or after any meeting, regardless of whether the Observer shall be in attendance at the meeting; and (iii) participate in (but not vote on) all discussions conducted at Board and committee meetings; provided, however, that any Observer may be excluded from any meeting or portion thereof, and any such Observer need not be given such materials, if a majority of the members of the Board who are non-Stockholder Designees determine, upon advice of counsel, that (1) excluding such Observer or failing to give such materials to the Observer is necessary or advisable to (x) preserve attorney-client, work product or similar privilege, or (y) comply with the terms and conditions of confidentiality agreements with third parties or applicable law or (2) there exists, with respect to the subject of a meeting or the materials provided to the Board, an actual or potential conflict of interest between the Company, on the one hand, and such Observer or the Principal Stockholder, on the other hand. The Principal Stockholder shall be entitled to direct the replacement of any Observer for any reason and at any time by delivering notice in writing or by electronic

transmission of such replacement to the Company, which such replacement shall take effect at the time specified in such notice.

(h) Except as may be required by applicable law or requested by any applicable governmental entity, each Stockholder Designee and Observer shall agree to maintain the confidentiality of all confidential information and shall not disclose any confidential information to any person or entity; provided that any such Stockholder Designee and Observer may disclose confidential information to representatives of the Principal Stockholder, CVC, CVC Funds or CPP Investments who have a reasonable need to know such information solely for the purpose of allowing them to monitor their investment in the Company.

(i) For the avoidance of doubt, for so long as any Stockholder Designees serve as directors of the Company and/or there are any Observers, (i) the Company shall take all Necessary Actions, and the Principal Stockholder shall vote its shares as to cause the Company, to provide each such Stockholder Designee and Observer, as applicable, with the rights to exculpation, indemnification and advancement of expenses that are not less favorable to any such Stockholder Designee and/or Observer, as applicable, than those it provides to any other non-employee directors serving on the Board, and (ii) each such Stockholder Designee and/or Observer, as applicable, shall be entitled to be reimbursed by the Company for all reasonable out-of-pocket expenses incurred in connection with his or her attendance at meetings of the Board and any committees thereof.

(j) For greater certainty, although the obligations set forth in this Agreement are binding upon the parties hereto and any failure to comply herewith will constitute a breach of this Agreement, this Section 2.1 does not amend the voting rights of any class of Common Stock set forth under the Certificate of Incorporation.

**2.2 Consent Rights.** So long as the Principal Stockholder Beneficially Owns at least 25% of the outstanding shares of Class A Common Stock and Class B-1 Common Stock (as adjusted for stock splits, combinations, reclassifications and similar transactions), in addition to any vote required by law or the applicable governing documents, the Company shall not take, and shall take all Necessary Action to cause its subsidiaries not to take, directly or indirectly (whether by amendment, merger, consolidation, reorganization or otherwise), any of the following actions without the prior written consent of the Principal Stockholder, which consent may be withheld for any reason or no reason:

(a) liquidation, dissolution or winding up of the Company;

(b) any material change in the nature of the business or operations of the Company and its subsidiaries, taken as a whole, as of the date of this Agreement;

(c) hiring or terminating the Chief Executive Officer of the Company and his or her successors and, so long as the Principal Stockholder Beneficially Owns at least 50% of the outstanding shares of Class A Common Stock and Class B-1 Common Stock (as adjusted for stock splits, combinations, reclassifications and similar transactions), hiring or terminating any other executive officer of the Company and his or her successor;

(d) any mergers or other transaction that, if consummated, would constitute a Change in Control or entering into any definitive agreement or series of related agreements that govern any transaction or series of related transactions that, if consummated, would result in a Change in Control;

(e) entering into any agreement providing for the acquisition or divestiture of assets or Persons, in each such case, involving consideration payable or receivable by the Company or any of its subsidiaries in excess of \$200 million in the aggregate in any single transaction or series of related transactions during any 12-month period;

(f) any incurrence by the Company or any of its subsidiaries of indebtedness for borrowed money (including through capital leases, the issuance of debt securities or the guarantee of indebtedness of another Person) (i) in excess of \$200 million in the aggregate in any single transaction or series of related transactions during any 12-month period, other than indebtedness incurred under an existing and previously approved revolving credit facility, or (ii) that would result in the Company's Total Net Leverage Ratio (as such term or an analogous term is defined in the then-in-effect senior credit agreement of the Company or its subsidiary or, to the extent there is no such senior credit agreement then in effect or such term or an analogous term is not contained therein, any indenture of the Company or its subsidiary, including that indenture dated January 16, 2016, as amended) exceeding 4.00:1.00;

(g) any issuance or series of related issuances of equity securities by the Company or any of its subsidiaries, other than grants of equity securities under any equity compensation plan, including an employee stock purchase plan, approved by the Board or a committee thereof;

(h) any payment or declaration of any dividend or other distribution of any shares of Class A Common Stock or Class B-1 Common Stock or entering into any recapitalization transaction the primary purpose of which is to pay a dividend of shares of Class A Common Stock or Class B-1 Common Stock;

(i) any increase or decrease in the size of (i) the Board from the number of directors set forth in Section 2.1(b) or (ii) the committees of the Board; and

(j) amendments to, or modification or repeal of, organizational documents (such as certificate of incorporation and bylaws of the Company or equivalent organizational documents of the Company's subsidiaries) that adversely affect any of the Principal Stockholder, CVC or CPP Investments or their respective Affiliates.

### **ARTICLE III COVENANTS**

#### ***3.1 Certain Notices.***

(a) The Company hereby acknowledges and agrees with and covenants to the Principal Stockholder, that unless otherwise agreed to by the Principal Stockholder in writing, the Company shall:

(i) not issue any shares of Class B-1 Common Stock or Class B-2 Common Stock as a dividend or distribution without providing the Principal Stockholder at least thirty (30) days' prior written notice of the Company's intention to do so; and

(ii) promptly, upon becoming aware of any event, circumstance or proposed transaction that may result in the issuance of any shares of capital stock of the Company (or its successor) to the Principal Stockholder (whether as a result of any dividend, distribution, stock split, recapitalization, merger, combination or other transaction) (other than pursuant to a rights offering or other similar offering by the Company to the holders of Class A Common Stock generally), provide the Principal Stockholder prior written notice of any such event, circumstance or proposed transaction as far in advance of such issuance as reasonably practicable.

#### **ARTICLE IV EFFECTIVENESS AND TERMINATION**

**4.1 Effectiveness.** Upon the closing of the IPO, this Agreement will thereupon be deemed to be effective. However, to the extent the closing of the IPO does not occur, the provisions of this Agreement will be without any force or effect.

**4.2 Termination.** This Agreement will terminate upon the earlier to occur of (a) the Principal Stockholder no longer having the right to designate an individual for nomination to the Board under this Agreement and (b) the delivery of written notice to the Company by the Principal Stockholder effecting the termination of this Agreement.

#### **ARTICLE V MISCELLANEOUS**

**5.1 Notices.** All notices, requests, demands and other communications under this Agreement will be in writing and will be personally delivered, sent by nationally recognized overnight courier, mailed by registered or certified mail or be sent by facsimile or electronic mail to such party at the address set forth below (or such other address as will be specified by like notice). Notices will be deemed to have been duly given hereunder if (a) personally delivered, when received, (b) sent by nationally recognized overnight courier, one business day after deposit with the nationally recognized overnight courier, (c) mailed by registered or certified mail, five business days after the date on which it is so mailed, and (d) sent by facsimile or electronic mail, on the date sent so long as such communication is transmitted before 5:00 p.m. on a business day in the time zone of the receiving party, otherwise, on the next business day.

(a) If to the Company, to:

Petco Health and Wellness Company, Inc.  
10850 Via Frontera  
San Diego, CA 92127  
Attention: Chief Legal Officer  
E-mail: Ilene.Eskenazi@PETCO.com

with a copy (not constituting notice) to:

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166  
Attention: Sean P. Griffiths  
Andrew L. Fabens  
E-mail: SGriffiths@gibsondunn.com  
AFabens@gibsondunn.com

- (b) If to the Principal Stockholder, to:

[ ]  
c/o CVC  
One Maritime Plaza, Suite 1610  
San Francisco, CA 94111  
Attention: Cameron Breitner  
E-mail: cbreitner@cvc.com

and

[ ]  
c/o CPP Investment Board  
One Queen Street East, Suite 2500  
Toronto, ON M5C 2W5  
Canada  
Attention: Jennifer Pereira  
E-mail: jpereira@cppib.com

with a copy (not constituting notice) to:

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166  
Attention: Sean P. Griffiths  
Andrew L. Fabens  
E-mail: SGriffiths@gibsondunn.com  
AFabens@gibsondunn.com

and

Torys LLP  
1114 Avenue of the Americas, 23rd Floor  
New York, NY 10036  
Attention: Heding Yang  
E-mail: HYang@torys.com

**5.2 Severability.** The provisions of this Agreement will be deemed severable, and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is found to be invalid or unenforceable in any jurisdiction, (a) a suitable and equitable provision will be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances will not be affected by such invalidity or unenforceability, nor will such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

**5.3 Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which, taken together, will be considered one and the same agreement.

**5.4 Entire Agreement; No Third-Party Beneficiaries.** This Agreement (a) constitutes the entire agreement and supersedes all other prior agreements, both written and oral, among the parties hereto with respect to the subject matter hereof and (b) is not intended to confer upon any Person, other than the parties hereto, any rights or remedies hereunder.

**5.5 Further Assurances.** Each party hereto will execute, deliver, acknowledge and file such other documents and take such further actions as may be reasonably requested from time to time by the other parties hereto to give effect to and carry out the transactions contemplated herein.

**5.6 Governing Law; Equitable Remedies.** THIS AGREEMENT WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE (WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES THEREOF). The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the parties hereto will be entitled to an injunction or injunctions and other equitable remedies to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any of the Selected Courts (as defined below), this being in addition to any other remedy to which they are entitled at law or in equity. Any requirements for the securing or posting of any bond with respect to such remedy are hereby waived by each of the parties hereto. Each party hereto further agrees that, in the event of any action for an injunction or other equitable remedy in respect of such breach or enforcement of specific performance, it will not assert the defense that a remedy at law would be adequate.

**5.7 Consent to Jurisdiction.** With respect to any suit, action or proceeding (“*Proceeding*”) arising out of or relating to this Agreement, each of the parties hereto hereby irrevocably (a) submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware and the United States District Court for the District of Delaware and the appellate courts therefrom (the “*Selected Courts*”) and waives any objection to venue being laid in the Selected Courts whether based on the grounds of forum non conveniens or otherwise and hereby agrees not to commence any such Proceeding other than before one of the Selected Courts; provided, however, that a party may commence any Proceeding in a court other than a Selected Court solely

for the purpose of enforcing an order or judgment issued by one of the Selected Courts; (b) consents to service of process in any Proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, or by recognized international express carrier or delivery service, to their respective addresses referred to in Section 5.1 hereof; provided, however, that nothing herein will affect the right of any party hereto to serve process in any other manner permitted by law; and (c) TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, WAIVES, AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING IN WHOLE OR IN PART UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AND AGREES THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE THE RIGHT TO TRIAL BY JURY IN ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT AND TO HAVE ALL MATTERS RELATING TO THIS AGREEMENT BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

**5.8 Amendments; Waivers.**

(a) No provision of this Agreement may be amended or waived unless such amendment or waiver is in writing and signed (i) in the case of an amendment, by each of the parties hereto (including any amendment providing for additional obligations hereunder of any party hereto), and (ii) in the case of a waiver, by each of the parties against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder will operate as waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided will be cumulative and not exclusive of any rights or remedies provided by law.

**5.9 Assignment.** Neither this Agreement nor any of the rights or obligations hereunder will be assigned by any of the parties hereto without the prior written consent of the other parties, and any attempted assignment, without such consents, will be null and void; provided, however, that the Principal Stockholder shall be entitled to assign, in whole or in part, to any of its Permitted Transferees without such prior written consent any of its rights or obligations hereunder in connection with and upon a transfer of Common Stock from the Principal Stockholder to such Permitted Transferee.

*[Signature pages follow.]*

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

COMPANY:

Petco Health and Wellness Company, Inc.

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

*Signature Page to Stockholder's Agreement*

---

PRINCIPAL STOCKHOLDER:

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Name:

Title:

*Signature Page to Stockholder's Agreement*

, 2020

PET Acquisition LLC  
10850 Via Frontera  
San Diego, California 92127

Re: *PET Acquisition LLC*  
*Registration Statement on Form S-1 (File No. 333-* )

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-1, File No. 333- , as amended (the "Registration Statement"), of PET Acquisition LLC, a Delaware limited liability company, to be converted into Petco Health and Wellness Company, Inc., a Delaware corporation (the "Company"), filed with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), in connection with the offering by the Company of up to shares of the Company's Class A common stock, par value \$0.001 per share (the "Shares").

In arriving at the opinion expressed below, we have examined the Registration Statement, a form of the certificate of conversion of the Company (the "Certificate of Conversion") and a form of the certificate of incorporation of the Company (the "Certificate of Incorporation"), which has been filed with the Commission as an exhibit to the Registration Statement. In addition, we have examined originals, or copies certified or otherwise identified to our satisfaction as being true and complete copies of the originals, of specimen Common Stock certificates and such other documents, corporate records, certificates of officers of the Company and of public officials and other instruments as we have deemed necessary or advisable to enable us to render the opinions set forth below. In our examination, we have assumed without independent investigation the genuineness of all signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies.

Based upon the foregoing, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, we are of the opinion that, when the Certificate of Conversion and the Certificate of Incorporation have been duly filed with the Secretary of State for the State of Delaware, the Shares, when issued against payment therefor as set forth in the Registration Statement, will be validly issued, fully paid and non-assessable.

Beijing • Brussels • Century City • Dallas • Denver • Dubai • Frankfurt • Hong Kong • Houston • London • Los Angeles • Munich  
New York • Orange County • Palo Alto • Paris • San Francisco • São Paulo • Singapore • Washington, D.C.

, 2020

Page 2

We consent to the filing of this opinion as an exhibit to the Registration Statement, and we further consent to the use of our name under the caption “Legal Matters” in the Registration Statement and the prospectus that forms a part thereof. In giving these consents, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the Rules and Regulations of the Commission.

Very truly yours,

**PETCO HEALTH AND WELLNESS COMPANY, INC.  
2020 EQUITY INCENTIVE PLAN**

## **1. Purpose**

The purpose of this Petco Health and Wellness Company, Inc. 2020 Equity Incentive Plan (the “*Plan*”) is to promote and closely align the interests of employees, officers, non-employee directors and other service providers of Petco Health and Wellness Company, Inc. and its stockholders by providing stock-based compensation and other performance-based compensation. The objectives of the Plan are to attract and retain the best available employees for positions of substantial responsibility and to motivate Participants to optimize the profitability and growth of the Company through incentives that are consistent with the Company’s goals and that link the personal interests of Participants to those of the Company’s stockholders. The Plan provides for the grant of Options, Stock Appreciation Rights, Restricted Stock Units, Restricted Stock and Other Stock-Based Awards, any of which may be performance-based, and for Incentive Bonuses, which may be paid in cash, Common Stock or a combination thereof, as determined by the Committee.

## **2. Definitions**

As used in the Plan, the following terms shall have the meanings set forth below:

- (a) “*Affiliate*” means any entity in which the Company has a substantial direct or indirect equity interest, as determined by the Committee from time to time.
- (b) “*Act*” means the Securities Exchange Act of 1934, as amended.
- (c) “*Award*” means an Option, Stock Appreciation Right, Restricted Stock Unit, Restricted Stock, Other Stock-Based Award or Incentive Bonus granted to a Participant pursuant to the provisions of the Plan, any of which may be subject to performance conditions.
- (d) “*Award Agreement*” means a written or electronic agreement or other instrument as may be approved from time to time by the Committee and designated as such implementing the grant of each Award. An Award Agreement may be in the form of an agreement to be executed by both the Participant and the Company (or an authorized representative of the Company) or certificates, notices or similar instruments as approved by the Committee and designated as such.
- (e) “*Beneficial Owner*” shall have the meaning set forth in Rule 13d-3 under the Act.
- (f) “*Board*” means the Board of Directors of the Company.
- (g) “*Cause*” has the meaning set forth in the written employment, offer, services or severance agreement or letter between the Participant and the Company or an Affiliate, or if there is no such agreement or no such term is defined in such agreement, means a Participant’s Termination of Employment by the Company or an Affiliate by reason of (i) the Participant’s material breach of any agreement between the Participant and the Company or an Affiliate or any policy of the Company of an Affiliate; (ii) the willful failure or refusal by the Participant to

substantially perform his or her duties; (iii) the commission or conviction of the Participant of, or the entering of a plea of nolo contendere by the Participant with respect to, (A) a felony or (B) a misdemeanor involving moral turpitude; (iv) the Participant's gross misconduct that causes harm to the reputation of the Company or (v) the Participant's inability or failure to competently perform his or her duties in any material respect due to the use of drugs or other illicit substances. A Participant's employment or service will be deemed to have been terminated for Cause if it is determined subsequent to such Participant's Termination of Employment that grounds for a Termination of Employment for Cause existed at the time of such Termination of Employment, as determined by the Committee in good faith.

(h) "**Change in Control**" means the occurrence of any one of the following:

(i) any Person, other than any Pre-IPO Affiliate (as defined below), is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person or any securities acquired directly from the Company or its Affiliates) representing 50% or more of the combined voting power of the Company's then outstanding securities, excluding any Person who becomes such a Beneficial Owner in connection with a transaction described in Section 2(h)(iii)(A), below;

(ii) the following individuals cease for any reason to constitute a majority of the number of directors then serving: (A) individuals who, on the Effective Date (as defined below), constitute the Board and (B) any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including a consent solicitation, relating to the election of directors of the Company) whose appointment or election by the Board or nomination for election by the Company's stockholders was approved or recommended by a vote of at least a majority of the directors then still in office who were either directors on the Effective Date or whose appointment, election or nomination for election was previously so approved or recommended;

(iii) there is consummated a merger or consolidation of the Company or any direct or indirect subsidiary of the Company with any other corporation (other than with any Pre-IPO Affiliate), other than a merger or consolidation which would result in the holders of the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) at least 50% of the combined voting power of the securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger or consolidation; or

(iv) the implementation of a plan of complete liquidation or dissolution of the Company; or

(v) there is consummated a sale or disposition by the Company of all or substantially all of the Company's assets, other than a sale or disposition by the Company of all or substantially all of the Company's assets to (A) an entity, at least 50% of the combined voting power of the voting securities of which is owned by stockholders of the Company in substantially the same proportions as their ownership of the Company immediately prior to such sale, or (B) any Pre-IPO Affiliates.

- (i) “**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and the rulings and regulations issued thereunder.
- (j) “**Committee**” means the Compensation Committee of the Board (or any successor committee) or such other committee as designated by the Board to administer the Plan under Section 6.
- (k) “**Common Stock**” means the Class A common stock of the Company, \$0.001 par value per share, or such other class or kind of shares or other securities as may be applicable under Section 16.
- (l) “**Company**” means Petco Health and Wellness Company, Inc., a Delaware corporation, and except as utilized in the definition of Change in Control, any successor corporation.
- (m) “**Disability**” has the meaning set forth in a written employment, offer, services or severance agreement or letter between the Participant and the Company or an Affiliate, or if there is no such agreement or no such term is defined in such agreement, means, as determined by the Committee in its discretion exercised in good faith, a physical or mental condition of a Participant that would entitle him or her to payment of disability income payments under the Company’s long-term disability insurance policy or plan for employees as then in effect; or in the event that a Participant is not covered, for whatever reason under the Company’s long-term disability insurance policy or plan for employees or in the event the Company does not maintain such a long-term disability insurance policy, “**Disability**” means a permanent and total disability as defined in Section 22(e)(3) of the Code. A determination of Disability may be made by a physician selected or approved by the Committee and, in this respect, Participants shall submit to an examination by such physician upon request by the Committee.
- (n) “**Dividend Equivalent**” mean an amount payable in cash or Common Stock, as determined by the Committee, equal to the dividends that would have been paid to the Participant if the share of Common Stock with respect to which the Dividend Equivalent relates had been owned by the Participant.
- (o) “**Effective Date**” means the date on which the Plan takes effect, as defined pursuant to Section 4.
- (p) “**Eligible Person**” any current or prospective employee, officer, non-employee director or other service provider of the Company or any of its Subsidiaries; provided however that Incentive Stock Options may only be granted to employees of the Company or any of its “subsidiary corporations” within the meaning of Section 424 of the Code.

(q) “**Fair Market Value**” means as of any date, the value of the Common Stock determined as follows: (i) if the Common Stock is listed on any established stock exchange, system or market, its Fair Market Value shall be the closing price for the Common Stock as quoted on such exchange, system or market as reported in the Wall Street Journal or such other source as the Committee deems reliable (or, if no sale of Common Stock is reported for such date, on the next preceding date on which any sale shall have been reported); and (ii) in the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Committee by the reasonable application of a reasonable valuation method, taking into account factors consistent with Treas. Reg. § 409A-1(b)(5)(iv)(B) as the Committee deems appropriate.

(r) “**Incentive Bonus**” means a bonus opportunity awarded under Section 12 pursuant to which a Participant may become entitled to receive an amount based on satisfaction of such performance criteria established for a specified performance period as specified in the Award Agreement.

(s) “**Incentive Stock Option**” means a stock option that is intended to qualify as an “incentive stock option” within the meaning of Section 422 of the Code.

(t) “**Nonqualified Stock Option**” means a stock option that is not intended to qualify as an “incentive stock option” within the meaning of Section 422 of the Code.

(u) “**Option**” means a right to purchase a number of shares of Common Stock at such exercise price, at such times and on such other terms and conditions as are specified in or determined pursuant to an Award Agreement. Options granted pursuant to the Plan may be Incentive Stock Options or Nonqualified Stock Options.

(v) “**Other Stock-Based Award**” means an Award granted to an Eligible Person under Section 11.

(w) “**Participant**” means any Eligible Person to whom Awards have been granted from time to time by the Committee and any authorized transferee of such individual.

(x) “**Person**” shall have the meaning given in Section 3(a)(9) of the Act, as modified and used in Sections 14(d) and 15(d) thereof, except that such term shall not include (i) the Company or any of its Affiliates, (ii) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or any of its Subsidiaries, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities or (iv) a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(y) “**Pre-IPO Affiliates**” Scooby Aggregator LP, CVC Pet LP, Scooby LP, the Canada Pension Plan Investment Board, 9314601 B-2 SPV, LLC, their respective Controlled Affiliates, and any entity in which any such entity has a substantial direct or indirect equity interest, as determined by the Committee from time to time; provided, however, that the term Pre-IPO Affiliate shall not include CVC Pet LP and its Controlled Affiliates or the Canada Pension Plan Investment Board and its Controlled Affiliates, in each case, after they no longer directly or indirectly own or control at least 10% of the outstanding stock of the Company. For purposes of this definition, “**Controlled Affiliates**” means any Person referred to in the preceding sentence that, directly or indirectly, through one or more intermediaries, is controlling, controlled by, or under common control with, such other Person.

(z) “**Restricted Stock**” means an Award or issuance of Common Stock the grant, issuance, vesting and/or transferability of which is subject during specified periods of time to such conditions (including continued employment or engagement or performance conditions) and terms as the Committee deems appropriate.

(aa) “**Restricted Stock Unit**” means an Award denominated in units of Common Stock under which the issuance of shares of Common Stock (or cash payment in lieu thereof) is subject to such conditions (including continued employment or engagement or performance conditions) and terms as the Committee deems appropriate.

(bb) “**Separation from Service**” or “**Separates from Service**” means a Termination of Employment that constitutes a “separation from service” within the meaning of Section 409A of the Code.

(cc) “**Stock Appreciation Right**” means a right granted that entitles the Participant to receive, in cash or Common Stock or a combination thereof, as determined by the Committee, value equal to the excess of (i) the Fair Market Value of a specified number of shares of Common Stock at the time of exercise over (ii) the exercise price of the right, as established by the Committee on the date of grant.

(dd) “**Subsidiary**” means any business association (including a corporation or a partnership, other than the Company) in an unbroken chain of such associations beginning with the Company if each of the associations other than the last association in the unbroken chain owns equity interests (including stock or partnership interests) possessing 50% or more of the total combined voting power of all classes of equity interests in one of the other associations in such chain.

(ee) “**Substitute Awards**” means Awards granted or Common Stock issued by the Company in assumption of, or in substitution or exchange for, awards previously granted, or the right or obligation to make future awards, by a company acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines.

(ff) “**Termination of Employment**” means ceasing to serve as an employee of the Company and its Subsidiaries or, with respect to a non-employee director or other service provider, ceasing to serve as such for the Company and its Subsidiaries, except that with respect to all or any Awards held by a Participant (i) the Committee may determine that a leave of absence or employment on a less than full-time basis is considered a “Termination of Employment,” (ii) the Committee may determine that a transition from employment to service with a partnership, joint venture or corporation not meeting the requirements of a Subsidiary in which the Company or a Subsidiary is a party is not considered a “Termination of Employment,” (iii) service as a member of the Board shall constitute continued employment with respect to Awards granted to a Participant while he or she served as an employee, (iv) service as an employee of the Company or a Subsidiary shall constitute continued employment with respect to Awards granted to a Participant while he or she served as a member of the Board or other service provider, and (v) the Committee may determine that a transition from employment with the Company or a Subsidiary to service to the Company or a Subsidiary other than as an employee shall constitute a “Termination of Employment”. The Committee shall determine whether any corporate transaction, such as a sale or spin-off of a division or Subsidiary that employs or engages a Participant, shall be deemed to result in a Termination of Employment with the Company and its Subsidiaries for purposes of any affected Participant’s Awards, and the Committee’s decision shall be final and binding.

### 3. Eligibility

Any Eligible Person is eligible for selection by the Committee to receive an Award.

### 4. Effective Date and Termination of Plan

This Plan became effective on \_\_\_\_\_ (the “*Effective Date*”). The Plan shall remain available for the grant of Awards until the 10th anniversary of the Effective Date. Notwithstanding the foregoing, the Plan may be terminated at such earlier time as the Board may determine. Termination of the Plan will not affect the rights and obligations of the Participants and the Company arising under Awards theretofore granted.

### 5. Shares Subject to the Plan and to Awards

(a) *Aggregate Limits.* The aggregate number of shares of Common Stock issuable under the Plan shall be equal to \_\_\_\_\_. The aggregate number of shares of Common Stock available for grant under this Plan and the number of shares of Common Stock subject to Awards outstanding at the time of any event described in Section 16 shall be subject to adjustment as provided in Section 16. The shares of Common Stock issued pursuant to Awards granted under this Plan may be shares that are authorized and unissued or shares that were reacquired by the Company, including shares purchased in the open market.

(b) *Issuance of Shares.* For purposes of Section 5(a), the aggregate number of shares of Common Stock issued under this Plan at any time shall equal only the number of shares of Common Stock actually issued upon exercise or settlement of an Award. Shares of Common Stock subject to Awards that have been canceled, expired, forfeited or otherwise not issued under an Award and shares of Common Stock subject to Awards settled in cash shall not count as shares of Common Stock issued under this Plan. The aggregate number of shares available for issuance under this Plan at any time shall not be reduced by (i) shares subject to Awards that have been terminated, expired unexercised, forfeited or settled in cash, (ii) shares subject to Awards that have been retained or withheld by the Company in payment or satisfaction of the exercise price, purchase price or tax withholding obligation of an Award, or (iii) shares subject to Awards that otherwise do not result in the issuance of shares in connection with payment or settlement thereof. In addition, shares that have been delivered (either actually or by attestation) to the Company in payment or satisfaction of the exercise price, purchase price or tax withholding obligation of an Award shall be available for issuance under this Plan.

(c) *Substitute Awards.* Substitute Awards shall not reduce the shares of Common Stock authorized for issuance under the Plan or authorized for grant to a Participant in any calendar year. Additionally, in the event that a company acquired by the Company or any Subsidiary, or with which the Company or any Subsidiary combines, has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used

in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the shares of Common Stock authorized for issuance under the Plan; provided that, Awards using such available shares (i) shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, (ii) shall only be made to individuals who were employees of such acquired or combined company before such acquisition or combination, and (iii) shall comply with the requirements of any stock exchange or market or quotation system on which the Common Stock is traded, listed or quoted.

(d) *Tax Code Limits.* The aggregate number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options granted under this Plan shall be equal to \_\_\_\_\_, which number shall be calculated and adjusted pursuant to Section 16 only to the extent that such calculation or adjustment will not affect the status of any option intended to qualify as an Incentive Stock Option under Section 422 of the Code.

(e) *Limits on Non-Employee Director Compensation.* The aggregate dollar value of equity-based (based on the grant date Fair Market Value of equity-based Awards) and cash compensation granted under this Plan or otherwise during any calendar year to any non-employee director shall not exceed \$800,000; provided, however, that in the calendar year in which a non-employee director first joins the Board or during any calendar year in which a non-employee director is designated as Chairman of the Board or Lead Director, the maximum aggregate dollar value of equity-based and cash compensation granted to the non-employee director may be up to \$1,000,000.

## **6. Administration of the Plan**

(a) *Administrator of the Plan.* The Plan shall be administered by the Committee. The Board shall fill vacancies on, and from time to time may remove or add members to, the Committee. The Committee shall act pursuant to a majority vote or unanimous written consent. Any power of the Committee may also be exercised by the Board, except to the extent that the grant or exercise of such authority would cause any Award or transaction to become subject to (or lose an exemption under) the short-swing profit recovery provisions of Section 16 of the Act. To the extent that any permitted action taken by the Board conflicts with action taken by the Committee, the Board action shall control. To the maximum extent permissible under applicable law, the Committee (or any successor) may by resolution delegate any or all of its authority to one or more subcommittees composed of one or more directors and/or officers of the Company, and any such subcommittee shall be treated as the Committee for all purposes under this Plan. Notwithstanding the foregoing, if the Board or the Committee (or any successor) delegates to a subcommittee comprised of one or more officers of the Company (who are not also directors) the authority to grant Awards, the resolution so authorizing such subcommittee shall specify the total number of shares of Common Stock such subcommittee may award pursuant to such delegated authority, and no such subcommittee shall designate any officer serving thereon or any officer (within the meaning of Section 16 of the Act) or non-employee director of the Company as a recipient of any Awards granted under such delegated authority. The Committee hereby delegates to and designates the Chief Human Resources Officer of the Company (or such other officer with similar authority), and to his or her delegates or designees, the authority to assist the Committee

in the day-to-day administration of the Plan and of Awards granted under the Plan, including those powers set forth in Section 6(b)(iv) through (ix) and to execute Award Agreements or other documents entered into under this Plan on behalf of the Committee or the Company. The Committee may further designate and delegate to one or more additional officers or employees of the Company or any Subsidiary, and/or one or more agents, authority to assist the Committee in any or all aspects of the day-to-day administration of the Plan and/or of Awards granted under the Plan.

(b) *Powers of Committee.* Subject to the express provisions of this Plan, the Committee shall be authorized and empowered to do all things that it determines to be necessary or appropriate in connection with the administration of this Plan, including:

(i) to prescribe, amend and rescind rules and regulations relating to this Plan and to define terms not otherwise defined herein;

(ii) to determine which persons are Eligible Persons, to which of such Eligible Persons, if any, Awards shall be granted hereunder and the timing of any such Awards;

(iii) to prescribe and amend the terms of the Award Agreements, to grant Awards and determine the terms and conditions thereof;

(iv) to establish and verify the extent of satisfaction of any performance goals or other conditions applicable to the grant, issuance, retention, vesting, exercisability or settlement of any Award;

(v) to prescribe and amend the terms of or form of any document or notice required to be delivered to the Company by Participants under this Plan;

(vi) to determine the extent to which adjustments are required pursuant to Section 16;

(vii) to interpret and construe this Plan, any rules and regulations under this Plan and the terms and conditions of any Award granted hereunder, and to make exceptions to any such provisions if the Committee, in good faith, determines that it is appropriate to do so;

(viii) to approve corrections in the documentation or administration of any Award; and

(ix) to make all other determinations deemed necessary or advisable for the administration of this Plan.

Notwithstanding anything in this Plan to the contrary, with respect to any Award that is “deferred compensation” under Section 409A of the Code, the Committee shall exercise its discretion in a manner that causes such Awards to be compliant with or exempt from the requirements of Section 409A of the Code. Without limiting the foregoing, unless expressly agreed to in writing by the Participant holding such Award, the Committee shall not take any action with respect to any Award which constitutes (x) a modification of a stock right within the meaning of Treas. Reg. § 1.409A-

1(b)(5)(v)(B) so as to constitute the grant of a new stock right, (y) an extension of a stock right, including the addition of a feature for the deferral of compensation within the meaning of Treas. Reg. § 1.409A-1 (b)(5)(v)(C), or (z) an impermissible acceleration of a payment date or a subsequent deferral of a stock right subject to Section 409A of the Code within the meaning of Treas. Reg. § 1.409A-1(b)(5)(v)(E).

The Committee may, in its sole and absolute discretion, without amendment to the Plan but subject to the limitations otherwise set forth in Section 20, waive or amend the operation of Plan provisions respecting exercise after Termination of Employment. The Committee or any member thereof may, in its sole and absolute discretion, except as otherwise provided in Section 20, waive, settle or adjust any of the terms of any Award so as to avoid unanticipated consequences or address unanticipated events (including any temporary closure of an applicable stock exchange, disruption of communications or natural catastrophe).

(c) *Determinations by the Committee.* All decisions, determinations and interpretations by the Committee regarding the Plan, any rules and regulations under the Plan and the terms and conditions of, or operation of, any Award granted hereunder, shall be final and binding on all Participants, beneficiaries, heirs, assigns or other persons holding or claiming rights under the Plan or any Award. The Committee shall consider such factors as it deems relevant, in its sole and absolute discretion, to making such decisions, determinations and interpretations, including the recommendations or advice of any officer or other employee of the Company and such attorneys, consultants and accountants as it may select. Members of the Board and members of the Committee acting under the Plan shall be fully protected in relying in good faith upon the advice of counsel and shall incur no liability except for as a result of gross negligence or willful misconduct in the performance of their duties.

(d) *Subsidiary Awards.* In the case of a grant of an Award to any Participant employed by a Subsidiary, such grant may, if the Committee so directs, be implemented by the Company issuing any subject shares of Common Stock to the Subsidiary, for such lawful consideration as the Committee may determine, upon the condition or understanding that the Subsidiary will transfer the shares of Common Stock to the Participant in accordance with the terms of the Award specified by the Committee pursuant to the provisions of the Plan. Notwithstanding any other provision hereof, such Award may be issued by and in the name of the Subsidiary and shall be deemed granted on such date as the Committee shall determine.

## **7. Plan Awards**

(a) *Terms Set Forth in Award Agreement.* Awards may be granted to Eligible Persons as determined by the Committee at any time and from time to time prior to the termination of the Plan. The terms and conditions of each Award shall be set forth in an Award Agreement in a form approved by the Committee for such Award, which Award Agreement may contain such terms and conditions as specified from time to time by the Committee, provided such terms and conditions do not conflict with the Plan. The Award Agreement for any Award (other than Restricted Stock awards) shall include the time or times at or within which and the consideration, if any, for which any shares of Common Stock or cash, as applicable, may be acquired from the Company. The terms of Awards may vary among Participants, and the Plan does not impose upon the Committee any requirement to make Awards subject to uniform terms. Accordingly, the terms of individual Award Agreements may vary.

(b) *Termination of Employment.* Subject to the express provisions of the Plan, the Committee shall specify before, at, or after the time of grant of an Award the provisions governing the effect(s) upon an Award of a Participant's Termination of Employment.

(c) *Rights of a Stockholder.* A Participant shall have no rights as a stockholder with respect to shares of Common Stock covered by an Award (including voting rights) until the date the Participant becomes the holder of record of such shares of Common Stock. No adjustment shall be made for dividends or other rights for which the record date is prior to such date, except as provided in Sections 10(b), 11(b), or 16 of this Plan or as otherwise provided by the Committee.

## **8. Options**

(a) *Grant, Term and Price.* The grant, issuance, retention, vesting and/or settlement of any Option shall occur at such time and be subject to such terms and conditions as determined by the Committee or under criteria established by the Committee, which may include conditions based on continued employment or engagement, passage of time, attainment of age and/or service requirements, and/or satisfaction of performance conditions. The term of an Option shall in no event be greater than 10 years; provided, however, the term of an Option (other than an Incentive Stock Option) shall be automatically extended if, at the time of its scheduled expiration, the Participant holding such Option is prohibited by law or the Company's insider trading policy from exercising the Option, which extension shall expire on the 30th day following the date such prohibition no longer applies. The Committee will establish the price at which Common Stock may be purchased upon exercise of an Option, which in no event will be less than the Fair Market Value of such shares on the date of grant; provided, however, that the exercise price per share of Common Stock with respect to an Option that is granted as a Substitute Award may be less than the Fair Market Value of the shares of Common Stock on the date such Option is granted if such exercise price is based on a formula set forth in the terms of the options held by such optionees or in the terms of the agreement providing for such merger or other acquisition that satisfies the requirements of (i) Section 409A of the Code, if such options held by such optionees are not intended to qualify as "incentive stock options" within the meaning of Section 422 of the Code, and (ii) Section 424(a) of the Code, if such options held by such optionees are intended to qualify as "incentive stock options" within the meaning of Section 422 of the Code. The exercise price of any Option may be paid in cash or such other method as determined by the Committee, including an irrevocable commitment by a broker to pay over such amount from a sale of the shares of Common Stock issuable under an Option, the delivery of previously owned shares of Common Stock or withholding of shares of Common Stock deliverable upon exercise.

(b) *No Repricing without Stockholder Approval.* Other than in connection with a change in the Company's capitalization (as described in Section 16), the Committee shall not, without stockholder approval, reduce the exercise price of a previously awarded Option, and at any time when the exercise price of a previously awarded Option is above the Fair Market Value of a share of Common Stock, the Committee shall not, without stockholder approval, cancel and re-grant or exchange such Option for cash or a new Award with a lower (or no) exercise price.

(c) *No Reload Grants.* Options shall not be granted under the Plan in consideration for, and shall not be conditioned upon the delivery of, shares of Common Stock to the Company in payment of the exercise price and/or tax withholding obligation under any other employee stock option.

(d) *Incentive Stock Options.* Notwithstanding anything to the contrary in this Section 8, in the case of the grant of an Incentive Stock Option, if the Participant owns stock possessing more than 10% of the combined voting power of all classes of stock of the Company (a "10% Stockholder"), the exercise price of such Option must be at least 110% of the Fair Market Value of the shares of Common Stock on the date of grant and the Option must expire within a period of not more than five years from the date of grant. Notwithstanding anything in this Section 8 to the contrary, options designated as Incentive Stock Options shall not be eligible for treatment under the Code as Incentive Stock Options (and will be deemed to be Nonqualified Stock Options) to the extent that either (i) the aggregate Fair Market Value of shares of Common Stock (determined as of the time of grant) with respect to which such Options are exercisable for the first time by the Participant during any calendar year (under all plans of the Company and any Subsidiary) exceeds \$100,000, taking Options into account in the order in which they were granted, or (ii) such Options otherwise remain exercisable but are not exercised within three months (or such other period of time provided in Section 422 of the Code) of separation of service (as determined in accordance with Section 3401(c) of the Code and the regulations promulgated thereunder).

(e) *No Stockholder Rights.* Participants shall have no voting rights and will have no rights to receive dividends or Dividend Equivalents in respect of an Option or any shares of Common Stock subject to an Option until the Participant has become the holder of record of such shares.

## 9. Stock Appreciation Rights

(a) *General Terms.* The grant, issuance, retention, vesting and/or settlement of any Stock Appreciation Right shall occur at such time and be subject to such terms and conditions as determined by the Committee or under criteria established by the Committee, which may include conditions based on continued employment or engagement, passage of time, attainment of age and/or service requirements, and/or satisfaction of performance conditions. Stock Appreciation Rights may be granted to Participants from time to time either in tandem with or as a component of Options granted under the Plan ("*tandem SARs*") or not in conjunction with other Awards ("*freestanding SARs*"). Upon exercise of a tandem SAR as to some or all of the shares covered by the grant, the related Option shall be canceled automatically to the extent of the number of shares covered by such exercise. Conversely, if the related Option is exercised as to some or all of the shares covered by the grant, the related tandem SAR, if any, shall be canceled automatically to the extent of the number of shares covered by the Option exercise. Any Stock Appreciation Right granted in tandem with an Option may be granted at the same time such Option is granted or at any time thereafter before exercise or expiration of such Option, provided that the Fair Market Value of Common Stock on the date of the SAR's grant is not greater than the exercise price of the related Option. All freestanding SARs shall be granted subject to the same terms and conditions applicable to Options as set forth in Section 8 and all tandem SARs shall have the same exercise price as the Option to which they relate. Subject to the provisions of Section 8 and the immediately preceding sentence, the Committee may impose such other conditions or restrictions on any Stock Appreciation Right as it shall deem appropriate. Stock Appreciation Rights may be settled in Common Stock, cash, Restricted Stock or a combination thereof, as determined by the Committee and set forth in the applicable Award Agreement.

(b) *No Repricing without Stockholder Approval.* Other than in connection with a change in the Company's capitalization (as described in Section 16), the Committee shall not, without stockholder approval, reduce the exercise price of a previously awarded Stock Appreciation Right, and at any time when the exercise price of a previously awarded Stock Appreciation Right is above the Fair Market Value of a share of Common Stock, the Committee shall not, without stockholder approval, cancel and re-grant or exchange such Stock Appreciation Right for cash or a new Award with a lower (or no) exercise price.

(c) *No Stockholder Rights.* Participants shall have no voting rights and will have no rights to receive dividends or Dividend Equivalents in respect of an Award of Stock Appreciation Rights or any shares of Common Stock subject to an Award of Stock Appreciation Rights until the Participant has become the holder of record of such shares.

#### **10. Restricted Stock and Restricted Stock Units**

(a) *Vesting and Performance Criteria.* The grant, issuance, vesting and/or settlement of any Award of Restricted Stock or Restricted Stock Units shall occur at such time and be subject to such terms and conditions as determined by the Committee or under criteria established by the Committee, which may include conditions based on continued employment or engagement, passage of time, attainment of age and/or service requirements, and/or satisfaction of performance conditions. In addition, the Committee shall have the right to grant Restricted Stock or Restricted Stock Unit Awards as the form of payment for grants or rights earned or due under other stockholder-approved compensation plans or arrangements of the Company.

(b) *Dividends and Distributions.* Participants in whose name Restricted Stock is granted shall be entitled to receive all dividends and other distributions paid with respect to those shares of Common Stock, unless determined otherwise by the Committee. The Committee will determine whether any such dividends or distributions will be automatically reinvested in additional shares of Restricted Stock and/or subject to the same restrictions on transferability as the Restricted Stock with respect to which they were distributed or whether such dividends or distributions will be paid in cash. Shares underlying Restricted Stock Units shall be entitled to dividends or distributions only to the extent provided by the Committee. Notwithstanding anything herein to the contrary, in no event will dividends or Dividend Equivalents be paid during the performance period with respect to unearned Awards of Restricted Stock or Restricted Stock Units that are subject to performance-based vesting criteria. Dividends or Dividend Equivalents accrued on such shares shall become payable no earlier than the date the performance-based vesting criteria have been achieved and the underlying shares or Restricted Stock Units have been earned.

## 11. Other Stock-Based Awards

(a) *General Terms.* The Committee is authorized, subject to limitations under applicable law, to grant to Eligible Persons such other Awards that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, Common Stock, as deemed by the Committee to be consistent with the purposes of the Plan. The Committee shall determine the terms and conditions of such Other Stock-Based Awards. Common Stock delivered pursuant to an Other-Stock Based Award in the nature of a purchase right granted under this Section 11 shall be purchased for such consideration, paid for at such times, by such methods, and in such forms, including cash, Stock, other Awards, or other property, as the Committee shall determine.

(b) *Dividends and Distributions.* Shares underlying Other Cash-Based Awards shall be entitled to dividends or distributions only to the extent provided by the Committee. Notwithstanding anything herein to the contrary, in no event will Dividend Equivalents be paid during the performance period with respect to unearned Other Cash-Based Awards that are subject to performance-based vesting criteria. Dividend Equivalents accrued on such shares shall become payable no earlier than the date the performance-based vesting criteria have been achieved and the shares underlying the Other Stock-Based Award have been earned.

## 12. Incentive Bonuses

(a) *Performance Criteria.* The Committee shall establish the performance criteria and level of achievement versus such criteria that shall determine the amount payable under an Incentive Bonus, which may include a target, threshold and/or maximum amount payable and any formula for determining such achievement, and which criteria may be based on performance conditions.

(b) *Timing and Form of Payment.* The Committee shall determine the timing of payment of any Incentive Bonus. Payment of the amount due under an Incentive Bonus may be made in cash or in Common Stock, as determined by the Committee.

(c) *Discretionary Adjustments.* Notwithstanding satisfaction of any performance goals and, the amount paid under an Incentive Bonus on account of either financial performance or personal performance evaluations may be adjusted by the Committee on the basis of such further considerations as the Committee shall determine.

## 13. Performance Awards

The Committee may establish performance criteria and level of achievement versus such criteria that shall determine the number of shares of Common Stock, Restricted Stock Units, or cash to be granted, retained, vested, issued or issuable under or in settlement of or the amount payable pursuant to an Award (any such Award, a "**Performance Award**"). A Performance Award may be identified as "Performance Share," "Performance Equity," "Performance Unit" or other such term as chosen by the Committee.

## 14. Deferral of Payment

The Committee may, in an Award Agreement or otherwise, provide for the deferred delivery of Common Stock or cash upon settlement, vesting or other events with respect to Restricted Stock Units, Other Stock-Based Awards or in payment or satisfaction of an Incentive Bonus. Notwithstanding anything herein to the contrary, in no event will any election to defer the delivery of Common Stock or any other payment with respect to any Award be allowed if the Committee

determines, in its sole discretion, that the deferral would result in the imposition of the additional tax under Section 409A(a)(1)(B) of the Code. No Award shall provide for deferral of compensation that does not comply with Section 409A of the Code. The Company, any Subsidiary or Affiliate which is in existence or hereafter comes into existence, the Board and the Committee shall have no liability to a Participant, or any other party, if an Award that is intended to be exempt from, or compliant with, Section 409A of the Code is not so exempt or compliant or for any action taken by the Board or the Committee.

#### **15. Conditions and Restrictions Upon Securities Subject to Awards**

The Committee may provide that the Common Stock issued upon exercise of an Option or Stock Appreciation Right or otherwise subject to or issued under an Award shall be subject to such further agreements, restrictions, conditions or limitations as the Committee in its discretion may specify prior to the exercise of such Option or Stock Appreciation Right or the grant, vesting or settlement of such Award, including conditions on vesting or transferability, forfeiture or repurchase provisions and method of payment for the Common Stock issued upon exercise, vesting or settlement of such Award (including the actual or constructive surrender of Common Stock already owned by the Participant) or payment of taxes arising in connection with an Award. Without limiting the foregoing, such restrictions may address the timing and manner of any resales by the Participant or other subsequent transfers by the Participant of any shares of Common Stock issued under an Award, including (a) restrictions under an insider trading policy or pursuant to applicable law, (b) restrictions designed to delay and/or coordinate the timing and manner of sales by the Participant and holders of other Company equity compensation arrangements, (c) restrictions as to the use of a specified brokerage firm for such resales or other transfers and (d) provisions requiring Common Stock be sold on the open market or to the Company in order to satisfy tax withholding or other obligations.

#### **16. Adjustment of and Changes in the Stock**

(a) The number and kind of shares of Common Stock available for issuance under this Plan (including under any Awards then outstanding), and the number and kind of shares of Common Stock subject to the limits set forth in Section 5, shall be equitably adjusted by the Committee to reflect any reorganization, reclassification, combination of shares, stock split, reverse stock split, spin-off, dividend or distribution of securities, property or cash (other than regular, quarterly cash dividends), or any other event or transaction that affects the number or kind of shares of Common Stock outstanding. Such adjustment may be designed to comply with Section 424 of the Code or may be designed to treat the shares of Common Stock available under the Plan and subject to Awards as if they were all outstanding on the record date for such event or transaction or to increase the number of such shares of Common Stock to reflect a deemed reinvestment in shares of Common Stock of the amount distributed to the Company's securityholders. The terms of any outstanding Award shall also be equitably adjusted by the Committee as to price, number or kind of shares of Common Stock subject to such Award, vesting, and other terms to reflect the foregoing events, which adjustments need not be uniform as between different Awards or different types of Awards. No fractional shares of Common Stock shall be issued or issuable pursuant to such an adjustment.

(b) In the event there shall be any other change in the number or kind of outstanding shares of Common Stock, or any stock or other securities into which such Common Stock shall have been changed, or for which it shall have been exchanged, by reason of a Change in Control, other merger, consolidation or otherwise, then the Committee shall determine the appropriate and equitable adjustment to be effected, which adjustments need not be uniform between different Awards or different types of Awards. In addition, in the event of such change described in this paragraph, the Committee may accelerate the time or times at which any Award may be exercised, consistent with and as otherwise permitted under Section 409A of the Code, and may provide for cancellation of such accelerated Awards that are not exercised within a time prescribed by the Committee in its sole discretion.

(c) Unless otherwise expressly provided in the Award Agreement or another contract, including an employment, offer, services or severance agreement or letter, or under the terms of a transaction constituting a Change in Control, the Committee may provide that any or all of the following shall occur upon a Participant's Termination of Employment without Cause within 24 months following a Change in Control: (i) in the case of an Option or Stock Appreciation Right, the Participant shall have the ability to exercise any portion of the Option or Stock Appreciation Right not previously exercisable, (ii) in the case of any Award the vesting of which is in whole or in part subject to performance criteria or an Incentive Bonus, all conditions to the grant, issuance, retention, vesting or transferability of, or any other restrictions applicable to, such Award shall immediately lapse and the Participant shall have the right to receive a payment based on target level achievement or actual performance through a date determined by the Committee, and (iii) in the case of outstanding Restricted Stock, Restricted Stock Units or Other Stock-Based Awards (other than those referenced in subsection (ii)), all conditions to the grant, issuance, retention, vesting or transferability of, or any other restrictions applicable to, such Award shall immediately lapse. Notwithstanding anything herein to the contrary, in the event of a Change in Control in which the acquiring or surviving company in the transaction does not assume or continue outstanding Awards or issue substitute Awards upon the Change in Control, immediately prior to the Change in Control, all Awards that are not assumed, continued or substituted for shall be treated as follows effective immediately prior to the Change in Control: (A) in the case of an Option or Stock Appreciation Right, the Participant shall have the ability to exercise such Option or Stock Appreciation Right, including any portion of the Option or Stock Appreciation Right not previously exercisable, (B) in the case of any Award the vesting of which is in whole or in part subject to performance criteria or an Incentive Bonus, all conditions to the grant, issuance, retention, vesting or transferability of, or any other restrictions applicable to, such Award shall immediately lapse and the Participant shall have the right to receive a payment based on target level achievement or actual performance through a date determined by the Committee, as determined by the Committee, and (C) in the case of outstanding Restricted Stock, Restricted Stock Units or Other Stock-Based Awards (other than those referenced in subsection (B)), all conditions to the grant, issuance, retention, vesting or transferability of, or any other restrictions applicable to, such Award shall immediately lapse. In no event shall any action be taken pursuant to this Section 16(c) that would change the payment or settlement date of an Award in a manner that would result in the imposition of any additional taxes or penalties pursuant to Section 409A of the Code.

(d) Notwithstanding anything in this Section 16 to the contrary, in the event of a Change in Control, the Committee may provide for the cancellation and cash settlement of all outstanding Awards upon such Change in Control.

(e) Notwithstanding anything in this Section 16 to the contrary, an adjustment to an Option or Stock Appreciation Right under this Section 16 shall be made in a manner that will not result in the grant of a new Option or Stock Appreciation Right under Section 409A of the Code.

#### **17. Transferability**

Each Award may not be sold, transferred for value, pledged, assigned, or otherwise alienated or hypothecated by a Participant other than by will or the laws of descent and distribution, and each Option or Stock Appreciation Right shall be exercisable only by the Participant during his or her lifetime. Notwithstanding the foregoing, (a) outstanding Options may be exercised following the Participant's death by the Participant's beneficiaries or as permitted by the Committee and (b) a Participant may transfer or assign an Award as a gift to an entity wholly owned by such Participant (an "*Assignee Entity*"), provided that such Assignee Entity shall be entitled to exercise assigned Options and Stock Appreciation Rights only during the lifetime of the assigning Participant (or following the assigning Participant's death, by the Participant's beneficiaries or as otherwise permitted by the Committee) and provided further that such Assignee Entity shall not further sell, pledge, transfer, assign or otherwise alienate or hypothecate such Award.

#### **18. Compliance with Laws and Regulations**

(a) This Plan, the grant, issuance, vesting, exercise and settlement of Awards hereunder, and the obligation of the Company to sell, issue or deliver shares of Common Stock under such Awards, shall be subject to all applicable foreign, federal, state and local laws, rules and regulations, stock exchange rules and regulations, and to such approvals by any governmental or regulatory agency as may be required. The Company shall not be required to register in a Participant's name or deliver Common Stock prior to the completion of any registration or qualification of such shares under any foreign, federal, state or local law or any ruling or regulation of any government body which the Committee shall determine to be necessary or advisable. To the extent the Company is unable to or the Committee deems it infeasible to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any shares of Common Stock hereunder, the Company and its Subsidiaries shall be relieved of any liability with respect to the failure to issue or sell such shares of Common Stock as to which such requisite authority shall not have been obtained. No Option shall be exercisable and no Common Stock shall be issued and/or transferable under any other Award unless a registration statement with respect to the Common Stock underlying such Option is effective and current or the Company has determined, in its sole and absolute discretion, that such registration is unnecessary.

(b) In the event an Award is granted to or held by a Participant who is employed or providing services outside the United States, the Committee may, in its sole discretion, modify the provisions of the Plan or of such Award as they pertain to such individual to comply with applicable foreign law or to recognize differences in local law, currency or tax policy. The Committee may also impose conditions on the grant, issuance, exercise, vesting, settlement or retention of Awards in order to comply with such foreign law and/or to minimize the Company's obligations with respect to tax equalization for Participants employed outside their home country.

## 19. Withholding

To the extent required by applicable federal, state, local or foreign law, the Committee may, and/or a Participant shall, make arrangements satisfactory to the Company for the satisfaction of any withholding tax obligations that arise with respect to any Award or the issuance or sale of any shares of Common Stock. The Company shall not be required to recognize any Participant rights under an Award, to issue shares of Common Stock or to recognize the disposition of such shares of Common Stock until such obligations are satisfied. To the extent permitted or required by the Committee, these obligations may or shall be satisfied by the Company withholding cash from any compensation otherwise payable to or for the benefit of a Participant, the Company withholding a portion of the shares of Common Stock that otherwise would be issued to a Participant under such Award or any other Award held by the Participant, or by the Participant tendering to the Company cash or, if allowed by the Committee, shares of Common Stock.

## 20. Amendment of the Plan or Awards

The Board may amend, alter or discontinue this Plan, and the Committee may amend or alter any Award Agreement or other document evidencing an Award made under this Plan; however, except as provided pursuant to the provisions of Section 16, no such amendment shall, without the approval of the stockholders of the Company:

- (a) increase the maximum number of shares of Common Stock for which Awards may be granted under this Plan;
- (b) reduce the price at which Options may be granted below the price provided for in Section 8(a);
- (c) reprice outstanding Options or SARs as described in Sections 8(b) and 9(b);
- (d) extend the term of this Plan;
- (e) change the class of persons eligible to be Participants;
- (f) increase the individual maximum limits in Section 5(e); or
- (g) otherwise amend the Plan in any manner requiring stockholder approval by law or the rules of any stock exchange or market or quotation system on which the Common Stock is traded, listed or quoted.

No amendment or alteration to the Plan or an Award or Award Agreement shall be made which would materially impair the rights of the holder of an Award without such holder's consent; provided that no such consent shall be required if the Committee determines in its sole discretion and prior to the date of any Change in Control that such amendment or alteration either (i) is required or advisable in order for the Company, the Plan or the Award to satisfy any law or regulation or to meet the requirements of, or avoid adverse financial accounting consequences under, any accounting standard, or (ii) is not reasonably likely to significantly diminish the benefits provided under such Award, or that any such diminishment has been adequately compensated.

## **21. No Liability of Company**

The Company, any Subsidiary or Affiliate which is in existence or hereafter comes into existence, the Board and the Committee shall not be liable to a Participant or any other person as to: (a) the non-issuance or sale of shares of Common Stock as to which the Company has been unable to obtain from any regulatory body having jurisdiction the authority deemed by the Company's counsel to be necessary to the lawful issuance and sale of any shares of Common Stock hereunder; and (b) any tax consequence expected, but not realized, by any Participant or other person due to the receipt, vesting, exercise or settlement of any Award granted hereunder.

## **22. Non-Exclusivity of Plan**

Neither the adoption of this Plan by the Board nor the submission of this Plan to the stockholders of the Company for approval shall be construed as creating any limitations on the power of the Board or the Committee to adopt such other incentive arrangements as either may deem desirable, including the granting of Restricted Stock or stock options otherwise than under this Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

## **23. Governing Law**

This Plan and any agreements or other documents hereunder shall be interpreted and construed in accordance with the laws of the State of Delaware and applicable federal law. Any reference in this Plan or in the agreement or other document evidencing any Awards to a provision of law or to a rule or regulation shall be deemed to include any successor law, rule or regulation of similar effect or applicability.

## **24. No Right to Employment, Reelection or Continued Service**

Nothing in this Plan or an Award Agreement shall interfere with or limit in any way the right of the Company, its Subsidiaries and/or its Affiliates to terminate any Participant's employment, service on the Board or service at any time or for any reason not prohibited by law, nor shall this Plan or an Award itself confer upon any Participant any right to continue his or her employment or service for any specified period of time. Neither an Award nor any benefits arising under this Plan shall constitute an employment contract with the Company, any Subsidiary and/or its Affiliates. Subject to Sections 4 and 20, this Plan and the benefits hereunder may be terminated at any time in the sole and exclusive discretion of the Board without giving rise to any liability on the part of the Company, its Subsidiaries and/or its Affiliates.

## **25. Specified Employee Delay**

To the extent any payment under this Plan is considered deferred compensation subject to the restrictions contained in Section 409A of the Code, such payment may not be made to a specified employee (as determined in accordance with a uniform policy adopted by the Company with respect to all arrangements subject to Section 409A of the Code) upon Separation from Service before the date that is six months after the specified employee's Separation from Service (or, if

earlier, the specified employee's death). Any payment that would otherwise be made during this period of delay shall be accumulated and paid on the sixth month plus one day following the specified employee's Separation from Service (or, if earlier, as soon as administratively practicable after the specified employee's death).

#### **26. No Liability of Committee Members**

No member of the Committee shall be personally liable by reason of any contract or other instrument executed by such member or on his or her behalf in his or her capacity as a member of the Committee nor for any mistake of judgment made in good faith, and the Company shall indemnify and hold harmless each member of the Committee and each other employee, officer or director of the Company to whom any duty or power relating to the administration or interpretation of the Plan may be allocated or delegated, against any cost or expense (including counsel fees) or liability (including any sum paid in settlement of a claim) arising out of any act or omission to act in connection with the Plan, unless arising out of such person's own fraud or willful bad faith; provided, however, that approval of the Board shall be required for the payment of any amount in settlement of a claim against any such person. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Certificate of Incorporation and Bylaws (as each may be amended from time to time), as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

#### **27. Severability**

If any provision of the Plan or any Award is or becomes or is deemed to be invalid, illegal, or unenforceable in any jurisdiction or as to any Person or Award, or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to the applicable laws, or if it cannot be construed or deemed amended without, in the determination of the Committee, materially altering the intent of the Plan or the Award, such provision shall be stricken as to such jurisdiction, Person or Award, and the remainder of the Plan and any such Award shall remain in full force and effect.

#### **28. Unfunded Plan**

The Plan is intended to be an unfunded plan. Participants are and shall at all times be general creditors of the Company with respect to their Awards. If the Committee or the Company chooses to set aside funds in a trust or otherwise for the payment of Awards under the Plan, such funds shall at all times be subject to the claims of the creditors of the Company in the event of its bankruptcy or insolvency.

#### **29. Clawback/Recoupment**

Awards granted under this Plan will be subject to recoupment in accordance with any clawback policy that the Company adopts or is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law. In addition, the Committee may impose such other clawback, recovery or recoupment provisions in an Award Agreement as the Committee determines necessary or

appropriate, including a reacquisition right in respect of previously acquired shares of Common Stock or other cash or property upon the occurrence of misconduct. No recovery of compensation under such a clawback policy will be an event giving rise to a right to resign for “good reason” or be deemed a “constructive termination” (or any similar term) as such terms are used in any agreement between any Participant and the Company.

### **30. Interpretation**

Headings are given to the Sections and subsections of the Plan solely as a convenience to facilitate reference and shall not be deemed in any way material or relevant to the construction or interpretation of the Plan or any provision thereof. Words in the masculine gender shall include the feminine gender, and where appropriate, the plural shall include the singular and the singular shall include the plural. The use herein of the word “including” following any general statement, term or matter shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation”, “but not limited to”, or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter. References herein to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and not prohibited by the Plan.

**FORM OF INDEMNIFICATION AGREEMENT**

This Indemnification Agreement (this "Agreement") is entered into as of \_\_\_\_\_, \_\_\_\_ (the "Effective Date") by and between Petco Health and Wellness Company, Inc., a Delaware corporation (the "Company"), and \_\_\_\_\_ (the "Indemnitee").

**RECITALS**

WHEREAS, the Board of Directors has determined that the inability to attract and retain qualified persons as directors and officers is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there shall be adequate certainty of protection through insurance and indemnification against risks of claims and actions against them arising out of their service to and activities on behalf of the Company;

WHEREAS, the Company has adopted provisions in its Bylaws (as amended and/or restated from time to time, the "Bylaws") providing for indemnification and advancement of expenses of its directors and officers, and the Company wishes to clarify and enhance the rights and obligations of the Company and the Indemnitee with respect to indemnification and advancement of expenses;

WHEREAS, in order to induce and encourage highly experienced and capable persons such as the Indemnitee to serve and continue to serve as directors and officers of the Company and in any other capacity with respect to the Company as the Company may request, and to otherwise promote the desirable end that such persons shall resist what they consider unjustified lawsuits and claims made against them in connection with the good faith performance of their duties to the Company, with the knowledge that certain costs, judgments, penalties, fines, liabilities, and expenses incurred by them in their defense of such litigation are to be borne by the Company and they shall receive appropriate protection against such risks and liabilities, the Board of Directors of the Company has determined that the following Agreement is reasonable and prudent to promote and ensure the best interests of the Company and its stockholders; and

WHEREAS, the Company desires to have the Indemnitee serve or continue to serve as a director or officer of the Company and in any other capacity with respect to the Company as the Company may request, as the case may be, free from undue concern for unpredictable, inappropriate, or unreasonable legal risks and personal liabilities by reason of the Indemnitee acting in good faith in the performance of the Indemnitee's duty to the Company; and the Indemnitee desires to continue so to serve the Company, provided, and on the express condition, that he or she is furnished with the protections set forth hereinafter.

**AGREEMENT**

NOW, THEREFORE, in consideration of the Indemnitee's continued service as a director or officer of the Company, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

(a) A “Change in Control” will be deemed to have occurred if, with respect to any particular 24-month period, the individuals who, at the beginning of such 24-month period, constituted the Board of Directors of the Company (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board of Directors; provided, however, that any individual becoming a director subsequent to the beginning of such 24-month period whose election, or nomination for election by the stockholders of the Company, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a person other than the Board of Directors. For the avoidance of doubt, a “Change in Control” shall not include the initial public offering of Class A Common Stock of the Company or the actions or transactions contemplated to effect any such transaction.

(b) “Disinterested Director” means a director of the Company who is not or was not a party to the Proceeding in respect of which indemnification is being sought by the Indemnitee.

(c) “Expenses” includes, without limitation, expenses incurred in connection with the defense or settlement of any action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative, or legislative hearing, or any other threatened, pending, or completed proceeding, whether brought by or in the right of the Company or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative, or other nature, attorneys’ fees, witness fees and expenses, fees and expenses of accountants and other advisors, retainers and disbursements and advances thereon, the premium, security for, and other costs relating to any bond (including cost bonds, appraisal bonds, or their equivalents), and any expenses of establishing a right to indemnification or advancement under Sections 9, 11, 13, and 16 hereof, but shall not include the amount of judgments, fines, ERISA excise taxes, or penalties actually levied against the Indemnitee, or any amounts paid in settlement by or on behalf of the Indemnitee.

(d) “Independent Counsel” means a law firm or a member of a law firm that neither is presently nor in the past five years has been retained to represent (i) the Company or the Indemnitee in any matter material to either such party or (ii) any other party to the Proceeding giving rise to a request for indemnification hereunder. Notwithstanding the foregoing, 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 Indemnitee in an action to determine the Indemnitee’s right to indemnification under this Agreement.

(e) “Proceeding” means any action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative, or legislative hearing, or any other threatened, pending, or completed proceeding, whether brought by or in the right of the Company or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative, or other nature, to which the Indemnitee was or is a party or is threatened to be made a party or is otherwise involved in by reason of the fact that the

Indemnitee is or was a director, officer, employee, agent, or trustee of the Company or while a director, officer, employee, agent, or trustee of the Company is or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, or by reason of anything done or not done by the Indemnitee in any such capacity, whether or not the Indemnitee is serving in such capacity at the time any expense, liability, or loss is incurred for which indemnification or advancement can be provided under this Agreement.

2. Service by the Indemnitee. The Indemnitee shall serve and/or continue to serve as a director or officer of the Company faithfully and to the best of the Indemnitee's ability so long as the Indemnitee is duly elected or appointed and until such time as the Indemnitee's successor is elected and qualified or the Indemnitee is removed as permitted by applicable law or tenders a resignation in writing.

3. Indemnification and Advancement of Expenses. The Company shall indemnify and hold harmless the Indemnitee, and shall pay to the Indemnitee in advance of the final disposition of any Proceeding all Expenses incurred by the Indemnitee in defending any such Proceeding, to the fullest extent authorized by the General Corporation Law of the State of Delaware (the "DGCL"), as the same exists or may hereafter be amended, all on the terms and conditions set forth in this Agreement. Without diminishing the scope of the rights provided by this Section, the rights of the Indemnitee to indemnification and advancement of Expenses provided hereunder shall include but shall not be limited to those rights hereinafter set forth, except that no indemnification or advancement of Expenses shall be paid to the Indemnitee (unless the Board of Directors otherwise determines that such payment is appropriate):

(a) to the extent expressly prohibited by applicable law;

(b) subject to Section 12(b) below, for and to the extent that payment is actually made to the Indemnitee under a valid and collectible insurance policy or under a valid and enforceable indemnity clause, provision of the certificate of incorporation or bylaws, or agreement of the Company or any other company or other enterprise (and the Indemnitee shall reimburse the Company for any amounts paid by the Company and subsequently so recovered by the Indemnitee);

(c) in connection with an action, suit, or proceeding, or part thereof voluntarily initiated by the Indemnitee (including claims and counterclaims, whether such counterclaims are asserted by (i) the Indemnitee, or (ii) the Company in an action, suit, or proceeding initiated by the Indemnitee), except a judicial proceeding or arbitration pursuant to Section 11 to enforce rights under this Agreement, unless the action, suit, or proceeding, or part thereof, was authorized or ratified by the Board of Directors of the Company or the Board of Directors otherwise determines that indemnification or advancement of Expenses is appropriate; or

(d) with respect to any Proceeding brought by or in the right of the Company against the Indemnitee that is authorized or ratified by the Board of Directors of the Company, including any Proceeding brought by the Company seeking reimbursement pursuant to any

compensation recoupment or clawback policy adopted by the Board of Directors or the compensation committee of the Board of Directors, except as provided in Sections 5, 6, and 7 below.

4. Action or Proceedings Other than an Action by or in the Right of the Company. Except as limited by Section 3 above, the Indemnitee shall be entitled to the indemnification rights provided in this Section if the Indemnitee was or is a party or is threatened to be made a party to, or was or is otherwise involved in, any Proceeding (other than an action by or in the right of the Company) by reason of the fact that the Indemnitee is or was a director, officer, employee, agent, or trustee of the Company or while a director, officer, employee, agent, or trustee of the Company is or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, or by reason of anything done or not done by the Indemnitee in any such capacity. Pursuant to this Section, the Indemnitee shall be indemnified against all expense, liability, and loss (including judgments, fines, ERISA excise taxes, penalties, amounts paid in settlement by or on behalf of the Indemnitee, and Expenses) actually and reasonably incurred by the Indemnitee in connection with such Proceeding, if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe his or her conduct was unlawful.

5. Indemnity in Proceedings by or in the Right of the Company. Except as limited by Section 3 above, the Indemnitee shall be entitled to the indemnification rights provided in this Section if the Indemnitee was or is a party or is threatened to be made a party to, or was or is otherwise involved in, any Proceeding brought by or in the right of the Company to procure a judgment in its favor by reason of the fact that the Indemnitee is or was a director, officer, employee, agent, or trustee of the Company or while a director, officer, employee, agent, or trustee of the Company is or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, or by reason of anything done or not done by the Indemnitee in any such capacity. Pursuant to this Section, the Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee in connection with such Proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no such indemnification shall be made in respect of any claim, issue, or matter as to which the DGCL expressly prohibits such indemnification by reason of any adjudication of liability of the Indemnitee to the Company, unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the Indemnitee is entitled to indemnification for such expense, liability, and loss as such court shall deem proper.

6. Indemnification for Costs, Charges, and Expenses of Successful Party. Notwithstanding any limitations of Sections 3(c), 3(d), 4, and 5 above, to the extent that the Indemnitee has been successful, on the merits or otherwise, in whole or in part, in defense of any Proceeding, or in defense of any claim, issue, or matter therein, including, without limitation, the

dismissal of any action without prejudice, or if it is ultimately determined, by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal, that the Indemnitee is otherwise entitled to be indemnified against Expenses, the Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee in connection therewith.

7. Partial Indemnification. If the Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the expense, liability, and loss (including judgments, fines, ERISA excise taxes, penalties, amounts paid in settlement by or on behalf of the Indemnitee, and Expenses) actually and reasonably incurred in connection with any Proceeding, or in connection with any judicial proceeding or arbitration pursuant to Section 11 to enforce rights under this Agreement, but not, however, for all of the total amount thereof, the Company shall nevertheless indemnify the Indemnitee for the portion of such expense, liability, and loss actually and reasonably incurred to which the Indemnitee is entitled.

8. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the maximum extent permitted by the DGCL, the Indemnitee shall be entitled to indemnification against all Expenses actually and reasonably incurred by the Indemnitee or on the Indemnitee's behalf if the Indemnitee appears as a witness or otherwise incurs legal expenses as a result of or related to the Indemnitee's service as a director or officer of the Company, in any threatened, pending, or completed action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative, or legislative hearing, or any other threatened, pending, or completed proceeding, whether of a civil, criminal, administrative, legislative, investigative, or other nature, to which the Indemnitee neither is, nor is threatened to be made, a party.

9. Determination of Entitlement to Indemnification. To receive indemnification under this Agreement, the Indemnitee shall submit a written request to the Secretary of the Company. Such request shall include documentation or information that is necessary for such determination and is reasonably available to the Indemnitee. Upon receipt by the Secretary of the Company of a written request by the Indemnitee for indemnification, the entitlement of the Indemnitee to indemnification, to the extent not required pursuant to the terms of Section 6 or Section 8 of this Agreement, shall be determined by the following person or persons who shall be empowered to make such determination (as selected by the Board of Directors, except with respect to Section 9(e) below): (a) the Board of Directors of the Company by a majority vote of Disinterested Directors, whether or not such majority constitutes a quorum; (b) a committee of Disinterested Directors designated by a majority vote of such directors, whether or not such majority constitutes a quorum; (c) if there are no Disinterested Directors, or if the Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the Indemnitee; (d) the stockholders of the Company; or (e) in the event that a Change in Control has occurred, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the Indemnitee. Such Independent Counsel shall be selected by the Board of Directors and approved by the Indemnitee, except that in the event that a Change in Control has occurred, Independent Counsel shall be selected by the Indemnitee. Upon failure of the Board of Directors so to select such Independent Counsel or upon failure of the Indemnitee so to approve (or so to select, in the event a Change in Control has occurred), such Independent Counsel shall be selected upon application

to a court of competent jurisdiction. The determination of entitlement to indemnification shall be made and, unless a contrary determination is made, such indemnification shall be paid in full by the Company not later than 60 calendar days after receipt by the Secretary of the Company of a written request for indemnification. If the person making such determination shall determine that the Indemnitee is entitled to indemnification as to part (but not all) of the application for indemnification, such person shall reasonably prorate such partial indemnification among the claims, issues, or matters at issue at the time of the determination.

10. Presumptions and Effect of Certain Proceedings. The Secretary of the Company shall, promptly upon receipt of the Indemnitee's written request for indemnification, advise in writing the Board of Directors or such other person or persons empowered to make the determination as provided in Section 9 that the Indemnitee has made such request for indemnification. Upon making such request for indemnification, the Indemnitee shall be presumed to be entitled to indemnification hereunder and the Company shall have the burden of proof in making any determination contrary to such presumption. If the person or persons so empowered to make such determination shall have failed to make the requested determination with respect to indemnification within 60 calendar days after receipt by the Secretary of the Company of such request, a requisite determination of entitlement to indemnification shall be deemed to have been made and the Indemnitee shall be absolutely entitled to such indemnification, absent actual fraud in the request for indemnification. The termination of any Proceeding described in Sections 4 or 5 by judgment, order, settlement, or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself (a) create a presumption that the Indemnitee did not act in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had reasonable cause to believe his or her conduct was unlawful or (b) otherwise adversely affect the rights of the Indemnitee to indemnification except as may be provided herein.

11. Remedies of the Indemnitee in Cases of Determination Not to Indemnify or to Advance Expenses; Right to Bring Suit. In the event that a determination is made that the Indemnitee is not entitled to indemnification hereunder or if payment is not timely made following a determination of entitlement to indemnification pursuant to Sections 9 and 10, or if an advancement of Expenses is not timely made pursuant to Section 16, the Indemnitee may at any time thereafter bring suit against the Company seeking an adjudication of entitlement to such indemnification or advancement of Expenses, and any such suit shall be brought in the Court of Chancery of the State of Delaware unless otherwise required by the law of the state in which the Indemnitee primarily resides and works. Alternatively, the Indemnitee at the Indemnitee's option may seek an award in an arbitration to be conducted by a single arbitrator in the State of Delaware pursuant to the rules of the American Arbitration Association, such award to be made within 60 calendar days following the filing of the demand for arbitration. The Company shall not oppose the Indemnitee's right to seek any such adjudication or award in arbitration. In any suit or arbitration brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit or arbitration brought by the Indemnitee to enforce a right to an advancement of Expenses), it shall be a defense that the Indemnitee has not met any applicable standard of conduct for indemnification set forth in the DGCL, including the standard described in Section 4 or 5, as applicable. Further, in any suit brought by the Company to recover an advancement of Expenses pursuant to the terms of an undertaking, the Company shall be entitled to recover such Expenses upon a final judicial decision of a court of competent jurisdiction from which there is

no further right to appeal that the Indemnitee has not met the standard of conduct described above. Neither the failure of the Company (including the Disinterested Directors, a committee of Disinterested Directors, Independent Counsel, or its stockholders) to have made a determination prior to the commencement of such suit or arbitration that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the standard of conduct described above, nor an actual determination by the Company (including the Disinterested Directors, a committee of Disinterested Directors, Independent Counsel, or its stockholders) that the Indemnitee has not met the standard of conduct described above shall create a presumption that the Indemnitee has not met the standard of conduct described above, or, in the case of such a suit brought by the Indemnitee, be a defense to such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of Expenses hereunder, or brought by the Company to recover an advancement of Expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Section 11 or otherwise shall be on the Company. If a determination is made or deemed to have been made pursuant to the terms of Section 9 or 10 that the Indemnitee is entitled to indemnification, the Company shall be bound by such determination and is precluded from asserting that such determination has not been made or that the procedure by which such determination was made is not valid, binding, and enforceable. The Company further agrees to stipulate in any court or before any arbitrator pursuant to this Section 11 that the Company is bound by all the provisions of this Agreement and is precluded from making any assertions to the contrary. If the court or arbitrator shall determine that the Indemnitee is entitled to any indemnification or advancement of Expenses hereunder, the Company shall pay all Expenses actually and reasonably incurred by the Indemnitee in connection with such adjudication or award in arbitration (including, but not limited to, any appellate proceedings) to the fullest extent permitted by law, and in any suit brought by the Company to recover an advancement of Expenses pursuant to the terms of an undertaking, the Company shall pay all Expenses actually and reasonably incurred by the Indemnitee in connection with such suit to the extent the Indemnitee has been successful, on the merits or otherwise, in whole or in part, in defense of such suit, to the fullest extent permitted by law.

#### 12. Non-Exclusivity of Rights.

(a) The rights to indemnification and to the advancement of Expenses provided by this Agreement shall not be deemed exclusive of any other right that the Indemnitee may now or hereafter acquire under any applicable law, agreement (including any partnership agreement or limited liability company agreement), vote of stockholders or Disinterested Directors, provisions of an entity's organizational documents (including the Company's), or otherwise.

(b) The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of expenses and/or insurance provided by one or more direct or indirect equityholders that have invested in the Company and/or certain affiliates of such equityholders (collectively, the "Principal Stockholder"). The Company hereby agrees that, in connection with any Proceeding, it: (i) is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Principal Stockholder to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary); (ii) shall be required to advance the full amount of Expenses incurred by Indemnitee

and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and the certificate of incorporation or bylaws of the Company (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Principal Stockholder; and (iii) irrevocably waives, relinquishes and releases the Principal Stockholder from any and all claims against the Principal Stockholder for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Principal Stockholder on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company hereunder shall affect the foregoing and that the Principal Stockholder shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Principal Stockholder is an express third party beneficiary of this Section 12(b).

13. Expenses to Enforce Agreement. In the event that the Indemnitee is subject to or intervenes in any action, suit, or proceeding in which the validity or enforceability of this Agreement is at issue or seeks an adjudication or award in arbitration to enforce the Indemnitee's rights under, or to recover damages for breach of, this Agreement, the Indemnitee, if the Indemnitee prevails in whole or in part in such action, suit, or proceeding, shall be entitled to recover from the Company and shall be indemnified by the Company against any Expenses actually and reasonably incurred by the Indemnitee in connection therewith.

14. Continuation of Indemnity. All agreements and obligations of the Company contained herein shall continue during the period the Indemnitee is a director, officer, employee, agent, or trustee of the Company or while a director, officer, employee, agent, or trustee is serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, and shall continue thereafter with respect to any possible claims based on the fact that the Indemnitee was a director, officer, employee, agent, or trustee of the Company or was serving at the request of the Company as a director, officer, employee, agent, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan. This Agreement shall be binding upon all successors and assigns of the Company (including any transferee of all or substantially all of its assets and any successor by merger or operation of law) and shall inure to the benefit of the Indemnitee's heirs, executors, and administrators.

15. Notification and Defense of Proceeding. Promptly after receipt by the Indemnitee of notice of any Proceeding, the Indemnitee shall, if a request for indemnification or an advancement of Expenses in respect thereof is to be made against the Company under this Agreement, notify the Company in writing of the commencement thereof; but the omission so to notify the Company shall not relieve it from any liability that it may have to the Indemnitee. Notwithstanding any other provision of this Agreement, with respect to any such Proceeding of which the Indemnitee notifies the Company:

- (a) The Company shall be entitled to participate therein at its own expense;

(b) Except as otherwise provided in this Section 15(b), to the extent that it may wish, the Company, jointly with any other indemnifying party similarly notified, shall be entitled to assume the defense thereof, with counsel satisfactory to the Indemnitee. After notice from the Company to the Indemnitee of its election so to assume the defense thereof, the Company shall not be liable to the Indemnitee under this Agreement for any expenses of counsel subsequently incurred by the Indemnitee in connection with the defense thereof except as otherwise provided below. The Indemnitee shall have the right to employ the Indemnitee's own counsel in such Proceeding, but the fees and expenses of such counsel incurred after notice from the Company of its assumption of the defense thereof shall be at the expense of the Indemnitee unless (i) the employment of counsel by the Indemnitee has been authorized by the Company, (ii) the Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and the Indemnitee in the conduct of the defense of such Proceeding, or (iii) the Company shall not within 60 calendar days of receipt of notice from the Indemnitee in fact have employed counsel to assume the defense of the Proceeding, in each of which cases the fees and expenses of the Indemnitee's counsel shall be at the expense of the Company. The Company shall not be entitled to assume the defense of any Proceeding brought by or on behalf of the Company or as to which the Indemnitee shall have made the conclusion provided for in (ii) above; and

(c) Notwithstanding any other provision of this Agreement, the Company shall not be liable to indemnify the Indemnitee under this Agreement for any amounts paid in settlement of any Proceeding effected without the Company's written consent, or for any judicial or other award, if the Company was not given an opportunity, in accordance with this Section 15, to participate in the defense of such Proceeding. The Company shall not settle any Proceeding in any manner that would impose any penalty or limitation on or disclosure obligation with respect to the Indemnitee, or that would directly or indirectly constitute or impose any admission or acknowledgment of fault or culpability with respect to the Indemnitee, without the Indemnitee's written consent. Neither the Company nor the Indemnitee shall unreasonably withhold its consent to any proposed settlement.

16. Advancement of Expenses. All Expenses incurred by the Indemnitee in defending any Proceeding described in Section 4 or 5 shall be paid by the Company in advance of the final disposition of such Proceeding at the request of the Indemnitee. The Indemnitee's right to advancement shall not be subject to the satisfaction of any standard of conduct and advances shall be made without regard to the Indemnitee's ultimate entitlement to indemnification under the provisions of this Agreement or otherwise. To receive an advancement of Expenses under this Agreement, the Indemnitee shall submit a written request to the Secretary of the Company. Such request shall reasonably evidence the Expenses incurred by the Indemnitee (which may be redacted as necessary to avoid the waiver of any privilege accorded by applicable law), and shall include or be accompanied by an undertaking, by or on behalf of the Indemnitee, to repay all amounts so advanced if it shall ultimately be determined, by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal, that the Indemnitee is not entitled to be indemnified for such Expenses by the Company as provided by this Agreement or otherwise. The Indemnitee agrees to repay all such amounts promptly following any such final judicial decision. The Indemnitee's undertaking to repay any such amounts is not required to be secured. Each such advancement of Expenses shall be made within 20 calendar days after the receipt by the Secretary of the Company of such

written request. The Indemnitee's entitlement to Expenses under this Agreement shall include those incurred in connection with any action, suit, or proceeding by the Indemnitee seeking an adjudication or award in arbitration pursuant to Section 11 of this Agreement (including the enforcement of this provision) to the extent the court or arbitrator shall determine that the Indemnitee is entitled to an advancement of Expenses hereunder.

17. Severability; Prior Indemnification Agreements. If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law (a) the validity, legality, and enforceability of such provision in any other circumstance and of the remaining provisions of this Agreement (including, without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal, or unenforceable, that are not by themselves invalid, illegal, or unenforceable) and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal, or unenforceable, that are not themselves invalid, illegal, or unenforceable) shall be construed so as to give effect to the intent of the parties that the Company provide protection to the Indemnitee to the fullest extent set forth in this Agreement. This Agreement shall supersede and replace any prior indemnification agreements entered into by and between the Company and the Indemnitee and any such prior agreements shall be terminated upon execution of this Agreement.

18. Headings; References; Pronouns. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof. References herein to section numbers are to sections of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the singular or plural as appropriate.

19. Other Provisions.

(a) This Agreement and all disputes or controversies arising out of or related to this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to the laws of any other jurisdiction that might be applied because of conflicts of laws principles of the State of Delaware, unless otherwise required by the law of the state in which the Indemnitee primarily resides and works.

(b) This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

(c) This Agreement shall not be deemed an employment contract between the Company and any Indemnitee who is an officer of the Company, and, if the Indemnitee is an officer of the Company, the Indemnitee specifically acknowledges that the Indemnitee may be discharged at any time for any reason, with or without cause, and with or without severance compensation, except as may be otherwise provided in a separate written contract between the Indemnitee and the Company.

(d) In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee (excluding insurance obtained on the Indemnitee's own behalf and subject to Section 12(b) above), and the Indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

(e) This Agreement may not be amended, modified, or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each party. No failure or delay of either party in exercising any right or remedy hereunder shall operate as a waiver thereof, and no single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, shall preclude any other or further exercise thereof or the exercise of any other right or power.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the Company and the Indemnitee have caused this Agreement to be executed as of the date first written above.

Petco Health and Wellness Company, Inc.

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_  
Indemnitee

SIGNATURE PAGE TO INDEMNIFICATION AGREEMENT

**EMPLOYMENT AGREEMENT BETWEEN  
PETCO ANIMAL SUPPLIES, INC. AND RON V. COUGHLIN**

This EMPLOYMENT AGREEMENT (the “**Agreement**”) is made and entered into as of June 4, 2018 (the “**Effective Date**”) by and between Petco Animal Supplies, Inc., a Delaware corporation (“**Petco**” or “**the Company**”) and Ron V. Coughlin (“**Executive**”). Petco and Executive are hereinafter collectively referred to as the “**Parties**,” and are individually referred to as a “**Party**.”

**RECITALS**

A. Petco desires to assure the association and services of Executive in order to retain Executive’s experience, skills, abilities, background and knowledge, and is willing to engage Executive’s services on the terms and conditions set forth in this Agreement.

B. Executive desires to be employed by Petco, and is willing to accept such employment on the terms and conditions set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants herein contained, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

**1. EMPLOYMENT.**

1.1 Petco hereby employs Executive, and Executive hereby accepts employment by Petco, upon the terms and conditions set forth in this Agreement, for the period commencing on June 13, 2018 or such earlier date as mutually agreed by the parties (the “**Start Date**”) and ending as provided in paragraph 4 hereof (the “**Employment Period**”). In addition, while employed by Petco pursuant to this Agreement, Executive shall serve as a member of the Board of Managers of PET Acquisition LLC (“**PET Acquisition**”).

1.2 Executive shall serve as the Chief Executive Officer (“**CEO**”) of Petco and shall report to the Board of Managers of PET Acquisition (the “**Board**”).

1.3 Executive shall do and perform all services, acts or things necessary or advisable to manage and conduct the business of the Company, consistent with the bylaws of the Company and as required by the Board, and which are customarily associated with his position as Chief Executive Officer.

1.4 Unless the Parties otherwise agree in writing, during the Employment Period, Executive shall perform his services at Petco’s offices, located in San Diego, California or such other facilities of the Company as the Company and Executive may agree upon from time to time; provided, however, that the Company may from time to time require Executive to travel temporarily to other locations in connection with the Company’s business.

## 2. LOYAL AND CONSCIENTIOUS PERFORMANCE; NONCOMPETITION.

2.1 During the Employment Period, Executive shall devote his full business energies, interest, abilities and productive time to Petco. This section shall not preclude Executive from managing personal investments, subject to Section 2.3, engaging in civic, charitable or religious activities, or serving on boards of directors of companies or organizations that do not present any conflict with the interests of the Company or otherwise adversely affect the Executive's performance of his duties.

2.2 Except with the prior written consent of the Board, Executive will not, during the Employment Period, compete with the Company, either directly or indirectly, in any manner or capacity, as adviser, consultant, principal, agent, partner, officer, director, employee, member of any association or otherwise, in any phase of developing, manufacturing or marketing any product or service that is in the same field of use or that otherwise competes with a product or service that is offered, is actively under development, or is actively being considered for development by the Company.

2.3 Except as permitted herein, Executive agrees not to acquire, assume or participate in, directly or indirectly, any position, investment or interest that Executive knows or should know is adverse or antagonistic to the Company, its business, clients, strategic partners, investors or prospects. Ownership by Executive, as a passive investment, of less than five percent (5%) of the outstanding shares of capital stock of any corporation with one or more classes of its capital stock listed on a national securities exchange or publicly traded in the over-the-counter market shall not constitute a breach of this paragraph.

## 3. COMPENSATION AND BENEFITS.

3.1 The Company will pay Executive an annual base salary (the "**Base Salary**") of Eight Hundred Fifty Thousand Dollars (\$850,000) per year, payable in accordance with the Company's standard payroll practices. Such salary shall be prorated for any partial year of employment on the basis of a 365-day fiscal year.

3.2 Executive's Base Salary shall be reviewed annually and may be increased (but not decreased) in the Company's sole discretion.

3.3 All of Executive's compensation shall be subject to withholding taxes and any other employment taxes as are required to be collected or withheld by the Company under applicable law.

3.4 Surrendered Stock Assets Payment — In consideration for stock-based awards Executive will forfeit from his prior employer, the Company shall pay Executive Eight Million Dollars (\$8,000,000) (the "Stock Replacement") in cash within ten (10) days following the Start Date. Executive agrees that, if Executive's employment is terminated by the Company for Cause or Executive resigns without Good Reason, in either case, prior to the third anniversary of the Start Date, Executive will promptly repay to the Company the following amount: (i) the full Stock Replacement if such termination is prior to the first anniversary of the Start Date; (ii) two-thirds of the Stock Replacement if such termination is on or after the first

anniversary of the Start Date and before the second anniversary of the Start Date; and (iii) one-third of the Stock Replacement if such termination is on or after the second anniversary of the Start Date and before the third anniversary of the Start Date. If Executive fails to repay any portion of the Stock Replacement pursuant to the immediately-preceding sentence, the Company and its affiliates may, subject to Section 409A of the Code, withhold any compensation or other payments owed to Executive (including, without limitation, pursuant to the Common Series PI Units) to the extent necessary to satisfy such repayment obligation.

3.5 Annual Performance Bonus — Executive will be eligible for a bonus payment for each fiscal year of the Company (the “**Annual Performance Bonus**”), with a target bonus of one hundred twenty-five percent (125%) of Executive’s annualized Base Salary for the applicable fiscal year, based on the achievement of specific performance criteria established by the Board in consultation with Executive. Executive’s annual bonus for the fiscal year commencing in January 2018 shall be no less than One Million Sixty-Two Thousand Five Hundred Dollars (\$1,062,500) and shall not be prorated for the partial year of employment hereunder. The annual bonus earned by Executive shall be paid to Executive in no event later than the later of (i) the 15th day of the third month following the end of the Executive’s taxable year in which such annual bonus is earned or (ii) the 15th day of the third month following the end of the Company’s taxable year in which such bonus is earned. Executive must be actively employed at Petco at the time the bonus is paid in order to be eligible to receive the payment, except as provided in Section 4(b).

3.6 Special Performance Bonus – If the Company’s EBITDA exceeds \$500 million for any two consecutive fiscal years that commence on or after January 2019, Executive shall be paid a cash bonus of Five Million Dollars (\$5,000,000) (the “**Special Performance Bonus**”), subject to his continued employment through the last day of the second such fiscal year, except as provided in Section 4(b)(iii). Such bonus shall be payable at the same time as the Annual Performance Bonus described in Section 3.5 that is earned for such second fiscal year. For purposes hereof, “EBITDA” means the Company’s earnings before interest, taxes, depreciation and amortization, as determined by the Board in good faith, provided that EBITDA shall be measured and adjusted on the same basis used by the Company in measuring the Company’s adjusted EBITDA for the fiscal year that ended in January 2018, subject to reasonable further adjustments by the Board for acquisitions, dispositions, non-recurring items, and other appropriate circumstances. For the avoidance of doubt, only one Special Performance Bonus may be paid hereunder.

3.7 During the Employment Period, the Company agrees to reimburse Executive for all reasonable and necessary business expenses subject to the Company’s standard requirements regarding the reporting and documentation of such expenses.

3.8 During the Employment Period, Executive shall, in accordance with Company policy and the terms of any then applicable plan documents, be entitled to participate in the Petco group medical, dental, vision, 401(k), deferred compensation, and flex spending plans upon hire and other benefits, in each case, on a basis no less favorable than on which such plans, programs or benefits are provided to the Company’s other senior executives from time to time. It is understood that the Company may modify or cancel any or all such plans programs or benefits in its discretion, consistent with the requirements of state or federal law. Currently these

benefits, plans and programs include the elements described in the remainder of Sections 3.9 through 3.14.

3.9 Financial Planning and Tax Services - Financial, investment, estate and tax planning services from AYCO Financial Services (or such other financial services company as may be designated by Executive having an equal or lower cost) will be provided at no cost to Executive.

3.10 Disability and Life Insurance - Short-term and long-term disability insurance, Company-paid Group Term Life Insurance equal to three times Executive's annual earnings up to a maximum of \$1,000,000.00, and AD&D Insurance will be provided at no cost to Executive.

3.11 401(k) Savings Plan — Executive will be eligible to participate in the Company sponsored 401(k) plan effective the first of the month following Executive's one-year anniversary with the Company, provided that Executive meets all eligibility requirements. Under current plan terms, Executive may elect to contribute up to sixty (60) percent of his salary on a tax-deferred basis (subject to any plan discrimination testing limits), and Petco will provide a matching fifty percent (50%) contribution on the first three percent (3%) of Executive's deferred salary contribution.

3.12 Paid Time Off — Executive will be entitled to Paid Time Off (PTO) in accordance with the Company's then existing standard policy for the Company's senior executives. PTO must be taken according to the terms of Petco's policy and Executive shall use such PTO in a manner that is minimally disruptive to Company's business.

3.13 Non-Qualified Deferred Compensation Plan - Executive may contribute up to seventy-five percent (75%) of his base pay and up to one hundred percent (100%) of his bonus pay each calendar year into the Company's non-qualified deferred compensation plan upon hire. Petco currently has a discretionary match of \$.50 on each dollar up to a maximum of three percent (3%) of an employee's contribution for base pay and \$.50 on each dollar up to a maximum of six percent (6%) of an employee's contribution for bonus pay. Executive may enroll in the Plan within thirty (30) days of hire and each year in December for the following year.

3.14 Petco Discount and Other Benefits — Executive will be eligible to participate in a number of Petco-sponsored benefits, including a twenty percent (20%) merchandise discount at all Petco stores, discounted pet insurance through Petco's then existing preferred pet insurance vendor, membership privileges at the San Diego County Credit Union, a discount at 24-Hour Fitness Centers, discounted childcare at Children's World Learning Centers, and an annual executive physical through Scripps Executive Health.

3.15 Private Travel — Executive will be entitled to continuation of the Company's existing private travel program, subject to reasonable mutually-agreed modifications thereof. Unless otherwise approved by the Board, private air travel shall not be provided for international flights or cross-country travel within the United States, other than in connection with multi-location store visit trips or similar trips.

3.16 Equity Grant — Scooby LP, a limited partnership organized under the laws of the State of Delaware (“**Ultimate Parent**”) shall grant Executive the following Common Series C Units pursuant to Ultimate Parent’s Amended and Restated Agreement of Limited Partnership, dated as of January 26, 2016, as may be amended from time to time (the “**Ultimate Parent LP Agreement**”) and award agreements substantially identical to the form of Common Series C Unit Award Agreement attached hereto as APPENDIX C: (i) 30,000,000 Common Series C Units to be granted as of the Effective Date with a “distribution threshold” of \$0.75 per Unit; (ii) 15,000,000 Common Series C Units to be granted as of the Effective Date with a “distribution threshold” of \$1.00 per Unit, and (iii) 30,000,000 Common Series C Units to be granted within thirty days following the completion of the annual audit for the Company’s fiscal year that commenced in January 2018, with a “distribution threshold” of the higher of \$0.50 per Unit or the fair market value per Unit as of the end of such fiscal year as determined by a third party valuation firm and approved by the Board. Each grant of Common Series C Units shall vest in 20% increments on each of the first through fifth anniversaries of the applicable date of grant (or, if earlier, upon a Change in Control, as defined in the award agreement, or a qualifying termination of employment pursuant to Section 4(b) below), subject to Executive’s continued employment with the Company through the applicable vesting date or Change in Control, as applicable.

#### **4. TERM**

Petco is an “at will” employer and as such, employment with Petco is not for a fixed term or definite period and may be terminated at the will of either party, with or without Cause, and without prior notice. No supervisor or other representative of the Company (except the Board) has the authority to enter into any agreement for employment for any specified period of time, or to make any agreement contrary to the above. This is the final and complete agreement on this term. Any contrary representations which may have been made or which may be made to Executive are superseded by this Agreement. Upon termination of Executive’s employment for any reason, he shall automatically be deemed to have resigned from all positions with the Company and its affiliates.

(a) If the Employment Period is terminated by the Company or by Executive for any reason, including as a result of Executive’s death or Disability, Executive (or Executive’s legal representatives or estate, as applicable) shall be entitled to receive his earned but unpaid Base Salary through his termination date plus any accrued but unused vacation and unreimbursed business expenses through the termination date, in each case, payable within five days following the termination date (or such earlier date required by applicable law), in addition to any other vested employee benefits to which Executive is entitled as of the termination date under the employee benefit plans of the Company.

(b) Notwithstanding the at-will nature of the employment relationship between Petco and Executive, if Executive’s employment is terminated by Petco without Cause (as defined in Section 4(c) below) or by Executive for Good Reason (as defined in Section 4(d) below), in either case, and explicitly conditioned upon Executive’s furnishing to the Company, and not revoking, an executed waiver and release of claims

(in substantially the form of APPENDIX B, which is attached to this Agreement), Executive shall be entitled to receive:

(i) A lump sum payment equal to eighteen (18) months of his current Base Salary in effect as of the date of termination, subject to standard deductions and withholdings, payable thirty (30) days after the date of termination (or, if later, when the release of claims becomes irrevocable, but no later than sixty (60) days after the date of termination);

(ii) A lump sum payment of any unpaid Annual Performance Bonus for a fiscal year ending prior to the date of termination, payable when such Annual Performance Bonus would have otherwise been payable to Executive pursuant to Section 3.5 had Executive's employment not terminated;

(iii) A lump sum payment equal to the pro rata portion of any Annual Performance Bonus that Executive would have been entitled to receive pursuant to Section 3.5 in respect of the fiscal year in which such termination occurs based on the ratio of the number of days employed during such fiscal year to 365, but only to the extent of achievement of the applicable Company performance criteria (disregarding any individual performance criteria) for such Annual Performance Bonus, payable when such Annual Performance Bonus would have otherwise been payable to Executive pursuant to Section 3.5 had Executive's employment not terminated;

(iv) If the Special Performance Bonus has not previously been paid and such termination occurs in the fiscal year immediately following a fiscal year in which the Company's EBITDA (as determined pursuant to Section 3.6) exceeded \$500 million, Executive shall receive a lump sum payment equal to the pro rata portion of the Special Performance Bonus (if any) that Executive would have been entitled to receive pursuant to Section 3.6 in respect of the fiscal year in which such termination occurs, based on the ratio of the number of days employed during the applicable two consecutive fiscal years to 720, but only to the extent of achievement of the applicable EBITDA performance metric for such second fiscal year, payable when such Special Performance Bonus would have otherwise been payable to Executive pursuant to Section 3.6 had Executive's employment not terminated;

(v) Pro rata vesting of any outstanding awards of Common Series C Units or other equity or equity-based awards held by Executive on the date of termination with respect to the portion of such awards that would have vested on the next-applicable vesting date following such date of termination multiplied by a fraction, the numerator of which is the number of days from the most recent vesting date (or, if no vesting date has occurred prior to the date of termination, the date of grant) through the date of termination, and the denominator of which is 365 (or such other number of days in such vesting period, if applicable); and

(vi) Continued medical benefits at the Company's sole expense for a period of eighteen (18) months (the "**Severance Period**"), to the extent he elects and remains eligible to continue those benefits under COBRA; provided, that if the Company determines that it cannot provide such continued medical benefits without adverse tax consequences to Executive or the Company or for any other reason, then the Company shall, in lieu thereof, provide to Executive a taxable amount equal to the monthly plan premium payment for such medical benefits in substantially equal monthly installments over the Severance Period (or the remaining portion thereof).

(c) For purposes of this Agreement, "**Cause**" shall mean:

(i) The Executive's material breach of this Agreement, which breach is not cured within thirty (30) days of receipt by Executive of written notice from the Board specifying the breach, which notice shall be delivered to Executive within ninety (90) days after such breach is discovered by the Board and shall identify the manner in which the Company believes that the Executive has committed such breach and the steps required to cure such breach;

(ii) The willful failure or refusal by Executive to substantially perform his duties hereunder that has not been remedied within thirty (30) business days after written demand for substantial performance has been delivered to Executive by the Company, which demand shall be delivered to Executive within ninety (90) Days after the initial existence of such failure or refusal and shall identify the manner in which the Company believes that the Executive has committed such failure or refusal and the steps required to cure such failure or refusal;

(iii) The conviction of Executive of, or the entering of a plea of nolo contendere by Executive with respect to a felony or a misdemeanor involving moral turpitude; or

(iv) Executive's inability or failure to competently perform his duties hereunder in any material respect due to the use of drugs or alcohol.

(d) For purposes of this Agreement, "**Disability**" shall mean that Executive either (i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months or (ii) is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under the Company's accident and health plan.

(e) For purposes of this Agreement, "**Good Reason**" shall mean the occurrence, without the express written consent of Executive, of any of the following conditions:

- (i) the removal of Executive from the Board for any reason while he is entitled to serve on the Board pursuant to Section 1.1;
- (ii) a material diminution in Executive's authority, duties or responsibilities;
- (iii) Executive is required to report to any person or body other than the Board;
- (iv) a material diminution in Executive's Base Salary or target bonus amount;
- (v) the relocation of Executive's own office to a location more than thirty (30) miles from its present location;
- (vi) the failure of the Company to obtain the assumption in writing of its obligation to perform this Agreement by any successor to all or substantially all of the assets of the Company, whether direct or indirect by a merger, consolidation, sale or similar transaction, unless such assumption occurs by operation of law;
- (vii) any bankruptcy, liquidation, receivership or other wind down of the Company or Ultimate Parent (an "**Event**") if (i) such Event does not constitute a Change in Control (as defined in the Ultimate Parent LP Agreement) or (ii) in connection with such Event, (A) CVC and/or CPPIB (each as defined in the Ultimate Parent LP Agreement) do not retain the right to appoint the majority of the members of the Board and (B) a majority of the Board ceases to consist of members appointed by CVC and/or CPPIB; or
- (viii) any other action or inaction that constitutes a material breach by the Company of the Agreement.

If Executive intends to resign for one or more of the conditions listed above, Executive shall give notice of such intent to the Company within ninety (90) days after the initial existence of such condition, detailing such condition with specificity. If the Company does not remedy the condition within thirty (30) days of receiving such notice, then any resignation by Executive from the Company within the two (2) year period beginning with the initial existence of one or more of the foregoing conditions shall be deemed a resignation for "Good Reason."

The treatment of Executive's equity awards in Ultimate Parent shall be governed by the terms of the operative documents of Ultimate Parent and any grant agreement between Executive and Ultimate Parent.

To the extent applicable, this Agreement shall be interpreted and applied consistent and in accordance with Section 409A of the Internal Revenue Code (the "Code") and Department of Treasury regulations and other interpretive guidance issued thereunder. If, however, the Parties determine that any compensation or benefits payable under this Agreement may be or become subject to Section 409A of the Code, the Parties shall cooperate to adopt such amendments to

this Agreement or to adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take such other actions, as the Parties determine to be necessary or appropriate to (i) exempt the compensation and benefits payable under this Agreement from Section 409A of the Code and/or preserve the intended tax treatment of such compensation and benefits, or (ii) comply with the requirements of Section 409A of the Code. In furtherance of the foregoing, Executive's date of termination of service with the Company for purposes of determining the date that any payment or benefit that is treated as nonqualified deferred compensation under Section 409A of the Code is to be paid or provided (or in determining whether an exemption to such treatment applies), shall be the date on which Executive has incurred a "**separation from service**" within the meaning of Section 409A(a)(2)(A)(i) and applicable guidance thereunder ("**Separation from Service**"). Notwithstanding any provision of this Agreement to the contrary, to the extent necessary to avoid the imposition of taxes under Section 409A of the Code, no payment or distribution under this Agreement that becomes payable by reason of Executive's termination of employment with the Company will be made to Executive unless Executive's termination of employment constitutes a Separation from Service. In addition, for purposes of this Agreement, each amount to be paid or benefit to be provided shall be construed as a separate identified payment for purposes of Section 409A of the Code. To the extent the Company is required pursuant to this Agreement to reimburse expenses or provide a gross-up for taxes incurred by Executive, and such reimbursement or gross-up obligation is subject to Section 409A of the Code, the Company shall reimburse any such eligible expenses by the end of the calendar year next following the calendar year in which the expense was incurred (and provide the tax gross-up payments no later than the end of the calendar year next following the calendar year in which the related taxes were remitted), subject to any earlier required deadline for payment otherwise applicable under this Agreement. In addition, to the extent any expense reimbursements or in-kind benefits are subject to Section 409A, (x) the amount of expenses reimbursed in one year shall not affect the amount eligible for reimbursement in any subsequent year, and the amount of any in-kind benefits provided in one year shall not affect the amount of in-kind benefits provided in any other year, and (y) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

If the Company in good faith determines that Executive is a "**specified employee**" (as defined in Section 409A(a)(2)(B)(i) of the Code) with respect to the payment of benefits or the provision of benefits coverage under this Agreement at the time of his Separation from Service and that the immediate commencement of such payment or provision, as otherwise provided in this Agreement, would constitute a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code, then, to the extent necessary to avoid the imposition of taxes under Section 409A of the Code, notwithstanding any provision to the contrary in this Agreement (and in an effort to spare Executive such additional taxes), the Company shall delay the commencement of payments or benefits coverage to which Executive would otherwise become entitled under this Agreement in connection with Executive's Separation from Service until the earlier of:

- (i) the expiration of the six (6)-month period measured from the date of Executive's Separation from Service, or
- (ii) the date of Executive's death.

Upon expiration of the applicable Code Section 409A(a)(2) deferral period, all payments and benefits deferred pursuant to this provision (whether they would have otherwise been payable in a single sum or in installments in the absence of such deferral) shall be paid or reimbursed to Executive in a lump sum, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.

## 5. AMENDMENT AND WAIVER.

5.1 The provisions of this Agreement may be amended or waived only with the prior written consent of the Company and Executive, and no course of conduct or failure or delay in enforcing the provisions of this Agreement shall affect the validity, binding effect or enforceability of this Agreement.

## 6. CONFIDENTIAL AND PROPRIETARY INFORMATION; NONSOLICITATION.

6.1 Executive agrees to execute and abide by the Proprietary Information and Inventions Agreement attached hereto as APPENDIX A.

6.2 Executive recognizes that his employment with the Company will involve contact with information of substantial value to the Company, which is not generally known in the trade, and which gives the Company an advantage over its competitors who do not know or use it, including but not limited to, techniques, designs, drawings, processes, inventions, developments, equipment, prototypes, sales and customer information, and business and financial information relating to the business, products, practices and techniques of the Company, (hereinafter referred to as “**Confidential and Proprietary Information**”). Executive will at all times regard and preserve as confidential such Confidential and Proprietary Information obtained by Executive from whatever source and will not, either during his employment with the Company or thereafter, publish or disclose any part of such Confidential and Proprietary Information in any manner at any time, or use any Confidential and Proprietary Information except on behalf of the Company, without the prior written consent of the Company.

6.3 While employed by the Company and for one (1) year thereafter, the Executive agrees that in order to protect the Company’s Confidential and Proprietary Information from unauthorized use, that Executive will not, either directly or through others, (i) solicit or attempt to solicit any employee, consultant or independent contractor of the Company to terminate his or her relationship with the Company in order to become an employee, consultant or independent contractor to or for any other person or business entity; or (ii) use the Company’s trade secrets or confidential information to solicit or attempt to solicit the business of any customer, vendor or distributor, partner or strategic alliance of the Company which, at the time of termination or one (1) year immediately prior thereto, was doing business with the Company.

6.4 Notwithstanding any other provision in this Agreement or the Proprietary Information and Inventions Agreement, Executive understands and acknowledges that, pursuant to Section 7 of the Defend Trade Secrets Act of 2016 (which added 18 U.S.C. § 1833(b)),

Executive shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (A) (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. If Executive files a lawsuit for retaliation by Executive for reporting a suspected violation of law, Executive may disclose the Company's trade secrets to Executive's attorney and use the trade secret information in the court proceeding if Executive: (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order. Nothing in this Agreement or the Proprietary Information and Inventions Agreement is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by such Section.

## **7. INDEMNIFICATION.**

Ultimate Parent shall indemnify Executive as provided in Section 7.5 of the Ultimate Parent LP Agreement. The Parent agrees not to cause Section 6.4 of the Ultimate Parent LP Agreement to be amended in a manner materially detrimental to Executive without Executive's prior written consent. Ultimate Parent shall, or shall cause the Company to, cover Executive under any directors and officers insurance obtained by Ultimate Parent or the Company. This Section shall survive for 6 years following termination of the Employment Period.

## **8. LEGAL FEES.**

The Company shall reimburse Executive for reasonable legal fees of up to \$20,000 actually incurred by Executive in connection with the preparation and execution of this Agreement; provided, that Executive furnishes the Company with reasonable written supporting documentation with respect to such legal fees.

## **9. ASSIGNMENT AND BINDING EFFECT.**

This Agreement shall be binding upon and inure to the benefit of Executive and Executive's heirs, executors, personal representatives, assigns, administrators and legal representatives. Due to the unique and personal nature of Executive's duties under this Agreement, neither this Agreement nor any rights or obligations under this Agreement shall be assignable by Executive. This Agreement shall be binding upon and inure to the benefit of the Company and its successors, assigns and legal representatives. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company, to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

## **10. NOTICES.**

10.1 All notices or demands of any kind required or permitted to be given by the Company or Executive under this Agreement shall be given in writing and shall be personally delivered (and receipted for) or mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

**If to the Company:**

PETCO Animal Supplies, Inc.  
c/o CVC Capital Partners Advisory (US), Inc.  
One Maritime, Suite 1610  
San Francisco, CA 94111  
Attn: Cameron Breitner

and

PETCO Animal Supplies, Inc.  
c/o Canada Pension Plan Investment Board  
One Queen Street East, Suite 2500  
Toronto, ON, M5C 2W5  
Attn: Scott Nishi

**with a copy (which shall not constitute notice) to:**

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166  
Attention: Sean P. Griffiths

**If to Executive:** At the address reflected in the Company's payroll records.

Any such written notice shall be deemed received when personally delivered or three (3) days after its deposit in the United States mail as specified above. Either Party may change its address for notices by giving notice to the other Party in the manner specified in this section.

**11. CHOICE OF LAW.**

This Agreement is made in San Diego, California. The parties agree that it shall be construed and interpreted in accordance with the laws of the State of California, regardless of the choice of law's provisions of such state or any other jurisdiction.

**12. INTEGRATION.**

This Agreement contains the complete, final and exclusive agreement of the Parties relating to the subject matter of this Agreement, and supersedes all prior oral and written employment agreements or arrangements between the Parties unless otherwise expressly referenced above.

**13. AMENDMENT.**

This Agreement cannot be amended or modified except by a written agreement signed by Executive and a duly authorized representative of the Board.

**14. WAIVER.**

No term, covenant or condition of this Agreement or any breach thereof shall be deemed waived, except with the written consent of the Party against whom the waiver is claimed, and any waiver or any such term, covenant, condition or breach shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other term, covenant, condition or breach.

**15. SEVERABILITY.**

The finding by a court or arbitrator of the unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid or illegal. Such court shall have the authority to modify or replace the invalid or unenforceable term or provision with a valid and enforceable term or provision that will most accurately represent the parties' intention with respect to the invalid or unenforceable term or provision.

**16. INTERPRETATION; CONSTRUCTION.**

The headings set forth in this Agreement are for convenience of reference only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Company, but Executive has been encouraged, and has consulted with, his own independent counsel with respect to the terms of this Agreement. The Parties acknowledge that each Party and its counsel has reviewed and revised, or had an opportunity to review and revise, this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

**17. REPRESENTATIONS AND WARRANTIES.**

Executive represents and warrants that he is not restricted or prohibited, contractually or otherwise, from entering into and performing each of the terms and covenants contained in this Agreement, and that his execution and performance of this Agreement will not violate or breach any other agreements between Executive and any other person or entity.

**18. ARBITRATION.**

18.1 The Parties agree to arbitrate any dispute, claim, or controversy ("**Claim**") including, but not limited to, claims of employment discrimination and harassment under Title VII of the Civil Rights Act, as amended, and the California Fair Employment & Housing Act, age discrimination under the Age Discrimination in Employment Act, as amended, the Americans with Disabilities Act, 42 U.S.C. section 1981, the Employment Retirement Income Security Act, the California Labor Code, breach of employment contract or the implied covenant of good faith and fair dealing, wrongful discharge, or tortious conduct (whether intentional or negligent) including defamation, misrepresentation, fraud, infliction of emotional distress, but

excluding claims for workers' compensation benefits or unemployment insurance or claims for wages before the California Department of Industrial Relations.

18.2 The arbitration shall be conducted by a single neutral arbitrator in accordance with the rules issued by the American Arbitration Association ("AAA") for resolution of employment disputes. The arbitration shall take place in the City of San Diego. The Company will pay the fee for the arbitration proceeding, as well as any other charges by the AAA.

18.3 The Arbitrator shall issue a written decision or award. The decision or award of the arbitrator shall be final and binding upon the Parties. The arbitrator shall have the power to award any type of relief that would be available in a court of competent jurisdiction. Any award may thereafter be entered as a judgment in any court of competent jurisdiction. Executive agrees that any relief to which he is entitled arising out of his employment or cessation of that employment shall be limited to that awarded by the arbitrator.

18.4 Executive agrees to file any demand for arbitration within the time limit established by the applicable statute of limitations for the asserted claims. Failure to demand arbitration within the prescribed time period shall result in waiver of any claims.

18.5 A court or arbitrator construing this Agreement may modify, or interpret it to the extent and such manner as to render it enforceable.

18.6 Executive has agreed to this arbitration provision in consideration of his employment by the Company and upon consultation with private counsel of his choice.

18.7 EXECUTIVE HAS READ AND UNDERSTANDS THIS SECTION 16.7 WHICH DISCUSSES ARBITRATION. EXECUTIVE UNDERSTANDS THAT BY SIGNING THIS AGREEMENT, EXECUTIVE AGREES TO SUBMIT ANY FUTURE CLAIMS ARISING OUT OF, RELATED TO, OR IN CONNECTION WITH EXECUTIVE'S EMPLOYMENT OR TERMINATION THEREOF, OR THE INTERPRETATION, VALIDITY, CONSTRUCTION, PERFORMANCE OR BREACH OF THIS AGREEMENT, TO BINDING ARBITRATION, AND THAT THIS ARBITRATION CLAUSE CONSTITUTES A WAIVER OF EXECUTIVE'S RIGHT TO A JURY TRIAL AND RELATES TO THE RESOLUTION OF ALL DISPUTES RELATING TO ALL RESPECTS OF THE EMPLOYER/EXECUTIVE RELATIONSHIP, INCLUDING BUT NOT LIMITED TO, DISCRIMINATION CLAIMS.

## **19. LITIGATION COSTS.**

Should any litigation, arbitration, or administrative action be commenced between the Parties or their personal representatives concerning any provision of this Agreement or the rights and duties of any person in relation to this Agreement, the Party or Parties prevailing in such action shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for that Party's attorney's fees, which shall be determined by the court, arbitrator, or administrative agency.

**20. TRADE SECRETS OF OTHERS.**

It is the understanding of both the Company and Executive that Executive shall not divulge to the Company and/or its subsidiaries any confidential information or trade secrets belonging to others, including Executive's former employers, nor shall the Company and/or its affiliates seek to elicit from Executive any such information. Consistent with the foregoing, Executive shall not provide to the Company and/or its affiliates, and the Company and/or its affiliates shall not request, any documents or copies of documents containing such information.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

/s/ Ron V. Coughlin  
Ron V. Coughlin

/s/ Cameron Breitner  
Cameron Breitner  
For Petco Animal Supplies, Inc.

**EMPLOYMENT AGREEMENT BETWEEN  
PETCO ANIMAL SUPPLIES STORES, INC. AND MICHAEL NUZZO**

This EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into as of April 8th, 2015 (the "Effective Date") by and between Petco Animal Supplies Stores, Inc., a Delaware corporation ("Petco" or "the Company"), and Michael Nuzzo ("Executive"). Petco and Executive are hereinafter collectively referred to as the "Parties," and are individually referred to as a "Party."

**RECITALS**

- A. Petco desires to assure the association and services of Executive in order to retain Executive's experience, skills, abilities, background and knowledge, and is willing to engage Executive's services on the terms and conditions set forth in this Agreement.
- B. Executive desires to be employed by Petco, and is willing to accept such employment on the terms and conditions set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants herein contained, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

**1. EMPLOYMENT.**

- 1.1 Petco hereby employs Executive, and Executive hereby accepts employment by Petco, upon the terms and conditions set forth in this Agreement, for the period commencing on April 13, 2015, and ending as provided in paragraph 4 hereof (the "Employment Period").
- 1.2 Executive shall serve as Executive Vice President & Chief Financial Officer of the Company and shall report to the Chief Executive Officer ("CEO") of Petco, initially having responsibility over Finance, Information Technology, Supply Chain, Law, and Business Development strategy and execution activity, and/or any other duties delegated to him by the CEO.
- 1.3 Executive shall do and perform all services, acts or things necessary or advisable to manage and conduct the business of the Company, consistent with the bylaws of the Company and as required by the Company's Board of Directors ("Board") or CEO, and which are customarily associated with his position as Executive Vice President & Chief Financial Officer.
- 1.4 Unless the Parties otherwise agree in writing, during the term of this Agreement, Executive shall perform his services at Petco's offices, located in San Diego, California or such other facilities of the Company as the

Company and Executive may agree upon from time to time; provided, however, that the Company may from time to time require Executive to travel temporarily to other locations in connection with the Company's business.

## **2. LOYAL AND CONSCIENTIOUS PERFORMANCE; NONCOMPETITION.**

- 2.1 During the Employment Period, Executive shall devote his full business energies, interest, abilities and productive time to Petco. This section shall not preclude Executive from engaging in civic, charitable or religious activities, or from serving on boards of directors of companies or organizations that do not present any conflict with the Interests of the Company or otherwise adversely affect the Executive's performance of his duties.
- 2.2 Except with the prior written consent of the Board, Executive will not, during the Employment Period, compete with the Company, either directly or Indirectly, in any manner or capacity, as adviser, consultant, principal, agent, partner, officer, director, employee, member of any association or otherwise, in any phase of developing, manufacturing or marketing any product or service that is in the same field of use or that otherwise competes with a product or service that is offered, is actively under development, or is actively being considered for development by the Company.
- 2.3 Except as permitted herein, Executive agrees not to acquire, assume or participate in, directly or indirectly, any position, investment or interest that Executive knows or should know is adverse or antagonistic to the Company, its business, clients, strategic partners, investors or prospects. Ownership by Executive, as a passive investment, of less than five percent (5%) of the outstanding shares of capital stock of any corporation with one or more classes of its capital stock listed on a national securities exchange or publicly traded in the over-the-counter market shall not constitute a breach of this paragraph.

## **3. COMPENSATION AND BENEFITS.**

- 3.1 The Company will pay Executive a Base Salary of Five Hundred Seventy-Five Thousand Dollars (\$575,000) per year in bi-weekly installments of Twenty-Two Thousand One Hundred Fifteen Dollars and Thirty-Eight Cents (\$22,115.38). Such salary shall be prorated for any partial year of employment on the basis of a 365-day fiscal year.
- 3.2 Executive's Base Salary shall be reviewed annually and adjusted in the Company's sole discretion. Executive will be eligible to participate in the annual salary administration process in February 2016. Executive's performance will be reviewed and an increase may be granted for the fiscal year 2015 based on satisfactory or above performance.

- 3.3 All of Executive's compensation shall be subject to customary withholding taxes and any other employment taxes as are commonly required to be collected or withheld by the Company.
- 3.4 Annual Performance Bonus – At the discretion of the Board, Executive will be eligible for a targeted bonus payment for fiscal year 2015, based on eighty percent (80%) of Executive's annualized Base Salary for 2015, payable in April 2016 and subject to all terms of the bonus plan then existing. Subsequent bonus payments, if approved by the Board, are typically awarded in March and payable in April. The annual bonus, if approved by the Board, shall be paid to Executive during the month of April of each calendar year (following the determination of the award in month of March of such calendar year), or as soon as practicable thereafter, and shall, in all events, be payable no later than the end of such calendar year so as to be deemed a timely payment for purposes of Section 409A of the Code (as hereinafter defined), consistent with the requirements of Treasury Regulation Section 1.409A-3(d). As retention of the Executive is one of the main purposes of this bonus, Executive must be actively employed at Petco at the time the bonus is paid in order to be eligible to receive the payment.
- 3.5 During the Employment Period, the Company agrees to reimburse Executive for all reasonable and necessary business expenses subject to the Company's standard requirements regarding the reporting and documentation of such expenses.
- 3.6 During the Employment Period, Executive shall, in accordance with Company policy and the terms of any then applicable plan documents, be entitled to participate in the Petco group medical, dental, vision, 401(k), deferred compensation, and flex spending plans upon hire and other benefits. It is understood that the Company may modify or cancel any or all such plans programs or benefits in its discretion, consistent with the requirements of state or federal law. Currently these benefits, plans and programs include the elements described in the remainder of this paragraph 3.
- 3.7 Financial Planning and Tax Services - Financial, investment, estate and tax planning services from AYCO Financial Services will be provided at no cost to Executive. Although the value of these services will be provided at no cost to Executive, cost of same will be imputed to Executive for income tax purposes (should Executive elect to utilize such services).
- 3.8 Disability and Life Insurance - Short-term and long-term disability Insurance, Company-paid Group Term Life Insurance equal to three times Executive's annual earnings up to a maximum of \$1,000,000.00, and AD&D Insurance will be provided at no cost to Executive.

- 3.9 Annual Executive Physical – An annual physical will be provided through Scripps Executive Health or a similar qualified provider at no cost to Executive. Although the value of this service will be provided at no cost to Executive, cost of same will be imputed to Executive for income tax purposes (should Executive elect to utilize this benefit).
- 3.10 401(k) Savings Plan – Executive will be eligible to participate in the Company sponsored 401(k) plan effective the first of the month following Executive's one-year anniversary with the Company, provided that Executive meets all eligibility requirements. Under current plan terms, Executive may elect to contribute up to sixty (60) percent of his salary on a tax-deferred basis (subject to any, plan discrimination testing limits), and Petco will provide a matching fifty percent (50%) contribution on the first three percent (3%) of Executive's deferred salary contribution.
- 3.11 Time Off Work - Executive does not earn PTO or vacation benefits. Instead, Petco offers an Informal time off policy, which allows Executive to take as much time away from the office as needed and as deemed consistent with the responsibilities of the job, subject to manager approval (because executives are expected to work as needed to fulfill their Job responsibilities, Petco leaves to the discretion of each executive how to best manage his/her time, including scheduling time away from the office for vacation, illness, and other personal reasons).
- 3.12 Non-Qualified Deferred Compensation Plan - Executive may contribute up to seventy-five percent (75%) of his base pay and up to one hundred percent (100%) of his bonus pay each calendar year into the non-qualified deferred compensation plan upon hire. Petco currently has a discretionary match of \$.50 on each dollar up to a maximum of three percent (3%) of an employee's contribution for base pay and \$.60 on each dollar up to a maximum of six percent (6%) of an employee's contribution for bonus pay. Executive may enroll in the Plan within thirty (30) days of hire and each year in December for the following year.
- 3.13 Equity - Subject to the Board's approval, Petco will grant Executive an option to purchase four million (4,000,000) shares of common stock. The option will have an Initial per share exercise price not less than the fair market value of the Company's common stock on the date of grant. Executive's Initial option shall vest and become exercisable as to twenty percent (20%) of the option shares on each anniversary date of the date of the grant. All equity awards are issued according to the terms of Petco's 2006 Senior Executive Incentive Award Plan (the "2006 Plan") and applicable award agreements and are subject to approval by the Board. Any future equity incentives will vest according to the terms of their agreements.

- 3.14 Petco Discount and Other Benefits – Executive will be eligible to participate in a number of Petco-sponsored benefits, including a merchandise discount at all Petco stores, discounted pet insurance through Petco's then existing preferred pet insurance vendor, membership privileges at the San Diego County Credit Union, a discount at 24-Hour Fitness Centers, discounted childcare at Children's World Learning Centers, and an annual executive physical through Scripps Executive Health.
- 3.15 Relocation Expenses – Subject to Executive's execution of the Relocation Repayment Agreement, a copy of which is attached hereto as APPENDIX A, Petco will provide Executive with the following relocation assistance to San Diego (all relocation expense reimbursements will be grossed up):
- (1) Reimbursement for the cost of packing and moving Executive's household goods to the San Diego area through the use of Petco's preferred carrier.
  - (2) Reimbursement for reasonable house-hunting trips prior to Executive's move to San Diego Inclusive of airfare, lodging, daily meal allowance and car rental. Travel arrangements will be made through Petco's on-site travel agent and Talent Acquisition Department.
  - (3) Reimbursement for normal and reasonable commissions and other usual and customary costs associated with the sale of Executive's current primary residence and usual and customary closing costs associated with a new home purchase in San Diego. Petco will not reimburse pre-paid interest, underwriting fees used to buy down interest rates or any recurring real estate costs as part of Executive's relocation package.

Petco's relocation policy requires that Executive execute the Relocation Repayment Agreement before the Company will assist with any relocation costs. The Relocation Repayment Agreement states that Executive will repay the Company a prorated portion of all advanced relocation expenses if Executive leaves the employment of Petco voluntarily or for Cause (as defined in Section 4(c) below) prior to completing one (1) year of service.

#### **4. TERM.**

Petco is an "at will" employer and as such, employment with Petco is not for a fixed term or definite period and may be terminated at the will of either party, with or without cause, and without prior notice. No supervisor or other representative of the Company (except Petco's CEO) has the authority to enter into any agreement for employment for any specified period of time, or to make any agreement contrary to the above. This is the final and complete agreement on this term. Any contrary representations which may have been made or which may be made to Executive are superseded by this Agreement.

- (a) If the Employment Period is terminated by the Company, or by Executive's resignation, or as a result of Executive's death or permanent disability, Executive shall be entitled to receive his Base Salary through his termination date.
- (b) Notwithstanding the at-will nature of the employment relationship between Petco and Executive, if Executive's employment is terminated by Petco without Cause ("Cause" is defined in Section 4(c) below) and explicitly conditioned upon Executive's furnishing to the Company, and not revoking, an executed waiver and release of claims (in substantially the form of APPENDIX C, which is attached to this Agreement), Executive shall be entitled to receive a lump sum payment equal to eighteen (18) months of his current Base Salary in effect as of the date of termination, subject to standard deductions and withholdings, payable in a lump sum thirty (30) days after the date of termination.
- (c) For purposes of this Agreement, "Cause" shall mean:
  - (i) The Executive's material breach of this Agreement, including without limitation any act that is materially contrary to the best interests of the Company, which breach is not cured within ten (10) days of receipt by Executive of written notice from the Company's Board specifying the breach;
  - (ii) The failure or refusal by Executive to perform his duties hereunder that has not been remedied within ten (10) business days after written demand for substantial performance has been delivered to Executive by the Company, which demand identifies the manner in which Company believes that the Executive has not performed such duties and the steps required to cure such failure to perform;
  - (iii) The conviction of Executive of, or the entering of a plea of *nolo contendere* by Executive with respect to a felony;
  - (iv) Executive's violation of Petco's Code Of Ethics or Petco's policies against discrimination or harassment; or
  - (v) Executive's inability or failure to competently perform his duties hereunder due to the use of drugs or alcohol.
- (d) Executive will also be entitled to the severance benefits in Section 4(b) above, should Executive terminate his employment for Good Reason (as defined below), and explicitly conditioned upon Executive's furnishing the Company, and not revoking, an executed waiver and release of claims (in substantially the form of APPENDIX C, which is attached to this Agreement).

For purposes of this Agreement, "Good Reason" shall mean the occurrence, without the express written consent of Executive, of any of the following conditions:

- (i) a material diminution in Executive's authority, duties or responsibilities;
- (ii) a material diminution in the authority, duties or responsibilities of the supervisor to whom Executive is required to report;
- (iii) a material diminution in Executive's base compensation;
- (iv) a material diminution in the budget over which Executive retains authority;
- (v) the relocation of Executive's own office to a location more than fifty (50) miles from its present location except if such relocation is to the Company's San Antonio Support Center;
- (vi) the failure of the Company to obtain the assumption in writing of its obligation to perform this Agreement by any successor to all or substantially all of the assets of the Company within sixty (60) days after a merger, consolidation, sale or similar transaction, unless such assumption occurs by operation of law; or
- (vii) any other action or inaction that constitutes a material breach by the Company of the Agreement.

If Executive intends to resign for one or more of the conditions listed above, Executive shall give notice of such intent to the Company within ninety (90) days after the initial existence of such condition, detailing such condition with specificity. If the Company does not remedy the condition within thirty (30) days of receiving such notice, then any resignation by Executive from the Company within the two (2) year period beginning with the initial existence of one or more of the foregoing conditions shall be deemed a resignation for "Good Reason."

For purposes of this Agreement, "Change in Control" shall have the meaning assigned to it under the 2006 Plan. If Executive is terminated without Cause and within twelve (12) months after a Change in Control, Executive shall also be entitled to receive at the time of termination, an amount equal to the product of "x" and "y" where:

"x" = The bonus, if any, that Executive would have been eligible to receive in respect of the then current year in which Executive's termination of employment occurs (as such bonus would have been computed based on Company performance immediately prior to such termination of

employment), but in no event greater than 100% of the Executive's target bonus); and

"y" = the number of whole months in the Severance Period divided by eighteen (18).

In addition, if Executive's services with the Company are terminated entitling Executive to the bonus amount set forth in the preceding paragraph relating to "Change in Control," all of Employee's rights to (a) exercise options to purchase shares of the Company's common stock granted to and held by Employee at the time of the Change in Control, if any, and (b) restricted stock units representing the right to receive shares of Company common stock granted to and held by Executive at the time of the Change in Control, if any, shall immediately vest or the restrictions thereon shall immediately lapse, as applicable, resulting in such options becoming immediately exercisable and such restricted stock units becoming immediately available for settlement, and exempt from the exercise of any discretion to the contrary by the administrator of any plans under which such equity awards were originally granted. Notwithstanding the preceding sentence, in the case of any equity Interest that constitutes nonqualified deferred compensation subject to Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), such equity interest shall not be payable upon such Change in Control and Instead shall be payable in accordance with the terms of the applicable equity award agreement, unless such transaction satisfies the requirements for a change in the ownership or effective control of the Company, or a change in the ownership of a substantial portion of the assets of the Company, under Section 409A of the Code.

In furtherance of the foregoing, Executive's date of termination of service with the Company for purposes of determining the date that any payment or benefit that is treated as nonqualified deferred compensation under Section 409A of the Code is to be paid or provided (or in determining whether an exemption to such treatment applies), shall be the date on which Executive has incurred a "separation from service" within the meaning of Section 409A(a)(2)(A)(i) and applicable guidance thereunder ("Separation from Service"). Notwithstanding any provision of this Agreement to the contrary, to the extent necessary to avoid the imposition of taxes under Section 409A of the Code, no payment or distribution under this Agreement that becomes payable by reason of Executive's termination of employment with the Company will be made to Executive unless Executive's termination of employment constitutes a Separation from Service. In addition, for purposes of this Agreement, each amount to be paid or benefit to be provided shall be construed as a separate identified payment for purposes of Section 409A of the Code. To the extent the Company is required pursuant to this Agreement to reimburse expenses or provide a gross-up for taxes incurred by Executive, and such reimbursement or gross-up obligation is subject to Section 409A of the Code, the Company shall reimburse any such eligible expenses by the end of the calendar year next following the calendar year in which the expense was Incurred (and provide the tax gross-up payments no later than the end of the calendar year

next following the calendar year in which the related taxes were remitted), subject to any earlier required deadline for payment otherwise applicable under this Agreement. In addition, to the extent any expense reimbursements or in-kind benefits are subject to Section 409A, (x) the amount of expenses reimbursed in one year shall not affect the amount eligible for reimbursement in any subsequent year, and the amount of any in-kind benefits provided in one year shall not affect the amount of in-kind benefits provided in any other year, and (y) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

If the Company in good faith determines that Executive is a "specified employee" (as defined in Section 409A(a)(2)(B)(i) of the Code) with respect to the payment of benefits or the provision of benefits coverage under this Agreement at the time of his Separation from Service and that the immediate commencement of such payment or provision, as otherwise provided in this Agreement, would constitute a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code, then, to the extent necessary to avoid the imposition of taxes under Section 409A of the Code, notwithstanding any provision to the contrary in this Agreement (and in an effort to spare Executive such additional taxes), the Company shall delay the commencement of payments or benefits coverage to which Executive would otherwise become entitled under this Agreement in connection with Executive's Separation from Service until the earlier of:

- (i) the expiration of the six (6)-month period measured from the date of Executive's Separation from Service, or
- (ii) the date of Executive's death.

Upon expiration of the applicable Code Section 409A(a)(2) deferral period, all payments and benefits deferred pursuant to this provision (whether they would have otherwise been payable in a single sum or in installments in the absence of such deferral) shall be paid or reimbursed to Executive in a lump sum, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.

## **5. AMENDMENT AND WAIVER.**

- 5.1 The provisions of this Agreement may be amended or waived only with the prior written consent of the Company and Executive, and no course of conduct or failure or delay in enforcing the provisions of this Agreement shall affect the validity, binding effect or enforceability of this Agreement.

## **6. CONFIDENTIAL AND PROPRIETARY INFORMATION; NONSOLICITATION.**

- 6.1 Executive agrees to execute and abide by the Proprietary Information and Inventions Agreement attached hereto as APPENDIX B.

- 6.2 Executive recognizes that his employment with the Company will involve contact with information of substantial value to the Company, which is not generally known in the trade, and which gives the Company an advantage over its competitors who do not know or use it, including but not limited to, techniques, designs, drawings, processes, inventions, developments, equipment, prototypes, sales and customer information, and business and financial information relating to the business, products, practices and techniques of the Company, (hereinafter referred to as "Confidential and Proprietary Information"). Executive will at all times regard and preserve as confidential such Confidential and Proprietary information obtained by Executive from whatever source and will not, either during his employment with the Company or thereafter, publish or disclose any part of such Confidential and Proprietary information in any manner at any time, or use any Confidential and Proprietary Information except on behalf of the Company, without the prior written consent of the Company.
- 6.3 While employed by the Company Executive will not, either directly or through others, solicit or attempt to solicit: (i) any employee, consultant or Independent contractor of the Company to terminate his or her relationship with the Company in order to become an employee, consultant or independent contractor to or for any other person or business entity; or (ii) the business of any customer, vendor or distributor, partner or strategic alliance of the Company which, is or was doing business with the Company. Executive further agrees that for one (1) year after his employment ends, he will not directly or indirectly use any Company Confidential/Proprietary Information to solicit: (i) any employee, consultant or independent contractor of the Company to terminate his or her relationship with the Company in order to become an employee, consultant or independent contractor to or for any other person or business entity; or (ii) the business of any customer, vendor or distributor, partner or strategic alliance of the Company which, at the time of termination or one (1) year immediately prior thereto, was doing business with the Company.

## **7. ASSIGNMENT AND BINDING EFFECT.**

This Agreement shall be binding upon and inure to the benefit of Executive and Executive's heirs, executors, personal representatives, assigns, administrators and legal representatives. Due to the unique and personal nature of Executive's duties under this Agreement, neither this Agreement nor any rights or obligations under this Agreement shall be assignable by Executive. This Agreement shall be binding upon and inure to the benefit of the Company and its successors, assigns and legal representatives. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company, to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

**8. NOTICES.**

8.1 All notices or demands of any kind required or permitted to be given by the Company or Executive under this Agreement shall be given in writing and shall be personally delivered (and receipted for) or mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

**If to the Company:** Petco Animal Supplies Stores, Inc., 9125 Rehco Road, San Diego, California 92121, Attn: Chairman of the Board of Directors

**with a copy to:**

Jody A. Landry, Littler Mendelson P.C., 501 W. Broadway, Suite 900, San Diego, California 92101

**If to Executive:** Michael Nuzzo

Any such written notice shall be deemed received when personally delivered or three (3) days after its deposit in the United States mail as specified above. Either Party may change its address for notices by giving notice to the other Party in the manner specified in this section.

**9. CHOICE OF LAW.**

This Agreement is made in San Diego, California. The parties agree that it shall be construed and interpreted in accordance with the laws of the State of California, regardless of the choice of laws provisions of such state or any other Jurisdiction.

**10. INTEGRATION.**

This Agreement contains the complete, final and exclusive agreement of the Parties relating to the subject matter of this Agreement, and supersedes all prior oral and written employment agreements or arrangements between the Parties unless otherwise expressly referenced above.

**11. AMENDMENT.**

This Agreement cannot be amended or modified except by a written agreement signed by Executive and the CEO of Petco.

**12. WAIVER.**

No term, covenant or condition of this Agreement or any breach thereof shall be deemed waived, except with the written consent of the Party against whom the waiver is claimed, and any waiver or any such term, covenant, condition

or breach shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other term, covenant, condition or breach.

**13. SEVERABILITY.**

The finding by a court or arbitrator of the unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid or illegal. Such court shall have the authority to modify or replace the invalid or unenforceable term or provision with a valid and enforceable term or provision that will most accurately represent the parties' intention with respect to the invalid or unenforceable term or provision.

**14. INTERPRETATION; CONSTRUCTION.**

The headings set forth in this Agreement are for convenience of reference only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Company, but Executive has been encouraged, and has consulted with, his own independent counsel with respect to the terms of this Agreement. The Parties acknowledge that each Party and its counsel has reviewed and revised, or had an opportunity to review and revise, this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

**15. REPRESENTATIONS AND WARRANTIES.**

Executive represents and warrants that he is not restricted or prohibited, contractually or otherwise, from entering into and performing each of the terms and covenants contained in this Agreement, and that his execution and performance of this Agreement will not violate or breach any other agreements between Executive and any other person or entity.

**16. ARBITRATION.**

- 16.1 This Arbitration provision is governed by the Federal Arbitration Act (9 U.S.C. sections 1 et seq.), regardless of any choice of law provisions otherwise contained in this contract. The Parties agree to arbitrate any dispute, claim, or controversy ("Claim") arising out of or related to this employment contract or Executive's employment with Petco, including, but not limited to, claims of misappropriation of trade secrets or proprietary information, unfair competition, employment discrimination and harassment under Title VII of the Civil Rights Act, as amended, and the California Fair Employment & Housing Act, age discrimination under the Age Discrimination in Employment Act, as amended, the Americans with Disabilities Act, 42 U.S.C. section 1981, the Employment Retirement Income Security Act, the California Labor Code, breach of employment contract or the Implied covenant of good faith and fair dealing, wrongful discharge, or tortious conduct (whether intentional or negligent) including

defamation, misrepresentation, fraud, infliction of emotional distress, but excluding claims for workers' compensation benefits or unemployment insurance or claims for wages before the California Department of Industrial Relations. This arbitration provision does not prevent Executive from filing a claim or charge with the Equal Employment Opportunity Commission, U.S. Department of Labor, or the National Labor Relations Board.

- 16.2 The arbitration shall be conducted by a single neutral arbitrator in accordance with the rules issued by the American Arbitration Association ("AAA") for resolution of employment disputes. The AAA Rules may be located at [www.adr.org](http://www.adr.org). The arbitration shall take place within 45 miles of where Executive is or was last employed by Petco. Petco will pay the fee for the arbitration proceeding, as well as any other charges by the AAA.
- 16.3 The Arbitrator shall issue a written decision or award, stating the findings of fact and conclusions of law supporting the decision or award. The decision or award of the arbitrator shall be final and binding upon the Parties. The arbitrator shall have the power to award any type of relief that would be available in a court of competent jurisdiction for the claims brought in arbitration. Any award may thereafter be entered as a judgment in any court of competent jurisdiction. Executive agrees that any relief to which he is entitled arising out of his employment or cessation of that employment shall be limited to that awarded by the arbitrator.
- 16.4 Executive and Petco agree to file any demand for arbitration within the time limit established by the applicable statute of limitations for the asserted claims. Failure to demand arbitration within the prescribed time period shall result in waiver of any claims.
- 16.5 A court construing this Agreement may modify, or interpret it to the extent and such manner as to render it enforceable.
- 16.6 Executive has agreed to this arbitration provision in consideration of his employment by Petco and upon consultation with private counsel of his choice.
- 16.7 EXECUTIVE HAS READ AND UNDERSTANDS THIS SECTION 16.7 WHICH DISCUSSES ARBITRATION. EXECUTIVE UNDERSTANDS THAT BY SIGNING THIS AGREEMENT, EXECUTIVE AGREES TO SUBMIT ANY FUTURE CLAIMS ARISING OUT OF, RELATED TO, OR IN CONNECTION WITH EXECUTIVE'S EMPLOYMENT OR TERMINATION THEREOF, OR THE INTERPRETATION, VALIDITY, CONSTRUCTION, PERFORMANCE OR BREACH OF THIS AGREEMENT, TO BINDING ARBITRATION, AND THAT EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 16.7 THIS ARBITRATION CLAUSE CONSTITUTES A WAIVER OF EXECUTIVE'S RIGHT TO A JURY TRIAL AND RELATES TO THE RESOLUTION OF ALL DISPUTES RELATING TO ALL RESPECTS

OF THE EMPLOYER/EXECUTIVE RELATIONSHIP, INCLUDING BUT NOT LIMITED TO, DISCRIMINATION CLAIMS. EXECUTIVE AND THE COMPANY AGREE THAT THIS AGREEMENT TO ARBITRATION IS GOVERNED BY THE AMERICAN ARBITRATION ACT AND THAT ANY ARBITRATION WILL BE GOVERNED BY THE EMPLOYMENT ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, WHICH CAN BE OBTAINED FROM ITS WEBSITE.

**17. LITIGATION COSTS.**

Should any litigation, arbitration, or administrative action be commenced between the Parties or their personal representatives concerning any provision of this Agreement or the rights and duties of any person in relation to this Agreement, the Party or Parties prevailing in such action shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for that Party's attorney's fees, which shall be determined by the court, arbitrator, or administrative agency.

**18. TRADE SECRETS OF OTHERS.**

It is the understanding of both the Company and Executive that Executive shall not divulge to the Company and/or its subsidiaries any confidential information or trade secrets belonging to others, including Executive's former employers, nor shall the Company and/or its affiliates seek to elicit from Executive any such information. Consistent with the foregoing, Executive shall not provide to the Company and/or its affiliates, and the Company and/or its affiliates shall not request, any documents or copies of documents containing such information.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

/s/ Michael Nuzzo  
Michael Nuzzo

/s/ James Myers  
James Myers, CEO  
Petco Animal Supplies Stores, Inc.

## AMENDMENT TO EMPLOYMENT AGREEMENT

January 26, 2016

THIS AMENDMENT TO EMPLOYMENT AGREEMENT (“AMENDMENT”), is entered into as of January 26, 2016, by and between Petco Animal Supplies Stores, Inc., Scooby LP (solely for the purposes specified herein) (the “Ultimate Parent”) and Michael Nuzzo, and amends certain provisions of the Employment Agreement by and among Petco Animal Supplies Stores, Inc. and Michael Nuzzo effective as of April 8, 2015 (the “Employment Agreement”). Capitalized terms used and not otherwise defined herein shall have their respective meanings as set forth in the Employment Agreement.

WHEREAS, effective upon the Closing (as defined in the Agreement and Plan of Merger by and among PET Acquisition LLC, a Delaware limited liability company, PET Acquisition Merger Sub LLC, a Delaware limited liability company, and Petco Holdings, Inc., a Delaware corporation and Shareholder Representative Services LLC, a Colorado limited liability company, dated as of November 21, 2015 (as the same may be amended from time to time, the “Merger Agreement”)), the Ultimate Parent will become the indirect owner of 100% of the equity of the Company;

WHEREAS, the Ultimate Parent desires for the Company to continue to employ Executive and Executive desires to continue such employment; and

WHEREAS, in connection with (and subject to the occurrence of) the Closing, the Company, Ultimate Parent and Executive wish to amend the Employment Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises, covenants and conditions hereinafter contained, the parties agree as follows, effective upon (and subject to the occurrence of) the Closing:

1. Section 3.13 is deleted and replaced with the following:

Equity — Any equity grants held by Executive in Ultimate Parent shall be governed by the terms of the operative documents of Ultimate Parent and any grant agreement between Executive and Ultimate Parent.

2. The first sentence of the paragraph in Section 4(d) that begins with “For purposes of this Agreement, “Change in Control” . . .” is deleted and replaced with the following:

For purposes of this Agreement, following the Closing, a “Change in Control” shall have the meaning specified in the Common Series C Unit Award Agreement dated January 26, 2016 between the Ultimate Parent and Executive.

3. The paragraph in Section 4(d) that begins with “In addition, if Executive’s services with the Company are terminated . . .” is deleted and replaced with the following:

The treatment of Executive's equity awards in Ultimate Parent (including, without limitation, in connection with Executive's termination of employment and in connection with any Change in Control) shall be governed by the terms of the operative documents of Ultimate Parent and any grant agreement between Executive and Ultimate Parent.

4. The first clause of the second sentence of the paragraph in section 4(d) that begins with "If Executive is terminated without Cause and within twelve (12) months after a Change in Control..." is amended by inserting "(i) the Closing or (ii)" between "after" and "a Change in Control".

5. The portion of Section 8.1 for notices "If to the Company" is amended to read as follows:

**If to the Company:**

PETCO Animal Supplies Stores, Inc.  
c/o CVC Capital Partners Advisory (US), Inc.  
One Maritime, Suite 1610  
San Francisco, CA 94111  
Attn: Cameron Breitner

and

PETCO Animal Supplies Stores, Inc.  
c/o Canada Pension Plan Investment Board  
One Queen Street East, Suite 2500  
Toronto, ON, M5C 2W5  
Attn: Scott Nishi

with a copy (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166  
Attention: Sean P. Griffiths

6. Except as amended hereby, all other terms and conditions of the Employment Agreement shall remain in full force and effect from and after the Closing. This Amendment and the Employment Agreement as previously amended constitute the complete and entire agreement among the parties relating to the subject matter thereof, and there are no prior or contemporaneous oral or written representations, promises or agreements not expressly set forth

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therein. This Amendment may not be modified in any respect except by a writing dated and signed by the parties hereto.

*[Signature Page Follows]*

IN WITNESS Whereof, the parties hereto have executed this Amendment as of the day and year first written above.

Michael Nuzzo

PETCO ANIMAL SUPPLIES  
STORES, INC.

/s/ Michael Nuzzo

By: /s/ James Myers  
Name: James Myers  
Title: Chief Executive Officer

[Signature Page to Amendment to Employment Agreement]

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SCOOBY LP

By: SCOOBY GP LLC, its General  
Partner

By: /s/ Cameron Breitner  
Name: Cameron Breitner  
Title: President

[Signature Page to Amendment to Employment Agreement]

**EMPLOYMENT AGREEMENT BETWEEN  
PETCO ANIMAL SUPPLIES, INC. AND DARREN MACDONALD**

This EMPLOYMENT AGREEMENT (the “**Agreement**”) is made and entered into as of May 25, 2019 (the “**Effective Date**”) by and between Petco Animal Supplies, Inc., a Delaware corporation (“**Petco**” or “**the Company**”) and Darren MacDonald (“**Executive**”). Petco and Executive are hereinafter collectively referred to as the “**Parties**,” and are individually referred to as a “**Party**.”

**RECITALS**

A. Petco desires to assure the association and services of Executive in order to retain Executive’s experience, skills, abilities, background and knowledge, and is willing to engage Executive’s services on the terms and conditions set forth in this Agreement.

B. Executive desires to be employed by Petco, and is willing to accept such employment on the terms and conditions set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants herein contained, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

**1. EMPLOYMENT.**

1.1 Petco hereby employs Executive, and Executive hereby accepts employment by Petco, upon the terms and conditions set forth in this Agreement, for the period commencing on June 18, 2019 or such earlier date as mutually agreed by the parties (the “**Start Date**”) and ending as provided in paragraph 4 hereof (the “**Employment Period**”).

1.2 Executive shall serve as the Chief Digital and Innovation Officer of Petco and shall report to the Chief Executive Officer of the Company (the “**CEO**”).

1.3 Executive shall have the responsibility and authority for managing all of the Company’s digital commerce activities, and shall perform all services, acts or things necessary or advisable to fulfill the duties of his position, as reasonably required by the Board of Managers of PET Acquisition LLC (the “**Board**”) or the CEO.

1.4 During the Employment Period, Executive shall perform his services at Petco’s offices, located in San Diego, California or such other facilities of the Company as the Company and Executive may agree upon in writing from time to time; provided, however, that the Company may from time to time require Executive to travel temporarily to other locations in connection with the Company’s business.

## 2. LOYAL AND CONSCIENTIOUS PERFORMANCE; NONCOMPETITION.

2.1 During the Employment Period, Executive shall devote his full business energies, interest, abilities and productive time to Petco. This section shall not preclude Executive from managing personal investments, subject to Section 2.3, engaging in civic, charitable or religious activities that do not adversely affect the Executive's performance of his duties.

2.2 Except with the prior written consent of the Board, Executive will not, during the Employment Period, compete with the Company, either directly or indirectly, in any manner or capacity, as adviser, consultant, principal, agent, partner, officer, director, employee, member of any association or otherwise, in any phase of developing, manufacturing or marketing any product or service that is in the same field of use or that otherwise competes with a product or service that is offered, is actively under development, or is actively being considered for development by the Company.

2.3 Except as permitted herein, Executive agrees not to acquire, assume or participate in, directly or indirectly, any position, investment or interest that Executive knows or should know is adverse or antagonistic to the Company, its business, clients, strategic partners, investors or prospects. Ownership by Executive, as a passive investment, of less than five percent (5%) of the outstanding shares of capital stock of any corporation with one or more classes of its capital stock listed on a national securities exchange or publicly traded in the over-the-counter market shall not constitute a breach of this paragraph.

## 3. COMPENSATION AND BENEFITS.

3.1 The Company will pay Executive an annual base salary (the "**Base Salary**") of Five Hundred Fifty Thousand Dollars (\$550,000) per year, payable in accordance with the Company's standard payroll practices. Such salary shall be prorated for any partial year of employment on the basis of a 365-day fiscal year.

3.2 Executive's Base Salary shall be reviewed annually and may be increased (but not decreased) in the Company's sole discretion.

3.3 All of Executive's compensation shall be subject to withholding taxes and any other employment taxes as are required to be collected or withheld by the Company under applicable law.

3.4 Annual Performance Bonus — Executive will be eligible for a bonus payment for each fiscal year of the Company (the "**Annual Performance Bonus**"), with a target bonus of eighty percent (80%) of Executive's annualized Base Salary for the applicable fiscal year, based on the achievement of specific performance criteria established by the Board, provided that Executive shall be guaranteed payment of an Annual Performance Bonus for fiscal year 2019 of not less than Four Hundred Forty Thousand Dollars (\$440,000) (which payment is subject to offset pursuant to Section 3.15). Commencing with the fiscal year beginning in 2020, the Board shall establish the specific performance criteria for each fiscal year no later than January 31 of each such fiscal year, after conferring with Executive and considering his input in

good faith. Any Annual Performance Bonus earned by Executive shall be paid to Executive in no event later than the later of (i) the 15th day of the third month following the end of the Executive’s taxable year in which such bonus is earned or (ii) the 15th day of the third month following the end of the Company’s taxable year in which such bonus is earned. Executive must be actively employed by the Company at the time the bonus is paid in order to be eligible to receive the payment, except as provided in Section 4(b).

3.5 Fiscal Year 2020 Special Bonus Payment – On February \_\_, 2020, subject to Executive’s continued employment through the payment date, the Company shall pay Executive a one-time cash bonus of \$675,000 (the “**Special Bonus Payment**”), which such payment is subject to offset pursuant to Section 3.15. If Executive resigns for any reason other than for Good Reason or is terminated by the Company with Cause in the first year following the Start Date, Executive shall promptly repay the full amount of the Special Bonus Payment. If Executive resigns for any reason other than for Good Reason or is terminated by the Company with Cause in the second year following the Start Date, Executive shall promptly repay one-half the amount of the Special Bonus Payment. If Executive fails to repay any portion of such bonus pursuant to the immediately-preceding sentence, the Company and its affiliates may, subject to Section 409A of the Code, withhold any compensation or other payments owed to Executive (including, without limitation, pursuant to the Common Series B Units and the Common Series C Units) to the extent necessary to satisfy such repayment obligation.

3.6 Digital Growth Award – Executive shall be eligible to receive a cash bonus award (the “**Digital Growth Award**”) as follows. To the extent earned and payable pursuant to this Section 3.6, the Digital Growth Award shall be paid (i) 50% in cash, and (ii) 50% in fully-vested Common Series B Units of Scooby LP (based on their fair market value as of the time of payment as determined by the Board in its discretion) that are subject to Ultimate Parent LP Agreement (as defined in Section 3.15). The Digital Growth Award eligible to be paid shall be determined as follows based on performance for each fiscal year ending with the fiscal year that concludes in January/February 2022 (and, for the avoidance of doubt, (i) the payment shall be solely as reflected in the applicable row of the chart and shall not involve the addition of amounts from any other row, and (ii) if an amount is payable pursuant to one or more fiscal years pursuant to the below, only the highest earned amount for any of such fiscal years shall apply (and there shall be no summation across multiple fiscal years)):

<b>Revenue</b>	<b>Minimum EBITDA</b>	<b>Amount of Digital Growth Award</b>
Less than \$538 million	N/A	\$0
At least \$538 million but less than \$591 million	\$38 million	\$500,000
At least \$591 million but less than \$619 million	\$43 million	\$1,076,000

At least \$619 million but less than \$645 million	\$46 million	\$2,420,000
\$645 million or more	\$48 million	\$4,302,000

If Revenue is in one of the ranges above but EBITDA is below the designated level in the applicable row for such Revenue achievement, then the Digital Growth Award shall be determined based on the row above such row for which the minimum EBITDA target was met. For example, if (i) Revenue were \$550 million but EBITDA were less than \$38 million, then the Digital Growth Award would be \$0, or (ii) if Revenue were \$620 million but EBITDA were \$44 million, the Digital Growth Award would be \$1,076,000. The EBITDA and Revenue targets in the chart above are subject to adjustment by the Board in its discretion in the event of any acquisition, disposition or other corporate event.

Except as provided in Section 4(b)(iii), payment of the Digital Growth Award, if earned, is subject to Executive's continued employment through (and shall be paid promptly following the occurrence of) either a Change in Control, a Public Offering, a secondary public offering or the Company's payment of any cash dividend to its shareholders (but, in the case of a Public Offering, a secondary public offering or the Company's payment of any cash dividend to its shareholders, the amount payable with respect to the Digital Growth Award, plus any performance-based amounts payable to any other Company employee pursuant to bonus arrangements that pay out in connection therewith, shall be capped at five percent (5%) of the payments received by the Company's shareholders in connection therewith, with any remaining amount potentially payable upon a subsequent Change in Control, Public Offering, secondary public offering or cash dividend payment by the Company (subject to such 5% cap for each such subsequent event other than a Change in Control) if Executive remains employed through the date thereof). For the avoidance of doubt, except as provided in Section 4(b)(iii), no payment of the Digital Growth Award shall be made if Executive's employment with the Company terminates for any reason prior to the applicable payment event specified in this paragraph.

For purposes of this Section 3.6, (a) "**Change in Control**" has the meaning specified in the Award Agreement described in Section 3.15; (b) "**EBITDA**" means (i) sales on the Company's digital platform, less (ii) cost of goods sold attributable to such sales, less (iii) direct marketing spending on the digital platform, less (iv) any other direct expenses related to the digital platform, and the Board shall appropriately adjust EBITDA for proportionate ownership interests in joint ventures and in such other circumstances as it deems appropriate; (c) "**Public Offering**" has the meaning specified in the Award Agreement described in Section 3.15; and (d) "**Revenues**" means net revenues of the Company's digital platform. The EBITDA and Revenues calculations shall be subject to the Board's good faith determination.

3.7 During the Employment Period, the Company agrees to reimburse Executive for all reasonable and necessary business expenses subject to the Company's standard requirements regarding the reporting and documentation of such expenses.

3.8 During the Employment Period, Executive shall, in accordance with Company policy and the terms of any then applicable plan documents, be entitled to participate in the Petco group medical, dental, vision, 401(k), deferred compensation, and flex spending plans upon hire and other benefits. It is understood that the Company may modify or cancel any or all such plans programs or benefits in its discretion, consistent with the requirements of state or federal law. Currently (and subject to change in the future), these benefits, plans and programs include the elements described in the remainder of Sections 3.9 through 3.14. Such benefits shall be taxable to Executive to the extent provided by applicable law and shall be subject to any applicable tax withholdings.

3.9 Financial Planning and Tax Services - Financial, investment, estate and tax planning services from AYCO Financial Services (or such other financial services company as may be designated by the Company) will be provided to Executive. These services are paid for by the Company and are treated as income to Executive for tax purposes.

3.10 Disability and Life Insurance - Short-term and long-term disability insurance, Company-paid Group Term Life Insurance and AD&D Insurance will be provided at no cost to Executive.

3.11 401(k) Savings Plan — Executive will be eligible to participate in the Company-sponsored 401(k) plan consistent with the terms thereof.

3.12 Paid Time Off — Executive will be entitled to Paid Time Off (PTO) in accordance with the Company's then existing standard policy for the Company's executives. PTO must be taken according to the terms of Petco's policy and Executive shall use such PTO in a manner that is minimally disruptive to Company's business.

3.13 Non-Qualified Deferred Compensation Plan - Executive will be eligible to participate in the Company's nonqualified deferred compensation plan consistent with the terms thereof

3.14 Petco Discount and Other Benefits — Executive will be eligible to participate in a number of Petco-sponsored benefits, including a twenty percent (20%) merchandise discount at all Petco stores, discounted pet insurance through Petco's then existing preferred pet insurance vendor, membership privileges at the San Diego County Credit Union, a discount at 24-Hour Fitness Centers, discounted childcare at Children's World Learning Centers. Executive is also eligible to participate in an annual executive physical through Scripps Executive Health (which shall be paid for by the Company but imputed as taxable income to Executive).

3.15 Equity Grant -- Promptly following Executive's commencement of employment, the Company shall ensure that Scooby LP, a limited partnership organized under the laws of the State of Delaware ("**Ultimate Parent**") grants Executive (i) 1,400,000 fully-vested Common Series B Units pursuant to Ultimate Parent's Amended and Restated Agreement of Limited Partnership, dated as of January 26, 2016, as may be amended from time to time (the "**Ultimate Parent LP Agreement**"), and (ii) 5,000,000 Common Series C Units pursuant to the Ultimate Parent LP Agreement and the standard form of award agreement for Common Series C

Units thereunder which sets forth the distribution threshold, vesting, repurchase and other terms and conditions of the grant (the “**Award Agreement**”). Any tax withholdings required to be remitted by the Company or any affiliate in connection with the issuance of the Common Series B Units (i) shall be withheld from and offset the bonus payments to be made in 2020 pursuant to Sections 3.4 and/or 3.5 or (ii) if Executive does not receive such bonus payments as a result of his termination of employment prior to the applicable payment dates, Executive shall repay the Company and its affiliates the amount of such tax withholdings promptly following his date of termination (and if Executive fails to repay any portion of such withholdings, the Company and its affiliates may, subject to Section 409A of the Code, withhold any compensation or other payments owed to Executive (including, without limitation, pursuant to the Common Series B Units and the Common Series C Units) to the extent necessary to satisfy such repayment obligation).

3.16 Relocation Benefits -- The Company shall provide Executive with its standard relocation assistance package, the terms of which shall be set forth in a Relocation Repayment Agreement between Executive and the Company.

#### 4. TERM

Petco is an “**at will**” employer and as such, employment with Petco is not for a fixed term or definite period and may be terminated at the will of either party, with or without Cause, and without prior notice. No supervisor or other representative of the Company (except the Board) has the authority to enter into any agreement for employment for any specified period of time, or to make any agreement contrary to the above. This is the final and complete agreement on this term. Any contrary representations which may have been made or which may be made to Executive are superseded by this Agreement. Upon termination of Executive’s employment for any reason, he shall automatically be deemed to have resigned from all positions with the Company and its affiliates.

(a) If the Employment Period is terminated by the Company or by Executive for any reason, including as a result of Executive’s death or permanent disability, Executive (or Executive’s legal representatives or estate, as applicable) shall be entitled to receive his earned but unpaid Base Salary through his termination date plus any unreimbursed business expenses through the termination date, in each case, payable within five days following the termination date (or such earlier date required by applicable law), in addition to any other vested employee benefits to which Executive is entitled as of the termination date under the employee benefit plans of the Company.

(b) Notwithstanding the at-will nature of the employment relationship between Petco and Executive, if Executive’s employment is terminated by Petco without Cause (as defined in Section 4(c) below), and explicitly conditioned upon Executive’s furnishing to the Company, and not revoking, the Company’s standard release of claims provided by the Company to Executive at the time of termination, Executive shall be entitled to receive:

(i) A lump sum payment equal to twelve (12) months of his current Base Salary in effect as of the date of termination, subject to standard

deductions and withholdings, payable thirty (30) days after the date of termination (or, if later, when the release of claims becomes irrevocable, but no later than sixty (60) days after the date of termination);

(ii) A portion of the Annual Performance Bonus that Executive would have earned if he had remained employed for the entire fiscal year in which his termination occurs, pro-rated based on the number of days Executive was employed in that fiscal year, based on actual performance and payable at the time such bonus would be paid if Executive's employment had not terminated;

(iii) If such termination without Cause (or, to the extent Section 4(d) applies, resignation with Good Reason) occurred within six (6) months prior to a Change in Control, a Public Offering, a secondary public offering, or the Company's payment of any cash dividend to shareholders and if the Digital Growth Award was earned based on performance in a prior fiscal year(s) but has not previously been paid, payment of such earned Digital Growth Award as described in Section 3.6 upon or promptly following such event as if Executive's employment had not terminated; and

(iv) Continued medical benefits at the Company's sole expense for a period of twelve (12) months (the "**Severance Period**"), to the extent he elects and remains eligible to continue those benefits under COBRA; provided, that if the Company determines that it cannot provide such continued medical benefits without adverse tax consequences to Executive or the Company or for any other reason, then the Company shall, in lieu thereof, provide to Executive a taxable amount equal to the monthly plan premium payment for such medical benefits in substantially equal monthly installments over the Severance Period (or the remaining portion thereof).

(c) For purposes of this Agreement, "**Cause**" shall mean:

(i) The Executive's material breach of this Agreement which is not substantially cured within thirty (30) days of receipt by Executive of written notice from the Company's Board specifying the breach and the reasonable steps required to cure such breach, and referring specifically to this Section 4(c);

(ii) The intentional and material failure or refusal by Executive to perform a specific and reasonable directive from the CEO of the Company that has not been substantially cured within thirty (30) business days after written demand for substantial performance has been delivered to Executive by the Company, which demand identifies the manner in which Company believes that the Executive has not performed such duties and the steps required to cure such failure to perform;

(iii) The conviction of Executive of, or the entering of a plea of guilty or *nolo contendere* by Executive to a felony or a misdemeanor involving moral turpitude; or

(iv) Executive's substantial inability or failure to perform the essential functions of his position even with reasonable accommodation as required by law, which is not substantially cured thirty (30) days of receipt by Executive of written notice from the Company's Board specifying the breach and the reasonable steps required to cure such breach, and referring specifically to this Section 4(c).

(d) Executive shall also be entitled to the severance pay and benefits in Section 4(b) above if Executive terminates his employment for Good Reason (as defined below), and explicitly conditioned upon Executive's furnishing the Company, and not revoking, an executed waiver and release of claims referred to above. For purposes of this Agreement, "Good Reason" shall mean the occurrence, without the express written consent of Executive, of any of the following conditions:

- (i) a material diminution in Executive's authority, duties, or responsibilities;
- (ii) Executive is required to report to any person or other than the CEO or the Board;
- (iii) any diminution in Executive's Base Salary;
- (iv) the relocation of Executive's own office to a location more than fifty (50) miles from its location as of the Start Date;
- (v) the failure of the Company to obtain the assumption in writing of its obligation to perform this Agreement by any buyer or successor to the Company upon the effective date of merger, consolidation, sale or similar transaction, unless such assumption occurs by operation of law; or
- (vi) any other action or inaction that constitutes a material breach by the Company of the Agreement.

If Executive intends to resign for one or more of the conditions listed above, Executive shall give notice of such intent to the Company within ninety (90) days after the initial existence of such condition, detailing such condition with specificity. If the Company does not remedy the condition within thirty (30) days of receiving such notice, then any resignation by Executive from the Company within the one hundred eighty (180)-day period beginning with the initial existence of one or more of the foregoing conditions shall be deemed a resignation for "**Good Reason.**"

(e) To the extent applicable, this Agreement shall be interpreted and applied consistent and in accordance with Section 409A of the Internal Revenue Code (the "**Code**") and Department of Treasury regulations and other interpretive guidance issued thereunder. If, however, the Parties determine that any compensation or benefits payable under this Agreement may be or become subject to Section 409A of the Code, the Parties shall cooperate to adopt such amendments to this Agreement or to adopt other policies and procedures (including amendments, policies and procedures with retroactive

effect), or take such other actions, as the Parties determine to be necessary or appropriate to (i) exempt the compensation and benefits payable under this Agreement from Section 409A of the Code and/or preserve the intended tax treatment of such compensation and benefits, or (ii) comply with the requirements of Section 409A of the Code. In furtherance of the foregoing, Executive's date of termination of service with the Company for purposes of determining the date that any payment or benefit that is treated as nonqualified deferred compensation under Section 409A of the Code is to be paid or provided (or in determining whether an exemption to such treatment applies), shall be the date on which Executive has incurred a "**separation from service**" within the meaning of Section 409A(a)(2)(A)(i) and applicable guidance thereunder ("**Separation from Service**"). Notwithstanding any provision of this Agreement to the contrary, to the extent necessary to avoid the imposition of taxes under Section 409A of the Code, no payment or distribution under this Agreement that becomes payable by reason of Executive's termination of employment with the Company will be made to Executive unless Executive's termination of employment constitutes a Separation from Service. In addition, for purposes of this Agreement, each amount to be paid or benefit to be provided shall be construed as a separate identified payment for purposes of Section 409A of the Code. To the extent the Company is required pursuant to this Agreement to reimburse expenses or provide a gross-up for taxes incurred by Executive, and such reimbursement or gross-up obligation is subject to Section 409A of the Code, the Company shall reimburse any such eligible expenses by the end of the calendar year next following the calendar year in which the expense was incurred (and provide the tax gross-up payments no later than the end of the calendar year next following the calendar year in which the related taxes were remitted), subject to any earlier required deadline for payment otherwise applicable under this Agreement. In addition, to the extent any expense reimbursements or in-kind benefits are subject to Section 409A, (x) the amount of expenses reimbursed in one year shall not affect the amount eligible for reimbursement in any subsequent year, and the amount of any in-kind benefits provided in one year shall not affect the amount of in-kind benefits provided in any other year, and (y) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

If the Company in good faith determines that Executive is a "**specified employee**" (as defined in Section 409A(a)(2)(B)(i) of the Code) with respect to the payment of benefits or the provision of benefits coverage under this Agreement at the time of his Separation from Service and that the immediate commencement of such payment or provision, as otherwise provided in this Agreement, would constitute a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code, then, to the extent necessary to avoid the imposition of taxes under Section 409A of the Code, notwithstanding any provision to the contrary in this Agreement (and in an effort to spare Executive such additional taxes), the Company shall delay the commencement of payments or benefits coverage to which Executive would otherwise become entitled under this Agreement in connection with Executive's Separation from Service until the earlier of:

- (i) the expiration of the six (6)-month period measured from the date of Executive's Separation from Service, or

- (ii) the date of Executive's death.

Upon expiration of the applicable Code Section 409A(a)(2) deferral period, all payments and benefits deferred pursuant to this provision (whether they would have otherwise been payable in a single sum or in installments in the absence of such deferral) shall be paid or reimbursed to Executive in a lump sum, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.

## 5. AMENDMENT AND WAIVER.

5.1 The provisions of this Agreement may be amended or waived only with the prior written consent of the Company and Executive, and no course of conduct or failure or delay in enforcing the provisions of this Agreement shall affect the validity, binding effect or enforceability of this Agreement.

## 6. CONFIDENTIAL AND PROPRIETARY INFORMATION; NONSOLICITATION.

6.1 Executive agrees to execute and abide by the Proprietary Information and Inventions Agreement attached hereto as APPENDIX A.

6.2 Executive recognizes that his employment with the Company will involve contact with information of substantial value to the Company, which is not generally known in the trade, and which gives the Company an advantage over its competitors who do not know or use it, including but not limited to, techniques, designs, drawings, processes, inventions, developments, equipment, prototypes, sales and customer information, and business and financial information relating to the business, products, practices and techniques of the Company, (hereinafter referred to as "**Confidential and Proprietary Information**"). Executive will at all times regard and preserve as confidential such Confidential and Proprietary Information obtained by Executive from whatever source and will not, either during his employment with the Company or thereafter, publish or disclose any part of such Confidential and Proprietary Information in any manner at any time, or use any Confidential and Proprietary Information except on behalf of the Company, without the prior written consent of the Company.

6.3 While employed by the Company and for one (1) year thereafter, the Executive agrees that in order to protect the Company's Confidential and Proprietary Information from unauthorized use, that Executive will not, either directly or through others, (i) solicit or attempt to solicit any employee, consultant or independent contractor of the Company to terminate his or her relationship with the Company in order to become an employee, consultant or independent contractor to or for any other person or business entity; or (ii) use the Company's trade secrets or confidential information to solicit or attempt to solicit the business of any customer, vendor or distributor, partner or strategic alliance of the Company which, at the time of termination or one (1) year immediately prior thereto, was doing business with the Company.

6.4 Notwithstanding any other provision in this Agreement or the Proprietary Information and Inventions Agreement, Executive understands and acknowledges that, pursuant

to Section 7 of the Defend Trade Secrets Act of 2016 (which added 18 U.S.C. § 1833(b)), Executive shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (A) (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. If Executive files a lawsuit for retaliation by Executive for reporting a suspected violation of law, Executive may disclose the Company's trade secrets to Executive's attorney and use the trade secret information in the court proceeding if Executive: (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order. Nothing in this Agreement or the Proprietary Information and Inventions Agreement is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by such Section.

## **7. ASSIGNMENT AND BINDING EFFECT.**

This Agreement shall be binding upon and inure to the benefit of Executive and Executive's heirs, executors, personal representatives, assigns, administrators and legal representatives. Due to the unique and personal nature of Executive's duties under this Agreement, neither this Agreement nor any rights or obligations under this Agreement shall be assignable by Executive. This Agreement shall be binding upon and inure to the benefit of the Company and its successors, assigns and legal representatives. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company, to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

## **8. NOTICES.**

8.1 All notices or demands of any kind required or permitted to be given by the Company or Executive under this Agreement shall be given in writing and shall be personally delivered (and receipted for) or mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

### **If to the Company:**

PETCO Animal Supplies, Inc.  
c/o CVC Capital Partners Advisory (US), Inc.  
One Maritime, Suite 1610  
San Francisco, CA 94111  
Attn: Cameron Breitner

and

PETCO Animal Supplies, Inc.  
c/o Canada Pension Plan Investment Board

One Queen Street East, Suite 2500  
Toronto, ON, M5C 2W5  
Attn: Max Biagosch

**with a copy (which shall not constitute notice) to:**

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166  
Attention: Sean P. Griffiths

**If to Executive:** At the address reflected in the Company's payroll records.

Any such written notice shall be deemed received when personally delivered or three (3) days after its deposit in the United States mail as specified above. Either Party may change its address for notices by giving notice to the other Party in the manner specified in this section.

**9. CHOICE OF LAW.**

This Agreement is made in San Diego, California. The parties agree that it shall be construed and interpreted in accordance with the laws of the State of California, regardless of the choice of law's provisions of such state or any other jurisdiction.

**10. INTEGRATION.**

This Agreement contains the complete, final and exclusive agreement of the Parties relating to the subject matter of this Agreement, and supersedes all prior oral and written employment agreements or arrangements between the Parties (including, without limitation, the offer letter dated as of April 26, 2019).

**11. AMENDMENT.**

This Agreement cannot be amended or modified except by a written agreement signed by Executive and the CEO or another duly authorized representative of the Board.

**12. WAIVER.**

No term, covenant or condition of this Agreement or any breach thereof shall be deemed waived, except with the written consent of the Party against whom the waiver is claimed, and any waiver or any such term, covenant, condition or breach shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other term, covenant, condition or breach.

### **13. SEVERABILITY.**

The finding by a court or arbitrator of the unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid or illegal. Such court shall have the authority to modify or replace the invalid or unenforceable term or provision with a valid and enforceable term or provision that will most accurately represent the parties' intention with respect to the invalid or unenforceable term or provision.

### **14. INTERPRETATION; CONSTRUCTION.**

The headings set forth in this Agreement are for convenience of reference only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Company, but Executive has been encouraged, and has consulted with, his own independent counsel with respect to the terms of this Agreement. The Parties acknowledge that each Party and its counsel has reviewed and revised, or had an opportunity to review and revise, this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

### **15. REPRESENTATIONS AND WARRANTIES.**

Executive represents and warrants that he is not restricted or prohibited, contractually or otherwise, from entering into and performing each of the terms and covenants contained in this Agreement, and that his execution and performance of this Agreement will not violate or breach any other agreements between Executive and any other person or entity.

### **16. ARBITRATION.**

16.1 The Parties agree to arbitrate any dispute, claim, or controversy ("**Claim**") including, but not limited to, claims of employment discrimination and harassment under Title VII of the Civil Rights Act, as amended, and the California Fair Employment & Housing Act, age discrimination under the Age Discrimination in Employment Act, as amended, the Americans with Disabilities Act, 42 U.S.C. section 1981, the Employment Retirement Income Security Act, the California Labor Code, breach of employment contract or the implied covenant of good faith and fair dealing, wrongful discharge, or tortious conduct (whether intentional or negligent) including defamation, misrepresentation, fraud, infliction of emotional distress, but excluding claims for workers' compensation benefits or unemployment insurance or claims for wages before the California Department of Industrial Relations.

16.2 The arbitration shall be conducted by a single neutral arbitrator in accordance with the rules issued by the American Arbitration Association ("**AAA**") for resolution of employment disputes. The arbitration shall take place in the City of San Diego. The Company will pay the fee for the arbitration proceeding, as well as any other charges by the AAA.

16.3 The Arbitrator shall issue a written decision or award. The decision or award of the arbitrator shall be final and binding upon the Parties. The arbitrator shall have the power to award any type of relief that would be available in a court of competent jurisdiction.

Any award may thereafter be entered as a judgment in any court of competent jurisdiction. Executive agrees that any relief to which he is entitled arising out of his employment or cessation of that employment shall be limited to that awarded by the arbitrator.

16.4 Executive agrees to file any demand for arbitration within the time limit established by the applicable statute of limitations for the asserted claims. Failure to demand arbitration within the prescribed time period shall result in waiver of any claims.

16.5 A court or arbitrator construing this Agreement may modify, or interpret it to the extent and such manner as to render it enforceable.

16.6 Executive has agreed to this arbitration provision in consideration of his employment by the Company and upon consultation with private counsel of his choice.

16.7 EXECUTIVE HAS READ AND UNDERSTANDS THIS SECTION 16.7 WHICH DISCUSSES ARBITRATION. EXECUTIVE UNDERSTANDS THAT BY SIGNING THIS AGREEMENT, EXECUTIVE AGREES TO SUBMIT ANY FUTURE CLAIMS ARISING OUT OF, RELATED TO, OR IN CONNECTION WITH EXECUTIVE'S EMPLOYMENT OR TERMINATION THEREOF, OR THE INTERPRETATION, VALIDITY, CONSTRUCTION, PERFORMANCE OR BREACH OF THIS AGREEMENT, TO BINDING ARBITRATION, AND THAT THIS ARBITRATION CLAUSE CONSTITUTES A WAIVER OF EXECUTIVE'S RIGHT TO A JURY TRIAL AND RELATES TO THE RESOLUTION OF ALL DISPUTES RELATING TO ALL RESPECTS OF THE EMPLOYER/EXECUTIVE RELATIONSHIP, INCLUDING BUT NOT LIMITED TO, DISCRIMINATION CLAIMS.

#### **17. LITIGATION COSTS.**

Should any litigation, arbitration, or administrative action be commenced between the Parties or their personal representatives concerning any provision of this Agreement or the rights and duties of any person in relation to this Agreement, the Party or Parties prevailing in such action shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for that Party's attorney's fees, which shall be determined by the court, arbitrator, or administrative agency.

#### **18. TRADE SECRETS OF OTHERS.**

It is the understanding of both the Company and Executive that Executive shall not divulge to the Company and/or its subsidiaries any confidential information or trade secrets belonging to others, including Executive's former employers, nor shall the Company and/or its affiliates seek to elicit from Executive any such information. Consistent with the foregoing, Executive shall not provide to the Company and/or its affiliates, and the Company and/or its affiliates shall not request, any documents or copies of documents containing such information.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

/s/ Darren MacDonald

Darren MacDonald

/s/ Ron Coughlin

Chief Executive Officer

For Petco Animal Supplies, Inc.



unleashed

DOCTORS  
FOSTER AND SMITH

vetco

PetCoach

□ 10850 Via Frontera □ San Diego, California 92127 □ Phone 858.453.7845

09/17/18

Justin Tichy  
4133 Eagle Flight Drive  
Simi Valley, CA 93065

Dear Justin,

At Petco, we share a common vision of Healthier Pets. Happier People. Better World. and our success depends on our 27,000+ Partners across the country who are living our brand promise to nurture powerful relationships between pets and people.

On behalf of Petco Animal Supplies Stores, Inc. ("Petco" or the "Company"), I am delighted to invite you to join the Petco leadership team and am pleased to extend a contingent offer of employment to you as Chief Stores Officer, reporting directly to Ron Coughlin. Based on our discussions, your tentative first day is October 3, 2018. Please take a moment to review the details of your offer below:

**Compensation** – Your compensation will be \$480,000 per year, paid on a bi-weekly basis.

**Annual Incentive** - Provided the Board of Managers approves an incentive payment for the fiscal year, you will be eligible for incentive consideration based on 60% of your annual base salary (prorated from your hire date to start of end of the fiscal year). To be eligible for incentive consideration during your first year of employment, your start date must be before December 1. Incentive payments are awarded based on company and individual performance assessed during the annual review cycle. You must be employed at Petco at the time the incentive is paid. The Company reserves the right to modify or terminate the incentive plan at its sole discretion.

**Fiscal Year 2019 Annual Incentive** - Provided the Board of Managers approves an annual incentive payment for fiscal year 2019, you will receive a bonus of \$288,000. You must be employed at Petco at the time the bonus is paid.

**Performance Management** - Performance reviews are based on a fiscal review period of February to January. Merit increases shall be tied to performance results assessed during the annual review cycle.

**Long Term Incentive** – Following the commencement of employment with the Company and subject to Board approval and applicable plan terms, you will receive an award of partnership profits interests in the form of 7,000,000 Common Series C Units (P Units).

**Cash Retention Bonus** – Should you remain continuously employed with Petco through March 31, 2021, and if a change of control event does not occur prior to that date, you will be eligible to receive a cash retention bonus in the amount of \$500,000, subject to standard deductions and withholdings. You must remain employed at Petco and in good standing as of March 31, 2021 to be eligible to receive this payment. Your Cash Retention Bonus Agreement will provide further details regarding this payment.

**Sign-on Bonus Payment** - You are being provided a one-time Sign-on Bonus Payment of \$200,000. All payments will be taxed according to IRS guidelines and paid after 30 days of continuous employment. You agree to repay Petco up to 100% of the sign-on bonus if your employment is terminated either voluntarily or for cause by Petco. Your Sign-on Bonus Repayment Agreement will provide further details regarding this payment.

**Additional Bonus Payment** - You are eligible for an additional bonus of \$36,000, payable in three (3) installments of \$12,000; (1) after 30 days of continuous employment, (2) within 30 days of the first anniversary of your employment, and,

(3) within 30 days of the second anniversary of your employment. All payments will be taxed according to IRS guidelines. To be eligible, you must be employed at Petco at the time the additional bonus is paid.

*Severance Provision* – Should you experience an involuntary, not-for-Cause termination, Petco will provide for a severance payment equal to twelve (12) months of your base salary, subject to standard deductions and withholdings, and subject to you signing (and not revoking) a severance agreement and general release of claims in the form to be provided by Petco.

*Benefits* - Petco offers an excellent benefits package including medical, dental, vision, life insurance, non-qualified deferred compensation plan, an informal time off work program and Petco merchandise and services discounts. You are eligible to begin your participation in our benefits program on your first day of employment. We also offer a 401(k) program that allows you to participate on the first day of the month following one year of service (subject to any plan discrimination testing).

*Financial and Tax Preparation Services* - As a senior officer, you are eligible for financial planning and tax preparation services through AYCO Financial Services, a Goldman Sachs Company. This service is paid for by the Company, and treated as income to you for tax purposes.

*Executive Physical* - As a senior officer, you are eligible to receive an annual comprehensive wellness exam provided through the Scripps Center for Executive Health. This service is paid for by the Company, and treated as income to you for tax purposes.

This offer is contingent upon our receipt and verification of various pre-employment screenings. If you accept this contingent offer of employment, we suggest that you do not give notice to your current employer or make any other arrangements with respect to potential employment with the Company until you have been notified that we have successfully completed all components of this pre-employment process.

Petco is an "at will" employer and as such, employment with Petco is not for a fixed term or definite period and may be terminated at the will of either party, with or without cause, and without prior notice. No supervisor or other representative of the Company (except the Chief Executive Officer) has the authority to enter into any agreement for employment for any specified period of time, or to make any agreement contrary to the above. This is the final and complete agreement on this term. Any contrary representations which may have been made or which may be made to you are superseded by this offer. If you accept this contingent offer, the terms described in this letter shall be the terms of your employment.

All Petco partners are expected to adhere to the Petco Code of Ethics and the corresponding policies and procedures as a condition of employment. You will be provided a copy of the Code of Ethics upon hire and are encouraged to read it thoroughly and notify your supervisor of any questions.

We look forward to having you on the Petco leadership team and to the contributions you'll make to our overall success. To acknowledge and accept the above-described offer, please sign and return to Alex Gould, Director, HR Business Partner. If you have any questions, please contact Alex at \_\_\_\_\_ or at \_\_\_\_\_.

Sincerely,

Petco Human Resources

Acknowledged by:

/s/ Justin Tichy  
Signature

9/17/18  
Date



unleashed!

DOCTORS  
FOSTER AND SMITH

+vetco.

PetCoach

□ 10850 Via Frontera □ San Diego, California 92127 □ Phone 858.453.7845

October 3, 2018

Michelle Bonfilio  
969 Pearl St.  
Alameda, CA 94501

Dear Michelle,

At Petco, we share a common vision of Healthier Pets. Happier People. Better World. and our success depends on our 27,000+ Partners across the country who are living our brand promise to nurture powerful relationships between pets and people.

On behalf of Petco Animal Supplies Stores, Inc. ("Petco" or the "Company"), I am delighted to invite you to join the Petco leadership team and am pleased to extend a contingent offer of employment to you as Chief Human Resources Officer (CHRO), reporting directly to Ron Coughlin. Based on our discussions, your official first day as CHRO is to be determined. Please take a moment to review the details of your offer below:

**Compensation** – Your compensation will be \$456,000 per year, paid on a bi-weekly basis.

**Annual Incentive** - Provided the Board of Managers approves an incentive payment for the fiscal year, you will be eligible for incentive consideration based on 60% of your annual base salary (prorated from your hire date to start of end of the fiscal year). To be eligible for incentive consideration during your first year of employment, your start date must be before December 1. Incentive payments are awarded based on company and individual performance assessed during the annual review cycle. You must be employed at Petco at the time the incentive is paid. The Company reserves the right to modify or terminate the incentive plan at its sole discretion.

**Performance Management** - Performance reviews are based on a fiscal review period of February to January. Merit increases shall be tied to performance results assessed during the annual review cycle.

**Long Term Incentive** – Following the commencement of employment with the Company and subject to Board approval and applicable plan terms, you will receive an award of partnership profits interests in the form of 3,000,000 Performance Incentive Units (P Units). Following approval of your grant, you will receive from the Law Department important details about your award, including an Award Agreement and processing instructions.

**Cash Retention Bonus** – Should you remain continuously employed with Petco through March 31, 2021, and if a change of control event does not occur prior to that date, you will be eligible to receive a cash retention bonus in the amount of \$250,000, subject to standard deductions and withholdings. You must remain employed at Petco and in good standing as of March 31, 2021 to be eligible to receive this payment. Your Cash Retention Bonus Agreement will provide further details regarding this payment.

**Relocation** - To assist you with your move, we are pleased to provide you with relocation assistance through our third-party provider, Cartus. A PDF for Relocation Package D - Homeowner that describes your benefits in detail will follow shortly. Petco agrees to increase your Miscellaneous Expense Allowance to \$19,500 tax-

assisted and provide an exception under our Interim Living Options to extend your temporary housing accommodation through May 31, 2019. A Cartus representative will contact you directly within three business days after accepting and returning your Offer Letter to begin the relocation process. Your Relocation Repayment Agreement will provide further details regarding this payment.

*Severance Provision* – Should you experience an involuntary, not-for-Cause termination, Petco will provide for a severance payment equal to twelve (12) months of your base salary, subject to standard deductions and withholdings, and subject to you signing (and not revoking) a severance agreement and general release of claims in the form to be provided by Petco.

*Benefits* - Petco offers an excellent benefits package including medical, dental, vision, life insurance, non-qualified deferred compensation plan, an informal time off work program and Petco merchandise and services discounts. You are eligible to begin your participation in our benefits program on your first day of employment. We also offer a 401(k) program that allows you to participate on the first day of the month following six (6) months of service (subject to any plan testing discrimination).

*Financial and Tax Preparation Services* - As a senior officer, you are eligible for financial planning and tax preparation services through AYCO Financial Services, a Goldman Sachs Company. This service is paid for by the Company, and treated as income to you for tax purposes.

*Executive Physical* - As a senior officer, you are eligible to receive an annual comprehensive wellness exam provided through the Scripps Center for Executive Health. This service is paid for by the Company, and treated as income to you for tax purposes.

This offer is contingent upon our receipt and verification of various pre-employment screenings. If you accept this contingent offer of employment, we suggest that you do not give notice to your current employer or make any other arrangements with respect to potential employment with the Company until you have been notified that we have successfully completed all components of this pre-employment process.

Petco is an "at will" employer and as such, employment with Petco is not for a fixed term or definite period and may be terminated at the will of either party, with or without cause, and without prior notice. No supervisor or other representative of the Company (except the Chief Executive Officer) has the authority to enter into any agreement for employment for any specified period of time, or to make any agreement contrary to the above. This is the final and complete agreement on this term. Any contrary representations which may have been made or which may be made to you are superseded by this offer. If you accept this contingent offer, the terms described in this letter shall be the terms of your employment.

All Petco partners are expected to adhere to the Petco Code of Ethics and the corresponding policies and procedures as a condition of employment. You will be provided a copy of the Code of Ethics upon hire and are encouraged to read it thoroughly and notify your supervisor of any questions.

We look forward to having you on the Petco leadership team and to the contributions you'll make to our overall success. To acknowledge and accept the above-described offer, please sign and return to Alex Gould, Director of Human Resources. If you have any questions, please contact Alex at \_\_\_\_\_ or at \_\_\_\_\_.

Sincerely,

Petco Human Resources

Acknowledged by:

/s/ Michelle Bonfilio  
Signature

10/5/18  
Date



May 2, 2018

Laura A. Wilkin  
30 Nottingham Lane  
Rogers, AR 72758

Dear Laura,

At Petco, we know that business success begins with having great leaders who promote a high-performing, service-oriented culture. During the interview process and subsequent discussions, we were impressed by your skill set and management style, and we believe you have got what it takes to be an effective leader at Petco.

It's a great time to join our organization. We operate in a fun and growing industry, and we're making terrific progress in our journey to become the undisputed pet industry leader.

On behalf of Petco Animal Supplies Stores, Inc., I am delighted to invite you to join the Petco team and am pleased to extend an offer of employment to you as Executive Vice President, Supply Chain reporting directly to Brad Weston, Chief Executive Officer. Based on our discussions, your anticipated first day of work will be Monday, May 21, 2018. Please take a moment to review the details of your offer as indicated below:

*Compensation* - Your compensation will be \$515,000.00 annually.

*Annual Incentive* - Provided the Board of Directors approves an incentive payment for the fiscal year, you will be eligible for incentive consideration based on 80% of your annual salary. Incentive payments for senior executives are awarded based on achievement of annual Company performance targets, and if approved, are typically awarded in late April. You must be employed at Petco at the time the bonus is paid in order to be eligible to receive payment.

*Long Term Incentive* - Following the commencement of employment with the Company and subject to Board approval and applicable plan terms, you will receive an award of 6,000,000 long term incentive units. Following approval of your grant, you will receive from the Law Department important details about your award, including an Award Agreement and processing instructions.

*Performance Review* - Performance reviews are based on a fiscal review period of February to January. Merit increases shall be tied to performance results assessed during the annual review cycle.

*Retention Bonus* - Upon 48 months following the commencement of your employment with Petco Animal Supplies Stores, Inc., you will receive \$2,000,000 as a retention bonus. You must be employed at Petco at the time the bonus is paid in order to be eligible to receive this payment.

However, should you experience an involuntary, not-for-Cause termination within 48 months of the commencement of your employment, the full retention bonus will be paid in full, subject to standard deductions and withholdings, and subject to you signing (and not revoking) a severance agreement and general release of claims in the form to be provided by Petco.

*Severance Provision* - Should you experience an involuntary, not-for-Cause termination, Petco will provide for a severance payment equal to twelve (12) months of your base salary, subject to standard deductions and withholdings, and subject to you signing (and not revoking) a severance agreement and general release of claims in the form to be provided by Petco.

*Relocation* - We are pleased to provide you with relocation assistance through our third-party provider, Cartus. A PDF for Package D Homeowner that describes your benefits in detail has been included for your review. Petco approves an exception under our Interim Living Options to provide a lump sum payment of \$25,000 (tax assisted) in lieu of directly providing corporate housing. In addition Petco approves the use of an enclosed car carrier to move your four vehicles, two motorcycles and one scooter. Petco will cover the cost of one rental car for the duration of time you reside in corporate housing. A Cartus representative will contact you directly within three business days after accepting and returning your Offer Letter to begin the relocation process.

*Medical/Dental/Vision Benefits/Flex Spending Plan* - Upon date of hire, you are eligible to participate in the Petco group medical/dental/vision/flex spending plans. Your contributions for the first 60 days will be deducted on an after-tax basis. Effective the first of the month following 60 days, your contributions will be withheld on a pre-tax basis. Upon hire, you may access [www.mypetcobenefits.com](http://www.mypetcobenefits.com) for more information on our benefit plans.

*Non-Qualified Deferred Compensation Plan* - You may contribute up to 85% of base pay and up to 100% of your fiscal year bonus each calendar year into the non-qualified deferred compensation plan. Petco has a discretionary match on base pay and bonus pay. You may enroll within 30 days of hire and each year in November for the following year.

*401(k) Savings Plan* - You will be eligible to participate in the Petco Animal Supplies 401(k) Plan effective the first of the month following one year of service, provided that you meet the eligibility requirements. You may elect to contribute up to 60% of your salary on a tax-deferred basis (subject to any plan discrimination testing limits). Petco will provide a discretionary matching contribution of 50% on the first 3% of salary deferred (subject to any plan discrimination testing limits).

*Time Off Work* - Petco offers an informal time off policy, which allows executives (i.e., Director-level and above for purposes of time off policy) to take as much time away from the office as needed and as deemed consistent with the responsibilities of the job, subject to approval by one's manager. Because executives are expected to work as needed to fulfill their job responsibilities, Petco leaves to the discretion of each executive how to best manage his/her time, including scheduling time away from the office for vacation, illness, and other personal reasons. While no accrual or allotment of hours occurs under this informal time off policy, it would not be unreasonable for an executive to take 20 to 30 days of each year for vacation or other personal reasons.

*Financial and Tax Preparation Services* – As a senior officer, you will be eligible for financial planning and tax preparation services through AYCO Financial Services, a Goldman Sachs company. This service is paid for by the Company, and treated as income to you for tax purposes.

*Executive Physical* - As a senior officer, you will be eligible to receive an annual comprehensive wellness exam provided through Scripps Center for Executive Health. This service is paid for by the Company, and treated as income to you for tax purposes.

*Petco Discount* - Upon date of hire, you are eligible to participate in a number of Company-sponsored benefits including a 20% merchandise discount at all Petco stores.

This offer is contingent upon our receipt and verification of various pre-employment screening elements including, but not limited to: education records as you have stated on your application and/or resume; background check results; and assessments results/profiles. If you accept this conditional offer of employment, we suggest that you do not give notice to your current employer or make any other arrangements with respect to potential employment with the Company until you have been notified that we have successfully completed all components of this pre-employment process.

Petco is an “at will” employer and as such, employment with Petco is not for a fixed term of definite period and may be terminated at the will of either party, with or without cause, and without prior notice. No supervisor or other representative of the Company (except the Chief Executive Officer) has the authority to enter into any agreement for employment for any specified period of time, or to make any agreement contrary to the above. This is the final and complete agreement of this term. Any contrary representations which may have been made or which may be made to you are superseded by this offer. If you accept this offer, the terms described in this letter shall be the terms of your employment.

You will be required to sign Petco’s Code of Ethics and Conduct as a condition of employment. The purpose of this document is to set forth Petco’s policy of Ethical Standards and Business Practices. The entire policy will be reviewed during New Hire Orientation. If you would like to preview a copy of the Code of Ethics and Conduct prior to that time, please contact me and I can provide a copy for you.

Laura, we look forward to having you as a member of the Petco leadership team and to the contributions you will make. To acknowledge and accept the above-described offer please sign, date, scan and email a copy of this letter to Matt Kennon, Director of Talent Acquisition. If you have any questions, please contact Matt at .

Sincerely,

Brad Weston  
Chief Executive Officer

**Acknowledged by:**

Signature: /s/ Brad Weston

**RELEASE OF CLAIMS AGREEMENT**

This RELEASE OF CLAIMS AGREEMENT (this "Agreement") is entered into by and between Petco Animal Supplies Stores, Inc. (the "Operating Company"), Scooby LP (solely for the purposes specified herein) (the "Ultimate Parent"), PET Acquisition LLC (solely for the purposes specified herein) ("PET Acquisition" and, collectively with the foregoing entities, the "Petco Affiliated Entities") and Laura Wilkin ("Executive"), for the good and sufficient consideration set forth below, as follows, effective as of August 13, 2019 (the "Effective Date").

1. Executive's employment with the Operating Company and his position as Chief Supply Chain Officer terminated as of August 30, 2019 (the "Termination Date") pursuant to mutual agreement of the parties. In addition, effective as of the Termination Date, Executive resigns from all officer, director, manager and other roles and positions with PET Acquisition and/or its direct and indirect subsidiaries.
2. Pursuant to the letter agreement by and between the Operating Company and Executive dated as of May 2, 2018 (the "Letter Agreement"), Executive shall be entitled to the following payments and benefits in connection with the termination of her employment:
  - (a) A lump sum payment of \$515,000 (equal to twelve (12) months of her current base salary), payable thirty days after the Effective Date;
  - (b) Payment of her base salary through the Termination Date (which Executive acknowledges has been paid prior to the Effective Date);
  - (c) A lump sum payment of \$7,000, the cash equivalent of Petco's Executive outplacement services package, payable thirty days after the Effective Date.
3. Executive was granted certain rights pursuant to a Special Retention Bonus Agreement between Executive and Petco Animal Supplies, Inc. dated as of October 31, 2018 (the "Special Bonus Agreement"). In connection with her termination of employment, Executive shall be paid a "Special Bonus" of \$2,000,000, payable within thirty (30) days after the Effective Date.
4. Executive was granted 6,000,000 Common Series C Units (the "Units") in Ultimate Parent through two Common Series C Unit Award Agreements, one such agreement dated August 1, 2018 ("2018 Award Agreement") and the second dated May 1, 2019 ("the 2019 Award Agreement") (the 2018 Award Agreement and the 2019 Award Agreement, collectively, the "Award Agreements"). The 2018 Award Agreement provided for a "Distribution Threshold" of \$.75 per Unit for 3,000,000 Units and the 2019 Award Agreement provided for a "Distribution Threshold" of \$.50 per Unit. With respect to the 2018 Award Agreement, 600,000 Units are currently vested and, with respect to the 2019 Award Agreement, 600,000 Units are currently vested (all 1,200,000 vested Units, collectively, "the Vested Units"). All other Units granted under the Award Agreements are currently unvested (the "Unvested Units"). Executive hereby agrees that the Unvested Units have been forfeited and she has no further rights with respect thereto. In addition, Executive hereby agrees that the Vested Units

are hereby repurchased by Ultimate Parent for \$0 (their current fair market value), and Executive shall have no further rights with respect thereto.

5. Executive agrees that she shall not advise or encourage any employee of the Operating Company or any affiliate to terminate employment with the Operating Company or such affiliate at any time.
6. Executive understands that any payments or benefits paid or granted to her pursuant to Sections 2 and 3 (other than in Section 2(b)) represent consideration for signing this Agreement and are not salary, payments or benefits to which she was already entitled. Executive understands and agrees that she will not receive the payments and benefits specified in Sections 2 and 3 (other than Section 2(c)) unless she executes this Agreement and does not revoke this Agreement within the time period permitted herein.
7. Executive hereby acknowledges and agrees that the confidentiality, nonsolicitation, noncompetition, and inventions covenants applicable to her by virtue of her employment by the Operating Company and equity holdings in Ultimate Parent pursuant to Section 8 of the Award Agreements shall continue in full force and effect in accordance with their terms. In addition to her existing nondisparagement obligations, Executive hereby agrees that she shall not disparage, denigrate or otherwise make any statement that could impair the reputation, goodwill or interests of any of the Company Released Parties.
8. Except as specifically provided herein, Executive knowingly and voluntarily (for herself, her family, and her heirs, executors, administrators and assigns) releases and forever discharges the Petco Affiliated Entities and their subsidiaries and affiliates and all present and former directors, managers, partners, officers, agents, representatives, employees, successors and assigns of the Petco Affiliated Entities and their subsidiaries and affiliates and the Petco Affiliated Entities' direct or indirect owners (collectively, the "Company Released Parties") from any and all claims, suits, controversies, actions, causes of action, cross-claims, counter-claims, demands, debts, compensatory damages, liquidated damages, punitive or exemplary damages, other damages, claims for costs and attorneys' fees, or liabilities of any nature whatsoever in law and in equity, both past and present (in each case, through the Effective Date) and whether known or unknown, suspected, or claimed against any of the Company Released Parties which Executive or any of her heirs, family members, executors, administrators or assigns, may have, which arise out of or are connected with her employment with, or her separation or termination from, the Operating Company (including, but not limited to, any allegation, claim or violation, arising under: Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1967, as amended (including the Older Workers Benefit Protection Act); the Equal Pay Act of 1963, as amended; the Americans with Disabilities Act of 1990; the Family and Medical Leave Act of 1993; the Worker Adjustment Retraining and Notification Act; the Employee Retirement Income Security Act of 1974; the Fair Labor Standards Act; or their state or local counterparts; or under any other federal, state or local civil or human rights law, or under any other local, state, or federal law, regulation or ordinance; or under any public policy, contract or tort, or under common law; or arising under any policies, practices or procedures of the Petco Affiliated Entities; or any claim for wrongful discharge, breach of contract, infliction of emotional distress, defamation; or any claim for costs, fees,

or other expenses, including attorneys' fees incurred in these matters) (all of the foregoing collectively referred to herein as the "Executive Claims"); except that she does not waive or release (a) any rights or claims for vested benefits under the tax-qualified retirement plans or other benefit plans or programs of any Petco Affiliated Entity, (b) any rights or claims she may have to indemnification by any Petco Affiliated Entity pursuant to the governing documents of such Petco Affiliated Entity or any agreement between Executive and such Petco Affiliated Entity, or (c) any rights or claims of Executive pursuant to this Agreement.

9. Section 1542 of the Civil Code of the State of California ("Section 1542") provides: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. Executive waives all rights under Section 1542 or any other law or statute of similar effect in any jurisdiction with respect to the Executive Claims. Executive acknowledges that she understands the significance and specifically assumes the risk regarding the consequences of such release and such specific waiver of Section 1542.
10. Executive represents that she has made no assignment or transfer of any right, claim, demand, cause of action, or other matter covered by this Agreement.
11. Each of Executive and the Petco Affiliated Entities agrees that this Agreement does not waive or release any rights or claims that Executive may have under the Age Discrimination in Employment Act of 1967 which arise after the date she executes this Agreement.
12. In signing this Agreement, Executive acknowledges and intends that it shall be effective as a bar to each and every one of the Executive Claims hereinabove mentioned or implied. She expressly consents that this Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected Executive Claims, if any, as well as those relating to any other Executive Claims hereinabove mentioned or implied. Executive acknowledges and agrees that this waiver is an essential and material term of this Agreement and that without such waiver the Petco Affiliated Entities would not have agreed to the terms and conditions hereof. Executive further agrees that in the event she should bring an Executive Claim seeking damages against the Petco Affiliated Entities, or in the event Executive should seek to recover against the Petco Affiliated Entities in any Executive Claim brought by a governmental agency on her behalf, this Agreement shall serve as a complete defense to such Executive Claims and Company Claims to the extent released hereunder. Executive further agrees that she is not aware of any pending charges or complaints of the type described as Executive Claims in Section 8 as of the Effective Date.
13. Executive agrees that neither this Agreement, nor the furnishing of the consideration for this Agreement, shall be deemed or construed at any time to be an admission by any Petco Affiliated Entity of any improper or unlawful conduct.

14. Executive agrees that if she violates this Agreement by suing any Company Released Party or participating in any such lawsuit, she will pay all costs and expenses of defending against the suit incurred by the Company Released Parties, including reasonable attorneys' fees.
15. Executive agrees that this Agreement is confidential and agrees not to disclose any information regarding the terms and conditions of this Agreement, except to her immediate family (or trusts for her or their benefit) and any tax, legal or other counsel she has consulted regarding the meaning or effect hereof or as required by law, and she will instruct each of the foregoing not to disclose the same to anyone.
16. Executive agrees to reasonably cooperate with the Petco Affiliated Entities in any internal investigation, any administrative, regulatory, or judicial proceeding or any dispute with a third party. She understands and agrees that her cooperation may include, but not be limited to, making herself available to the Petco Affiliated Entities upon reasonable notice for interviews and factual investigations; appearing at the Petco Affiliated Entities' request to give testimony without requiring service of a subpoena or other legal process; volunteering to the Petco Affiliated Entities pertinent information received by her in her capacity as Chief Supply Officer or otherwise; and turning over to the Petco Affiliated Entities all relevant documents which are or may have come into her possession in her capacity as Chief Supply Officer or otherwise, all at times and on schedules that are reasonably consistent with her other permitted activities and commitments.
17. Notwithstanding anything in this Agreement to the contrary, this Agreement will not result in the relinquishment, diminishment, or any other effect upon any rights or claims arising out of any breach by the Petco Affiliated Entities or by Executive of this Agreement on or after the date hereof.
18. Amounts payable hereunder are subject to all tax and other legally-required withholdings.
19. No right to receive payments and benefits under this Agreement shall be subject to set off, offset, anticipation, commutation, alienation, assignment, encumbrance, charge, pledge or hypothecation or to execution, attachment, levy, or similar process or assignment by operation of law.
20. Any notices provided for in this Agreement shall be in writing and shall be either personally delivered by a nationally recognized overnight courier service, to the recipient at the address indicated below, or to any replacement address of which a party hereto gives written notice to the other parties:

NOTICES TO EXECUTIVE:

Laura Wilkin

NOTICES TO OPERATING COMPANY:

Petco Animal Supplies Stores, Inc.  
10850 Via Frontera  
San Diego, CA 92127  
Attn: Chief Legal Officer & Corporate Secretary

NOTICES TO PETCO AFFILIATED ENTITIES:

c/o CVC Capital Partners Advisory (U.S.), Inc.  
One Maritime Plaza, Suite 1610  
300 Clay Street, San Francisco, CA 94111

and

c/o Canada Pension Plan Investment Board  
One Queen Street East, Suite 2500  
Toronto, ON, M5C 2W5  
Attn: Maximilian Biagosch

With a copy (which will not constitute notice) to:

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166  
Attn: Sean P. Griffiths

21. This Agreement, together with the Letter Agreement, the Special Bonus Agreement, the Award Agreements, and the Partnership Agreement, represent the entire understanding and agreement between the parties as to the subject matter hereof and supersede all prior agreements, arrangements and understandings between them concerning the subject matter hereof, and any subsequent written agreements shall be construed to change, amend, alter, repeal or invalidate this Agreement only to the extent that this Agreement is specifically identified in and made subject to such other written agreements and is executed by all parties hereto. The provisions of this Agreement may be waived only with the prior written consent of the parties hereto, and no course of conduct or failure or delay in enforcing the provisions of this Agreement shall affect the validity, binding effect or enforceability of this Agreement.

22. This Agreement and its performance will be construed and interpreted in accordance with the laws of the State of California, without regard to principles of conflicts of law that would apply the substantive law of any other jurisdiction.
23. Whenever possible, each provision of this Agreement shall 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 invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.
24. This Agreement may be executed in several counterparts, including by .PDF or .GIF attachment to email or by facsimile, each of which is deemed to be an original, and all of which taken together constitute one and the same agreement.

BY SIGNING THIS AGREEMENT, I REPRESENT AND AGREE THAT:

1. I HAVE READ IT CAREFULLY;
2. I UNDERSTAND ALL OF ITS TERMS AND KNOW THAT I AM GIVING UP IMPORTANT RIGHTS, INCLUDING BUT NOT LIMITED TO, RIGHTS UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED, TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED; THE EQUAL PAY ACT OF 1963, THE AMERICANS WITH DISABILITIES ACT OF 1990; AND THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED;
3. I VOLUNTARILY CONSENT TO EVERYTHING IN IT;
4. I HAVE BEEN ADVISED TO CONSULT WITH AN ATTORNEY BEFORE EXECUTING IT AND I HAVE DONE SO OR, AFTER CAREFUL READING AND CONSIDERATION I HAVE CHOSEN NOT TO DO SO OF MY OWN VOLITION;
5. I HAVE HAD AT LEAST 21 DAYS FROM THE DATE OF MY RECEIPT OF THIS RELEASE SUBSTANTIALLY IN ITS FINAL FORM ON AUGUST 13, 2019;
6. I UNDERSTAND THAT I HAVE SEVEN DAYS AFTER THE EXECUTION OF THIS RELEASE TO REVOKE IT AND THAT THIS RELEASE SHALL NOT BECOME EFFECTIVE OR ENFORCEABLE UNTIL THE REVOCATION PERIOD HAS EXPIRED;
7. I HAVE SIGNED THIS GENERAL RELEASE KNOWINGLY AND VOLUNTARILY AND WITH THE ADVICE OF ANY COUNSEL RETAINED TO ADVISE ME WITH RESPECT TO IT; AND
8. I AGREE THAT THE PROVISIONS OF THIS GENERAL RELEASE MAY NOT BE AMENDED, WAIVED, CHANGED OR MODIFIED EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF EACH PETCO AFFILIATED ENTITY AND BY ME.

[Signature Page Follows]

Laura Wilkin

PETCO ANIMAL SUPPLIES  
STORES, INC.

/s/ Laura A. Wilkin

By: /s/ Michelle Bonfilio  
Name: Michelle Bonfilio  
Title: Chief Human Resources Officer

SCOOBY LP

By: /s/ Cameron Breitner  
Name: Cameron Breitner  
Title: President

PET ACQUISITION LLC

By: /s/ Michelle Bonfilio  
Name: Michelle Bonfilio  
Title: Chief Human Resources Officer

## COMMON SERIES C UNIT AWARD AGREEMENT

THIS COMMON SERIES C UNIT AWARD AGREEMENT (this “**Award**”) is made as of \_\_\_\_\_ (the “**Grant Date**”) between Scooby LP, a limited partnership organized under the laws of the State of Delaware (the “**Partnership**”), and the individual set forth on the signature page hereto (the “**Participant**”);

WHEREAS, the Partnership is governed by the Limited Partnership Agreement of the Partnership dated as of January 26, 2016 (as the same may be amended from time to time, the “**Partnership Agreement**”);

WHEREAS, capitalized terms not otherwise defined herein shall have the meanings provided to such terms in the Partnership Agreement;

WHEREAS, the Units acquired pursuant to this Award are being issued to the Participant upon the terms and subject to the conditions set forth in the Scooby 2016 Incentive Plan (the “**Plan**”), and in this Award promulgated under such Plan, each as amended from time to time;

WHEREAS, the Partnership desires to issue this Award to the Participant as consideration for the Participant’s provision of services to the Partnership or its Subsidiaries; and

WHEREAS, as a condition to the issuance of this Award, the Participant shall, to the extent he or she has not previously executed the Partnership Agreement, be required to execute the omnibus joinder, attached hereto as Exhibit B, to the Partnership Agreement.

NOW, THEREFORE, in consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Grant of Restricted Profits Interests. Subject to the terms and conditions set forth herein, the Partnership hereby grants to the Participant the number of Common Series C Units indicated on Exhibit A (the “**Units**”). The “Distribution Threshold” for the Units is \$ \_\_\_\_\_, subject to adjustment as provided in the Partnership Agreement. All such Units shall be initially unvested, and shall be entitled to vest in accordance with Section 2.

2. Vesting. Each Unit shall become vested on the vesting date indicated for such Unit on Exhibit A, subject to the Participant’s continued employment upon such date (except as otherwise provided in Exhibit A or this Award). Except as may otherwise be provided in Exhibit A or this Award, if the Participant’s employment is terminated for any reason before a vesting date indicated on Exhibit A with respect to a Unit, then such Unit shall be automatically forfeited and reacquired by the Partnership without payment of any consideration therefor. For the avoidance of doubt, any Units that have vested as of a termination of Participant’s employment shall not be subject to forfeiture (but, for the avoidance of doubt, shall remain subject to Section 9.2 of the Partnership Agreement).

3. Rights, Privileges and Limitations. The Participant shall be the record owner of the Units unless or until they are automatically reacquired by the Partnership for no consideration pursuant to Section 2 hereof. Except as otherwise set forth in this Award or in the Partnership Agreement, the same rights, privileges, limitations and obligations applicable to the Units under the Partnership Agreement shall apply equally whether the Units are vested or unvested. As a condition to the grant of the Units pursuant to this Award, and by executing this Award and the omnibus joinder attached hereto as Exhibit B (to the extent the Participant has not previously executed the Partnership Agreement), the Participant agrees to be bound by the terms of the Partnership Agreement.

4. Participant Representations. In connection with the grant of the Units, the Participant represents the following to the Partnership:

(a) The Participant is aware of the Partnership's business affairs and financial condition and has acquired sufficient information about the Partnership to reach an informed and knowledgeable decision regarding the investment in (and/or acquisition of) the Units. The Participant is acquiring the Units as an investment for Participant's own account only and not with a view to, or for sale in connection with, any "distribution" thereof within the meaning of the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated pursuant thereto (the "**Securities Act**").

(b) The Participant understands that the Units have not been registered under the Securities Act and that the Participant is investing in (and/or acquiring) the Units pursuant to a specific exemption therefrom, which exemption depends upon, among other things, the *bona fide* nature of the Participant's investment intent as expressed herein.

(c) The Participant is aware that the Participant's investment in (and/or acquisition of) the Units, as applicable, is a speculative investment that has limited liquidity and is subject to the risk of complete loss.

(d) The Participant further acknowledges and understands that the Units must be held indefinitely unless the Units are subsequently registered under the Securities Act or an exemption from such registration is available. The Participant further acknowledges and understands that the Partnership is under no obligation to register the Units except as otherwise set forth in the Partnership Agreement.

(e) The Participant was not presented with or solicited by any form of general solicitation or general advertising, including, but not limited to, any advertisement, article, notice, or other communication published in any newspaper, magazine, or similar media, or broadcast or television, radio or similar communications media, or presented at any seminar or meeting whose attendees were invited by any general solicitation or advertising.

(f) The Participant agrees to execute and deliver, contemporaneous with this Award, the omnibus joinder, attached hereto as Exhibit B, to the Partnership Agreement (to the extent that the Participant has not previously executed the Partnership Agreement).

(g) If the Participant is married, then the Participant warrants and represents that the spouse of the Participant has executed and will deliver, contemporaneous with delivery of this Award, the spousal consent attached hereto as Exhibit C.

(h) The Participant has been given the opportunity to examine all documents and to ask questions of, and to receive answers from, the Partnership and its representatives concerning the Partnership and its Subsidiaries, the Partnership Agreement and the terms and conditions of this Award and to obtain any additional information which the Participant deems necessary.

(i) All information the Participant has provided to the Partnership and its representatives concerning Participant and the Participant's financial position is complete and correct in all material respects as of the date of this Award.

5. Adjustments. In the event of any change in number of Units after the date hereof by reason of any reorganization, recapitalization, merger, consolidation, spin off, combination or transaction or exchange of Units or other exchange or any transaction similar to the foregoing, the General Partner, in its sole discretion and without liability to any person shall make such substitution or adjustment, if any, as it deems to be equitable, as to (i) the number or kind of Units or other securities issued pursuant to this Award and/or (ii) any other affected terms of this Award.

6. Withholding Taxes. The Participant may be required to pay to the Partnership or any of its affiliates, and the Partnership and its affiliates shall have the right and are hereby authorized to withhold, any applicable withholding taxes in respect of the Units, whether relating to their grant, their vesting or otherwise, or any payment or transfer with respect to the Units, and shall have the right to take such action as may be necessary in the opinion of the Partnership to satisfy all obligations for the payment of any such withholding taxes. If the Participant is subject to personal income tax liability in the United States, the Participant shall promptly, but in any event no later than 30 days after the Grant Date, make an election pursuant to Section 83 of the Code. The Participant is hereby advised to seek the Participant's own tax counsel regarding the taxation of the Units granted hereunder.

7. Notices. All notices, requests, consents and other communications under this Award shall be made by the parties hereto in accordance with the procedure set forth in the Partnership Agreement.

8. Protective Covenants.

(a) The Participant recognizes that his or her employment with Subsidiaries of the Partnership will involve contact with information of substantial value to the Partnership and its Subsidiaries, which is not generally known in the trade, and which gives the Partnership and its Subsidiaries an advantage over their competitors who do not know or use it, including but not limited to, techniques, designs, drawings, processes, inventions, developments, equipment, prototypes, sales and customer information, and business and financial information relating to the business, products, practices and techniques of the Partnership and its Subsidiaries (hereinafter referred to as "**Confidential and Proprietary Information**"). The Participant will at all times regard and preserve as confidential such Confidential and Proprietary Information obtained by the Participant from whatever source and will not, either during his or her employment with Subsidiaries of the Partnership or thereafter, publish or disclose any part of such Confidential and Proprietary Information in any manner at any time, or use any Confidential and Proprietary Information except on behalf of the Partnership and its Subsidiaries, without the prior written consent of the General Partner.

(b) While employed by the Subsidiaries of the Partnership and for one (1) year thereafter, the Participant agrees that in order to protect the Partnership's and its Subsidiaries' Confidential and Proprietary Information from unauthorized use, that the Participant will not, either directly or through others, solicit or attempt to solicit: (i) any employee, consultant or independent contractor of the Partnership and its Subsidiaries to terminate his or her relationship with the Partnership and its Subsidiaries in order to become an employee, consultant or independent contractor to or for any other person or business entity; or (ii) the business of any customer, vendor or distributor, partner or strategic alliance of the Partnership and its Subsidiaries which, at the time of termination or one (1) year immediately prior thereto, was doing business with the Partnership and its Subsidiaries.

(c) Each party (which, in the case of the Partnership, shall mean the Partnership or a Subsidiary by authorized statement or its executive officers and the members of the board of directors or managers) agrees to refrain from Disparaging (as defined below) the other party and its Affiliates, including, in the case of the Partnership and its Affiliates, any of their products, services or practices, or any of their directors, managers, officers or direct or indirect owners (including, for the avoidance of doubt, CVC and CPPIB), either orally or in writing. Nothing in this paragraph shall preclude any party from making truthful statements that are reasonably necessary to comply with applicable law, regulation or legal process, or to defend or enforce a party's rights under this Award or any other agreement between the parties or their Affiliates. For purposes of this Award, "Disparaging" means making remarks, comments or statements, whether written or oral, that impugn the character, integrity, or reputation of the person being disparaged.

(d) If, at the time of enforcement of any of the provisions of this Section 8, a court holds that the restrictions stated herein are unreasonable under circumstances then existing, the parties hereto agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area. Because the Participant's services are unique and because the Participant has access to Confidential and Proprietary Information, the parties hereto agree that money damages would be an inadequate remedy for any breach of this Section 8. Therefore, in the event of a breach of threatened breach of this Section 8, the Partnership, its Subsidiaries or any of their respective successors or assigns may, in addition to other rights and remedies existing in their favor and notwithstanding Section 10 of this Award, apply to any court of competent jurisdiction for specific performance and/or injunctive or other relief in order to enforce, or prevent any violations of the provisions hereof (without posting a bond or other security).

9. Securities Laws. Upon the grant and/or the vesting of the Units, the Participant hereby agrees to make or enter into such written representations, warranties and agreements as the Partnership may reasonably request in order to comply with any applicable securities laws or with this Award.

10. Arbitration. Except for the enforcement of any covenant herein that would be the subject of specific performance contemplated by Section 8, (a) to the extent any employment agreement between the Participant and a Subsidiary of the Partnership provides for arbitration of disputes, all disputes with respect to the Units shall be subject to the arbitration rules and procedures specified therein and (b) to the extent there is no such employment agreement or arbitration provision, any controversy or claim arising with respect to the Units shall be settled

by arbitration administered by the American Arbitration Association under its National Rules for the Resolution of Employment Disputes, and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof. There shall be one arbitrator who shall be currently licensed to practice law and appointed by the respective parties or, failing agreement, by the American Arbitration Association in San Francisco. The arbitration shall be held in the City of San Francisco, California, and the arbitrator shall apply the substantive law of the State of Delaware, except that the interpretation and enforcement of this arbitration provision shall be governed by the United States Arbitration Act. Disputes about arbitration procedure shall be resolved by the arbitrator or failing agreement, by the American Arbitration Association in San Francisco. The award of the arbitrator shall be the sole and exclusive remedy of the parties and shall be enforceable in any court of competent jurisdiction, subject only to revocation on grounds of fraud or clear bias on the part of the arbitrator. The prevailing party shall be entitled to an award of reasonable attorney's fees.

11. Choice of Law. This Award shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflicts of laws principles thereof.

12. Signature in Counterparts. This Award may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

*[Signatures on next page.]*

IN WITNESS WHEREOF, the parties have caused this Award to be effective as of the day and year first above written.

SCOOBY LP

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

PARTICIPANT

By: \_\_\_\_\_

Printed:

Address:

[Signature Page to Unit Award Agreement]

**Number of Units Granted:**

**Vesting of the Units:**

## OMNIBUS JOINDER

The undersigned is executing and delivering this Joinder pursuant to the Limited Partnership Agreement of the Partnership dated as of January 26, 2016 (as the same may be amended from time to time, the "**Partnership Agreement**"). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Partnership Agreement.

By executing and delivering this Joinder to the Partnership Agreement, the undersigned hereby adopts and approves the Partnership Agreement and agrees, effective commencing on the date on which the undersigned first becomes the owner of any Unit or otherwise holds a Partnership Interest in accordance with the Partnership Agreement, to be bound by, and to comply with, the provisions of the Partnership Agreement applicable to a Partner, in the same manner as if the undersigned were an original signatory to the Partnership Agreement, whether or not any such Partnership Interest was acquired prior to the date hereof. The undersigned expressly acknowledges and agrees that (i) the undersigned's receipt and ownership of any Partnership Interest is expressly conditioned on its execution and delivery of this Joinder and (ii) the undersigned shall not be entitled to any rights pursuant to the Partnership Agreement unless the undersigned shall have executed and delivered this Joinder.

Accordingly, the undersigned has executed and delivered this Joinder as of \_\_\_\_\_.

PARTICIPANT

By: \_\_\_\_\_

Printed:

Address:

**EXHIBIT C**  
**SPOUSAL CONSENT**

In consideration of the execution of the foregoing Award Agreement between Scooby LP, a Delaware limited partnership, and Scott Curlow (the "Participant"), I, \_\_\_\_\_, the spouse of the Participant, do hereby join with my spouse in executing the Award Agreement to which this consent is attached as Exhibit C (the "**Award**"), and do hereby agree to be bound by all of the terms and provisions thereof and of the Partnership Agreement (as defined in the Award), including the terms of the Participant's joinder thereto, and of any agreements contemplated thereby, and if applicable, of the joint election, in lieu of all other interests I may have in the Units subject thereto, whether the interest may be community property or otherwise.

Dated as of \_\_\_\_\_

\_\_\_\_\_  
Signature of Spouse

Print Name:

**RETENTION BONUS AGREEMENT**

This Retention Bonus Agreement (Agreement) is effective on April 1, 2020, by and between Michelle Bonfilio (hereinafter "Employee") and Petco Animal Supplies Stores., Inc. (hereinafter "Company"). In consideration of the mutual promises made herein, the Company and Employee agree as follows.

1. **Purpose of Retention Bonus.** Employee is being offered a Retention Bonus in order to encourage Employee to remain employed with the Company through February 1, 2022. The "Retention Period" shall begin on April 1, 2020 and shall end on February 1, 2022. This Agreement shall not modify the duration of the Employee's employment with the Company, and the Employee remains an employee-at-will during the entire time of employment with the Company.

2. **Retention Bonus Amount.** The Company shall pay to Employee a total amount of \$500,000.00, less applicable state and federal taxes and withholdings, as a Retention Bonus if Employee remains employed during the entire Retention Period and complies with all other conditions stated in this Agreement and otherwise meets all conditions precedent to earn the Retention Bonus. The Retention Bonus shall be subject to standard withholdings.

3. **Conditions Required To Earn Retention Bonus Payment.** In addition to remaining employed during the Retention Period, Employee also must comply with the following conditions to receive a Retention Bonus Payment:

(a) **Resignation and Termination for Cause.** Employee shall not resign Employee's employment prior to the end of the Retention Period, nor shall Employee commit any action that results in a performance problem or violation of Company policy, which leads to termination for cause. The term "cause" is defined for purposes of this Agreement to include any act of dishonesty or disloyalty, fraud, conviction of a felony or conviction of a misdemeanor involving moral turpitude, and/or willful misconduct in the performance of Employee's job duties. If either of these events occurs prior to the end of the Retention Period, Employee shall not earn the full Retention Bonus and may be obligated to repay a portion of the Retention Bonus already paid in compliance with Section 5 below;

(b) **Compliance with Applicable Laws.** Employee shall at all times comply with laws (whether domestic or foreign) applicable to Employee's actions on behalf of the Company; and

4. **Payment of Retention Bonus:** If Employee is employed through the Retention Period, the Retention Bonus will be paid out in accordance with the following payment schedule:

(a) **First Payment Installment:** Company shall pay Employee \$100,000.00, less applicable state and federal taxes and withholdings, on the first pay period following March 31, 2021;

(b) **Second Payment Installment:** Company shall pay Employee \$400,00.00, less applicable state and federal taxes and withholdings, on the first pay period following February 1, 2022 (collectively, "Installment Payments").

5. **Forfeiture/Repayment of Retention Bonus.** Employee agrees that in the event Employee does not earn the Retention Bonus, in full or in part, because Employee did not fulfill the obligations set forth above in Section 3, then Employee agrees to either forfeit future Installment Payments and/or repay previous Installment Payments already made as follows:

(a) **Resignation:** If the Retention Bonus is not earned because Employee resigns employment prior to the end of the Retention Period, Employee agrees to forfeit any future unpaid Installment Payments as set forth in Section 4 above. Employee shall retain and not be required to repay any previous Installment Payments that were already made.

(b) **Termination for Cause:** If the Retention Bonus is not earned because Employee is terminated for cause, Employee agrees to repay any previous Installment Payments already made within 10 business days of being notified of such termination. The Company agrees to provide Employee with notice of this fact and request that repayment of all previous Installment Payments be made within 10 business days. Employee further understands that if he fails to repay the previous Installment Payment already made within the 10 business days, that Employee will be in breach of this Agreement and that the Company can take legal action to recover the any previous Installment Payments made but unearned.

(c) **Death, Disability, or Termination Without Cause:** If the Retention Bonus is not earned because Employee dies, becomes disabled and unable to work, or is terminated without cause, Employee shall be entitled to the full Retention Bonus. Employee shall retain and not be required to repay any previous Installment Payments already made, as well as, be entitled to payment of any future Installment Payments payable in compliance with Section 4 above.

6. **Miscellaneous.**

(a) This Agreement constitutes the entire agreement of the parties with regard to the Retention Bonus. Any modification of this Agreement will be effective only if it is in writing and signed by both the Company and Employee;

(b) The provisions of this Agreement shall not supersede or modify the provisions of any employment agreement, confidentiality agreement, or relationship between Employee and the Company. This Agreement does not supersede, replace or limit the rights and obligations of the Company and Employee with respect to such matters imposed by law or other agreements;

(c) The headings in this Agreement are intended solely for the convenience of reference and should be given no effect in the construction or interpretation of this Agreement; and

(d) Should any provision of this Agreement be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall be unaffected and shall continue in full force and effect, and the invalid, void or unenforceable provision(s) shall be deemed not to be part of this Agreement.

7. **Governing Law.** This Agreement shall be governed in all respects by the laws of the State of California.

**IT IS SO AGREED.**

DATED: 10/1/2020

/s/ Michelle Bonfilio

Michelle Bonfilio

DATED: 11/11/2020

Petco Animal Supplies Stores, Inc.

By: /s/ Ron Coughlin

Title: Chief Executive Officer

## SECOND AMENDED AND RESTATED SPECIAL RETENTION BONUS AGREEMENT

THIS SECOND AMENDED AND RESTATED SPECIAL RETENTION BONUS AGREEMENT (this “**Agreement**”) is entered into as of December 3, 2020, between Petco Animal Supplies Stores, Inc., a Delaware corporation (the “**Company**”), PET Acquisition LLC, a Delaware limited liability company (including its successor, Petco Health and Wellness Company, Inc., “**Parent**”), and Michael Nuzzo (the “**Employee**”).

WHEREAS, the Employee is a key executive and is critical to the future success of the Company;

WHEREAS, the Company wishes to incentivize the Employee to remain with the Company in order to help drive the success of the Company; and

WHEREAS, the Company, Parent and the Employee wish to amend and restate the Amended and Restated Special Retention Bonus Agreement between the Company and the Employee dated October 8, 2020 in order to provide for the grant of restricted stock units in certain circumstances in lieu of the “Special Performance Bonus”.

NOW, THEREFORE, 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 hereto agree as follows:

1. **Cash Retention Bonuses.** The Employee shall be eligible to receive cash retention bonuses in the aggregate amount \$1,500,000 (collectively, the “**Retention Bonus**”). Subject to the Employee’s continued employment through September 30, 2019, the Company shall pay the Employee one-third of the Retention Bonus (*i.e.*, \$500,000) on the first payroll date following such date (and the parties hereby acknowledge that such amount was paid in accordance with its terms). In addition, subject to the Employee’s continued employment through March 31, 2021, the Company shall pay the Employee two-thirds of the Retention Bonus (*i.e.*, \$1,000,000) on the first payroll date following such date. Notwithstanding the foregoing, (a) if a Change in Control occurs prior to payment of the entire Retention Bonus and the Employee remains employed by the Company through the date of such Change in Control, any unpaid portion of the Retention Bonus shall be paid to him promptly following such Change in Control (and in no event later than March 15 of the year following the year in which the Change in Control occurs), or (b) if the Employee’s employment is terminated by the Company without Cause prior to the payment of the full amount of the Retention Bonus, then a Pro Rata Retention Bonus shall be paid to the Employee promptly following his execution and nonrevocation of a severance agreement and general release of claims presented by the Company (which such release of claims must be executed and returned by the Employee within 30 days following his termination date). For purposes of this Agreement, (i) “**Cause**” has the meaning specified in the Employment Agreement between Petco Animal Supplies Stores, Inc. and the Employee dated as of April 8, 2015; (ii) “**Change in Control**” has the meaning specified in the Common Series C Unit Agreement between the Employee and Scooby LP dated as of January 26, 2016 (the “**Award Agreement**”); and (iii) “**Pro Rata Retention Bonus**” means (A) the product of the Retention Bonus and a fraction, the numerator of which is the number of days from August 31, 2018 through the date of termination and the denominator of which is the number of days from August 31, 2018 through March 31, 2021, less (B) any portion of the

Retention Bonus previously paid (but in no event with the Pro Rata Retention Bonus be a negative number). For the avoidance of doubt, no further payments of the Retention Bonus shall be made if the Employee's employment with the Company terminates for any reason prior to a vesting date except as specifically provided in this Section 1.

2. Special Performance Bonus. Subject to Section 4, if the Company's EBITDA (as determined by the Board in good faith) exceeds \$500 million for any two consecutive fiscal years that commence on or after January 2019, the Employee shall be paid a cash bonus of \$2 million (the "**Special Performance Bonus**"), subject to the Employee's continued employment through the last day of the second such fiscal year. Such bonus shall be payable at the same time as the annual bonuses for such second fiscal year, and in all events in the calendar year in which such fiscal year ends. For the avoidance of doubt, (i) only one Special Performance Bonus may be paid hereunder, (ii) if the Additional RSUs described in Section 4 are granted, no Special Performance Bonus shall be paid hereunder, and (iii) if the Additional RSUs are not granted pursuant to Section 4 (*i.e.*, because a Qualified Public Offering does not occur by 30 days following the last day of the Company's 2020 fiscal year), this Section 2 shall continue in effect.

3. Restricted Stock Unit Grant. If a Qualified Public Offering occurs no later than September 30, 2021, Parent shall grant the Employee restricted stock units (the "**RSUs**") with respect to common stock with a fair market value of \$3,000,000 as of the date of the Qualified Public Offering, as determined by the Board in good faith. Such RSUs shall be subject to Parent's 2020 Equity Incentive Plan (the "**Equity Plan**") and a grant agreement with the Employee, and shall vest in three equal increments on the first, second and third anniversaries of the consummation of the Qualified Public Offering (subject to the Employee's continued employment through each applicable vesting date). For purposes hereof, "**Qualified Public Offering**" means the sale in an underwritten public offering registered under the Securities Act of 1933 of shares of Parent's common stock having an aggregate offering value of at least \$30 million.

4. Additional Special Restricted Stock Unit Grant. In addition, in lieu of the Special Performance Bonus described in Section 2, if a Qualified Public Offering occurs no later than 30 days following the last day of the Company's 2020 fiscal year, Parent shall grant the Employee additional restricted stock units (the "**Additional RSUs**") with respect to common stock with a fair market value of \$2,000,000 as of the date of the Qualified Public Offering, as determined by the Board in good faith. Such Additional RSUs shall be subject to the Equity Plan and a grant agreement with the Employee, and shall vest within 30 days after the end of the Company's 2021 fiscal year only if the Company's EBITDA (as determined by the Board in good faith) exceeds \$500 million for the Company's 2021 fiscal year, subject to the Employee's continued employment through the last day of the such fiscal year.

5. Section 280G. Notwithstanding anything to the contrary in this Agreement, if the Employee is a "disqualified individual" (as defined in Section 280G(c) of the Internal Revenue Code of 1986, as amended (the "**Code**")), and the payments and benefits provided for in this Agreement, together with any other payments and benefits which the Employee has the right to receive from the Company, Parent or any of their affiliates, would constitute a "parachute payment" (as defined in Section 280G(b)(2) of the Code), then the payments and benefits provided for in this Agreement shall be either (a) reduced (but not below zero) so that the present value of

such total amounts and benefits received by the Employee from the Company, Parent and their affiliates will be one dollar (\$1.00) less than three times the Employee's "base amount" (as defined in Section 280G(b)(3) of the Code) such that no portion of such amounts and benefits received by the Employee shall be subject to the excise tax imposed by Section 4999 of the Code or (b) paid in full, whichever produces the better net after-tax position to the Employee (taking into account any applicable excise tax under Section 4999 of the Code and any other applicable taxes). The reduction of payments and benefits hereunder, if applicable, shall be made by reducing, first, payments or benefits to be paid in cash hereunder in the order in which such payment or benefit would be paid or provided (beginning with such payment or benefit that would be made last in time and continuing, to the extent necessary, through to such payment or benefit that would be made first in time) and, then, reducing any benefit to be provided in-kind hereunder or otherwise in a similar order. The determination as to whether any such reduction in the amount of the payments and benefits provided hereunder is necessary shall be made by a nationally recognized accounting or consulting firm retained by the Company at the Company's expense. If a reduced payment or benefit is made or provided and through error or otherwise that payment or benefit, when aggregated with other payments and benefits from the Company, Parent or their affiliates used in determining if a "parachute payment" exists, exceeds one dollar (\$1.00) less than three times the Employee's base amount, then the Employee shall immediately repay such excess to the Company, Parent or their affiliate, as applicable, upon notification that an overpayment has been made. Nothing in this Section 22 shall require the Company or Parent to be responsible for, or have any liability or obligation with respect to, the Employees' excise tax liabilities under Section 4999 of the Code.

6. Short-Term Deferral Rule. The payments hereunder are intended to be exempt from coverage under Section 409A of the Internal Revenue Code pursuant to the "short-term deferral rule", and the Agreement shall be interpreted and applied accordingly.

7. Withholding. All payments hereunder are subject to all tax and other legally-required withholdings.

8. Entire Agreement/Amendment. This Agreement supersedes any prior verbal or written agreement with respect to the subject matter hereof (including, without limitation, the Special Retention Bonus Agreement dated August 31, 2018 as amended in September 2020). The provisions of this Agreement may be amended or waived only with the prior written consent of the Company and the Employee.

9. Governing Law. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of California.

10. Headings. The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.

11. Assignment; Third Party Beneficiary. This Agreement may not be assigned by any party hereto without the written consent of the other party hereto. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, personal representatives, legatees, successors and permitted assigns.

12. Severability. The provisions of this Agreement shall be deemed severable, and if any part of any provision is held illegal, void or invalid under applicable law, such provision may be changed to the extent reasonably necessary to make the provision, as so changed, legal, valid and binding. If any provision of this Agreement is held illegal, void or invalid in its entirety, the remaining provisions of this Agreement shall not in any way be affected or impaired but shall remain binding in accordance with their terms.

13. Counterparts; Facsimiles. For the convenience of the parties, this Agreement may be executed in any number of counterparts, each such executed counterpart shall be deemed an original and all such counterparts together shall constitute one and the same instrument. Facsimile and electronic PDF transmission of any signed original counterpart transmission shall be deemed the same as the delivery of an original.

\* \* \* \* \*

IN WITNESS WHEREOF, the parties hereto have caused this Second Amended and Restated Special Retention Bonus Agreement to be duly executed and delivered as of the date first written above.

PETCO ANIMAL SUPPLIES STORES, INC.

By: /s/ Michelle Bonfilio  
Name: Michelle Bonfilio  
Its: Chief Human Resources Officer

PET ACQUISITION, LLC

By: /s/ Michelle Bonfilio  
Name: Michelle Bonfilio  
Its: Chief Human Resources Officer

EMPLOYEE:

/s/ Michael Nuzzo  
Michael Nuzzo

SIGNATURE PAGE TO  
SECOND AMENDED AND RESTATED SPECIAL RETENTION BONUS AGREEMENT

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\$2,525,000,000

TERM LOAN CREDIT AGREEMENT,

dated as of January 26, 2016,

among

PET ACQUISITION MERGER SUB LLC,  
(to be merged with and into PETCO HOLDINGS, INC.)  
as the Initial Borrower, and immediately after giving effect to the Merger, as Holdings,

PETCO ANIMAL SUPPLIES, INC.,  
as the Successor Borrower,

THE LENDERS PARTY HERETO,

and

CITIBANK, N.A.,  
as Administrative Agent and Collateral Agent,

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CITIGROUP GLOBAL MARKETS INC.,  
BARCLAYS BANK PLC,  
RBC CAPITAL MARKETS<sup>1</sup>,  
CREDIT SUISSE SECURITIES (USA) LLC,  
NOMURA SECURITIES INTERNATIONAL, INC., and  
MACQUARIE CAPITAL (USA) INC.,  
as Bookrunners and Arrangers,

BARCLAYS BANK PLC,

as Syndication Agent,

and

RBC CAPITAL MARKETS,

as Documentation Agent

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<sup>1</sup> RBC Capital Markets is a brand name for the capital markets activities of Royal Bank of Canada and its affiliates.

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TERM LOAN CREDIT AGREEMENT, dated as of January 26, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time, this “**Agreement**”), among initially PET ACQUISITION MERGER SUB LLC, a Delaware limited liability company (“**Merger Sub**” and in its capacity as the initial borrower hereunder, the “**Initial Borrower**”, and after the assignment of the obligations of Initial Borrower on the Closing Date pursuant to Section 10.22 and the Merger and the LLC Conversion have been completed, in its capacity as Holdings hereunder, “**Holdings**”) and after the consummation of the Merger, and upon assumption of the Initial Borrower’s Obligations hereunder pursuant to Section 10.22, PETCO ANIMAL SUPPLIES, INC., a Delaware corporation (the “**Successor Borrower**”), the Lenders party hereto from time to time and CITIBANK, N.A., 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) CVC Capital Partners Advisory (U.S.), Inc. and Canada Pension Plan Investment Board or their respective Affiliates have formed PET Acquisition LLC, a Delaware limited liability company (“**Parent**”), owning all of the Capital Stock of Merger Sub, and pursuant to the Agreement and Plan of Merger, dated as of November 21, 2015 (the “**Merger Agreement**”), by and among Parent, Merger Sub, Petco Holdings, Inc., a Delaware corporation (the “**Company**”), and the equityholders’ representative named therein, Merger Sub will merge (the “**Merger**”) with and into the Company, with the Company being the survivor of such Merger. After the consummation of the Merger, the Company will be converted into a limited liability company with the name Petco Holdings, Inc. LLC (the “**LLC Conversion**”). As used herein the “**Borrower**” means the Initial Borrower, prior to the consummation of the Merger and assumption of the Initial Borrower’s Obligations hereunder pursuant to Section 10.22, and the Successor Borrower, thereafter.
- (2) In connection with the consummation of the Merger, (a) the Lenders have agreed to extend credit to the Borrower in the form of Term Loans on the Closing Date in an aggregate principal amount of \$2,525.0 million, (b) certain financial institutions have agreed to extend credit to the Borrower in the form of revolving loans, swingline loans and letters of credit under the ABL Credit Agreement (as defined herein), (c) certain initial purchasers have agreed to purchase Senior Notes in an aggregate principal amount not to exceed \$750.0 million and (d) each of the Sponsors and certain other equity investors (including members of the Company’s management) arranged by or designated by the Sponsors will, directly or indirectly, contribute to Parent or another Parent Entity (as defined herein) cash or rollover equity in exchange for common equity of Parent or such Parent Entity (and Parent or such Parent Entity will contribute such cash and rollover equity to the common equity capital of Merger Sub) and the aggregate amount of such contributed cash or rollover equity will be no less than 25.0% of the sum of (i) the aggregate gross proceeds of the loans borrowed on the Closing Date under the ABL Credit Agreement (excluding letters of credit, amounts borrowed to cash collateralize letters of credit issued under the Existing ABL Agreement (as defined in the ABL Credit Agreement), amounts borrowed to fund working capital needs of the Company and its

subsidiaries on the Closing Date and amounts borrowed to fund the Transaction Tax Benefits (as defined in the Merger Agreement) in an amount not to exceed \$50.0 million), the Term Loans borrowed hereunder on the Closing Date and the aggregate gross cash proceeds from any sale of Senior Notes on or prior to the Closing Date and (ii) the amount of such cash and rollover equity contributed on the Closing Date after giving effect to the Transactions (such contribution, the “*Equity Contribution*”).

## 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 the “*ABL Claims*” as defined in the Intercreditor Agreement.

“*ABL Credit Agreement*” means the Revolving Credit Agreement, dated as of the Closing Date, among Holdings, Merger Sub, the Successor Borrower, the lenders party thereto and Citibank, N.A., as administrative agent and collateral agent, as such document may be amended, restated, supplemented or otherwise modified from time to time.

“*ABL Extended Revolving Commitments*” means “*Extended Loans*” as defined in the ABL Credit Agreement.

“*ABL Facility*” means the “*Revolving Facility*” and any “*Incremental Facility*,” each as defined in the ABL Credit Agreement.

“*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 that consists of or includes the disposition of ABL Priority Collateral outside the ordinary course of business.

“**ABL Security Documents**” means the “*Security Documents*” as defined in the ABL Credit Agreement.

“**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 commercial lending rate published as of such day by the Administrative Agent as the “prime rate;”
- (3) the LIBOR Quoted Rate *plus* 1.00%; and
- (4) solely in respect of Tranche B-1 Term Loans, 2.00%

Any change in the ABR due to a change in the Federal Funds Rate, the “prime rate” or the LIBOR Quoted Rate will be effective on the effective date of such change in the Federal Funds Rate, the “prime rate” or the LIBOR Quoted 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-1 Term Loans, 1.00%.

“**Administrative Agent**” means Citibank, N.A., 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 and each of its 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-1 Term Loans made on the Closing Date, (a) for ABR Loans, 3.75% and (b) for Eurocurrency Loans, 4.75%;
- (2) with respect to any Tranche B-2 Term Loans made on the Closing Date, (a) for ABR Loans, 4.00% and (b) for Eurocurrency Loans, 5.00%;
- (3) with respect to any Incremental Term Loans, the “Applicable Margin” set forth in the Incremental Facility Amendment establishing the terms thereof;
- (4) with respect to any Other Term Loans, the “Applicable Margin” set forth in the Refinancing Amendment establishing the terms thereof; and
- (5) 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 each of Citigroup Global Markets Inc., Barclays Bank PLC, RBC Capital Markets, Credit Suisse Securities (USA) LLC, Nomura Securities International, Inc., and Macquarie Capital (USA) 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 and reasonably satisfactory to the Borrower.

“*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) \$125.0 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, Cure Amounts, 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, Cure Amounts, 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, as determined by a Responsible Officer of the Borrower in good faith; *plus*

- (8) any mandatory prepayment declined by a Lender; *minus*
- (9) the use of such Available Amount since the Closing 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 \$10.0 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 Base**” means as of any date, the sum of:

- (1) 90% of all accounts receivable held by the Borrower and the Restricted Subsidiaries as of such date; *plus*
- (2) 90% of the net ordinary liquidation value of inventory held by the Borrower and the Restricted Subsidiaries as of such date; *plus*
- (3) 100% of all cash and Cash Equivalents held by the Borrower and the Restricted Subsidiaries as of such date; *provided* that the aggregate amount of cash and Cash Equivalents included in the Borrowing Base shall not exceed \$50.0 million;

in each case, 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.

“**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) the Merger;
- (9) the purchase of property, plant or equipment to the extent purchased with the proceeds of Asset Sales that are not applied to prepay Term Loans pursuant to Section 2.08; or
- (10) expenditures used for acquisitions of fee-owned Real Property, up to \$25.0 million during any fiscal year, so long as (A) the Borrower demonstrates to the satisfaction of the Administrative Agent a viable plan that provides for a Sale and Lease-Back Transaction within one year of acquisition and (B) the Administrative Agent approves of the exclusion of such expenditures in their reasonable discretion, *provided* if the Borrower and its Subsidiaries fail to complete such Sale and Lease-Back Transaction within such one-year period, expenditures used for such acquisition shall be included as Capital Expenditures in the fiscal year in which such one-year period expires.

“**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.

“**Certain Funds Provisions**” has the meaning given to such term in the Commitment Letter.

A “**Change in 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 or the 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; or
- (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).

“**Change in Law**” means:

- (1) the adoption of any law, rule or regulation after the Closing Date;
- (2) any change in 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.

“**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 are two Classes of Term Facilities and Term Loans, the Tranche B-1 Term Loans and the Tranche B-2 Term Loans, and the Term Loans and the Lenders under each such Term Facility will be considered a separate Class hereunder.

“**Closing Date**” means January 26, 2016.

“**Closing Date Refinancing**” means the repayment of debt contemplated by Section 3.03 of the Merger Agreement, which for the avoidance of doubt shall include the repayment in full of the (i) Existing Term Loan Credit Agreement, (ii) Existing ABL Credit Agreement, (iii) the Existing Construction Loan Agreement, (iv) the outstanding Existing Senior Notes and (v) the outstanding Existing Senior PIK Toggle Notes and the termination of all obligations and liens related thereto.

“**Closing Date Senior Secured First Lien Net Leverage Ratio**” means 4.80 to 1.00.

“**Closing Date Total Net Leverage Ratio**” means 6.20 to 1.00.

“**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 Access Agreement**” means a landlord waiver or other agreement, in a form as shall be reasonably satisfactory to the Collateral Agent, between the Collateral Agent and any third party (including any bailee, consignee, customs broker, or other similar Person) in possession of any Collateral or any landlord of any premises where any Collateral is located, as such landlord waiver or other agreement may be amended, restated, or otherwise modified from time to time.

“**Collateral Agent**” means Citibank, N.A., 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**” mean, the Tranche B-1 Term Loan Commitment and the Tranche B-2 Term Loan Commitment. On the Closing Date, the aggregate amount of Commitments of all Term Loans is \$2,525.0 million.

“**Commitment Letter**” means that certain Amended and Restated Commitment Letter, dated as of November 30, 2015, by and among Merger Sub, Citigroup Global Markets

Inc., Barclays Bank PLC, Royal Bank of Canada, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Cayman Islands Branch, Nomura Securities International, Inc., Macquarie Capital (USA) Inc., MIHI LLC, GSMP VI Offshore US Holdings, Ltd., GSMP VI Onshore US Holdings, Ltd. and Broad Street Credit Holdings LLC and including any joinders thereto.

“**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 sum (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, Disqualified Stock and Indebtedness in respect of the deferred purchase price of property or services 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
  - (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; plus
  - (l) without duplication, “management adjustment” addbacks expressly set forth in the Sponsor Model; 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).

Notwithstanding the foregoing, the Consolidated EBITDA of the Borrower for the fiscal quarters ended:

- (i) October 31, 2015 will be deemed to be \$118.460 million;
- (ii) August 1, 2015 will be deemed to be \$119.512 million; and
- (iii) May 2, 2015 will be deemed to be \$121.040 million.

it being understood that the amounts listed in the foregoing clauses (i), (ii) and (iii) do not give effect to the adjustments provided for in the definition of Pro Forma Basis for any transactions or events other than the Transactions.

“**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;

*provided* that when determining Consolidated Interest Expense in respect of any four-quarter period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Closing Date by 365 and then dividing such product by the number of days from and including the Closing Date to and including the last day of 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 the Transactions or otherwise, expenses associated with strategic initiatives, facilities shutdown and opening costs, and any fees, expenses, charges or change in control payments related to the Transactions 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 are or are permitted to be 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 the Transactions 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 the Transactions within 18 months after the Closing 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 in an aggregate amount not to exceed \$20.0 million 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 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 voluntary or mandatory prepayments hereunder provided that in no event shall such Indebtedness be permitted to be voluntary or 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 (subject to customary exceptions for cash collateral in favor of an agent, letter of credit issuer or similar “fronting” lender);
  - (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.

“**Cure Amount**” means the amount of cash contributions to the capital of the Borrower made pursuant to Section 8.02 of the ABL Credit Agreement.

“**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 CVC Capital Partners Limited or any of its Affiliates or direct or indirect Subsidiaries or any investors in such funds or limited partnerships (but excluding, in each case, any portfolio companies in which such funds or limited partnerships hold an investment and excluding, in each case, any funds or entities managed or advised by CVC Credit Partners Holdings Limited or any of its direct or indirect Subsidiaries engaged in the same or a similar business to CVC Credit Partners Holdings Limited) who are investors in such funds or limited partnerships as at 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 a *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 Arrangers and the Administrative Agent on or prior to the date of the Commitment Letter;
  - (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 date of the Commitment Letter; provided that such Person will not be a Disqualified Institution if the Administrative Agent reasonably determines in good faith that such Person is not a competitor of the Borrower and notifies the Borrower of such determination promptly following the date on which the Borrower identifies such Person to the Administrative Agent; 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 (i) make investment decisions or (ii) have access to non-public information relating to the Borrower or any Person that forms part of the Borrower's business (including its Subsidiaries)); or
- (2) certain banks, financial institutions, other institutional lenders and investors and other entities that are identified by the Borrower in writing to the Arrangers and the Administrative Agent on or prior to the date of the Commitment Letter.

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:
  - (a) the Latest Maturity Date; and
  - (b) 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."

**"Documentation Agent"** means RBC Capital Markets.

**"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 or any political subdivision thereof, 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 a *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 a *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 is either (a) not permitted by the terms of any Loan Document immediately prior to the consummation of such transaction or (b) if permitted by the terms of the Loan Documents (prior to giving effect to any amendments) immediately prior to the consummation of such transaction, would not provide Holdings, the Borrower and its Restricted Subsidiaries with adequate flexibility under the Loan Documents for the continuation and/or expansion of their combined operations following such consummation, as reasonably determined by the Borrower acting in good faith.

**“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 Contribution”** has the meaning assigned to such term in the recitals to this Agreement.

“**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(28) in each case prior to such date; provided that the proceeds of Disqualified Stock, Cure Amounts 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:

- (1) Immaterial Subsidiary;
- (2) Subsidiary that is not a Wholly Owned Subsidiary of Holdings or 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 a Subsidiary that is not a Wholly Owned Subsidiary of Holdings or 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 ABL Credit Agreement**” means that certain ABL credit agreement, dated as of April 19, 2013, among Petco Animal Supplies, Inc., the lenders party thereto, Bank of America, N.A., (as successor to Credit Suisse AG) as administrative agent, Wells Fargo Bank, National Association, as collateral agent, and the subsidiaries of Petco Animal Supplies, Inc. from time to time party thereto, as amended by that certain First Amendment to the ABL Credit Agreement, dated as of November 21, 2014.

“**Existing Construction Loan Agreement**” means that certain Construction Loan Agreement, dated March 20, 2015, by and between Petco Real Estate Holdings III, LLC and MUFG Union Bank, N.A.

“**Existing Senior Notes**” means the Senior Notes due 2017 issued pursuant to that certain Indenture, dated as of November 24, 2010, among Petco Animal Supplies, Inc., the guarantors named on the signature pages thereto, and Wells Fargo Bank, National Association, as trustee.

“**Existing Senior PIK Toggle Notes**” means the Senior PIK Toggle Notes due 2018 issued pursuant to that certain Indenture, dated as of October 10, 2012, between Petco Holdings, Inc., and Wells Fargo Bank, National Association, as Trustee.

“**Existing Term Loan Credit Agreement**” means that certain term loan credit agreement, dated as of November 24, 2010, among Petco Animal Supplies, Inc., as borrower, the lenders party thereto, JPMorgan Chase Bank, N.A., (as successor to Credit Suisse AG) as administrative agent and collateral agent, and the subsidiaries of Petco Animal Supplies, Inc. from time to time party thereto, as amended by that certain Amendment No. 1 to Term Loan Agreement, dated as of February 25, 2011, as further amended by that certain Amendment No. 2 to Term Loan Agreement, dated October 9, 2012, as further amended by that certain Amendment No. 3 to Term Loan Agreement, dated February 4, 2013.

“**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, 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 per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided that*:

- (1) if such day is not a Business Day, the Federal Funds Rate for such day will be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and
- (2) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day will be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1.00%) charged to the Administrative Agent on such day on such transactions as determined in good faith by the Administrative Agent.

“**Fee Letter**” means the Amended and Restated Fee Letter, dated November 30, 2015, by and among Merger Sub, Citigroup Global Markets Inc., Barclays Bank PLC, Royal Bank of Canada, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Cayman Islands Branch, Nomura Securities International, Inc., Macquarie Capital (USA) Inc., MIHI LLC, GSMP VI Offshore US Holdings, Ltd., GSMP VI Onshore US Holdings, Ltd. and Broad Street Credit Holdings LLC, as amended and in effect from time to time and including any joinders thereto.

“**Fees**” means the Administrative Agent Fees and all other fees set forth in the Fee Letter payable to a Lender, the Administrative Agent, or any Arranger, in each case, with respect to Term Loans.

“**Financial Covenant Default**” has the meaning assigned to such term in Section 8.01(6).

“**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).

“**Fixed Charge Coverage Ratio**” means, as of any date, the ratio of:

- (1) (a) Consolidated EBITDA of the Borrower for the most recent period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis, *minus* (b) non-financed Maintenance Capital Expenditures of the Borrower for such period that were paid in cash during such four-quarter period (it being understood that Capital Expenditures funded with proceeds of revolving loans will not be deemed to be “financed” for the purpose of this clause (b)) *minus* (c) Taxes based on income of the Borrower and the Restricted Subsidiaries that were paid or required to be paid in cash during such period (including tax distributions paid in cash during such period) to
- (2) Fixed Charges of the Borrower for such four-quarter period, calculated on a Pro Forma Basis.

“**Fixed Charges**” means, for any period, the sum without duplication, of the following for such period:

- (1) the Consolidated Interest Expense of the Borrower that was paid or required to be paid in cash during such period; *plus*
- (2) all scheduled principal amortization payments that were paid or required to be paid in cash during such period with respect to Indebtedness for borrowed money of the Borrower and the Restricted Subsidiaries, including payments in respect of Capital Lease Obligations, but excluding payments with respect to intercompany Indebtedness; *plus*

all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock of the Borrower or preferred stock of any Restricted Subsidiary made during such period.

“**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.

“**Headquarters**” means the headquarters of the Borrower, located at 10850 Via Frontera, San Diego, CA 92127.

“**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 2.5% of the Consolidated Total Assets or revenues representing in excess of 2.5% 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 5.0% of Consolidated Total Assets or revenues representing in excess of 5.0% 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) the aggregate outstanding principal amount of such Indebtedness on any date that such Indebtedness is incurred pursuant to Section 6.01(1) shall be subject to the limitations set forth in Section 2.18(3);
- (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 (a) consist of notes, (b) 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 (c) the pricing of such Indebtedness complies with Section 2.18(8); 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”** shall have the meaning set forth in the Guaranty and Collateral Agreement.

**“Intercreditor Agreement”** means the Intercreditor Agreement, dated as of the Closing Date, by and among the Administrative Agent, the Collateral Agent and Citibank, N.A., as administrative agent and collateral agent under the ABL Credit Agreement, and acknowledged by Holdings and the Borrower, 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 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 (or, if agreed by all Lenders, 12 months or a shorter period), 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 April 29, 2016.

**“Interpolated Screen Rate”** means, 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 the Quotation 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 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-1 Term Loan Lender listed on Schedule 2.01(1) and Tranche B-2 Term Loan Lender listed on Schedule 2.01(2) (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.

**“Letter of Credit”** has the meaning assigned to such term in the ABL Credit Agreement.

**“LIBO Rate”** means with respect to any Eurocurrency Borrowing for any Interest Period, the rate per annum equal to the arithmetic mean of the offered rates for deposits in Dollars with a term equivalent to such Interest Period by reference to 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 Quoted Rate”** means, for any day (or if such day is not a Business Day, the immediately preceding Business Day), a fluctuating rate per annum equal to the greater of (1) the Adjusted LIBO Rate for an interest period of one month as determined as of 11:00 a.m. (London, England time) on such day by reference to 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). for deposits in dollars (as set forth by 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, “LIBOR Quoted Rate” shall be the interest rate per annum equal to the Interpolated Screen Rate; and (2) solely in respect of Tranche B-1 Term Loans, 1.00%; *provided, however*, if the LIBOR Quoted Rate is less than zero, the LIBOR Quoted 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.

**“LLC Conversion”** has the meaning specified in the recitals hereto.

**“Loan Documents”** means this Agreement, the Security Documents, the Intercreditor Agreement, any First Lien Intercreditor Agreement, any Junior Lien Intercreditor Agreement, any Note and, solely for the purposes of Sections 3.01, 3.02, and 8.01(3) hereof, the Fee Letter.

**“Loan Parties”** means Holdings, the Borrower and the Subsidiary Loan Parties.

**“Maintenance Capital Expenditures”** means, for any period, the portion of the aggregate amount of all Capital Expenditures of the Borrower for such period attributable to maintenance of property, plant or equipment of the Borrower and the Restricted Subsidiaries, as determined in good faith by a Responsible Officer of the Borrower.

**“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 Sponsor in an aggregate amount equal to or less than \$10.0 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 Parent, 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 \$50.0 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 Term Loans and Tranche B-2 Term Loans) existing on the Closing Date, January 26, 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.

“**Merger**” has the meaning assigned to such term in the recitals hereto.

“**Merger Agreement**” has the meaning assigned to such term in the recitals hereto.

“**Merger Sub**” has the meaning assigned to such term in the introductory paragraph hereof.

“**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 \$10.0 million.

“***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).

“***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 shall not, in any event, include any Excluded Swap Obligation.

“**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.

“**Pari Passu Liens Indebtedness**” has the meaning assigned to such term in Section 2.18(8).

“**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 Citibank, N.A., 1615 Brett Road, Building III, New Castle, DE 19720, Attention: Loan Administration (Email [global.loans.support@citi.com](mailto:global.loans.support@citi.com); Telephone No. (302) 894-6010) 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) \$75.0 million and (b) 1.50% 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 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 Arrangers 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 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 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);
- (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.

“**Pro Forma Basis**” or “**Pro Forma**” means, with respect to the calculation of the Senior Secured First Lien Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge 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.

“**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).

“**Purchase Date**” means the date that the Merger is required to be consummated pursuant to the Merger Agreement.

“**Purchase Documents**” means the collective reference to the Merger Agreement, all material exhibits and schedules thereto and all agreements expressly contemplated thereby.

“**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) 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”** and **“Refinancing”** will have correlative meanings.

**“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:

<b>Senior Secured First Lien Net Leverage Ratio</b>	<b>Required Percentage</b>
Greater than 3.50 to 1.00	50.00%
Less than or equal to 3.50 to 1.00 but greater than 3.00 to 1.00	25.00%
Less than or equal to 3.00 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 Notes**” means the floating rate senior notes due January 26, 2024, issued on or prior to the date hereof pursuant to the Senior Notes Indenture.

“**Senior Notes Documents**” means, collectively, the 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 Senior Notes.

“**Senior Notes Indenture**” means that certain indenture, dated as of January 26, 2016, among the Senior Notes Trustee, the Borrower and the guarantors party thereto.

“**Senior Notes Trustee**” means Wells Fargo Bank, National Association, together with its permitted successors and assigns.

“**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 Merger Agreement Representations**” means such of the representations and warranties made with respect to the Company and its Subsidiaries by the Company in the Merger Agreement to the extent a breach of such representations and warranties is material to the interests of the Lenders.

“**Specified Representations**” means the representations and warranties of each of Merger Sub, the Company 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 and subject to the Certain Funds Provisions);
- (8) Section 3.16; and
- (9) Section 3.19.

“**Specified Transaction**” means any Investment (including any Limited Condition Acquisition), 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.”

“**Sponsor Model**” means the model provided by the Sponsors to the Arrangers on November 17, 2015.

“**Sponsors**” means, any of CVC and Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised 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.

“**Syndication Agent**” means Barclays Bank PLC.

“**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 are two Term Facilities, the Tranche B-1 Term Loan Facility and the Tranche B-2 Term Loan Facility, and each such Term Facility will be considered a separate Term Facility hereunder. 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 Agent**” means “*Term Loan Agent*” as defined in the Intercreditor Agreement.

**“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-1 Term Loans and the Tranche B-2 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 Loan 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.

**“Tranche B-1 Term Loan Commitments”** means with respect to each Lender, the commitment of such Lender to make Tranche B-1 Term Loans as set forth on Schedule 2.01(1). On the Closing Date, the aggregate amount of Tranche B-1 Term Loan Commitments is \$1,825.0 million.

**“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 each financial institution listed on Schedule 2.01(1) (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-1 Term Loans.

**“Tranche B-1 Term Loans”** means the term loans made to the Borrower on the Closing Date pursuant to Section 2.01(1)(a).

**“Tranche B-2 Term Loan Commitments”** means with respect to each Lender, the commitment of such Lender to make Tranche B-2 Term Loans as set forth on Schedule 2.01(2). On the Closing Date, the aggregate amount of Tranche B-2 Term Loan Commitments is \$700.0 million.

**“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 each financial institution listed on Schedule 2.01(2) (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-1 Term Loans.

“**Tranche B-2 Term Loans**” means the term loans made to the Borrower on the Closing Date pursuant to Section 2.01(1)(b).

“**Transaction Documents**” means the Purchase Documents, the ABL Loan Documents, the Senior Notes Documents and the Loan Documents.

“**Transactions**” means, collectively, the transactions to occur pursuant to the Transaction Documents, including:

- (1) the consummation of the Merger;
- (2) the execution and delivery of the Loan Documents, the creation of the Liens pursuant to the Security Documents and the initial borrowings hereunder;
- (3) the Equity Contribution;
- (4) the execution and delivery of the ABL Loan Documents, the creation of the Liens pursuant to the ABL Security Documents and the initial borrowings under the ABL Credit Agreement;
- (5) the execution and delivery of the Senior Notes Documents and the issuance of the Senior Notes under the Senior Notes Indentures;
- (6) the Closing Date Refinancing;
- (7) the LLC Conversion; and
- (8) the payment of all fees, costs and expenses in connection with the foregoing.

“**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 Fixed Charge Coverage Ratio of 1.0 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 covenants, 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 Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge 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 Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge 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 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; *provided*, that (other than solely with respect to the incurrence test under which such Limited Condition Acquisition is being made) Consolidated EBITDA, Consolidated Total Assets or assets and Consolidated Net Income of any target of such Limited Condition Acquisition can only be used in the determination of the relevant ratio and baskets if and when such Limited Condition Acquisition has closed.

(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 Net Leverage Ratio test and/or any Fixed Charge Coverage Ratio test) (any such amounts, 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 Revolving Facility (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 Revolving Facility 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:
  - (a) each Tranche B-1 Term Loan Lender severally agrees to make to the Borrower Tranche B-1 Term Loans denominated in Dollars equal to such Tranche B-1 Term Loan Lender’s Tranche B-1 Term Loan Commitment on the Closing Date; and

- (b) each Tranche B-2 Term Loan Lender severally agrees to make to the Borrower Tranche B-2 Term Loans denominated in Dollars equal to such Tranche B-2 Term Loan Lender's Tranche B-2 Term Loan Commitment on the Closing 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. For the avoidance of doubt, the Tranche B-1 Term Loans and the Tranche B-2 Term Loans will be secured on a *pari passu* basis as of the Closing Date.

- (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, three Business Days 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-1 Term Loans and/or Tranche B-2 Term Loans to be borrowed;
- (2) the requested date of the Borrowing (which will be a Business Day);
- (3) the Type of Tranche B-1 Term Loans and/or Tranche B-2 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-1 Term Loan and/or Tranche B-2 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. 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 by telephone (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, on the date of 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). Each such telephonic Interest Election Request will be confirmed promptly by hand delivery, facsimile transmission or e-mail to the Administrative Agent of a written Interest Election Request substantially in the form of Exhibit D and signed by the Borrower.
- (3) Each telephonic and written Interest Election Request will be irrevocable 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.
- (5) Any Lender may request that Term Loans made by it be evidenced by a promissory note (a "*Note*"). 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 under each Term Facility 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 April 30, 2016, an aggregate principal amount equal to 0.25% of the aggregate principal amount of each Class of Term Loans outstanding on the Closing Date, which payments for each Class of Term Loans will be reduced as a result of the application of prepayments of Term Loans of such Class 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-1 Term Loans, the Tranche B-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 by telephone (confirmed by hand delivery, facsimile transmission or e-mail) 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. 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 Term Loans, Tranche B-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 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 January 30, 2017, not later than 90 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 90th 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);
  - (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 90th 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 notice to the Administrative Agent by telephone (confirmed by hand delivery, facsimile transmission or e-mail) 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 and the principal amount of each Term Loan (or portion thereof) to be prepaid. 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 “Term Administrative Fee” set forth in the Fee Letter at the times and on the terms specified therein (the “*Administrative Agent Fees*”).
- (2) All 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 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 or similar requirement against assets of, deposits with or for the account of, or credit extended 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) 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) on 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 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 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) such Loan Party will make such deductions; (b) such Loan Party 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) 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(7) (*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(7) 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.

- (8) 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.
- (9) 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 Class of Term Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Class of Term Loans than the proportion received by any other Lender in such Class, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the Term Loans of such Class of other Lenders in such Class to the extent necessary so that the benefit of all such payments will be shared by the Lenders in such Class ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Term Loans of such Class; *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 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 may, at the discretion of the Borrower, be secured or unsecured. If Incremental Term Loans are secured on a junior basis to the Term Loans, a Debt Representative, acting on behalf of the holders of such Incremental Term Loans, will become party or otherwise subject to the provisions of a Junior Lien Intercreditor Agreement. Any Incremental Facility that is unsecured or secured on a junior basis to the Term Loans shall be documented pursuant to a separate facility agreement subject to the terms of this Section 2.18.
- (3) **Size.** The principal amount of Incremental Facilities incurred pursuant to this Section 2.18 and Incremental Equivalent Term Debt incurred pursuant to Section 6.01(1) will not exceed, in the aggregate, an amount equal to \$300.0 million (the “**Non-Ratio Based Incremental Facility Cap**”); *provided* that the Borrower may incur additional Incremental Facilities and Incremental Equivalent Term Debt without regard to the Non-Ratio Based Incremental Facility Cap so long as (a) with respect to any such Incremental Facility or Incremental Equivalent Term Debt to be 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 applicable Incremental Facilities or 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 Facility or Incremental Equivalent Term Debt) is equal to or less than 4.50 to 1.00; and (b) with respect to any such Incremental Facility or Incremental Equivalent Term Debt to be secured on a junior basis to the Term Loans, subordinated in right of payment to the Term Loans or unsecured and *pari passu* in right of payment with the Term Loans, the Total Net Leverage Ratio (determined on the date on which the applicable Incremental Facilities or 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 Facility or Incremental Equivalent Term Debt) is equal to or less than the lesser of (i) Closing Date Total Net Leverage Ratio and (ii) 6.00 to 1.00 (collectively, the “**Available Incremental Term Loan Facility Amount**”).

If the Borrower incurs indebtedness under the Non-Ratio Based Incremental Facility Cap on the same date that it incurs indebtedness under the Available Incremental Term Loan Facility Amount, then the Senior Secured First Lien Net Leverage Ratio or the Total Net Leverage Ratio, as applicable, with respect to the amounts incurred under the Available Incremental Term Loan Facility Amount will be calculated without including any incurrence under the Non-Ratio Based Incremental Facility Cap. Unless the Borrower elects otherwise, each Incremental Facility shall be deemed incurred first under the Available Incremental Term Loan Facility Amount to the extent permitted, with the balance incurred under the Non-Ratio Based Incremental Facility Cap.

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.

- (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 that is secured on a pari passu basis with the Obligations hereunder 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. Each Incremental Facility that is unsecured or secured on a junior lien basis shall be documented outside of this Credit Agreement and, if secured on a junior lien basis, shall be subject to the Intercreditor Agreement. 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 a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any voluntary or 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 and (ii) the coupon, fees and original issue discount for (x) any Incremental Equivalent Term Debt that is secured on a *pari passu* basis with the Term Loans or (y) any other Indebtedness that is secured by a Lien on a *pari passu* basis with the Term Loans pursuant to Section 6.02(31) (“***Pari Passu Liens Indebtedness***”) will be as determined by a Responsible Officer of the Borrower and the providers of such *pari passu* Incremental Equivalent Term Debt or other *Pari Passu Liens Indebtedness*;
  - (b) If the yield (as determined below) on any such Incremental Term Loans, Incremental Equivalent Term Debt or *Pari Passu Liens Indebtedness*, in each case, incurred on a *pari passu* basis with the Term Loans (such yield, the “***Incremental Yield***”) exceeds the yield (as determined below) on any Class of Term Loans incurred on the Closing Date by more than 50 basis points, then the interest margins for the applicable Class of Term Loans incurred on the Closing Date will automatically be increased to a level such that the yield on such Class of Term Loans incurred on the Closing Date will be 50 basis points below the *Incremental Yield* on such Incremental Term Loans, Incremental Equivalent Term Debt or *Pari Passu Liens Indebtedness*, in each case, incurred on a *pari passu* basis with the Term Loans. Any increase in yield on any Class of Term Loans incurred on

the Closing Date 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, Incremental Equivalent Term Debt or Pari Passu Lien Indebtedness will be effected solely through an increase in such “floor” (or an implementation thereof, as applicable) in respect of any Class of Term Loans incurred on the Closing Date. In determining whether the Incremental Yield on Incremental Term Loans, Incremental Equivalent Term Debt or Pari Passu Liens Indebtedness, in each case, incurred on a *pari passu* basis with the Term Loans exceeds the yield on any Term Loans incurred on the Closing Date 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 or such other Indebtedness, 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) (x) with respect to the any Tranche B-1 Term Loans incurred on the Closing Date, to the extent the LIBO Rate on the closing date of the Incremental Facility is less than any LIBO Rate floor then applicable to the Tranche B-1 Term Loans, the amount of such difference shall be deemed added to the applicable rate for such Tranche B-1 Term Loans solely for the purposes of determining whether an increase in the interest margins for such Tranche B-1 Term Loans shall be required and (y) with respect to any Incremental Term Loans, Incremental Equivalent Term Debt or Pari Passu Lien Indebtedness (in each case if such Incremental Equivalent Term Debt or Pari Passu Lien Indebtedness is determined on a floating rate basis by reference to the LIBO Rate or any equivalent definition thereof), to the extent that the LIBO Rate or any equivalent definition thereof on the closing date of the Incremental Facility is less than any interest rate floor, if any, applicable to the Incremental Term Loans, the amount of such difference shall be deemed added to the applicable rate for such Incremental Term Loans solely for the purposes of determining the Incremental Yield; provided, that for purposes of calculating the LIBO Rate or any such equivalent definition for this clause (B), such rate shall be for the same interest period, which shall be determined by the Borrower from the interest periods available to it under this Agreement and such Indebtedness respectively. In addition to the foregoing, for purposes of calculating the Incremental Yield for any Incremental Equivalent Term Debt or Pari Passu Lien Indebtedness that constitutes fixed-rate Indebtedness, the fixed rate coupon of such Indebtedness shall be swapped to a floating rate on a customary matched-maturity basis, and the Incremental Yield of such fixed-rate Indebtedness on a floating rate basis shall be reasonably determined in a customary manner by the Administrative Agent based on customary financial methodology in consultation with the Borrower (or, if the Administrative Agent declines (or is unable) to determine such Incremental Yield or the appropriate floating rate swap on a matched maturity basis, as reasonably determined in a customary manner based on customary financial methodology by

a financial institution reasonably acceptable to the Administrative Agent and the Borrower).

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 extend 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**,” and each group of Term Loans so extended, as well as the original Term Loans not so extended, being a “**tranche**”). 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 \$125.0 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 with a like Maturity Date. 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. There is no requirement that any Extension Offer or Extension Amendment (defined as follows) 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 tranches 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 Extended 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 a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any voluntary or mandatory repayments or prepayments of Term Loans;
  - (d) such Extended Term Loans are not secured by any assets or property that does 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 tranche 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 twelve 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***

Each of Merger Sub, the Company and the Restricted Subsidiaries represents and warrants to each Agent and to each of the Lenders, with respect to Borrowings made on the Closing Date, that on the Closing Date immediately prior to consummation of the Merger, the Specified Merger Agreement Representations and the Specified Representations are true and correct in all material respects.

With respect to any Borrowing made 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(2), 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(1) 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, 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 January 31, 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 the Restricted 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 Restricted Subsidiary 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) Acquisition Transactions. Merger Sub shall have confirmed to the Administrative Agent that the following transactions have been consummated or will be consummated substantially concurrently with the making of the Term Loans on the Closing Date:
  - (a) the Merger;

- (b) the Equity Contribution; and
  - (c) the Closing Date Refinancing and evidence that arrangements satisfactory to the Administrative Agent shall have been made for the termination and release of guarantees, Liens and security interests granted in connection therewith in a form reasonably satisfactory to the Administrative Agent.
- (4) Pro Forma Balance Sheet; Financial Statements. The Administrative Agent shall have received (a) unaudited consolidated balance sheets and related statements of income and cash flows of the Company for each fiscal quarter, if any, ended after August 1, 2015 (other than the fourth fiscal quarter of the Company) and at least 45 days prior to the Closing Date and setting forth, with respect to statements of income and cash flows, comparative figures for the related period in the prior fiscal year, (b) audited consolidated balance sheets and related statements of income and cash flows of the Company, in each case, for the three fiscal years most recently ended at least 90 days before the Closing Date, and (c) a *pro forma* consolidated balance sheet and income statement of the Borrower as of October 31, 2015 and for the four-quarter period then ended, in each case, prepared on a pro forma basis giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such income statement).
- (5) Fees. Payment of all fees (a) required to be paid pursuant to the Fee Letter and (b) reasonable (and reasonably documented) out-of-pocket expenses required to be paid on the Closing Date pursuant to the Commitment Letter, in each case to the extent invoiced in reasonable detail at least five Business Days prior to the Closing Date.
- (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;
  - (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)); and
  - (e) that on the Closing Date following consummation of the Equity Contribution the Sponsors will control Merger Sub.
- (8) Legal Opinions. The Administrative Agent shall have received a customary legal opinion of Gibson, Dunn & Crutcher LLP, special New York and California counsel to the Loan Parties.
- (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, to the extent obtained by Merger Sub from the Company on or prior to the Closing Date, 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) No Material Adverse Effect. Since the date of the Merger Agreement, there shall not have occurred any facts, events, changes, developments or effects which, individually or in the aggregate, has had, or is reasonably expected to have, a Material Adverse Effect (as defined in the Merger Agreement).
- (12) 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 Purchase Date,

will be provided not later than the date that is three Business Days prior to the Purchase Date.

- (13) Representations and Warranties. Subject to the Certain Funds Provisions, the Specified Merger Agreement Representations and Specified Representations will be true and correct in all material respects; *provided* that the failure of a Specified Merger Agreement Representation to be true and correct will not result in a failure of a condition precedent under this Article IV unless such failure gives Merger Sub the right to terminate the Merger Agreement pursuant to its terms (after giving effect to any applicable notice and cure provisions).

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 (13) and upon satisfaction or waiver by the Administrative Agent of such conditions the 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 120 days following the end of the fiscal year ending on the earlier of (a) on or about January 30, 2016 or (b) the fiscal year ended after the Closing Date, and within 90 days following the end of each fiscal year thereafter, 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**");
- (2) within 60 days following the end of the fiscal quarters ending on or about April 30, 2016 and on or about July 31, 2016, and, thereafter, within 45 days following the end of each of the first three fiscal quarters of each fiscal year, 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 (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 120 days following the end of the fiscal year ending on or about January 30, 2017, and within 90 days following the end of each full fiscal year ended thereafter, 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 Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, within five Business Days after the date such Restricted Subsidiary is formed or acquired or such Unrestricted Subsidiary is redesignated as a Restricted 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 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 \$7.5 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;
  - (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) The Collateral Agent shall have received from each applicable Loan Party: (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;
  - (e) except, in the case of each of the foregoing clauses (a) through (c), in connection with the LLC Conversion.

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. Lender Calls. Participate in annual and quarterly conference calls with the Administrative Agent and the Lenders, such calls to be held at such time as may be agreed to by the Borrower and the Administrative Agent, but in any event not later than on or prior to the date that is 10 Business Days following the date after which the applicable Required Financial Statements are to be delivered pursuant to Section 5.04(1) and 5.04(2), with a Financial Officer of the Borrower, such other members of senior management of the Borrower as the Borrower deems appropriate, the Lenders and the Lenders' respective representatives and advisors to discuss the state of the Borrower's business, including, but not limited to, recent performance, cash and liquidity management, operational activities, current business and market conditions and material performance changes; *provided* that in no event shall more than one such call be requested in any fiscal quarter (in total with respect to this Agreement and the ABL Credit Agreement); *provided, further*, that the requirements set forth in this Section 5.12 may be satisfied with a public earnings calls for the applicable period.

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 may not exceed \$75.0 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 (including Indebtedness created under ABL Extended Revolving Commitments) 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), the greater of (i) \$600.0 million and (ii) the Borrowing Base as of the date any such Indebtedness is incurred;
- (3) the Senior Notes issued on the Closing Date, any notes issued in exchange for the Senior Notes pursuant to a registration rights agreement, 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);
- (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) \$125.0 million and (b) 2.25% 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 (other than 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; and
  - (iii) the aggregate principal amount of any such Indebtedness incurred pursuant to this clause (12) 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 this clause (12) (and any successive Permitted Refinancing Indebtedness), may not exceed \$75.0 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, 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) Cure Amounts 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) \$50.0 million and (b) 1.00% 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) \$75.0 million and (b) 1.50% 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 the Transactions or any Permitted Investment;
- (25) any Permitted Refinancing Indebtedness incurred to Refinance Incremental Equivalent Term Debt, Credit Agreement Refinancing Indebtedness or Indebtedness incurred under clauses (3), (4), (5), (12), (16), (21), (22), this clause (25) or clauses (28) or (29) 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) \$100.0 million and (b) 1.85% of Consolidated Total Assets as of the date any such Indebtedness is incurred; and

(29) Indebtedness incurred in respect of any mortgage financing or similar financing in respect of the Headquarters.

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 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; *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;
  - (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 property or assets 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 the lesser of (i) Closing Date Senior Secured First Lien Net Leverage Ratio and (ii) 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) the pricing of such Indebtedness complies with Section 2.18(8);
- (32) Liens that rank junior to the Liens securing both the Obligations and the ABL Obligations, if the Total Net Leverage Ratio as of the date on which such Liens are first created is less than or equal to the lesser of (i) Closing Date Total Net Leverage Ratio and (ii) 6.00 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) \$100.0 million and (b) 1.85% 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 Hedge Agreement (as defined in the ABL Credit Agreement) and Cash Management Obligations (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; and
- (36) Liens securing Indebtedness incurred in accordance with Section 6.01(29), solely encumbering the Headquarters.

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, (a) in respect of any Sale and Lease-Back Transaction in respect of the Headquarters and (b) in respect of any other property of the Borrower, 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 \$150.0 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 (including payment of the purchase consideration under the Merger Agreement);
- (2) loans and advances to officers, directors, employees or consultants of any Parent Entity, the Borrower or any Restricted Subsidiary not to exceed \$15.0 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;

- (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) \$25.0 million and (ii) 0.50% 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) \$75.0 million and (ii) 1.50% 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 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) \$100.0 million and (b) 1.85% 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 \$50.0 million plus an additional \$10.0 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) \$25.0 million and (ii) 0.50% 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; or
  - (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;
- (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) \$125.0 million and (B) 2.25% 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) (a) 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 of 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; or
- (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 \$10.0 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) Cure Amounts 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) \$20.0 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) Cure Amounts 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 or to pay any amounts pursuant to the Merger Agreement;
- (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 (including Holdings) that files, or to any Parent Entity for the purpose of paying to any other Parent Entity that files, a consolidated U.S. federal consolidated or combined or unitary state 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, 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 federal or state or local income or franchise taxes (including franchise taxes and similar taxes) in an amount not to exceed the liability of Borrower and its relevant subsidiaries for such 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 to 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) [Reserved.];
- (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 \$50.0 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 \$15.0 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) the Transactions and transactions pursuant to the Transaction Documents 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 the Transactions;
- (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) \$50.0 million and (ii) 1.00% 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 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), (28) or (29), 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 Facility, the Term Facility, other Indebtedness permitted by this Agreement, the Merger Agreement and the other agreements contemplated by the Merger 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 LLC Conversion or any other Transactions on the Closing Date; 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 financial maintenance covenant under the ABL Credit Agreement (a “**Financial Covenant Default**”) shall not in and of itself constitute an Event of Default hereunder until the later of (1) 90 days following the date of such Financial Covenant Default and (2) the date on which the lenders under the ABL Credit Agreement shall have accelerated payment of the ABL Obligations and terminated the commitments with respect thereto or foreclosed upon the collateral securing the ABL Obligations; and, *provided, further*, that prior to the time it becomes an Event of Default hereunder, any Financial Covenant Default may be waived, amended, terminated or otherwise modified from time to time in accordance with the ABL Credit Agreement;
- (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 \$50.0 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 or take any other action 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 may and, 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 neither the Agents, Arrangers, Syndication Agent or Syndication Agent, nor 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, Arrangers, Syndication Agent and Syndication Agent, that it has, independently and without reliance upon the Administrative Agent, Arrangers, Syndication Agent or Syndication Agent, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the 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, Arrangers, Syndication Agent or Syndication Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the 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), 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. Arrangers; Syndication Agent; Syndication Agent. None of the Arrangers, Syndication Agent or Syndication Agent will have any duties, responsibilities or liabilities hereunder in their respective capacities 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, Merger Sub 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), except to the Company pursuant to the Merger on the Closing Date pursuant to the Transactions, 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 any Lead 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); provided that such processing and recordation fee shall not be payable in the case of assignments by any Lead Arranger or any Affiliate of the Lead Arrangers;
- (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 may 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, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant shall not be entitled to the benefits of Section 2.14 to the extent such Participant fails to comply with Section 2.14(5) as though it were a Lender.
- (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, or if any Person becomes a Disqualified Institution after the applicable Trade Date, 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 a *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;
- (e) no proceeds from revolving loans under the ABL Credit Agreement shall be used to fund any such purchases; and
  - (f) 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 Term Loan 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 Term Loan 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, the Arrangers, Syndication Agent and Syndication Agent 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, the Arrangers, Syndication Agent and Syndication Agent, 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, the Arrangers, Syndication Agent and Syndication Agent and, in the case of enforcement of this Agreement, the Lenders.
- (2) The Borrower agrees to indemnify the Administrative Agent, each Arranger, each Syndication Agent, each Documentation Agent, 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, Arrangers, Syndication Agent or Syndication Agent 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 Restricted Subsidiaries.

- (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 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 Loan 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. Notwithstanding the foregoing, the Fee Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. 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, 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 Merger or 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 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 Arrangers 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 Arrangers 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 Arrangers 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 Term Loan Agent and 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 Arrangers are arm's-length commercial transactions between Holdings and the Borrower, on the one hand, and the Agents and the Arrangers, 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 Arrangers 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 Arrangers 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 Arrangers 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. Assumption and Release.

- (1) The Administrative Agent, the Collateral Agent, each Lender, Merger Sub as Initial Borrower, Successor Borrower, Petco Holdings, Inc., as Holdings, agree that, immediately upon consummation of the Merger, pursuant to this Section 10.22, (A) Merger Sub hereby assigns to Petco Animal Supplies, Inc., in its capacity as Successor Borrower, and Successor Borrower hereby expressly, unconditionally and irrevocably assumes all obligations of Merger Sub as "Initial Borrower" and "Borrower" hereunder and of all other obligations and liabilities of Merger Sub under this Agreement and each other Loan Document, in each case as if Merger Sub were never a party hereto or thereto as "Borrower" and (B) Successor Borrower agrees to perform and observe all of the

obligations (including, without limitation, all obligations in respect of the Term Loans and other indebtedness), covenants, agreements, terms, conditions, duties and liabilities of the Initial Borrower as the “Initial Borrower” and “Borrower” under or with respect to this Agreement, any Notes and any of the other Loan Documents to which the Initial Borrower is a party in its capacity as the “Initial Borrower” and “Borrower” as fully as if the Successor Borrower was originally the obligor in respect thereof and the signatory in the capacity of “Borrower” thereto.

- (2) The Administrative Agent, the Collateral Agent and each Lender, agree that, immediately after the assignment of the obligations of the Company as the Initial Borrower on the Closing Date pursuant to this Section 10.22 and the Merger and the LLC Conversion have been completed, the Company, as survivor of the Merger, ceases to be a party to this Agreement and each other Loan Document as a “Borrower,” and Company shall be released from the payment and performance of any and all obligations of a Borrower and from all other obligations and liabilities of a “Borrower” under this Agreement and each other Loan Document, in each case as if it were never a party hereto or thereto in such capacity. For the avoidance of doubt, after giving effect to the assignment of the obligations of the Company as the Initial Borrower on the Closing Date pursuant to this Section 10.22, the Merger and the LLC Conversion, Company’s sole obligations under this Agreement and each other Loan Document shall be as “Holdings” hereunder and thereunder (including any definition or covenant applicable thereto that applies to Holdings in such capacity).
- (3) The Successor Borrower hereby represents and warrants to the Administrative Agent, the Collateral Agent and the Lenders that all of the representations and warranties of the Successor Borrower set forth in this Agreement and each of the other Loan Documents are true and correct in all material respects as of the Closing Date, except to the extent such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.
- (4) The Successor Borrower hereby acknowledges that it has reviewed the terms and provisions of this Agreement and consents hereto. The Successor Borrower acknowledges and agrees that each of the Loan Documents to which it is a party or otherwise bound shall continue in full force and effect and that all of its obligations thereunder shall be valid and enforceable and shall not be impaired or limited by the execution or effectiveness of this Agreement.

SECTION 10.23. 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 10.24. 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.

MERGER SUB:

PET ACQUISITION MERGER SUB LLC (which on the Closing Date shall be merged with and into PETCO HOLDINGS, INC., with PETCO HOLDINGS, INC., surviving such merger as Holdings)

By /s/ Cameron Breitner

Name: Cameron Breitner

Title: President

*[Signature Page to Term Loan Credit Agreement]*

The undersigned hereby confirms that, as a result of its merger with PET ACQUISITION MERGER SUB LLC on the Closing Date, it hereby assumes all of the rights and obligations of PET ACQUISITION MERGER SUB LLC under this Agreement (in furtherance of, and not in lieu of, any assumption or deemed assumption as a matter of law) and hereby agrees to be joined to this Agreement as the Holdings hereunder.

Holdings:

PETCO HOLDINGS, INC.

By /s/ Cameron Breitner

Name: Cameron Breitner

Title: President

*[Signature Page to Term Loan Credit Agreement]*

The undersigned hereby confirms that, pursuant to Section 10.22 hereto, it hereby assumes all of the rights and obligations of PET ACQUISITION MERGER SUB LLC as “Initial Borrower” and “Borrower” under this Agreement and hereby agrees to be joined to this Agreement as the Successor Borrower and Borrower hereunder.

Successor Borrower:

PETCO ANIMAL SUPPLIES, INC.

By /s/ Michael Nuzzo

Name: Michael Nuzzo

Title: Chief Financial Officer

*[Signature Page to Term Loan Credit Agreement]*

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CITIBANK, N.A.,  
as Administrative Agent, Collateral Agent and a Lender

By  /s/ Caesar Wyszomirski  
Name: Caesar Wyszomirski  
Title: Director

*[Signature Page to Term Loan Credit Agreement]*

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\$500,000,000

REVOLVING CREDIT AGREEMENT,

dated as of January 26, 2016,

among

PET ACQUISITION MERGER SUB LLC,  
(to be merged with and into PETCO HOLDINGS, INC.)  
as the Initial Borrower, and immediately after giving effect to the Merger, as Holdings,

PETCO ANIMAL SUPPLIES, INC.,  
as the Successor Borrower,

THE LENDERS PARTY HERETO,

and

CITIBANK, N.A.,  
as Administrative Agent and Collateral Agent,

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CITIGROUP GLOBAL MARKETS INC.,  
BARCLAYS BANK PLC,  
RBC CAPITAL MARKETS<sup>1</sup>,  
CREDIT SUISSE SECURITIES (USA) LLC,  
NOMURA SECURITIES INTERNATIONAL, INC., and  
MACQUARIE CAPITAL (USA) INC.,  
as Bookrunners and Arrangers

WELLS FARGO BANK, NATIONAL ASSOCIATION, and  
BANK OF AMERICA, N.A.,  
as Senior Managing Agents,

BARCLAYS BANK PLC,  
WELLS FARGO BANK, NATIONAL ASSOCIATION, and  
BANK OF AMERICA, N.A.,  
as Syndication Agents,

and

RBC CAPITAL MARKETS, and  
MUFG UNION BANK, N.A.,  
as Documentation Agents

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<sup>1</sup> RBC Capital Markets is a brand name for the capital markets activities of Royal Bank of Canada and its affiliates

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REVOLVING CREDIT AGREEMENT, dated as of January 26, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time, this “**Agreement**”), among initially PET ACQUISITION MERGER SUB LLC, a Delaware limited liability company (“**Merger Sub**” and in its capacity as the initial borrower hereunder, the “**Initial Borrower**”, and after the assignment of the obligations of Initial Borrower on the Closing Date pursuant to Section 10.23 and the Merger and the LLC Conversion have been completed, in its capacity as Holdings hereunder, “**Holdings**”) and after the consummation of the Merger, and upon assumption of the Initial Borrower’s Obligations hereunder pursuant to Section 10.23, PETCO ANIMAL SUPPLIES, INC., a Delaware corporation (the “**Successor Borrower**”), the Lenders and other Issuing Banks party hereto from time to time and CITIBANK, N.A., 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**”), as Swingline Lender (in such capacity, and as further defined in Section 1.01, the “**Swingline Lender**”), and as an Issuing Bank.

#### RECITALS

- (1) CVC Capital Partners Advisory (U.S.), Inc. and Canada Pension Plan Investment Board or their respective Affiliates have formed PET Acquisition LLC, a Delaware limited liability company (“**Parent**”), owning all of the Capital Stock of Merger Sub and pursuant to the Agreement and Plan of Merger, dated as of November 21, 2015 (the “**Merger Agreement**”), by and among Parent, Merger Sub, Petco Holdings, Inc., a Delaware corporation (the “**Company**”), and the equityholders’ representative named therein, Merger Sub will merge (the “**Merger**”) with and into the Company, with the Company being the survivor of such Merger. After the consummation of the Merger, the Company will be converted into a limited liability company with the name Petco Holdings, Inc. LLC (the “**LLC Conversion**”). As used herein, the “**Borrower**” means the Initial Borrower, prior to the consummation of the Merger and assumption of the Initial Borrower’s Obligations hereunder pursuant to Section 10.23, and the Successor Borrower, thereafter.
- (2) In connection with the consummation of the Merger, (a) the Lenders have agreed to extend credit to the Borrower in the form of Revolving Loans, Swingline Loans and Letters of Credit in an aggregate principal amount not to exceed \$500.0 million, (b) certain financial institutions have agreed to extend credit to the Borrower in the form of term loans under the Term Loan Credit Agreement (as defined herein) in an aggregate principal amount not to exceed \$2,525.0 million, (c) certain initial purchasers have agreed to purchase Senior Notes in an aggregate principal amount not to exceed \$750.0 million and (d) the Sponsors and certain other equity investors (including members of the Company’s management) arranged by or designated by the Sponsors will, directly or indirectly, contribute to Parent or another Parent Entity (as defined herein) cash or rollover equity in exchange for common equity of Parent or such Parent Entity (and Parent or such Parent Entity will contribute such cash and rollover equity to the common equity capital of Merger Sub) and the aggregate amount of such contributed cash or rollover equity will be no less than 25% of the sum of (i) the aggregate gross proceeds of the Loans borrowed on the Closing Date under this Agreement (excluding Letters of

Credit, amounts borrowed to cash collateralize letters of credit issued under the Existing ABL Credit Agreement, amounts borrowed to fund working capital needs of the Company and its subsidiaries on the Closing Date and amounts borrowed to fund the Transaction Tax Benefits (as defined in the Merger Agreement) in an amount not to exceed \$50.0 million), the aggregate gross proceeds of the term loans borrowed by the Borrower under the Term Loan Credit Agreement on the Closing Date and the aggregate gross cash proceeds from any sale of Senior Notes on or prior to the Closing Date and (ii) the amount of such cash and rollover equity contributed on the Closing Date after giving effect to the Transactions (such contribution, the “*Equity Contribution*”).

## 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 Priority Collateral*” means “*ABL Priority Collateral*” as defined in the Intercreditor Agreement.

“*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 commercial lending rate published as of such day by the Wall Street Journal as the “prime rate;” and
- (3) the LIBOR Quoted Rate *plus* 1.00%.

Any change in the ABR due to a change in the Federal Funds Rate, the “prime rate” or the LIBOR Quoted Rate will be effective on the effective date of such change in the Federal Funds Rate, the “prime rate” or the LIBOR Quoted Rate, as the case may be.

“*ABR Borrowing*” means a Borrowing comprised of ABR Loans.

“*ABR Loan*” means any Loan bearing interest at a rate determined by reference to the ABR. For the avoidance of doubt, all Swingline Loans will be ABR Loans.

“*ABR Revolving Facility Borrowing*” means a Borrowing comprised of ABR Revolving Loans.

“*ABR Revolving Loan*” means any Revolving Loan bearing interest at a rate determined by reference to the ABR.

“**Acceptable Appraiser**” means (a) Great American Appraisal & Valuation Services, LLC or (b) any other experienced and reputable appraiser reasonably acceptable to the Borrower and the Administrative Agent.

“**Account**” means, with respect to a Person, any of such Person’s now owned and hereafter acquired or arising accounts (as defined in the UCC), including, whether or not constituting “accounts” (as defined in the UCC), any rights to payment for the sale or lease of goods or rendition of services, whether or not they have been earned by performance or arising out of the use of a credit or charge card or information contained on or used with such card (and whether same is an “Account” or “General Intangible” as defined in the UCC). For the avoidance of doubt, “Accounts” will include all Credit Card Processor Accounts.

“**Additional Lender**” means the banks, financial institutions and other institutional lenders and investors (other than natural persons) that become Lenders in connection with Incremental Commitments; *provided* that no Disqualified Institution may be an Additional Lender.

“**Adjusted LIBO Rate**” means, with respect to any Eurocurrency Revolving Facility Borrowing for any Interest Period, an interest rate per annum equal to the LIBO Rate in effect for such Interest Period *divided by* one *minus* the Statutory Reserves applicable to such Eurocurrency Revolving Facility Borrowing, if any.

“**Adjustment Date**” means the last calendar day of each month of January, April, July and October.

“**Administrative Agent**” means Citibank, N.A., 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 2.12(3).

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Ad Valorem Tax Reserve**” means an amount equal to any unpaid ad valorem taxes payable on any Inventory under the laws of the State of Texas or any such other state(s) in which such ad valorem taxes has priority by operation of law over the Lien of the Collateral Agent in any of the Collateral consisting of Eligible Inventory, as notified by the Administrative Agent to the Borrower in writing.

“**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.

“**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 Commitment Fee Percentage*” means (i) if the average daily Revolving Facility Credit Exposure is greater than 50% of the Line Cap as of the most recent Adjustment Date for the prior fiscal quarter, a percentage per annum equal to 0.25% and (ii) if otherwise, 0.375%.

“*Applicable Margin*” means, as of the Closing Date, (1) for ABR Loans, 0.50%, and (2) for Eurocurrency Revolving Loans, 1.50% and, after delivery of financial statements for the first full fiscal quarter after the Closing Date, the percentages per annum determined in accordance with the pricing grid set forth below, based on Average Historical Excess Availability as of the most recent Adjustment Date:

Pricing Level	Average Historical Excess Availability	Applicable Margin for Eurocurrency Revolving Loans	Applicable Margin for ABR Loans
I	Greater than or equal to 66.7% of the Line Cap	1.25%	0.25%
II	Less than 66.7% of the Line Cap but greater than or equal to 33.3% of the Line Cap	1.50%	0.50%
III	Less than 33.3% of the Line Cap	1.75%	0.75%

The Applicable Margin shall be adjusted quarterly on a prospective basis on each Adjustment Date based upon the Average Historical Excess Availability in accordance with the table above; provided that if any Borrowing Base Certificate delivered pursuant to this Agreement is at any time restated or otherwise revised, or if the information set forth in any such Borrowing Base Certificate 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 recalculated by the Administrative Agent at such higher rate for any applicable periods and shall be due and payable within 5 Business Days of receipt of such calculation by the Borrower from the Administrative Agent and shall be payable only to the Lenders whose Commitments were outstanding during such period when the Applicable Margin should have been higher (regardless of whether such Lenders remain parties to this Agreement at the time such payment is made).

“*Approved Fund*” has the meaning assigned to such term in Section 10.04(2).

“**Arranger**” means each of Citigroup Global Markets Inc., Barclays Bank PLC, RBC Capital Markets, Credit Suisse Securities (USA) LLC, Nomura Securities International, Inc., and Macquarie Capital (USA) 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 any Loan Party or any Restricted Subsidiary.

“**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 and reasonably satisfactory to the Borrower.

“**Availability Period**” means the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Revolving Facility Commitments.

“**Available Unused Commitment**” means, with respect to a Lender at any time, an amount equal to the amount by which (1) the Revolving Facility Commitment of such Lender at such time exceeds (2) the aggregate Revolving Facility Credit Exposure (other than Revolving Facility Credit Exposure attributable to Swingline Loans) of such Lender at such time.

“**Average Historical Excess Availability**” means, at any Adjustment Date, the average daily Excess Availability for the prior fiscal quarter.

“**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.

“**Blocked Account**” has the meaning assigned to such term in Section 5.11.

“**Blocked Account Agreement**” has the meaning assigned to such term in Section 5.11.

“**Below Threshold Asset Sale Proceeds**” has the meaning assigned to such term in the Term Loan Credit Agreement.

“**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 Base Parties**” means, as of any date, the Borrower and each Guarantor that is a Restricted Subsidiary.

“**Borrowing**” means a group of Loans of a single Type made on a single date and, in the case of Eurocurrency Revolving Loans, as to which a single Interest Period is in effect.

“**Borrowing Base**” means, at any time, the sum of:

- (1) 90% of the Eligible Accounts held by the Borrowing Base Parties; *plus*
- (2) 90% of the Net Orderly Liquidation Value of Eligible Inventory held by the Borrowing Base Parties; *plus*
- (3) 100% of Qualified Cash of the Borrowing Base Parties as to which the Borrowing Base Parties have no access; *provided* that, at any time, the aggregate amount of Qualified Cash included in the Borrowing Base shall not exceed \$50.0 million; *less*
- (4) Reserves;

*provided*, that, if a Report is not complete prior to the Closing Date, then on the Closing Date and until the earlier of (i) the completion of such Report and (ii) the 90<sup>th</sup> day following the Closing Date, the term “**Borrowing Base**” means the Existing ABL Borrowing Base;

*provided, further*, that if a Report has not been completed on or before the 90<sup>th</sup> day following the Closing Date, then the Borrowing Base shall be deemed to be zero from the 91<sup>st</sup> day following the Closing Date until such Report has been completed, on which date this *proviso* shall cease to be of any effect.

“**Borrowing Base Certificate**” means a certificate by a Responsible Officer of the Borrower, substantially in the form of Exhibit B (or another form acceptable to the Administrative Agent and the Borrower) setting forth the calculation of the Borrowing Base,

including a calculation of each component thereof (including, to the extent the Borrower has received notice of any such Reserve from the Administrative Agent, any of the Reserves included in such calculation), all in such detail as is reasonably satisfactory to the Administrative Agent. All calculations of the Borrowing Base in connection with the preparation of any Borrowing Base Certificate will be made by the Borrower and certified to the Administrative Agent.

“**Borrowing Minimum**” means \$1,000,000 in the case of ABR Borrowings and \$5,000,000 in the case of Eurocurrency Revolving Facility Borrowings.

“**Borrowing Multiple**” means \$1,000,000 in the case of ABR Borrowings and Eurocurrency Revolving Facility Borrowings.

“**Borrowing Request**” means a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit D-1.

“**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 Revolving 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) the Merger;
- (9) the purchase of property, plant or equipment made within 24 months of any Asset Sale to the extent purchased with the proceeds of such Asset Sale; or
- (10) expenditures used for acquisitions of fee-owned Real Property, up to \$25.0 million during any fiscal year, so long as (A) the Borrower demonstrates to the satisfaction of the Administrative Agent a viable plan that provides for a Sale and Lease-Back Transaction within one year of acquisition and (B) the Administrative Agent approves of the exclusion of such expenditures in their reasonable discretion, provided if the Borrower and its Subsidiaries fail to complete such Sale and Lease-Back Transaction within such one-year period, expenditures used for such acquisition shall be included as Capital Expenditures in the fiscal year in which such one-year period expires.

“**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 Dominion Period**” means the period commencing upon the occurrence of, and continuing during the continuation of, a Liquidity Condition or any Designated Event of Default. Once commenced, a Cash Dominion Period will continue until such Liquidity Condition or Designated Event of Default has been cured or waived or is no longer continuing, as applicable.

“**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 Term Loan 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.

“**Certain Funds Provisions**” has the meaning given to such term in the Commitment Letter.

A “**Change in 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 Term Loan Credit Agreement or the 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; or
- (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).

“*Change in Law*” means:

- (1) the adoption of any law, rule or regulation after the Closing Date;
- (2) any change in 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 2.15(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.

“**Charges**” has the meaning assigned to such term in Section 10.09.

“**Charitable Foundation**” means The Petco Foundation, a California Exempt Organization and all related charitable entities.

“**Charitable Foundation Liabilities**” means, at any time, the aggregate remaining balance at such time of amounts and pledges owed by the Borrowing Base Parties to the Charitable Foundations, net of any accounts receivables or payment intangibles owed by the Charitable Foundations to the Borrowing Base Parties.

“**Charitable Reserve**” means, as of any date, an amount equal to 100% of the Charitable Foundation Liabilities as reflected in the Borrowing Base Parties’ books and records.

“**Closing Date**” means January 26, 2016.

“**Closing Date Refinancing**” means the repayment of debt contemplated by Section 3.03 of the Merger Agreement, which for the avoidance of doubt shall include the repayment in full of the (i) Existing Term Loan Credit Agreement, (ii) Existing ABL Credit Agreement, (iii) the Existing Construction Loan Agreement, (iv) the outstanding Existing Senior Notes and (v) the outstanding Existing Senior PIK Toggle Notes and the termination of all obligations and liens related thereto.

“**Closing Date Senior Secured First Lien Net Leverage Ratio**” means 4.80 to 1.00.

“**Closing Date Total Net Leverage Ratio**” means 6.20 to 1.00.

“**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 Access Agreement**” means a landlord waiver or other agreement, in a form as shall be reasonably satisfactory to the Collateral Agent, between the Collateral Agent and any third party (including any bailee, consignee, customs broker, or other similar Person) in possession of any Collateral or any landlord of any premises where any Collateral is located, as such landlord waiver or other agreement may be amended, restated, or otherwise modified from time to time.

“**Collateral Agent**” means Citibank, N.A., 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 ABL 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.

“**Commitment Fee**” has the meaning assigned to such term in Section 2.12(1).

“**Commitment**” means (1) with respect to each Lender, such Lender’s Revolving Facility Commitment, (2) with respect to the Swingline Lender, its Swingline Commitment and (3) with respect to any Issuing Bank, its Letter of Credit Commitment. On the Closing Date, the aggregate amount of Commitments is \$500.0 million.

“**Commitment Letter**” means that certain Amended and Restated Commitment Letter, dated as of November 30, 2015, by and among Merger Sub, Citigroup Global Markets Inc., Barclays Bank PLC, Royal Bank of Canada, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Cayman Islands Branch, Nomura Securities International, Inc., Macquarie Capital (USA) Inc., MIHI LLC, GSMP VI Offshore US Holdings, Ltd., GSMP VI Onshore US Holdings, Ltd. and Broad Street Credit Holdings LLC and including any joinders thereto.

“**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 sum (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, Disqualified Stock and Indebtedness in respect of the deferred purchase price of property or services 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
  - (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; *plus*
  - (l) without duplication, “management adjustment” addbacks expressly set forth in the Sponsor Model; 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).

Notwithstanding the foregoing, the Consolidated EBITDA of the Borrower for the fiscal quarters ended:

- (i) October 31, 2015 will be deemed to be \$118.460 million;
- (ii) August 1, 2015 will be deemed to be \$119.512 million; and
- (iii) May 2, 2015 will be deemed to be \$121.040 million.

it being understood that the amounts listed in the foregoing clauses (i), (ii) and (iii) do not give effect to the adjustments provided for in the definition of Pro Forma Basis for any transactions or events other than the Transactions.

“**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 ABL Priority Collateral that is *pari passu* with the Lien securing the Obligations or that is secured by a Lien on the Term 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 Term Loan 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;

*provided* that when determining Consolidated Interest Expense in respect of any four-quarter period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Closing Date by 365 and then dividing such product by the number of days from and including the Closing Date to and including the last day of 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 the Transactions or otherwise, expenses associated with strategic initiatives, facilities shutdown and opening costs, and any fees, expenses, charges or change in control payments related to the Transactions 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 are or are permitted to be 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 the Transactions 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 the Transactions within 18 months after the Closing 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 in an aggregate amount not to exceed \$20.0 million 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; and

(19) non-cash charges for deferred tax asset valuation allowances will be excluded.

“**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.

“**Cost**” means the calculated cost of purchases, based upon the Borrower’s accounting practices as reflected in the most recent Annual Financial Statements, which practices are consistent with the methodology used in the most recent appraisal delivered in connection with this Agreement prior to the Closing Date.

“**Covenant Trigger Event**” means that Excess Availability is less than the greater of (a) \$30.0 million and (b) 10.0% of the Line Cap then in effect. Once commenced, a Covenant Trigger Event will be deemed to be continuing until such time as Excess Availability equals or exceeds the greater of (i) \$30.0 million and (ii) 10.0% of the Line Cap then in effect for 20 consecutive days.

“**Credit Card Notification**” has the meaning assigned to such term in Section 5.11.

“**Credit Card Processor**” means any Person (other than a Loan Party or any Affiliate of any Loan Party) who issues or whose members or Affiliates issue credit or debit cards, including MasterCard or VISA bank credit or debit cards or other bank credit or debit

cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club and Carte Blanche.

“**Credit Card Processor Accounts**” means Accounts owing to a Loan Party from a Credit Card Processor.

“**Credit Event**” has the meaning assigned to such term in Article IV.

“**Cure Amount**” has the meaning assigned to such term in Section 8.02.

“**Cure Right**” has the meaning assigned to such term in Section 8.02.

“**Customer Credit Liabilities**” means, at any time, the aggregate remaining balance at such time of (a) outstanding gift certificates and gift cards of the Borrowing Base Parties 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 of the Borrowing Base Parties, net of any dormancy reserves maintained by the Borrowing Base Parties on their books and records in the ordinary course of business consistent with past practices.

“**Customer Credit Liability Reserves**” means, as of any date, an amount equal to 50% of the Customer Credit Liabilities as reflected in the Borrowing Base Parties’ books and records.

“**Customer Deposits**” means, at any time, the aggregate balance at such time of outstanding customer deposits of the Borrowing Base Parties, net of any dormancy reserves maintained by the Borrowing Base Parties on their books and records in the ordinary course of business consistent with past practices.

“**Customer Deposits Reserve**” means, as of any date, an amount equal to 100% of the Customer Deposits as reflected in the Borrowing Base Parties’ books and records.

“**Customs Broker Agreement**” means an agreement, in form reasonably satisfactory to the Collateral 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 Collateral Agent and agrees, upon notice from the Collateral Agent, to hold and dispose of such Inventory solely as directed by the Collateral Agent.

“**CVC**” means any funds or limited partnerships managed or advised by CVC Capital Partners Limited or any of its Affiliates or direct or indirect Subsidiaries or any investors in such funds or limited partnerships (but excluding, in each case, any portfolio companies in which such funds or limited partnerships hold an investment and excluding, in each case, any funds or entities managed or advised by CVC Credit Partners Holdings Limited or any of its direct or indirect Subsidiaries engaged in the same or a similar business to CVC Credit Partners Holdings Limited) who are investors in such funds or limited partnerships as at the Closing Date, investing directly or indirectly in Holdings.

“**DDA**” means any checking or other demand deposit account maintained by the Loan Parties.

“**DDA Notification**” has the meaning assigned to such term in Section 5.11.

“**Debt Representative**” means, with respect to any Indebtedness that is secured on a junior basis to the Revolving Facility Claims, 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 (a) whose acts or failure to act, whether directly or indirectly, constitutes a Lender Default or (b) who has, or has a direct or indirect parent company that has, become the subject of a Bail-in Action.

“**Designated Cash Management Reserve**” means, as of any date, such reserves as the Administrative Agent determines in its Reasonable Credit Judgment to reflect (and in no event to exceed) the then aggregate outstanding cash management exposure of all Cash Management Banks to the relevant Loan Parties under all Cash Management Obligations.

“**Designated Hedging Agreement**” means Specified Hedge Agreements that are designated by the Qualified Counterparty and the Borrower in writing to the Administrative Agent as a “Designated Hedging Agreement” and the Qualified Counterparty shall have provided the MTM value on the date of such designation.

“**Designated Hedging Reserve**” means, as of any date, such reserves as the Administrative Agent determines in its Reasonable Credit Judgment to reflect (and in no event to exceed) the then aggregate outstanding mark-to-market (“**MTM**”) exposure owed by the relevant Loan Parties to all Qualified Counterparties under all Designated Hedging Agreements. Such exposure shall be the sum of the positive aggregate MTM values to each Qualified Counterparty of all Designated Hedging Agreements with such Qualified Counterparty outstanding at the time of the relevant calculation. The aggregate MTM value to a Qualified Counterparty of all Designated Hedging Agreements with such Qualified Counterparty shall be calculated (i) on a net basis by taking into account the netting provision contained in the ISDA Master Agreement (or other similar agreement with netting provisions substantially similar to an ISDA Master Agreement) with such Qualified Counterparty and (ii) if applicable, by taking into account any master netting agreement or arrangement in place among such Qualified Counterparty, any Subsidiary or Affiliate thereof that is also party to a Designated Hedging Agreement and the relevant Loan Party, in which case the positive aggregate MTM value of all relevant Designated Hedging Agreements to such Qualified Counterparty and such Subsidiaries or Affiliates who are parties to such master netting agreements shall be calculated in respect of all of the relevant Designated Hedging Agreements on a net basis across all such Designated Hedging Agreements, provided that the Borrower (i) certifies to the Administrative Agent that such master netting agreement shall apply to all such Designated Hedging Agreements in all cases including upon the occurrence of an event of default by the relevant Loan Party in respect of any such Designated Hedging Agreement and (ii) upon request, provides to the Administrative Agent a copy of the master netting agreement. In calculating the positive aggregate MTM value to a

Qualified Counterparty, the value of collateral posted to such Qualified Counterparty in respect of such Designated Hedging Agreements shall be taken into account, such that the value of such collateral shall reduce the MTM value of such Designated Hedging Agreements that is out-of-the-money to the relevant Loan Party by an amount equal to (x) the amount of cash collateral or (y) the value of non-cash collateral with such value as determined by the relevant Qualified Counterparty or the relevant valuation agent in accordance with the relevant credit support annex or other collateral agreement (for the avoidance of doubt, taking into account any haircut provision applicable to such non-cash collateral), provided that the Borrower shall provide any supporting documentation for such value as may be reasonably requested by the Administrative Agent. For the avoidance of doubt, if the MTM value of all Designated Hedging Agreements with a Qualified Counterparty is a negative amount to such Qualified Counterparty (i.e., if all such Designated Hedging Agreements with such Qualified Counterparty are in-the-money to the relevant Loan Party on a net basis), such MTM value shall be treated as zero in calculating the amount of the Designated Hedging Reserves. The MTM value of a Designated Hedging Agreement for this purpose shall be calculated and provided to the Administrative Agent, the relevant Loan Party and the Borrower together with the supporting calculations therefor promptly (but in any case not later than three Business Days) following (x) the last calendar day of each calendar month and (y) such other date on which a request was made by the Administrative Agent, the relevant Loan party or the Borrower, as applicable, for such MTM value, which shall be used by the Administrative Agent in calculating the relevant portion of the Designated Hedging Reserves. If a Qualified Counterparty fails to provide the MTM value of a Designated Hedging Agreement within the relevant timeframe specified above, then the Administrative Agent (x) shall give the Borrower notice thereof within three Business Days from the date such Qualified Counterparty was required to provide such MTM value and (y) may (but is not obligated to) provide, upon receiving from the Borrower or the relevant Loan Party all of the information reasonably determined by the Administrative Agent as being necessary to determine the MTM value of the relevant Designated Hedging Agreement, a proposed MTM value of the relevant Designated Hedging Agreement within such three Business Day period. If the Administrative Agent agrees to provide such a proposed MTM value and the Borrower does not notify the Administrative Agent within three Business Days from receipt thereof that it does not agree with such MTM value, then the Administrative Agent shall use such MTM value in calculating the relevant portion of the Designated Hedging Reserves.

**“Designated Event of Default”** means any Event of Default under Section 8.01(1) (solely with respect to a default under Section 3.05), Section 8.01(2), Section 8.01(3) (solely with respect to interest and Fees), Section 8.01(4) (solely with respect to a default under Section 5.04(9), Section 5.11 or Section 6.10), Section 8.01(8) or Section 8.01(9).

**“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.

**“Designated Disbursement Account”** has the meaning assigned to such term in Section 5.11.

“*Discharge of ABL Revolving Claims*” has the meaning assigned to the term “Discharge of ABL Revolving Claims” in the Intercreditor Agreement.

“*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 Arrangers and the Administrative Agent on or prior to the date of the Commitment Letter;
  - (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 date of the Commitment Letter; provided that such Person will not be a Disqualified Institution if the Administrative Agent reasonably determines in good faith that such Person is not a competitor of the Borrower and notifies the Borrower of such determination promptly following the date on which the Borrower identifies such Person to the Administrative Agent; 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 (i) make investment decisions or (ii) have access to non-public information relating to the Borrower or any Person that forms part of the Borrower’s business (including its Subsidiaries)); or
- (2) certain banks, financial institutions, other institutional lenders and investors and other entities that are identified by the Borrower in writing to the Arrangers and the Administrative Agent on or prior to the date of the Commitment Letter.

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 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 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:
  - (a) the Latest Maturity Date; and
  - (b) the date on which the 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 and any outstanding Letters of Credit are expired, terminated or cash-collateralized on terms satisfactory to the Issuing Bank;

*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.”

**“Documentation Agents”** means each of RBC Capital Markets and MUFG Union Bank, N.A.

**“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 or any political subdivision thereof, 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.

“**Dominion Account**” has the meaning assigned to such term in Section 5.11.

“**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 Accounts**” means all Credit Card Processor Accounts that constitute proceeds from the sale or disposition of Inventory in the ordinary course of business and that are reflected in the most recent Borrowing Base Certificate, except any Credit Card Processor Account with respect to which any of the exclusionary criteria set forth below applies. No Credit Card Processor Account will be an Eligible Account if:

- (1) such Credit Card Processor Account has been outstanding for more than five Business Days from the date of sale;
- (2) such Credit Card Processor Account is (a) not subject to the first priority, valid and perfected Lien of the Collateral Agent as to such Credit Card Processor Account or (b) is subject to any other Lien, other than (i) a Lien permitted under Section 6.02(10), 6.02(13) or 6.02(19) or other Permitted Lien arising by operation of law or (ii) a Lien securing Indebtedness permitted under Section 6.01(1)(it being understood that customary offsets to fees and chargebacks in the ordinary course by the credit card or debit card processors will not be deemed violative of this clause (2));
- (3) a Borrowing Base Party does not have good, valid and marketable title thereto, free and clear of any Lien (other than (i) Liens granted to the Collateral Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Security Documents, (ii) a junior priority Lien permitted under Section 6.02(10), 6.02(13) or 6.02(19) or other Permitted Lien arising by operation of law or (iii) a lien securing Indebtedness permitted under 6.01(1) or(2));
- (4) such Credit Card Processor Account does not constitute the legal, valid and binding obligation of the applicable Credit Card Processor enforceable in accordance with its terms;

- (5) such Credit Card Processor Account is disputed, or a claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback has been asserted with respect thereto by the applicable Credit Card Processor (but only to the extent of such dispute, claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback);
- (6) such Credit Card Processor Account is owed by a Credit Card Processor that is subject to a bankruptcy proceeding of the type specified in Section 8.01(8) or (9) or that is liquidating, dissolving or winding up its affairs or otherwise deemed not creditworthy by the Administrative Agent in its Reasonable Credit Judgment;
- (7) such Credit Card Processor Account does not conform with a covenant or representation contained herein as to such Credit Card Processor Account;
- (8) unless otherwise agreed by the Administrative Agent, the Credit Card Processor is organized or has its principal offices or assets outside the United States;
- (9) such Credit Card Processor Account is evidenced by Chattel Paper or an Instrument (each as defined in the Collateral Agreement) of any kind, or has been reduced to judgment; or
- (10) such Credit Card Processor Account includes a billing for interest, fees or late charges, but ineligibility will be limited to the extent thereof.

Anything contained herein to the contrary notwithstanding, for purposes of determining the amount of Eligible Accounts in the Borrowing Base at any time, any Credit Card Processor Account that otherwise meets the requirements for Eligible Accounts may be included in such calculation even though the same does not constitute proceeds from the sale or disposition of Inventory; *provided* that such amount will be subject to adjustment as may be required by the Administrative Agent at any time and from time to time to reflect such fact.

If any Credit Card Processor Account at any time ceases to be an Eligible Account, then such Credit Card Processor Account will promptly be excluded from the calculation of the Borrowing Base; *provided* that if any Credit Card Processor Account ceases to be an Eligible Account because of the adjustment of or imposition of new exclusionary criteria pursuant to the succeeding paragraph, the Administrative Agent will not require exclusion of such Credit Card Processor Account from the Borrowing Base until 5 Business Days following the date on which the Administrative Agent gives notice to the Borrower of such ineligibility; *provided* that upon such notice, the Borrower shall not be permitted to borrow any Loans or have any Letters of Credit issued so as to exceed the Borrowing Base after giving effect to such adjustment or imposition of new exclusionary criteria.

The Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the exclusionary criteria set forth above and to establish new criteria, in each case, in its Reasonable Credit Judgment (based on an analysis of material facts or events first occurring, or first discovered by the Administrative Agent, after the Closing Date), subject to the necessary approvals set forth in Section 10.08 in the case of adjustments or new criteria which have the effect of making more credit available than would have been available based upon the criteria in effect on the Closing Date.

“*Eligible Inventory*” means all Inventory reflected in the most recent Borrowing Base Certificate, except any Inventory with respect to which any of the exclusionary criteria set forth below applies. No item of Inventory will be Eligible Inventory if such item:

- (1) is not subject to a first priority (subject to a Lien permitted under Section 6.02(10) or 6.02(13)) perfected Lien in favor of the Administrative Agent;
- (2) is subject to any Lien other than (a) a Lien in favor of the Collateral Agent, (b) a Lien permitted under Section 6.02(10) or 6.02(13) or other Permitted Lien arising by operation of law or (c) a (in each case under Section 6.01(2), on a junior priority basis) Lien securing Indebtedness permitted under Section 6.01(1) or (2) (in each case under Section 6.01(2), on a junior priority basis);
- (3) is slow moving (other than Inventory located at a clearance center that has been appropriately priced consistent with the Borrowing Base Parties customary practices), obsolete, unmerchantable, defective, used or unfit for sale;
- (4) does not conform in all material respects to the representations and warranties contained in this Agreement or the Collateral Agreement;
- (5) is not owned only by one or more Borrowing Base Parties;
- (6) is not finished goods or which constitutes work-in-process, raw materials, packaging and shipping material, supplies, samples, prototypes, displays or display items, bill-and-hold goods, goods that are returned or marked for return (but not held for resale) or repossessed, or which constitutes goods held on consignment or goods which are not of a type held for sale in the ordinary course of business;
- (7) is not located in the United States;
- (8) (a) is located at any location (other than a retail store or clearance center) leased by a Borrowing Base Party, unless (x) the lessor has delivered to the Collateral Agent a Collateral Access Agreement as to such location or (y) a Reserve for rent, charges, and other amounts due or to become due with respect to such location has been established by the Administrative Agent in its Reasonable Credit Judgment or (b) is located at retail store or clearance center leased by a Borrowing Base Party and such location is in a Landlord Lien State, unless a Reserve for rent, charges, and other amounts due or to become due with respect to such location has been established by the Administrative Agent in its Reasonable Credit Judgment;
- (9) is located in any third-party warehouse or is in the possession of a bailee (other than a third-party processor) and is not evidenced by a Document (as defined in Article 9 of the UCC), unless (x) the warehouseman or bailee has delivered to the Collateral Agent a Collateral Access Agreement as to such location or (y) an appropriate Reserve (including for rent, charges and other amounts due or to become due with respect to such location) has been established by the Administrative Agent in its Reasonable Credit Judgment;

- (10) is being processed offsite at a third party location or outside processor, or is in-transit to or from said third party location or outside processor;
- (11) is the subject of a consignment by any Borrower as consignor;
- (12) contains or bears any intellectual property rights licensed to any Loan Party by any Person other than a Loan Party unless the Collateral Agent is reasonably satisfied that it may sell or otherwise dispose of such Inventory without (a) infringing the rights of such licensor, (b) violating any contract with such licensor, or (c) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement relating thereto;
- (13) is not reflected in a current retail stock ledger report of the Company or the respective Borrowing Base Party (except as to goods received but not recorded in the retail stock ledger);
- (14) is acquired in connection with a Permitted Acquisition to the extent the Administrative Agent has not received a Report in respect of such Inventory showing results reasonably satisfactory to the Administrative Agent;
- (15) is in transit, except that Inventory in transit will not be deemed ineligible if:
  - (a) it has been shipped (i) from a foreign location for receipt by any Borrowing Base Party within forty-five (45) days of the date of shipment (and such shipment has not been delayed beyond such forty-five (45) day delivery time), or (ii) from a domestic location for receipt by any Borrowing Base Party within fifteen (15) days of the date of shipment (and such shipment has not been delayed beyond such fifteen (15) day delivery time), but, in either case, which has not yet been delivered to such Borrowing Base Party,
  - (b) it has been paid for in advance of shipment, is not being shipped by a carrier owned by or affiliated with the vendor;
  - (c) legal ownership thereof has passed to the applicable Borrowing Base Party (or is retained by the applicable Borrowing Base Party) as evidenced by customary documents of title and such Inventory is not sold by a vendor that has a right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against the Inventory, or with respect to whom any Borrowing Base Party is in default of any obligations;
  - (d) the Collateral Agent has control over the documents of title which evidence ownership of the subject Inventory (including, if requested by the Collateral Agent, by the delivery of a Customs Broker Agreement); and
  - (e) it is insured to the reasonable satisfaction of the Administrative Agent;

- (16) constitutes operating supplies, packaging or shipping materials, cartons, repair parts, labels or miscellaneous spare parts or other such materials not considered for sale in the ordinary course of business;
- (17) is perishable (it being understood and agreed that (i) perishable Inventory shall include all Inventory consisting of live animals, live food or aquatic plants to the extent the aggregate book value thereof exceeds \$10,000,000 and (ii) pet food (other than live food) shall not be considered perishable Inventory);
- (18) is not located in a Permitted Inventory Location; or
- (19) is not reflected in a current perpetual inventory report (other than in transit Inventory that is otherwise Eligible Inventory) of the Borrowing Base Parties.

If any Inventory at any time ceases to be Eligible Inventory, such Inventory will promptly be excluded from the calculation of the Borrowing Base; *provided, however*, that if any Inventory ceases to be Eligible Inventory because of the adjustment of or imposition of new exclusionary criteria pursuant to the succeeding paragraph, the Administrative Agent will not require exclusion of such Inventory from the Borrowing Base until 5 Business Days following the date on which the Administrative Agent gives notice to the Borrower of such ineligibility; *provided* that upon such notice, the Borrower shall not be permitted to borrow any Loans or have any Letters of Credit issued so as to exceed the Line Cap after giving effect to such adjustment or imposition of new exclusionary criteria.

The Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the exclusionary criteria set forth above and to establish new criteria, in each case, its Reasonable Credit Judgment (based on an analysis of material facts or events first occurring, or first discovered by the Administrative Agent, after the Closing Date), subject to the necessary approvals set forth in Section 10.08 in the case of adjustments or new criteria which have the effect of making more credit available than would be available based upon the criteria in effect on the Closing Date.

**“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 Contribution”** has the meaning assigned to such term in the recitals to this Agreement.

“**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 Revolving Facility Borrowing**” means a Borrowing comprised of Eurocurrency Revolving Loans.

“**Eurocurrency Revolving Loan**” means any Revolving 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 Availability**” means, at any time, (a) the Line Cap at such time *minus* (b) the Revolving Facility Credit Exposure at such time.

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

“**Excluded Accounts**” means any DDA, securities account, commodity account or any other deposit account of any Borrowing Base Party or Restricted Subsidiary (and all cash, Cash Equivalents and other securities or investments credited thereto or deposited therein): (1) that does not have an individual ending balance in excess of \$500,000, or in the aggregate with each other account described in this clause (1), in excess of \$5,000,000; (2) the balance of which is swept at the end of each Business Day into a deposit account, securities account or commodity account subject to a control agreement, so long as such daily sweep is not terminated or modified (other than to provide that the balance in such deposit account, securities account or commodity account is swept into another deposit account, securities account or commodity account subject to a control agreement) without the consent of the Collateral Agent; (3) that is a Trust Account, Specified Segregated Account, or Designated Disbursement Account; (4) any DDA of the Borrower or any Restricted Subsidiary the balance of which consists solely of proceeds of any sale or other disposition of any Term Priority Collateral including the Asset Sale Proceeds Account (as defined in the Term Loan Credit Agreement) so long as all amounts on deposit therein constitute Term Priority Collateral; or (5) to the extent that it is cash collateral for letters of credit (other than Letters of Credit) to the extent permitted hereunder.

“**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(27), in each case prior to such date; *provided* that the proceeds of Disqualified Stock, Cure Amounts 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) or (B) for Contribution Indebtedness, will not be treated as Excluded Contributions.

**“Excluded Equity Interests”** means “*Excluded Equity Interests*” as defined in the Collateral Agreement.

**“Excluded Subsidiary”** means any:

- (1) Immaterial Subsidiary;
- (2) Subsidiary that is not a Wholly Owned Subsidiary of Holdings or 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 a Subsidiary that is not a Wholly Owned Subsidiary of Holdings or 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 2.17(1) or Section 2.17(3);
- (3) Taxes that are attributable to such Lender's or Administrative Agent's failure to comply with Section 2.17(5) or Section 2.17(6); and
- (4) any U.S. federal withholding Taxes imposed under FATCA.

**"Executive Order"** has the meaning assigned to such term in Section 3.20(3)(a).

**"Existing ABL Credit Agreement"** means that certain ABL credit agreement, dated as of April 19, 2013 among Petco Animal Supplies, Inc., the lenders party thereto, Bank of America, N.A. (as successor to Credit Suisse AG), as administrative agent, Wells Fargo Bank, National Association, as collateral agent, and the subsidiaries of Petco Animal Supplies, Inc., from time to time party thereto, as amended by that certain First Amendment to the ABL Credit Agreement, dated as of November 21, 2014.

**"Existing ABL Borrowing Base"** means the "Borrowing Base" as determined under the Existing ABL Credit Agreement and reflected in the most recently delivered "borrowing base certificate" delivered under such Existing ABL Credit Agreement as of the Closing Date.

“**Existing Letters of Credit**” means those Letters of Credit described on Schedule 1.01(1) hereto.

“**Existing Construction Loan Agreement**” means that certain Construction Loan Agreement, dated March 20, 2015, by and between Petco Real Estate Holdings III, LLC and MUFG Union Bank, N.A.

“**Existing Senior Notes**” means the Senior Notes due 2017 issued pursuant to that certain Indenture, dated as of November 24, 2010, among Petco Animal Supplies, Inc., the guarantors named on the signature pages thereto, and Wells Fargo Bank, National Association, as trustee.

“**Existing Senior PIK Toggle Notes**” means the Senior PIK Toggle Notes due 2018 issued pursuant to that certain Indenture, dated as of October 10, 2012, between Petco Holdings, Inc., and Wells Fargo Bank, National Association, as Trustee.

“**Existing Term Loan Credit Agreement**” means that certain term loan credit agreement, dated as of November 24, 2010, among Petco Animal Supplies, Inc., as borrower, the lenders party thereto, JPMorgan Chase Bank, N.A. (as successor to Credit Suisse AG), as administrative agent and collateral agent, and the subsidiaries of Petco Animal Supplies, Inc. from time to time party thereto, as amended by that certain Amendment No. 1 to Term Loan Agreement, dated as of February 25, 2011, as further amended by that certain Amendment No. 2 to Term Loan Agreement, dated October 9, 2012, as further amended by that certain Amendment No. 3 to Term Loan Agreement, dated February 4, 2013.

“**Extended Commitments**” has the meaning assigned to such term in Section 2.23(1).

“**Extended Loans**” has the meaning assigned to such term in Section 2.23(1).

“**Extension**” has the meaning assigned to such term in Section 2.23(1).

“**Extension Amendment**” has the meaning assigned to such term in Section 2.23(2).

“**Extension Offer**” has the meaning assigned to such term in Section 2.23(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, 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 3.20(2)

“**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 arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that:

- (1) if such day is not a Business Day, the Federal Funds Rate for such day will be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and
- (2) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day will be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1.00%) charged to the Administrative Agent on such day on such transactions as determined in good faith by the Administrative Agent.

“**Fee Letter**” means the Amended and Restated Fee Letter, dated November 30, 2015, by and among Merger Sub, Citigroup Global Markets Inc., Barclays Bank PLC, Royal Bank of Canada, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Cayman Islands Branch, Nomura Securities International, Inc., Macquarie Capital (USA) Inc., MIHI LLC, GSMP VI Offshore US Holdings, Ltd., GSMP VI Onshore US Holdings, Ltd. and Broad Street Credit Holdings LLC, as amended and in effect from time to time and including any jointers thereto.

“**Fees**” means the Commitment Fees, the L/C Participation Fees, the Issuing Bank Fees, Administrative Agent Fees and all other fees set forth in the Fee Letter and relating hereto.

“**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.

“**Financial Performance Covenant**” means the covenant set forth in Section 6.10.

“**Fixed Amounts**” has the meaning assigned to such term in Section 1.07(b).

“**Fixed Charge Coverage Ratio**” means, as of any date, the ratio of:

- (1) (a) Consolidated EBITDA of the Borrower for the most recent period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis, *minus* (b) non-financed Maintenance Capital Expenditures of the Borrower for such period that were paid in cash during such four-quarter period (it being understood that Capital Expenditures funded with proceeds of revolving loans will not be deemed to be “financed” for the purpose of this clause (b)) *minus* (c) Taxes based on income of the Borrower and the Restricted Subsidiaries that were paid or required to be paid in cash during such period (including tax distributions paid in cash during such period) to
- (2) Fixed Charges of the Borrower for such four-quarter period, calculated on a Pro Forma Basis.

“**Fixed Charges**” means, for any period, the sum without duplication, of the following for such period:

- (1) the Consolidated Interest Expense of the Borrower that was paid or required to be paid in cash during such period; *plus*
- (2) all scheduled principal amortization payments that were paid or required to be paid in cash during such period with respect to Indebtedness for borrowed money of the Borrower and the Restricted Subsidiaries, including payments in respect of Capital Lease Obligations, but excluding payments with respect to intercompany Indebtedness; *plus*
- (3) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock of the Borrower or preferred stock of any Restricted Subsidiary made during such period.

“**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 or Issuing Bank 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.

“**Fronting Exposure**” means, at any time there is a Defaulting Lender, (1) with respect to the Issuing Bank, such Defaulting Lender’s Revolving Facility Percentage of the outstanding Revolving L/C Exposure, other than Revolving L/C Exposure as to which such Defaulting Lender’s participation obligation has been reallocated to non-Defaulting Lenders or cash collateralized in accordance with the terms hereof, and (2) with respect to the Swingline Lender, such Defaulting Lender’s Revolving Facility Percentage of Swingline Loans other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

“**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, (3) each Borrowing Base Party; and (4) 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 (4), 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.

“**Headquarters**” means the headquarters of the Borrower, located at 10850 Via Frontera, San Diego, CA 92127.

“**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 2.5% of the Consolidated Total Assets or revenues representing in excess of 2.5% 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 5.0% of Consolidated Total Assets or revenues representing in excess of 5.0% of total revenues of the Borrower and the Restricted Subsidiaries on a consolidated basis for such four-quarter period.

**“Incremental Commitment”** has the meaning assigned to such term in Section 2.21(1).

**“Incremental Equivalent Term Debt”** has the meaning assigned to such term in the Term Loan Credit Agreement.

**“Incremental Revolving Facility Increase”** has the meaning assigned to such term in Section 2.21(1).

**“Incremental Facility Amendment”** has the meaning assigned to such term in Section 2.21(5)(a).

**“Incremental Lender”** has the meaning assigned to such term in Section 2.21(4).

**“Incurrence Based Amounts”** has the meaning assigned to such term in Section 1.07(b).

**“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 3.21(1).

**“Intellectual Property Security Agreements”** shall have the meaning set forth in the Guaranty and Collateral Agreement.

**“Intercreditor Agreement”** means the Intercreditor Agreement, dated as of the Closing Date, by and among the Administrative Agent, the Collateral Agent, and Citibank, N.A., as administrative agent and collateral agent under the Term Loan Credit Agreement, and acknowledged by Holdings and the Borrower, 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 request by the Borrower to convert or continue a Borrowing in accordance with Section 2.07.

**“Interest Payment Date”** means (1) with respect to any Eurocurrency Revolving Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurocurrency Revolving Facility 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, in addition, the date of any refinancing or conversion of such Borrowing with or to a Borrowing of a different Type 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 Revolving Facility 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 (or, if agreed by all Lenders, 12 months or a period of less than one month), as the Borrower may elect, or the date any Eurocurrency Revolving Facility Borrowing is converted to an ABR Borrowing in accordance with Section 2.07 or repaid or prepaid in accordance with Section 2.09, 2.10 or 2.11; *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; and
- (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.

**“Inventory”** means, with respect to a Person, all of such Person’s now owned and hereafter acquired inventory (as defined in the UCC), goods and merchandise, wherever located, in each case, to be furnished under any contract of service or held for sale or lease, all returned goods, raw materials, work-in-process, finished goods (including embedded software), other materials, and supplies of any kind, nature or description which are used or consumed in such Person’s business or used in connection with the packing, shipping, advertising, selling, or

finishing of such goods, merchandise and other property, and all documents of title or other documents representing the foregoing.

**“Interpolated Screen Rate”** means, 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 the Quotation 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.

**“Issuing Bank”** means each Lender designated as an Issuing Bank pursuant to Section 2.05(12), in each case, in its capacity as an issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.05(10). The Issuing Banks on the Closing Date shall be those Lenders listed on Schedule 2.01 hereto. An Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” will include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

**“Issuing Bank Fees”** has the meaning assigned to such term in Section 2.12(2)(b).

**“Junior Financing”** means (1) any Indebtedness permitted to be incurred hereunder that is subordinated in right of payment to the Obligations or secured by Liens that are in all respects subordinated to the Liens securing the Obligations (other than the Term Loan

Obligations), (2) the Senior Notes or (3) any Permitted Refinancing Indebtedness in respect of the foregoing.

**“Junior Lien Intercreditor Agreement”** means a “junior lien” intercreditor agreement substantially in the form attached hereto as Exhibit G, or, if requested by the providers of Indebtedness to be secured on a junior basis to the Revolving 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 Revolving Loans.

**“Landlord Lien Reserve”** means any reserve established by the Collateral Agent pursuant to clause (8) of the definition of “Eligible Inventory.”

**“Landlord Lien State”** means any state in which a landlord’s claim for rent has priority by law over the Lien of the Collateral Agent in any of the Collateral.

**“Latest Maturity Date”** means, as of any date of determination, the latest Maturity Date of the Revolving Facility Commitments or any Extended Commitments in effect on such date.

**“L/C Disbursement”** means a payment or disbursement made by an Issuing Bank pursuant to a Letter of Credit.

**“L/C Participation Fee”** has the meaning assigned such term in Section 2.12(2)(a).

**“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 3.16(2).

**“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 and any Additional Lender. Unless the context otherwise requires, the terms “Lender” and “Lenders” shall include the Swingline Lender.

**“Lender Default”** means:

- (1) the refusal (which may be given verbally or in writing and has not been retracted) or failure of any Lender to make available its portion of any Borrowing or reimbursement obligations, which refusal or failure is not cured within two Business Days after the date of such refusal or failure, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s good faith determination that one or more conditions precedent to funding (each of which conditions

- precedent, together with any applicable Default, shall be specifically identified in such writing) has not been satisfied;
- (2) the failure of any Lender to pay over to the Administrative Agent, the Issuing Bank or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due;
  - (3) the failure of any Lender within three Business Days after request by the Administrative Agent, to confirm that it will comply with its funding obligations under the Revolving Facility; *provided* that such Lender will cease to be a Defaulting Lender pursuant to this clause (3) upon receipt of such written confirmation by the Administrative Agent and the Borrower;
  - (4) 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 Revolving Facility or under other similar agreements in which it commits to extend credit; or
  - (5) 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 Loans.

**“Letter of Credit”** has the meaning assigned to such term pursuant to Section 2.05.

**“Letter of Credit Commitment”** means, with respect to each Issuing Bank, the commitment of such Issuing Bank to issue Letters of Credit pursuant to Section 2.05. The Letter of Credit Commitments of each of the Issuing Banks on the Closing Date shall be those Commitments listed on Schedule 2.01 hereto. Any Issuing Bank shall be permitted at any time to increase its Letter of Credit Commitment with the written consent of the Borrower and notice to the Administrative Agent of such increase, so long as such Issuing Bank’s Letter of Credit Commitment does not exceed the Letter of Credit Sublimit.

**“Letter of Credit Request”** shall mean a request by the Borrower substantially in the form of Exhibit D-3 (or such other form as may be agreed between the Borrower and the Administrative Agent).

**“Letter of Credit Sublimit”** means the aggregate Letter of Credit Commitments of the Issuing Banks, in an amount not to exceed \$150.0 million.

**“LIBO Rate”** means, with respect to any Eurocurrency Borrowing for any Interest Period, the rate per annum equal to the arithmetic mean of the offered rates for deposits in Dollars with a term equivalent to such Interest Period by reference to 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 Quoted Rate”** means, for any day (or if such day is not a Business Day, the immediately preceding Business Day), a fluctuating rate per annum equal to the greater of (1) the Adjusted LIBO Rate for an interest period of one month as determined as of 11:00 a.m. (London, England time) on such day by reference to by reference to 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). for deposits in dollars (as set forth by 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, “LIBOR Quoted Rate” shall be the interest rate per annum equal to the Interpolated Screen Rate; and (2) 1.00%; *provided, however,* if the LIBOR Quoted Rate is less than zero, the LIBOR Quoted 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.

“**Line Cap**” means, at any time, the lesser of (1) the aggregate Revolving Facility Commitments at such time and (2) the Borrowing Base then in effect.

“**Liquidity Condition**” means and will exist during the period from (1) the date on which Excess Availability has been less than the greater of (a) \$30.0 million and (b) 10.0% of the Line Cap then in effect, in either case, for five consecutive Business Days, to (2) the date on which Excess Availability has been at least equal to the greater of (a) \$30.0 million and (b) 10.0% of the Line Cap then in effect, in either case, for 20 consecutive calendar days.

“**LLC Conversion**” has the meaning specified in the recitals hereto.

“**Loan Accounts**” means the loan accounts established on the books of the Administrative Agent.

“**Loan Documents**” means this Agreement, the Security Documents, the Intercreditor Agreement, any Junior Lien Intercreditor Agreement, any Note and, solely for the purposes of Sections 3.01, 3.02, and 8.01(3) hereof, the Fee Letter.

“**Loan Parties**” means Holdings, the Borrower, each Borrowing Base Party and the Subsidiary Loan Parties.

“**Loans**” means the Revolving Loans and the Swingline Loans and any other loans and advances of any kind made by the Administrative Agent, any Lender or any Affiliate of the Administrative Agent or any Lender pursuant to this Agreement.

“**Maintenance Capital Expenditures**” means, for any period, the portion of the aggregate amount of all Capital Expenditures of the Borrower for such period attributable to maintenance of property, plant or equipment of the Borrower and the Restricted Subsidiaries, as determined in good faith by a Responsible Officer of the Borrower.

“**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 Sponsor in an aggregate amount equal to or less than \$10.0 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 Parent, 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 Loan Parties and the Restricted Subsidiaries (taken as a whole);
- (2) the ability of the Loan Parties (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 of the Borrower or any Subsidiary Loan Party in an aggregate outstanding principal amount exceeding (1) if Excess Availability is less than or equal to \$62.5 million, \$25.0 million, or (2) if Excess Availability is greater than \$62.5 million, \$50.0 million.

“**Material Subsidiary**” means any Subsidiary other than an Immaterial Subsidiary.

“**Maturity Date**” means, as the context may require:

- (1) with respect to Revolving Facility Commitments existing on the Closing Date and Loans and Letters of Credit in respect thereof, January 26, 2021; and
- (2) with respect to any Extended Commitments and Loans and Letters of Credit in respect thereof, the final maturity date specified therefor in the applicable Extension Amendment.

“**Maximum Rate**” has the meaning assigned to such term in Section 10.09.

“**Merger**” has the meaning assigned to such term in the recitals hereto.

“**Merger Agreement**” has the meaning assigned to such term in the recitals hereto.

“**Merger Sub**” has the meaning assigned to such term in the introductory paragraph hereof.

“**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.

“**MTM**”: has the meaning assigned such term in the definition of “Designated Hedging Reserves.”

“**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 Orderly Liquidation Value**” means, with respect to Eligible Inventory, the net appraised liquidation value thereof (expressed as a percentage of the Cost of such Inventory) as determined from time to time by an Acceptable Appraiser in accordance with Section 5.07.

“**New York Courts**” has the meaning assigned to such term in Section 10.15(1).

“**Non-Consenting Lender**” has the meaning assigned to such term in Section 2.19(3).

“**Non-Ratio Based Incremental Facility Basket**” has the meaning assigned such term in Section 6.01(2)

“**Note**” has the meaning assigned to such term in Section 2.09(2).

“**Obligations**” means:

- (1) all amounts owing to any Agent, any Issuing Bank 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) all amounts owing to any Qualified Counterparty under any Specified Hedge Agreement; 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 shall not, in any event, include any Excluded Swap Obligation.

“**OFAC**” has the meaning assigned to such term in Section 3.20(3)(e).

“**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 Loan or Loan Document).

“**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 2.19(2)).

“**Overadvance**” has the meaning assigned to such term in Section 2.01(2).

“**Owned Material Real Property**” has the meaning assigned to such term in Section 3.16(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).

“**Payment Conditions**” means, and will be deemed to be satisfied with respect to any particular action as to which the satisfaction of the Payment Conditions is being determined if, after giving effect to the taking of such action, (1) no Default or Event of Default has occurred and is continuing, (2) Excess Availability for each day in the 30-day period prior to such action and on the date of such proposed action would exceed the greater of (a) 15% of the Line Cap then in effect and (b) \$55.0 million, in any such case, on a Pro Forma Basis, (3) the Fixed Charge Coverage Ratio would be at least 1.0 to 1.0 on a Pro Forma Basis giving effect to the subject action; *provided* that compliance with the Fixed Charge Coverage Ratio will not be required if after giving effect to the taking of such action, Excess Availability for each day in the 30-day period prior to such action and on the date of such proposed action would exceed the greater of 20% of the Line Cap then in effect and \$75.0 million, on a Pro Forma Basis, and (4) the

Administrative Agent has received an Officer's Certificate certifying as to the calculations and satisfaction of the conditions set forth in foregoing clauses (1) through and including (3) above, which calculations shall be true and correct in all material respects.

**"Participant Register"** has the meaning assigned to such term in Section 10.04(4).

**"Payment Office"** means the office of the Administrative Agent located at Citibank, N.A., 1615 Brett Road, Building III, New Castle DE 19720, Attention: Loan Administration (Email [global.loans.support@citi.com](mailto:global.loans.support@citi.com); Telephone No. (302) 894-6010) 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).

**"Permitted Cure Securities"** means any equity securities of Holdings other than Disqualified Stock.

**"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 Arrangers 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 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 Inventory Locations”** means each location listed on Schedule 1.01(2), and from time to time each other location within the United States which the Borrower has notified the Administrative Agent is a location at which Inventory of a Borrowing Base Party is maintained.

**“Permitted Investment”** has the meaning assigned to such term in Section 6.04.

**“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);
- (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 Term Loan 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 Term Loan 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, or on a junior basis to, the Revolving Facility Claims with Indebtedness that is secured on a junior basis, to the Revolving Facility Claims, 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

- (6) in the case of a Refinancing of the Term Loan 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 Revolving Loans with Indebtedness that is secured on a pari passu basis with the Revolving 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.

“**Pro Forma Basis**” or “**Pro Forma**” means, with respect to the calculation of the Senior Secured First Lien Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge 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.

“**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.

“**Protective Advances**” has the meaning assigned to such term in Section 2.01(3).

“**Public Lender**” has the meaning assigned to such term in Section 10.17(2).

“**Purchase Date**” means the date that the Merger is required to be consummated pursuant to the Merger Agreement.

“**Purchase Documents**” means the collective reference to the Merger Agreement, all material exhibits and schedules thereto and all agreements expressly contemplated thereby.

“**Qualified Cash**” means the amount of unrestricted cash and cash equivalents of the Loan Parties at such time (to the extent held in investment accounts and other accounts agreed between the Borrower and the Administrative Agent) either (1) in a segregated restricted deposit account maintained with the Administrative Agent subject to a Blocked Account Agreement or (2) in a segregated restricted deposit account subject to a Blocked Account Agreement; *provided* that the applicable account bank (if not the Administrative Agent) shall provide daily reports to the Administrative Agent setting forth the balances in such accounts and such information as the Administrative Agent may reasonably request.

“**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) 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.

**“Reasonable Credit Judgment”** means reasonable credit judgment in accordance with customary business practices for comparable asset-based lending transactions; *provided* that, as it relates to the establishment of new Reserves (other than any defined Reserves that are expressly included in the definition thereof) or the adjustment or imposition of exclusionary criteria (other than those expressly set forth in the definitions of “Qualified Cash”, “Eligible Inventory” or “Eligible Credit Card Receivables”), Reasonable Credit Judgment will require that:

- (1) such establishment, adjustment or imposition be based on the analysis of facts or events first occurring or first discovered by the Administrative Agent after the Closing Date that are materially different from facts or events known to the Administrative Agent on the

Closing Date; *provided* that, this clause (1) shall not apply to the Administrative Agent's establishment of a Royalty Reserve in respect of any Royalties in existence on the Closing Date;

- (2) the contributing factors to the imposition of any Reserve will not duplicate (a) the exclusionary criteria set forth in definitions of "Eligible Accounts," "Eligible Inventory" or "Qualified Cash," as applicable (and vice versa), or (b) any reserves deducted in computing book value; and
- (3) the amount of any such Reserve so established or the effect of any adjustment or imposition of exclusionary criteria be a reasonable quantification of the incremental dilution of the Borrowing Base attributable to such contributing factors.

**"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”** and **“Refinancing”** will have correlative meanings.

**“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.

“**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.

“**Report**” means reports prepared by the Administrative Agent, the Collateral Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the Loan Parties’ assets from information furnished by or on behalf of the Loan Parties, after the Administrative Agent or Collateral Agent has exercised its rights of inspection pursuant to this Agreement, which Report may be distributed to the Lenders by the Administrative Agent, subject to the provisions of Section 10.16.

“**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).

“**Required Financial Statements**” has the meaning assigned to such term in Section 5.04(2).

“**Required Lenders**” means, at any time, Lenders having (1) Revolving Facility Credit Exposure and (2) Available Unused Commitments that, taken together, represent more than 50.0% of the sum of (a) all Revolving Facility Credit Exposure and (b) the total Available Unused Commitments at such time. The Revolving Facility Credit Exposure and Available Unused 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 Loan Parties to make payment of the Loans or Commitments of such Defaulting Lender as compared to other Lenders holding the same class of 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 Loans or Commitments of such Defaulting Lender;
  - (c) extensions of final maturity or the due date of any amortization, interest, fee or premium payment applicable to the Loans or Commitments of such Defaulting Lender; and
- (3) matters requiring the approval of each Lender under Sections 10.08(2)(vi) and (vii).

“**Reserves**” means, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves (including Ad Valorem Tax Reserves, Charitable Reserves, Customer Credit Liability Reserves, Customer Deposits Reserves, Designated Cash Management Reserves, Designated Hedging Reserves, Shrink Reserves, Landlord Lien Reserves, and reserves against Eligible Accounts, Eligible Inventory and Qualified Cash) that the Administrative Agent from time to time determines in its Reasonable Credit Judgment as being appropriate to reflect:

- (1) the impediments to the Administrative Agent’s ability to realize upon the Collateral included in the Borrowing Base in accordance with the Loan Documents;
- (2) claims and liabilities that will need to be satisfied, or will dilute the amounts received by holders of Loans, in connection with the realization upon such Collateral; or
- (3) criteria, events, conditions, contingencies or risks that adversely affect any component of the Borrowing Base, the Collateral included therein or the validity or enforceability of the Loan Documents or any material remedies of the Administrative Agent, the Collateral Agent, each Issuing Bank and each Lender under the Loan Documents with respect to such Collateral.

The establishment or increase of any Reserve will be limited to the exercise by the Administrative Agent of Reasonable Credit Judgment, upon at least five Business Days’ prior written notice to the Borrower (which notice will include a reasonably detailed description of the Reserve being established); *provided* that upon such notice, the Borrower will not be permitted to borrow so as to exceed the Borrowing Base after giving effect to such new or modified Reserves; *provided, further*, that any Designated Hedging Reserve or Designated Cash Management Reserve shall not require such five Business Day prior notice and shall be effectively immediately upon written notice to the Borrower. During such five Business Day period, the Administrative Agent will, if requested, discuss any such new or modified Reserve with the Borrower, and the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such new or modified Reserve no longer exists or exists

in a manner that would result in the establishment of a lower Reserve, in each case, in a manner and to the extent reasonably satisfactory to the Administrative Agent. Notwithstanding anything to the contrary herein, (a) the amount of any such Reserve will have a reasonable relationship to the event, condition or other matter that is the basis for such Reserve and (b) no Reserves will be duplicative of other reserves or items that are otherwise addressed, excluded or already accounted for through eligibility criteria (including collection/advance rates).

**“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.

**“Revolving Facility”** means the Revolving Facility Commitments (including any Incremental Commitments) and the extensions of credit made hereunder by the Revolving Lenders.

**“Revolving Facility Borrowing”** means a Borrowing comprised of Revolving Loans.

**“Revolving Facility Claims”** has the meaning assigned to the term “ABL Claims” in the Intercreditor Agreement.

**“Revolving Facility Commitment”** means, with respect to a Lender, the commitment of such Lender to make Revolving Loans pursuant to Section 2.01, expressed as an amount representing the maximum aggregate permitted amount of such Lender’s Revolving Facility Credit Exposure hereunder, as such commitment may be (1) reduced from time to time pursuant to Section 2.08, (2) reduced or increased from time to time pursuant to assignments by or to such Lender under Section 10.04 or (3) increased from time to time under Section 2.21. The initial amount of each Lender’s Revolving Facility Commitment is set forth on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Lender has assumed its Revolving Facility Commitment, as applicable. The initial aggregate amount of the Lenders’ Revolving Facility Commitments is \$500.0 million.

**“Revolving Facility Credit Exposure”** means, at any time, the sum of:

- (1) the aggregate principal amount of the Revolving Loans outstanding at such time;
- (2) the Swingline Exposure at such time; and

- (3) the Revolving L/C Exposure at such time. The Revolving Facility Credit Exposure of any Revolving Lender at any time will be, subject to adjustment as expressly provided in Section 2.26, the product of (a) such Revolving Lender's Revolving Facility Percentage and (b) the aggregate Revolving Facility Credit Exposure of all Revolving Lenders, collectively, at such time.

**"Revolving Facility Percentage"** means, with respect to any Revolving Lender, the percentage of the total Revolving Facility Commitments represented by such Lender's Revolving Facility Commitment. If the Revolving Facility Commitments have terminated or expired, the Revolving Facility Percentages will be determined based upon the Revolving Facility Commitments most recently in effect, giving effect to any assignments pursuant to Section 10.04.

**"Revolving L/C Exposure"** means at any time the sum of (1) the aggregate undrawn face amount of all Letters of Credit outstanding at such time and (2) the aggregate principal amount of all L/C Disbursements that have not yet been reimbursed at such time. The Revolving L/C Exposure of any Revolving Lender at any time will mean its Revolving Facility Percentage of the aggregate Revolving L/C Exposure at such time. 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 International Standard Practices, International Chamber of Commerce No. 590, such Letter of Credit will be deemed to be "outstanding" in the amount so remaining available to be drawn. Unless otherwise specified herein, the amount of a Letter of Credit at any time will be deemed to be the stated amount of such Letter of Credit in effect at such time; *provided that*, with respect to any Letter of Credit that by its terms or the terms of any document related thereto provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit will 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.

**"Revolving Lender"** means each Lender with a Revolving Facility Commitment or outstanding Revolving Facility Credit Exposure.

**"Revolving Loans"** has the meaning assigned to such term in Section 2.01(1) and will include any Overadvances and Protective Advances.

**"Royalties"** means all royalties, fees, expense reimbursement and other amounts payable by any Borrowing Base Party under a license of Intellectual Property.

**"Royalty Reserve"** means an amount equal to all accrued Royalties that are then unpaid, whether or not then due and payable by any Borrowing Base Party.

**"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 Managing Agents**” means each of Wells Fargo Bank, National Association and Bank of America, N.A.

“**Senior Notes**” means the floating rate senior notes due January 26, 2024, issued on or prior to the date hereof pursuant to the Senior Notes Indenture.

“**Senior Notes Documents**” means, collectively, the 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 Senior Notes.

“**Senior Notes Indenture**” means that certain indenture, dated as of January 26, 2016, among the Senior Notes Trustee, the Borrower and the guarantors party thereto.

“**Senior Notes Trustee**” means Wells Fargo Bank, National Association, together with its permitted successors and assigns.

“**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.

“**Settlement Date**” has the meaning assigned to such term in Section 2.18(2).

“**Shrink**” means Inventory that is lost, misplaced, or stolen. “**Shrink Reserve**” means an amount reasonably estimated by the Administrative Agent to be equal to that amount which is required in order that the Shrink reflected in current stock ledger of the Borrowing Base Parties would be reasonably equivalent to the Shrink calculated as part of the Borrower’s most recent physical inventory (it being understood and agreed that no Shrink Reserve established by the Administrative Agent shall be duplicative of any Shrink as so reflected in the current stock ledger of the Borrowing Base Parties or estimated by the Borrower for purposes of computing the Borrowing Base other than at month’s end).

“**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, any Borrowing Base Party 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 Term Loan Credit Agreement).

**“Specified Merger Agreement Representations”** means such of the representations and warranties made with respect to the Company and its Subsidiaries by the Company in the Merger Agreement to the extent a breach of such representations and warranties is material to the interests of the Lenders.

**“Specified Representations”** means the representations and warranties of each of Merger Sub, the Company 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 3.09(2);
- (6) Section 3.10;
- (7) Section 3.15(1) (subject to Permitted Liens and subject to the Certain Funds Provisions);
- (8) Section 3.17; and
- (9) Section 3.20.

**“Specified Segregated Accounts”** means those segregated DDAs that the Borrower designates to the Administrative Agent from time to time in writing, into which funds from the sale of Inventory (a) held by the Borrower or any Restricted Subsidiary on a consignment basis or (b) relating to a leased department within retail stores of the Borrower or any Restricted Subsidiary, in each case, which Inventory is not owned by a Loan Party (and would not be reflected on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP).

**“Specified Transaction”** means any Investment (including any Limited Condition Acquisition), disposition, incurrence or repayment of Indebtedness, Restricted Payment, Subsidiary designation, Incremental Revolving Facility Increase 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 Incremental Commitment or Extended Commitment) 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.”

**“Sponsor Model”** means the model provided by the Sponsors to the Arrangers on November 17, 2015.

**“Sponsors”** means, any of CVC and Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised 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.

**“Standby Letter of Credit”** has the meaning assigned to such term in Section 2.05(1).

**“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 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 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 Holdings that becomes, or is required to become, a party to the Collateral Agreement after the Closing Date. For the avoidance of doubt, “Subsidiary Loan Parties” includes all Borrowing Base Parties.

“**Supermajority Lenders**” has the meaning assigned to such term in clause (v) of the proviso to Section 10.08(2).

“**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.

“**Swingline Borrowing**” means a Borrowing comprised of Swingline Loans.

“**Swingline Borrowing Request**” means a request by the Borrower substantially in the form of Exhibit D-2.

“**Swingline Commitment**” means, with respect to any Swingline Lender, the commitment of such Swingline Lender to make Swingline Loans pursuant to Section 2.04. The aggregate amount of the Swingline Commitments on the Closing Date is \$45.0 million.

“**Swingline Exposure**” means, at any time, the aggregate principal amount of all outstanding Swingline Borrowings at such time. The Swingline Exposure of any Revolving Lender at any time will mean its Revolving Facility Percentage of the aggregate Swingline Exposure at such time.

“**Swingline Lender**” means Citibank, N.A., in its capacity as a lender of Swingline Loans to the Borrower.

“**Swingline Loans**” means the swingline loans made to the Borrower pursuant to Section 2.04.

“**Syndication Agents**” means each of Barclays Bank PLC, Wells Fargo Bank, National Association and Bank of America, N.A.

“**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 Loan Credit Agreement**” means the Term Loan Credit Agreement, dated as of the Closing Date, among Holdings, Merger Sub, Successor Borrower, the lenders party thereto and Citibank, N.A., as administrative agent and collateral agent, initially in respect of \$2,525.0 million of term loans made available on the Closing Date, as such document may be amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

“**Term Loan Documents**” means the Term Loan Credit Agreement and the other “Loan Documents” under and as defined in the Term Loan Credit Agreement, as each such

document may be amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

“**Term Loan Security Documents**” means the “*Security Documents*” as defined in the Term Loan Credit Agreement.

“**Term Loan Obligations**” means the “*Obligations*” as defined in the Term Loan Credit Agreement.

“**Term Priority Collateral**” means “*Term Loan 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.

“**Trade Letter of Credit**” has the meaning assigned to such term in Section 2.05(1).

“**Transaction Documents**” means the Purchase Documents, the Loan Documents, the Senior Notes Documents and the Term Loan Documents.

“**Transactions**” means, collectively, the transactions to occur pursuant to the Transaction Documents, including:

- (1) the consummation of the Merger;
- (2) the execution and delivery of the Loan Documents, the creation of the Liens pursuant to the Security Documents and the initial borrowings hereunder;
- (3) the Equity Contribution;
- (4) the execution and delivery of the Term Loan Documents, the creation of the Liens pursuant to the Term Loan Security Documents and the initial borrowings under the Term Loan Credit Agreement;
- (5) the execution and delivery of the Senior Notes Documents and the issuance of the Senior Notes under the Senior Notes Indenture;
- (6) the Closing Date Refinancing;
- (7) the LLC Conversion; and
- (8) the payment of all fees, costs and expenses in connection with the foregoing.

“**Trust Account**” means any accounts or trusts used solely to hold Trust Funds.

“**Trust Funds**” means, to the extent segregated from other assets of the Loan Parties in a segregated account that contains amounts comprised solely and exclusively of such Trust Funds, cash, Cash Equivalents or other assets comprised solely of:

- (1) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Loan Party’s employees;
- (2) all taxes required to be collected, remitted or withheld (including federal and state withholding taxes (including the employer’s share thereof)); and
- (3) any other funds which the Borrower or any of the Restricted Subsidiaries holds in trust or as an escrow or fiduciary for another person which is not a Restricted Subsidiary of the Borrower.

“**Type**” means, when used in respect of any Loan or Borrowing, the Rate by reference to which interest on such Loan or on the 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 any Loan Party) 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 the Payment Conditions.

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.

**“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 covenants, 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 Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge 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 Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge 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 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; *provided*, that (other than solely with respect to the incurrence test under which such Limited Condition Acquisition is being made) Consolidated EBITDA, Consolidated Total Assets or assets and Consolidated Net Income of any target of such Limited Condition Acquisition can only be used in the determination of the relevant ratio and baskets if and when such Limited Condition Acquisition has closed.

(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 Net Leverage Ratio test, and/or any Fixed Charge Coverage Ratio test) (any such amounts, 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 Revolving Facility (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 Revolving Facility 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      Commitments. Subject to the terms and conditions set forth herein:

(1) Revolving Loans.

- (a) Each Lender agrees to make loans (“**Revolving Loans**”) to the Borrower from time to time during the Availability Period in amounts not to exceed (except for the Swingline Lender with respect to Swingline Loans) such Lender’s Revolving Facility Percentage of the Borrowing Base, and in an aggregate principal amount that will not result in (i) such Lender’s Revolving Facility Credit Exposure exceeding such Lender’s Revolving Facility Commitment or (ii) the total Revolving Facility Credit Exposure exceeding the Total Revolving Facility Commitments; provided that for the avoidance of doubt such Revolving Loans shall not exceed the Line Cap. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.
- (b) Notwithstanding the foregoing, on the Closing Date only the following Revolving Loans will be made available:
  - (i) Revolving Loans in such amount required in respect of the Transaction Tax Benefits (as defined in the Merger Agreement) in an amount not exceed \$50.0 million; *plus*
  - (ii) Revolving Loans in such amount required for working capital related purposes (including repayment of loans under the Existing ABL Credit Agreement); *plus*

(iii) such amounts necessary to cash collateralize letters of credit issued under the Existing ABL Credit Agreement to the extent not backstopped with a Letter of Credit issued hereunder,

- (2) Overadvances. Insofar as the Borrower may request and the Administrative Agent or Required Lenders may be willing in their sole discretion to make Revolving Loans to the Borrower at a time when the Revolving Facility Credit Exposure exceeds, or would exceed with the making of any such Revolving Loan, the Borrowing Base (any such Loan being herein referred to individually as an “*Overadvance*”), the Administrative Agent will enter such Overadvances as debits in the applicable Loan Account. All Overadvances will be repaid on demand, will be secured by the Collateral and will bear interest as provided in this Agreement for Revolving Loans generally. Any Overadvance made pursuant to the terms hereof will be made to the Borrower by all Lenders ratably in accordance with their respective Revolving Facility Percentages. Overadvances in the aggregate amount of \$10.0 million or less may, unless a Default or Event of Default has occurred and is continuing, be made in the sole, reasonable discretion of the Administrative Agent; *provided* that the Required Lenders may at any time revoke the Administrative Agent’s authorization to make future Overadvances; *provided* that no existing Overadvances will be subject to such revocation and any such revocation must be in writing and will become effective prospectively upon the Administrative Agent’s receipt thereof. Overadvances in an aggregate amount of more than \$10.0 million but less than \$25.0 million may, unless a Default or Event of Default has occurred and is continuing, be made with the consent of the Required Lenders. Overadvances in an aggregate amount of \$25.0 million or more and Overadvances to be made after the occurrence and during the continuation of a Default or Event of Default will require the consent of all Revolving Lenders. The foregoing notwithstanding, in no event, unless otherwise consented to by all Revolving Lenders will:
- (a) any Overadvances be outstanding for more than 90 consecutive days;
  - (b) the Administrative Agent or Lenders make any additional Overadvances unless 30 days or more have expired since the last date on which any Overadvances were outstanding; or
  - (c) the Administrative Agent make Revolving Loans on behalf of Lenders under this Section 2.01(2) to the extent such Revolving Loans would cause a Lender’s share of the Revolving Facility Credit Exposure to exceed such Lender’s Revolving Facility Commitment or cause the aggregate Revolving Facility Commitments to be exceeded.
- (3) Protective Advances. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent, in its sole, reasonable discretion, may make Revolving Loans to the Borrower on behalf of the Lenders, so long as the aggregate amount of such Revolving Loans will not exceed 5.0% of the Borrowing Base, if the Administrative Agent, in its Reasonable Credit Judgment, deems that such Revolving Loans are necessary or desirable to:

- (a) protect all or any portion of the Collateral;
- (b) enhance the likelihood or maximize the amount of repayment of the Loans and the other Obligations; or
- (c) pay any other amount chargeable to the Borrower pursuant to this Agreement (such as Revolving Loans, “*Protective Advances*”);

*provided* that (i) in no event will the Revolving Facility Credit Exposure exceed the aggregate Revolving Facility Commitments and (ii) the Required Lenders under the Revolving Facility may at any time revoke the Administrative Agent’s authorization to make future Protective Advances; *provided, further*, that any such revocation must be in writing and will become effective prospectively upon the Administrative Agent’s receipt thereof and existing Protective Advances will not be subject to thereto.

Each applicable Lender will be obligated to advance to the Borrower its Revolving Facility Percentage of each Protective Advance made in accordance with this Section 2.01(3). If Protective Advances are made in accordance with the preceding sentence, then all Revolving Lenders will be bound to make, or permit to remain outstanding, such Protective Advances based upon their Revolving Facility Percentages in accordance with the terms of this Agreement. All Protective Advances will be repaid by the Borrower on demand, will be secured by the Collateral and will bear interest as provided in this Agreement for Revolving Loans generally. No Protective Advance may remain outstanding for more than forty-five (45) days without the consent of the Required Lenders.

- (4) Reserves. The Administrative Agent may at any time and from time to time in the exercise of its Reasonable Credit Judgment establish and increase or decrease Reserves in accordance with the terms of the definition thereof.

#### SECTION 2.02 Loans and Borrowings.

- (1) Each Loan will be made as part of a Borrowing consisting of Loans of the same Type made by the Lenders ratably in accordance with their respective Commitments (or, in the case of Swingline Loans, in accordance with their respective Swingline Commitments). The failure of any Lender to make any 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 Loans as required.
- (2) Subject to Section 2.14, each Borrowing (other than a Swingline Borrowing) will be comprised entirely of ABR Loans or Eurocurrency Revolving Loans as the Borrower may request in accordance herewith. Each Swingline Borrowing will be an ABR Borrowing. Each Lender at its option may make any ABR Loan or Eurocurrency Revolving Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option will not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement and such Lender will not be entitled to any amounts payable under Section 2.15 or 2.17 solely

in respect of increased costs resulting from such exercise and existing at the time of such exercise.

- (3) At the commencement of each Interest Period for any Eurocurrency Revolving Facility Borrowing, such Borrowing will be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum. At the time that each ABR Revolving Facility Borrowing is made, such Borrowing will be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum; *provided* that an ABR Revolving Facility Borrowing may be in an aggregate amount that is equal to the entire unused available balance of the Revolving Facility Commitments or that is required to finance the reimbursement of an L/C Disbursement as contemplated by Section 2.05(5). Each Swingline Borrowing will be in an amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum. Borrowings of more than one Type may be outstanding at the same time; *provided* that there will not at any time be more than ten Eurocurrency Revolving Facility Borrowings outstanding.
- (4) Notwithstanding any other provision of this Agreement, no Borrowing Base Party will 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 2.03      Requests for Borrowings.

- (1) To request a Revolving Facility Borrowing, (a) with respect to any initial ABR Borrowing on the Closing Date, the Borrower will deliver to the Administrative Agent a Borrowing Request not later than 2:00 p.m., New York City time, one Business Day before the anticipated Closing Date (or such later time as the Administrative Agent may agree in its sole discretion), requesting that the Lenders make the Loans on the Closing Date; *provided* that such Borrowing Request may be conditioned upon occurrence of the Closing Date and (b) with respect to any other Borrowing, the Borrower will notify the Administrative Agent of such request by telephone (i) in the case of a Eurocurrency Revolving Facility Borrowing, not later than 1:30 p.m., New York City time, three Business Days before the date of the proposed Borrowing (or such later time as the Administrative Agent may agree in its sole discretion) or (ii) in the case of an ABR Borrowing, not later than 1:00 p.m., New York City time, on the date of the proposed Borrowing; *provided* that any such notice of an ABR Borrowing to finance the reimbursement of an L/C Disbursement as contemplated by Section 2.05(5) may be given not later than 12:00 noon, New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request will be irrevocable and will be confirmed promptly by hand delivery, facsimile or e mail to the Administrative Agent of a written Borrowing Request substantially in the form of Exhibit D-1 and signed by the Borrower.
- (2) Each such telephonic and written Borrowing Request will specify the following information in compliance with Section 2.02:
  - (a) the aggregate amount of the requested Borrowing, which amount will not exceed Excess Availability;

- (b) the date of such Borrowing, which will be a Business Day;
  - (c) whether such Borrowing is to be an ABR Borrowing or a Eurocurrency Revolving Facility Borrowing;
  - (d) in the case of a Eurocurrency Revolving Facility Borrowing, the initial Interest Period to be applicable thereto, which will be a period contemplated by the definition of the term "Interest Period;" and
  - (e) the location and number of the Borrower's account to which funds are to be disbursed.
- (3) Disbursement. The Borrower irrevocably authorizes the Administrative Agent to disburse the proceeds of each Loan requested pursuant to this Section 2.03. The proceeds of each Revolving Loan requested under this Section 2.03 will be disbursed by the Administrative Agent in immediately available funds and in the same form as received from the Lenders, in the case of a borrowing on the Closing Date permitted under Section 2.01(1), in accordance with the terms of the written disbursement letter from the Borrower and, in the case of each Borrowing after the Closing Date, by wire transfer to such bank account as may be agreed upon by the Borrower and the Administrative Agent, from time to time or elsewhere if pursuant to a written direction from the Borrower. If at any time any Loan is funded in excess of the amount requested by the Borrower, the Borrower agrees to repay the excess to the Administrative Agent immediately upon notice thereof to the Borrower from the Administrative Agent or any Lender.
- (4) If no election as to the Type of Revolving Facility Borrowing is specified, then the requested Revolving Facility Borrowing will be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurocurrency Revolving Facility Borrowing, then the Borrower will be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent will advise the Lenders of the details thereof and of the amount of each such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04      Swingline Loans.

- (1) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount at any time outstanding that will not result in (a) the aggregate principal amount of outstanding Swingline Loans exceeding the Swingline Commitment; (b) the Revolving Facility Credit Exposure exceeding the total Revolving Facility Commitments; or (c) the Revolving Facility Credit Exposure of all Lenders exceeding the Borrowing Base; *provided* that the Swingline Lender will not be required to make a Swingline Loan to refinance an outstanding Swingline Borrowing. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.
- (2) To request a Swingline Borrowing, the Borrower will notify the Administrative Agent and the Swingline Lender of such request by telephone (confirmed by a Swingline

Borrowing Request by email or facsimile), not later than 2:00 p.m., New York City time, on the day of a proposed Swingline Borrowing. Each such notice and Swingline Borrowing Request will be irrevocable and will specify the requested (a) date (which will be a Business Day) and (b) amount of the Swingline Borrowing. The Swingline Lender will consult with the Administrative Agent as to whether the making of the Swingline Loan is in accordance with the terms of this Agreement prior to the Swingline Lender funding such Swingline Loan. The Swingline Lender will make each Swingline Loan in accordance with Section 2.02(2) on the proposed date thereof by wire transfer of immediately available funds by 5:00 p.m., New York City time, to the account of the Borrower (or, in the case of a Swingline Borrowing made to finance the reimbursement of an L/C Disbursement as provided in Section 2.05(5), by remittance to the applicable Issuing Bank); *provided* that the Swingline Lender will not be obligated to make any Swingline Loan at any time when any Lender is at such time a Defaulting Lender, unless the Swingline Lender (i) is satisfied in its reasonable discretion that the related exposure will be 100% covered by the Commitments of the non-Defaulting Lenders pursuant to clause (3) below or (ii) has otherwise entered into satisfactory arrangements with the Borrower or such Lender to eliminate the Swingline Lender's risk with respect to such Lender.

(3)

- (a) The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., New York City time, on any Business Day require the Revolving Lenders to acquire participations by 2:00 p.m. on such Business Day in all or a portion of the outstanding Swingline Loans made by it. Such notice will specify the aggregate amount of such Swingline Loans in which the Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each such Lender, specifying in such notice such Revolving Lender's Revolving Facility Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent for the account of the Swingline Lender, such Revolving Lender's Revolving Facility Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its respective obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and will not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or an Event of Default or reduction or termination of the Commitments, and that each such payment will be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender will comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.06 with respect to Loans made by such Revolving Lender (and Section 2.06 will apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent will promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders.

- (b) The Administrative Agent will notify the Borrower of any participations in any Swingline Loan acquired pursuant to paragraph (3)(a), and thereafter payments in respect of such Swingline Loan will be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein will be promptly remitted to the Administrative Agent and any such amounts received by the Administrative Agent will be promptly remitted by the Administrative Agent to the Revolving Lenders that made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; *provided* that any such payment so remitted will be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to paragraph (3)(a) will not relieve the Borrower of any default in the payment thereof.
- (4) If the Maturity Date in respect of any tranche of Revolving Facility Commitments occurs at a time when Extended Commitments are in effect, then (i) on such Maturity Date all then outstanding Swingline Loans shall be repaid in full on such date (and there shall be no adjustment to the participations in such Swingline Loans as a result of the occurrence of such Maturity Date) or refinanced with a borrowing of an Extension pursuant to Section 2.23; *provided* that, if on the occurrence of the such Maturity Date (after giving effect to any repayments of Revolving Loans and any reallocation of Letter of Credit participations as contemplated in Section 2.05), there shall exist sufficient unutilized Extended Commitments so that the respective outstanding Swingline Loans could be incurred pursuant to the Extended Commitments which will remain in effect after the occurrence of such Maturity Date, then there shall be an automatic adjustment on such date of the participations in such Swingline Loans and same shall be deemed to have been incurred solely pursuant to the Extended Commitments and such Swingline Loans shall not be so required to be repaid in full on such Maturity Date.

SECTION 2.05      Letters of Credit.

- (1) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of (a) trade letters of credit in support of trade obligations of the Borrower or any Subsidiary Loan Party incurred in the ordinary course of business (such letters of credit issued for such purposes, “*Trade Letters of Credit*”) and (b) standby letters of credit issued for any other lawful purposes of the Borrower or any Subsidiary Loan Party (such letters of credit issued for such purposes, “*Standby Letters of Credit*”) for their own account or for the account of any Subsidiary in a form reasonably acceptable to the applicable Issuing Bank, at any time and from time to time during the Availability Period and prior to the date that is five Business Days prior to the Maturity Date; *provided*, that in no event shall Barclays, Credit Suisse, or Royal Bank of Canada, in each case, to the extent they are Issuing Banks hereunder, be required to issue any Trade Letters of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, an Issuing Bank

relating to any Letter of Credit, the terms and conditions of this Agreement will control. “*Letters of Credit*” will include Trade Letters of Credit and Standby Letters of Credit and the Existing Letters of Credit. Each Existing Letter of Credit will be deemed to have been issued under this Section 2.05 on the Closing Date.

(2) Notice of Issuance, Amendment, Renewal, Extension.

- (a) To request the issuance of a Letter of Credit (or the amendment, renewal (other than an automatic extension in accordance with paragraph (3) of this Section 2.05) or extension of an outstanding Letter of Credit), the Borrower will deliver by hand or facsimile (or transmit by e-mail, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent three Business Days in advance of the requested date of issuance, amendment or extension (or such shorter period as the Administrative Agent and the Issuing Bank in their sole discretion may agree) a Letter of Credit Request requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment or extension (which will be a Business Day), the date on which such Letter of Credit is to expire (which will comply with paragraph (3) of this Section 2.05), the amount of such Letter of Credit, the name and address of the beneficiary thereof, whether such Letter of Credit constitutes a Standby Letter of Credit or a Trade Letter of Credit, and such other information as is necessary to issue, amend or extend such Letter of Credit. If requested by the applicable Issuing Bank, the Borrower will also submit a letter of credit application on such Issuing Bank’s standard form in connection with any request for a Letter of Credit. A Letter of Credit will be issued, amended or extended only if (and upon issuance, amendment or extension of each Letter of Credit, the Borrower will be deemed to represent and warrant that), after giving effect to such issuance, amendment or extension:
- (i) the Revolving L/C Exposure will not exceed the Letter of Credit Sublimit; and
  - (ii) the Revolving Facility Credit Exposure will not exceed the Line Cap.
- (b) Notwithstanding anything to the contrary contained herein, the Issuing Bank will not issue (or be obligated to issue) any Letter of Credit if:
- (i) any order, judgment or decree of any Governmental Authority or arbitrator by its terms purports to enjoin or restrain the Issuing Bank from issuing such Letter of Credit;
  - (ii) any applicable law or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank prohibits the issuance of letters of credit generally;

- (iii) such Letter of Credit imposes upon the Issuing Bank any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date;
- (iv) such Letter of Credit imposes upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Bank in good faith deems material to it;
- (v) any Lender is at such time a Defaulting Lender, unless the Issuing Bank (A) is satisfied in its reasonable discretion that the related exposure will be 100% covered by the Commitments of the non-Defaulting Lenders pursuant to Section 2.26(1) or (B) has otherwise entered into satisfactory arrangements with the Borrower or such Lender to eliminate the Issuing Bank's risk with respect to such Lender; or
- (vi) such Letter of Credit issuance would cause such Lender's Revolving L/C Exposure to exceed such Lender's Letter of Credit Commitment.

(3) Expiration Date.

- (a) Each Standby Letter of Credit will expire at or prior to the close of business on the earlier of (i) the date one year (unless otherwise agreed upon by the Administrative Agent and the Issuing Bank in their sole discretion) after the date of issuance of such Standby Letter of Credit (or, in the case of any extension thereof, one year (unless otherwise agreed upon by the Administrative Agent and the Issuing Bank in their sole discretion) after such renewal or extension) and (ii) the date that is five Business Days prior to the Maturity Date; *provided* that any Standby Letter of Credit with a one-year tenor may provide for the automatic extension thereof for additional one-year periods (which will in no event extend beyond the date referred to in the preceding clause (ii)) so long as such Standby Letter of Credit permits the Issuing Bank to prevent any such extension at least once in each 12-month period (commencing with the date of issuance of such Standby Letter of Credit) by giving prior notice to the beneficiary thereof within a time period during such 12-month period to be agreed upon at the time such Standby Letter of Credit is issued; *provided, further*, that if the Issuing Bank and the Administrative Agent each consent in their sole discretion, the expiration date of any Standby Letter of Credit may extend beyond the date referred to in clause (ii) above; and, *provided, further*, that (A) if any such Standby Letter of Credit is outstanding or is issued after the date that is 30 days prior to the Maturity Date, the Borrower will provide cash collateral pursuant to documentation reasonably satisfactory to the Administrative Agent and the relevant Issuing Bank in an amount equal to 103% of the face amount of each such Standby Letter of Credit on or prior to the date that is 30 days prior to the Maturity Date or, if later, such date of issuance, and (B) each Revolving Lender's participation in any undrawn Letter of Credit that is outstanding on the Maturity Date will terminate on the Maturity Date.

- (b) Each Trade Letter of Credit will expire on the earlier of (A) 180 days after such Trade Letter of Credit's date of issuance or (B) the date that is five Business Days prior to the Maturity Date.
- (4) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Revolving Lenders, such Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Revolving Lender's Revolving Facility Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, its Revolving Facility Percentage of each L/C Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (5) of this Section 2.05, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and will not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or Event of Default or reduction or termination of the Commitments, and that each such payment will be made without any offset, abatement, withholding or reduction whatsoever.
- (5) Reimbursement.
- (a) If the applicable Issuing Bank makes any L/C Disbursement in respect of a Letter of Credit, the Borrower will reimburse such L/C Disbursement by paying to the Administrative Agent an amount equal to such L/C Disbursement not later than 2:00 p.m., New York City time, on the first Business Day after the Borrower receives notice under paragraph (8) of this Section 2.05 of such L/C Disbursement (or the second Business Day, if such notice is received after 12:00 noon, New York City time), together with accrued interest thereon from the date of such L/C Disbursement at the rate applicable to ABR Loans; *provided* that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.04 that such payment be financed with an ABR Revolving Facility Borrowing or a Swingline Borrowing, as applicable, in an equivalent amount and, to the extent so financed, the Borrower's obligations to make such payment will be discharged and replaced by the resulting ABR Revolving Facility Borrowing or Swingline Borrowing. If such Letter of Credit is denominated in a currency other than Dollars, all reimbursements by the Borrower of the honoring of any drawing under such Letter of Credit will be paid in the currency in which such Letter of Credit was denominated.
- (b) If the Borrower fails to reimburse any L/C Disbursement when due, then the Administrative Agent will promptly notify the applicable Issuing Bank and each other Revolving Lender of the applicable L/C Disbursement, the payment then due from the Borrower in respect thereof and, in the case of a Revolving Lender,

such Lender's Revolving Facility Percentage thereof. Promptly following receipt of such notice, each Revolving Lender will pay to the Administrative Agent its Revolving Facility Percentage of the payment then due from the Borrower in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 will apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders), and the Administrative Agent will promptly pay to the applicable Issuing Bank the amounts so received by it from the Revolving Lenders. Any payment made by a Revolving Lender pursuant to this paragraph (5) to reimburse an Issuing Bank for any L/C Disbursement (other than the funding of an ABR Revolving Loan or a Swingline Borrowing as contemplated above) will not constitute a Loan and will not relieve the Borrower of its obligations to reimburse such L/C Disbursement.

- (c) Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to paragraph (5)(a), the Administrative Agent will distribute such payment to the applicable Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to paragraph (5)(b) to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear.
- (6) Obligations Absolute. The obligations of the Borrower to reimburse L/C Disbursements as provided in paragraph (5) of this Section 2.05 will be absolute, unconditional and irrevocable, and will be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of:
- (a) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein;
  - (b) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect;
  - (c) payment by the applicable Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit; or
  - (d) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.05, constitute a legal or equitable discharge of, or provide a right of setoff against the Borrower's obligations hereunder.
- (7) Limited Liability. None of the Administrative Agent, the Lenders, any Issuing Bank, or any of their Related Parties, will have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of

Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of such Issuing Bank, or any of the circumstances referred to in clauses (a), (b) or (c) of Section 2.05(6); *provided* that the foregoing will not be construed to excuse the applicable Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are determined by a final and binding decision of a court of competent jurisdiction to have been caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the applicable Issuing Bank, such Issuing Bank will be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the applicable Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

- (8) Disbursement Procedures. The applicable Issuing Bank will, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank will promptly notify the Administrative Agent and the Borrower by telephone (confirmed by facsimile or e-mail) of any such demand for payment under a Letter of Credit and whether such Issuing Bank has made or will make an L/C Disbursement thereunder; *provided* that any failure to give or delay in giving such notice will not relieve the Borrower of its obligations to reimburse such Issuing Bank and/or the Revolving Lenders with respect to any such L/C Disbursement.
- (9) Interim Interest. If an Issuing Bank makes any L/C Disbursement, then, unless the Borrower reimburses such L/C Disbursement in full on the date such L/C Disbursement is made, the unpaid amount thereof will bear interest, for each day from and including the date such L/C Disbursement is made to but excluding the date that the Borrower reimburses such L/C Disbursement, at the rate per annum then applicable to ABR Revolving Loans; *provided* that, if such L/C Disbursement is not reimbursed by the Borrower when due pursuant to paragraph (5) of this Section 2.05, then Section 2.13(3) will apply. Interest accrued pursuant to this paragraph will be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (5) of this Section 2.05 to reimburse such Issuing Bank will be for the account of such Revolving Lender to the extent of such payment.
- (10) Replacement of an Issuing Bank. An Issuing Bank may be replaced at any time by written agreement between the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent will notify the Lenders of any such replacement of an Issuing Bank. At the time any such replacement becomes

effective, the Borrower will pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12. From and after the effective date of any such replacement, (a) the successor Issuing Bank will have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (b) references herein to the term "Issuing Bank" will be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context will require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank will remain a party hereto and will continue to have all the rights and obligations of such Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement but will not be required to issue additional Letters of Credit.

- (11) Cash Collateralization. If any Event of Default occurs and is continuing, (a) in the case of an Event of Default described in Section 8.01(8) or (9), on the Business Day, or (b) in the case of any other Event of Default, on the third Business Day, in each case, following the date on which the Borrower receives notice from the Administrative Agent demanding the deposit of cash collateral pursuant to this paragraph (11), the Borrower will deposit in an account with or at the direction of the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders, an amount in cash equal to the Revolving L/C Exposure as of such date *plus* any accrued and unpaid interest thereon; *provided* that upon the occurrence of any Event of Default with respect to the Borrower described in Section 8.01(8) or (9), the obligation to deposit such cash collateral will become effective immediately, and such deposit will become immediately due and payable, without demand or other notice of any kind. Each such deposit pursuant to this paragraph will be held by the Collateral Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent will have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments will be made at the option and sole discretion of (i) for so long as an Event of Default is continuing, the Administrative Agent and (ii) at any other time, the Borrower, in each case, in Cash Equivalents and at the risk and expense of the Borrower, such deposits will not bear interest. Interest or profits, if any, on such investments will accumulate in such account. Moneys in such account will be applied by the Administrative Agent to reimburse each Issuing Bank for L/C Disbursements for which such Issuing Bank has not been reimbursed and, to the extent not so applied, will be held for the satisfaction of the reimbursement obligations of the Borrower for the Revolving L/C Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of the Required Lenders), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) will be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.
- (12) Additional Issuing Banks. From time to time, the Borrower may, by notice to the Administrative Agent, designate any Lender (in addition to Citibank, N.A.) to act as an Issuing Bank; *provided* that such Lender agrees in its sole discretion to act as such and

such Lender is reasonably satisfactory to the Administrative Agent as an Issuing Bank. Each such additional Issuing Bank will execute a counterpart of this Agreement upon the approval of the Administrative Agent (which approval will not be unreasonably withheld) and will thereafter be an Issuing Bank hereunder for all purposes. The Borrower may, in its sole discretion, request a Letter of Credit issuance from any Issuing Bank.

- (13) **Reporting.** Unless otherwise requested by the Administrative Agent, each Issuing Bank will (a) provide to the Administrative Agent copies of any notice received from the Borrower pursuant to Section 2.05(2) no later than the next Business Day after receipt thereof and (b) report in writing to the Administrative Agent as follows:
- (i) on or prior to each Business Day on which such Issuing Bank expects to issue, amend or extend any Letter of Credit, the date of such issuance, amendment or extension, and the aggregate face amount of the Letters of Credit to be issued, amended or extended by it and outstanding after giving effect to such issuance, amendment or extension occurred (and whether the amount thereof changed), and the Issuing Bank will be permitted to issue, amend or extend such Letter of Credit if the Administrative Agent will not have advised the Issuing Bank that such issuance, amendment or extension would not be in conformity with the requirements of this Agreement;
  - (ii) on each Business Day on which such Issuing Bank makes any L/C Disbursement, the date of such L/C Disbursement and the amount of such L/C Disbursement; and
  - (iii) on any other Business Day, such other information with respect to the outstanding Letters of Credit issued by such Issuing Bank as the Administrative Agent reasonably requests, including but not limited to prompt verification of such information as may be requested by the Administrative Agent.

The failure of any Issuing Bank (other than the Administrative Agent or any affiliate thereof acting as an Issuing Bank) to comply with the provisions of sub-clauses (i) and (ii) of this clause (13) with respect to any letter of credit will result in such letter of credit not being deemed a "Letter of Credit" hereunder and under the other Loan Documents.

- (14) **Reallocation.** If the Maturity Date in respect of any tranche of Revolving Facility Commitments occurs prior to the expiration of any Letter of Credit, then (i) if one or more other tranches of Revolving Facility Commitments in respect of which the Maturity Date shall not have occurred are then in effect, such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Lenders to purchase participations therein and to make Revolving Loans and payments in respect thereof pursuant to Section 2.05(5)) under (and ratably participated in by Lenders pursuant to) the Revolving Facility Commitments in respect of such non-terminating tranches up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Revolving Facility Commitments thereunder at such time (it

being understood that no partial face amount of any Letter of Credit may be reallocated); *provided*, in no event shall such reallocation cause a Lender's share of the Revolving Facility Commitment to exceed such Lender's Commitment, and (ii) to the extent not reallocated pursuant to the immediately preceding clause (i), the Borrower shall cash collateralize any such Letter of Credit in accordance with Section 2.05(11). If, for any reason, such cash collateral is not provided or reallocation does not occur, the Revolving Lenders under the maturing tranche shall continue to be responsible for their participating interests in the Letters of Credit. Except to the extent of reallocations of participations pursuant to clause (i) of the second preceding sentence, the occurrence of a Maturity Date with respect to a given tranche of Revolving Facility Commitments shall have no effect upon (and shall not diminish) the percentage participations of the Revolving Lenders in any Letter of Credit issued before such Maturity Date. Commencing with the Maturity Date of any tranche of Revolving Facility Commitments, the sublimit for Letters of Credit shall be agreed with the Lenders under the extended tranches.

SECTION 2.06      Funding of Borrowings.

- (1) Each Lender will make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 10:00 a.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders; *provided* that same-day ABR Loans will be made by each Lender on the proposed date thereof by wire transfer of immediately available funds by 2:00 p.m., New York City time; *provided, further* that Swingline Loans will be made as provided in Section 2.04. The Administrative Agent will make such 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 applicable Borrowing Request; *provided* that ABR Revolving Loans and Swingline Borrowings made to finance the reimbursement of an L/C Disbursement and reimbursements as provided in Section 2.05(5) will be remitted by the Administrative Agent to the applicable Issuing Bank.
- (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 2.06 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 Loan included in such Borrowing.

- (3) The foregoing notwithstanding, the Administrative Agent, in its sole discretion, may from its own funds make a Revolving Loan on behalf of any such Lender, (including by means of Swingline Loans to the Borrower). In such event, the Lender, on behalf of whom Administrative Agent made the Revolving Loan, will reimburse the Administrative Agent for all or any portion of such Revolving Loan made on its behalf upon written notice given to such Lender not later than 12:00 noon, New York City time, on the Business Day such reimbursement is requested. On each such settlement date, the Administrative Agent will pay to each Lender the net amount owing to such Lender in connection with such settlement, including amounts relating to Loans, fees, interest and other amounts payable hereunder. The entire amount of interest attributable to such Revolving Loan for the period from and including the date on which such Revolving Loan is made on such Lender's behalf, to but excluding the date the Administrative Agent is reimbursed in respect of such Revolving Loan by such Lender, will be paid to the Administrative Agent for its own account.

SECTION 2.07      Interest Elections.

- (1) Each Borrowing initially will be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Revolving Facility 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 Revolving Facility Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.07. 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 Loans comprising such Borrowing, and the Loans comprising each such portion will be considered a separate Borrowing. This Section 2.07 will not apply to Swingline Borrowings, which may not be converted or continued.
- (2) To make an election pursuant to this Section 2.07 following the Closing Date, the Borrower will notify the Administrative Agent of such election by telephone (a) in the case of an election to convert to or continue a Eurocurrency Revolving Facility Borrowing, not later than 2:00 p.m., New York City time, three Business Days before the 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, on the date of 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). Each such telephonic Interest Election Request will be confirmed promptly by hand delivery, facsimile transmission or e-mail to the Administrative Agent of a written Interest Election Request substantially in the form of Exhibit E and signed by the Borrower.
- (3) (a) Each telephonic and written Interest Election Request will be irrevocable and will specify the following information:

- (i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below will be specified for each resulting Borrowing);
  - (ii) the effective date of the election made pursuant to such Interest Election Request, which will be a Business Day;
  - (iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Revolving Facility Borrowing; and
  - (iv) if the resulting Borrowing is a Eurocurrency Revolving Facility 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."
- (b) If any such Interest Election Request requests a Eurocurrency Revolving Facility Borrowing but does not specify an Interest Period, then the Borrower will be deemed to have selected a Eurocurrency Revolving Facility Borrowing having an Interest Period of one month's duration.
- (4) 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.
- (5) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Revolving Facility Borrowing two Business Days 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 continued as a Eurocurrency Revolving Facility Borrowing having an Interest Period of one month's duration.
- (6) 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 an Event of Default is continuing, (a) no outstanding Borrowing may be converted to or continued as a Eurocurrency Revolving Facility Borrowing and (b) unless repaid, each Eurocurrency Revolving Facility Borrowing will be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.08 Termination and Reduction of Commitments.

- (1) Unless previously terminated, the Commitments will terminate on the Maturity Date.
- (2) The Borrower may at any time terminate, or from time to time reduce, the Revolving Facility Commitments; *provided* that (i) each reduction of the Revolving Facility Commitments will be in an amount that is an integral multiple of \$1.0 million and not

less than \$5.0 million (or, if less, the remaining amount of the applicable Revolving Facility Commitments) and (ii) the Borrower will not terminate or reduce the Revolving Facility Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the Revolving Facility Credit Exposure would exceed the lesser of the total Revolving Facility Commitments and the Borrowing Base.

- (3) The Borrower will notify the Administrative Agent of any election to terminate or reduce the Revolving Facility Commitments under paragraph (2) of this Section 2.08 at least three Business Days prior to the date of such termination or reduction, specifying such election and the date thereof. Promptly following receipt of any notice, the Administrative Agent will advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.08 will be irrevocable; *provided* that a notice of termination of the Revolving Facility Commitments delivered by the Borrower may state that such notice is revocable or conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked or extended by the Borrower (by notice to the Administrative Agent on or prior to the specified Closing Date). Any termination or reduction of the Commitments will be permanent. Each reduction of the Commitments will be made ratably among the Lenders in accordance with their respective Commitments.

SECTION 2.09      Promise to Pay; Evidence of Debt.

- (1) The Borrower hereby unconditionally promises to pay (a) to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan, Protective Advance and Overadvance to the Borrower on the Maturity Date and (b) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Maturity Date.
- (2) Any Lender may request that Loans made by it be evidenced by a promissory note (a “*Note*”). 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 Loans evidenced by such Note and interest thereon at all times (including after assignment pursuant to Section 10.04) will 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).
- (3) The Administrative Agent will maintain accounts in which it will record (a) the amount of each Loan to the Borrower 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. The entries made in the accounts maintained pursuant to this paragraph (3) will be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of the Administrative Agent to

maintain such accounts or any error therein will not in any manner affect the obligations of the Borrower to repay the Obligations in accordance with the terms of this Agreement.

SECTION 2.10 Optional Repayment of Loans.

- (1) The Borrower will have the right at any time and from time to time to repay any Loan in whole or in part, without premium or penalty (but subject to Section 2.16), in an aggregate principal amount, (a) in the case of Eurocurrency Revolving Loans, that is an integral multiple of \$500,000 and not less than \$2.5 million, and (b) in the case of ABR Loans, that is an integral multiple of \$100,000 and not less than \$1.0 million, or, in each case, if less, the amount outstanding.
- (2) Prior to any repayment of any Revolving Loans, the Borrower will select the Borrowing or Borrowings to be repaid and will notify the Administrative Agent by telephone (confirmed by hand delivery, facsimile transmission or e-mail) of such selection not later than 2:00 p.m., New York City time, (a) in the case of an ABR Borrowing, one Business Day before the anticipated date of such repayment and (b) in the case of a Eurocurrency Revolving Facility Borrowing, three Business Days before the anticipated date of such repayment. Each repayment of a Borrowing will be applied to the Revolving Loans included in the repaid Borrowing such that each Revolving Lender receives its ratable share of such repayment (based upon the respective Revolving Facility Credit Exposures of the Revolving Lenders at the time of such repayment). Notwithstanding anything to the contrary in the immediately preceding sentence, prior to any repayment of a Swingline Loan hereunder, the Borrower will select the Borrowing or Borrowings to be repaid and will notify the Administrative Agent by telephone (confirmed by hand delivery, facsimile transmission or e-mail) of such selection not later than 2:00 p.m., New York City time, on the scheduled date of such repayment. Repayments of Eurocurrency Revolving Facility Borrowings will be accompanied by accrued interest on the amount repaid, together with any amounts due under Section 2.16.

SECTION 2.11 Mandatory Repayment of Loans.

- (1) In the event the aggregate amount of the Revolving Facility Credit Exposure exceeds the Line Cap at such time, then the Borrower will on such Business Day repay outstanding Revolving Loans and Swingline Loans, and, if there remains an excess after paying all Revolving Loans and Swingline Loans, cash collateralize Letters of Credit (in accordance with Section 2.05(11)) in an aggregate amount equal to such excess.
- (2) [Reserved.]
- (3) In the event and on such occasion as the Revolving L/C Exposure exceeds the Letter of Credit Sublimit, the Borrower will deposit cash collateral (in accordance with Section 2.05(11)) in an amount equal to such excess.
- (4) Upon the occurrence and during the continuance of a Cash Dominion Period, all amounts in the Dominion Account shall be applied by the Administrative Agent pursuant to clause (b) of the proviso to Section 5.11.

- (5) Upon the occurrence and during the continuance of a Cash Dominion Period, the Borrower will prepay Revolving Loans (with no reduction in commitments) or cash collateralize Letters of Credit with 100% of all net cash proceeds from sales of Collateral included in the Borrowing Base. Any amounts prepaid pursuant to this clause (5) will be applied pursuant to the waterfall set forth in Section 2.18(3), *provided* that amounts applied pursuant to subclauses (iv) and (v) thereof will be applied:
- (a) *first*, to ABR Loans;
  - (b) *second*, to Eurocurrency Revolving Loans; and
  - (c) *third*, to the cash collateralization of Letters of Credit at 103% of the face amount of such Letters of Credit.

SECTION 2.12 Fees.

- (1) The Borrower agrees, to pay to each Lender (other than any Defaulting Lender), through the Administrative Agent, on the fifth Business Day after the end of each fiscal quarter of the Borrower, commencing with the first full fiscal quarter of the Borrower ending after the Closing Date, and on each Maturity Date and any date on which the Commitments of all the Lenders are terminated as provided herein, a commitment fee (a “**Commitment Fee**”) on the daily amount of the Available Unused Commitment of such Lender during the preceding fiscal quarter (or other period commencing with the Closing Date, or in the case of the first full fiscal quarter, the period commencing on the Closing Date and ending with the end of the first fiscal quarter, or ending with the date on which the last of the Commitments of such Lender will be terminated, as applicable) at a rate equal to the Applicable Commitment Fee Percentage (which shall be adjusted quarterly on each Adjustment Date). All Commitment Fees will be computed on the basis of the actual number of days elapsed in a year of 360 days. For the purpose of calculating any Lender’s Commitment Fee, the outstanding Swingline Loans during the period for which such Lender’s Commitment Fee is calculated will be deemed to be zero. The Commitment Fee due to each Lender will commence to accrue on the Closing Date and will cease to accrue on the date on which the last of the Commitments of such Lender will be terminated as provided herein.
- (2) The Borrower agrees, to pay to:
- (a) the Administrative Agent for the account of each Revolving Lender (other than any Defaulting Lender, it being understood that at any time the Issuing Bank has Fronting Exposure to such Defaulting Lender, the L/C Participation Fee with respect to such Fronting Exposure will be payable to the Issuing Bank for its own account), on the fifth Business Day after the end of each fiscal quarter of the Borrower in each year, commencing with the first full fiscal quarter of the Borrower ending after the Closing Date, and on each Maturity Date and any date on which the Commitments of all the Lenders are terminated as provided herein, a fee (an “**L/C Participation Fee**”) on such Lender’s Revolving Facility Percentage of the daily aggregate Revolving L/C Exposure (excluding the portion thereof

attributable to unreimbursed L/C Disbursements), during the preceding fiscal quarter (or other period commencing with the Closing Date, or in the case of the first full fiscal quarter, the period commencing on the Closing Date and ending with the end of the first fiscal quarter, or ending with the Maturity Date or the date on which the Revolving Facility Commitments are terminated, as applicable) at the rate per annum equal to the Applicable Margin for Eurocurrency Revolving Facility Borrowings effective for each day in such period; and

- (b) each Issuing Bank, for its own account (i) on the fifth Business Day after the end of each fiscal quarter of the Borrower, commencing with the first full fiscal quarter of the Borrower ending after the Closing Date, and on each Maturity Date and any date on which the Commitments of all the Lenders are terminated as provided herein, a fronting fee in respect of each Letter of Credit issued by, or the term of which is extended by, such Issuing Bank for the period from and including the date of issuance or extension of such Letter of Credit to and including the termination of such Letter of Credit, computed at a rate equal to 0.125% per annum of the daily stated amount of such Letter of Credit *plus* (ii) such Issuing Bank's customary issuance fees and customary documentary and processing fees and charges (collectively, "**Issuing Bank Fees**"). All L/C Participation Fees and Issuing Bank Fees that are payable in Dollars on a per annum basis will be computed on the basis of the actual number of days elapsed in a year of 360 days.
- (3) The Borrower agrees, to pay to the Administrative Agent, for its own account, the agency fees set forth in the Fee Letter at the times specified therein or in such other amounts and at such other times as may be separately agreed in writing by the Administrative Agent and the Borrower from time to time (the "**Administrative Agent Fees**").
- (4) All Fees will be paid on the dates due, in immediately available funds, to the Administrative Agent at the Payment Office for distribution, if and as appropriate, among the Lenders, except that Issuing Bank Fees will be paid directly to the applicable Issuing Banks. Once paid, none of the Fees will be refundable under any circumstances.

#### SECTION 2.13 Interest.

- (1) The Loans comprising each ABR Borrowing (including each Swingline Loan) will bear interest at the ABR *plus* the Applicable Margin.
- (2) The Loans comprising each Eurocurrency Revolving Facility 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 (a) in the case of overdue principal of any Loan, 2.00% *plus* the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.13 or (b) in the case

of overdue interest or any other overdue amount, 2.00% *plus* the rate applicable to ABR Loans as provided in clause (1) of this Section 2.13.

- (4) Accrued interest on each Loan will be payable by the Borrower, jointly and severally, in arrears (a) on each Interest Payment Date for such Loan; (b) on the applicable Maturity Date; and (c) upon termination of the Revolving Facility Commitments; *provided* that:
  - (i) interest accrued pursuant to paragraph (3) of this Section 2.13 will be payable on demand;
  - (ii) in the event of any repayment of any Loan (other than a repayment of an ABR Revolving Loan or Swingline Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment; and
  - (iii) in the event of any conversion of any Eurocurrency Revolving Loan prior to the end of the current Interest Period therefor, accrued interest on such 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 2.14 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurocurrency Revolving Facility 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 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 Revolving Facility 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 Revolving Facility Borrowing, such Borrowing will be made as an ABR Borrowing.

- (1) If any Change in Law:
  - (a) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or Issuing Bank;
  - (b) imposes on any Lender or Issuing Bank or the London interbank market any other condition (other than Taxes) affecting this Agreement or Eurocurrency Revolving Loans made by such Lender or any Letter of Credit or participation therein; 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) on 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 Revolving Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank, as applicable, for such additional costs incurred or reduction suffered.

- (2) If any Lender or Issuing Bank 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 or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender or such Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.
- (3) A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company, as applicable, as specified in paragraph (1) or (2) of this Section 2.15 will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such

Lender or Issuing Bank, as applicable, the amount shown as due on any such certificate within ten days after receipt thereof.

- (4) Promptly after any Lender or any Issuing Bank has determined that it will make a request for increased compensation pursuant to this Section 2.15, such Lender or Issuing Bank will notify the Borrower thereof. Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section 2.15 will not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; *provided* that the Borrower will not be required to compensate a Lender or an Issuing Bank pursuant to this Section 2.15 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or Issuing Bank, as applicable, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank'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 2.16 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 Revolving 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 Revolving Loan other than on the last day of the Interest Period applicable thereto;
- (3) the failure to borrow, convert, continue or prepay any Eurocurrency Revolving Loan on the date specified in any notice delivered pursuant hereto; or
- (4) the assignment of any Eurocurrency Revolving 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 2.19.

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 (a) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such 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 Revolving Loan, for the period that would have been the Interest Period for such Loan), *over* (b) 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 Eurocurrency 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 2.16 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 2.17 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 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) such Loan Party will make such deductions; (b) such Loan Party 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 2.17) 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 2.17) 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 2.17, 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 2.17(5)(b), 2.17(5)(c) and 2.17(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 2.17(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 2.17(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 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 (1) a "bank" within the meaning of Section 881(c)(3)(A) of the Code; (2) a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3) or Section 881(c)(3)(B) of the Code; or (3) 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) 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 2.17, 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 2.17 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 2.17(7) (*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 2.17(7) 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.

- (8) Each party's obligations under this Section 2.17 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.
- (9) For purposes of this Section 2.17, the term "applicable law" includes FATCA and the term "Recipient" includes any Issuing Bank.

SECTION 2.18      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 them hereunder (whether of principal, interest, fees, reimbursement of L/C Disbursements or otherwise) prior to 2:00 p.m., New York City time, at the Payment Office, except payments to be made directly to the applicable Issuing Bank or the Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 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) The amount of each Lender's Revolving Facility Percentage of outstanding Revolving Loans (including outstanding Swingline Loans) will be computed weekly (or more frequently in the Administrative Agent's discretion) and will be adjusted upward or downward based on all Revolving Loans (including Swingline Loans) and repayments of Revolving Loans (including Swingline Loans) received by the Administrative Agent as

of 4:00 p.m. on the first Business Day (such date, the “**Settlement Date**”) following the end of the period specified by the Administrative Agent. The Administrative Agent will deliver to each of the Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (a) the Administrative Agent will transfer to each Lender its Revolving Facility Percentage of repayments and (b) each Lender will transfer to the Administrative Agent (as provided below) or the Administrative Agent will transfer to each Lender such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Revolving Loans made by each Lender will be equal to such Lender’s Revolving Facility Percentage of all Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent by the Lenders and is received prior to 2:00 p.m. on a Business Day, such transfers will be made in immediately available funds no later than 5:00 p.m. that day and, if received after 2:00 p.m., then no later than 4:00 p.m. on the next Business Day. The obligation of each Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent. If and to the extent any Lender has not so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, equal to 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.

- (3) 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, unreimbursed L/C Disbursements, interest and fees and other Obligations then due from the Borrower hereunder or (b) at any time during a Cash Dominion Period (including in connection with any termination of the Revolving Facility Commitments pursuant to Section 8.01) and the Administrative Agent or the Collateral Agent receives proceeds of Collateral, such funds will be applied,
- (i) *first*, toward payment of any expenses, fees and indemnities due to the Agents hereunder;
  - (ii) *second*, toward payment of interest and fees then due from the Borrower hereunder with respect to any Revolving Facility Credit Exposure, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;
  - (iii) *third*, toward payment of principal of Swingline Loans, unreimbursed L/C Disbursements, Protective Advances and Overadvances then due from the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal, unreimbursed L/C Disbursements, Protective Advances and Overadvances then due to such parties;

- (iv) *fourth*, on a pro rata basis, (x) toward payment of other principal then due from the Borrower hereunder with respect to any Revolving Facility Credit Exposure, ratably among the parties entitled thereto in accordance with the amounts of such principal then due to such parties, (y) toward the payment of any outstanding obligations owed to the Qualified Counterparties under any Designated Hedging Agreements in an aggregate amount not to exceed the Designated Hedging Reserve ratably among the parties entitled thereto in accordance with the amounts of obligations under such Designated Hedging Agreements then due to such parties and (z) toward payment of any outstanding obligations owed to Cash Management Banks under any Cash Management Obligations in an aggregate amount not to exceed the Designated Cash Management Reserve ratably among the parties entitled thereto in accordance with the amounts of such Cash Management Obligations then due to such parties;
- (v) *fifth*, if an Event of Default has occurred and is continuing, to cash collateralize Letters of Credit issued for the account of the Borrower, any Borrowing Base Party or any other Subsidiary in accordance with Section 2.05(11);
- (vi) *sixth*, to pay any other Obligations (excluding Obligations as described in items (2) and (3) of the definition of "Obligations" contained herein) ratably among the parties thereto in accordance with such amounts so owed them;
- (vii) *seventh*, to payment of obligations pursuant to Specified Hedge Agreements then due from the Borrower, any Borrowing Base Party or any other Subsidiary party to such Specified Hedge Agreements, ratably among the parties entitled thereto in accordance with the amounts of obligations under such Specified Hedge Agreements then due to such parties;
- (viii) *eighth*, to payment of Cash Management Obligations of the Borrower and the other Loan Parties then due from the Borrower, ratably among the parties entitled thereto in accordance with the amounts of such Cash Management Obligations then due to such parties; and
- (ix) *ninth*, to payment of all other Obligations of the Borrower and the Loan Parties then due and payable, ratably among the parties entitled thereto in accordance with the amounts of such Obligations then due to such parties;

*provided* that the application of such proceeds at all times will be subject to the application of proceeds provisions contained in the Intercreditor Agreement.

- (4) Subject to express priorities set forth in Section 2.18(3) above, 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 Revolving Loans or participations in L/C

Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in L/C Disbursements and Swingline Loans and accrued interest thereon 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 Revolving Loans and participations in L/C Disbursements and Swingline 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 Revolving Loans and participations in L/C Disbursements and Swingline 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 (4) 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 Disqualified Institution) or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans or participations in L/C Disbursements to any assignee or participant, other than to the Borrower or any other Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (4) apply). The Borrower consents to the foregoing and agree, 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 any 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.

- (5) 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 or the applicable Issuing Bank 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 or the applicable Issuing Bank, as applicable, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the applicable Issuing Bank, as applicable, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank 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.
- (6) If any Lender fails to make any payment required to be made by it pursuant to Section 2.04(3), 2.05(4) or (5), 2.06(2) or 2.18(6), 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 such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.19      Mitigation Obligations; Replacement of Lenders.

- (1) If any Lender requests compensation under Section 2.15, 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 2.17, then such Lender will use reasonable efforts to designate a different Lending Office for funding or booking its 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 2.15 or 2.17, 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 2.15 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 2.17, then the Borrower may, at its 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 Section 10.04), all its interests, rights and obligations under this Agreement to an assignee that assumes such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (a) the Borrower shall have received the prior written consent of the Administrative Agent, the Swingline Lender and the Issuing Bank), which consent shall not unreasonably be withheld, (b) such Lender has received payment of an amount equal to the outstanding principal of its Loans and funded participations in L/C Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (c) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments thereafter. Nothing in this Section 2.19 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 which, pursuant to the terms of Section 10.08, requires the consent of such Lender 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 replace such Non-Consenting Lender by deeming such Non-Consenting Lender to have assigned its Loans and its Commitments hereunder to one or more assignees reasonably acceptable to the Administrative Agent, the Swingline Lender and the Issuing Bank to the extent the consent of such Person would be required under Section 10.04; *provided* that (a) all Obligations of the Borrower owing to such Non-Consenting Lender (including accrued Fees and any amounts due under Section 2.15, 2.16 or 2.17) being removed or replaced will be paid in full to such Non-Consenting Lender concurrently with such assignment and (b) 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, which will 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 therefor, compliance with Section 10.04 will not be required to effect such assignment.

SECTION 2.20 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 Revolving 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 Revolving Loans or to convert ABR Borrowings to Eurocurrency Revolving Facility 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 Revolving Facility 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 Revolving Facility Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrower will also pay accrued interest on the amount so prepaid or converted.

SECTION 2.21 Incremental Revolving Facility Increases.

- (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 notice to the Administrative Agent, increase the Revolving Facility Commitments (each such increase, an "***Incremental Revolving Facility Increase***" and such additional Revolving Facility Commitments, the "***Incremental Commitments***").
- (2) Ranking. Any Incremental Commitments will (a) rank *pari passu* in right of payment with the Revolving Facility Claims and (b) be secured by the Collateral on a *pari passu* basis with the Revolving Facility Claims.
- (3) Size. The principal amount of all commitments in respect of Incremental Revolving Facility Increases received pursuant to this Section 2.21, in the aggregate, shall not exceed \$100.0 million.

Each Incremental Revolving Facility Increase received pursuant to this Section 2.21 will be in an integral multiple of \$1.0 million and in a minimum aggregate principal amount of \$25.0 million (or such lesser minimum amount approved by the Administrative Agent).

- (4) Incremental Lenders. Incremental Revolving Facility Increases may be provided by any existing Lender (it being understood that no existing Lender will have an obligation to provide any Incremental Revolving Facility Increase), or any Additional Lender (collectively, the “**Incremental Lenders**”); *provided* that the Administrative Agent, each Swingline Lender and each Issuing Bank shall have consented (such consent not to be unreasonably withheld, delayed or conditioned) to any Additional Lender’s provision of such Incremental Revolving Facility Increase if such consent by the Administrative Agent or such Swingline Lender would be required under Section 10.04 for an assignment of Commitments or Loans to such Additional Lender.
- (5) Incremental Facility Amendments.
- (a) Each Incremental Revolving Facility Increase 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, the applicable 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 Revolving Facility Increase evidenced thereby.
- (b) Upon each Incremental Revolving Facility Increase in accordance with this Section 2.21:
- (i) each Incremental Lender in respect of such increase will automatically and without further act be deemed to have assumed a portion of each Revolving Lender’s participations hereunder in outstanding Letters of Credit and Swingline Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (A) participations hereunder in Letters of Credit and (B) participations hereunder in Swingline Loans held by each Lender (including each such Incremental Lender) will equal the percentage of the aggregate Revolving Facility Commitments of all Lenders represented by such Lender’s Revolving Facility Commitment; and
- (ii) the Administrative Agent may, in consultation with the Borrower, take any and all actions as may be reasonably necessary to ensure that, after giving effect to such Lender’s Incremental Commitments, the percentage of the aggregate Revolving Facility Commitments held by each Lender (including each such Incremental Lender) will equal the percentage of the aggregate Revolving Facility Commitments of all Lenders represented by such Lender’s Revolving Facility Commitment, which may be accomplished, at the discretion of the Administrative Agent following consultation with the Borrower, by:

- (A) requiring the outstanding Loans to be prepaid with the proceeds of a new Borrowing;
  - (B) causing non-increasing Lenders to assign portions of their outstanding Loans to Incremental Lenders; or
  - (C) a combination of the foregoing.
- (6) Conditions. The initial availability of any Incremental Revolving Facility Increase 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 Revolving Facility Increase is incurred (or commitments in respect thereof are provided) or would exist immediately after giving effect thereto; *provided*, that if the Incremental Revolving Facility Increase 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 Revolving Facility Increase 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 Revolving Facility Increase (or the date on which commitments in respect thereof are provided); *provided*, that if the Incremental Revolving Facility Increase 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 Revolving Facility Increase (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 Revolving Facility Increase, unless such other conditions are waived by such Incremental Lenders.
- (7) Terms. Any Incremental Revolving Facility Increase will be on terms identical to (and shall form part of) the Revolving Facility, except with respect to any arrangement, upfront, structuring or similar fees that may be agreed to by and among the Borrower and the Incremental Lenders.

SECTION 2.22      [Reserved].

SECTION 2.23      Extensions of Revolving Commitments.

- (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 Loans with a like Maturity Date, the Borrower may extend the Maturity Date of each such Lender’s Revolving Facility Commitments and otherwise modify the terms of such Revolving Facility Commitments pursuant to the terms of the relevant Extension Offer, including by increasing the interest rate or fees payable in respect to such Revolving Facility Commitments (each, an “**Extension**,” and each group of Revolving Facility Commitments so extended, as well as the original Revolving Facility Commitments not so extended, being a “**tranche**”). Each Extension Offer will specify the minimum amount of Revolving Facility Commitments 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 \$25.0 million (or (a) if less, the aggregate principal amount of such Revolving Facility Commitments or (b) such lesser minimum amount as is approved by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed), and shall be made on a *pro rata* basis to all Lenders having Revolving Facility Commitments with a like Maturity Date. If the aggregate outstanding principal amount of Loans and Revolving Facility Commitments (calculated on the face amount thereof) in respect of which Lenders have accepted an Extension Offer exceeds the maximum aggregate principal amount of Loans and Revolving Facility Commitments offered to be extended pursuant to an Extension Offer, then the Loans and Revolving Facility Commitments of such Lenders will be extended ratably up to such maximum amount based on the Revolving Facility Commitments of the Lenders that have accepted such Extension Offer. There is no requirement that any Extension Offer or Extension Amendment (defined as follows) be subject to any “most favored nation” pricing provisions. Each Lender accepting an Extension Offer is referred to herein as an “**Extending Lender**,” and the Loans and Revolving Facility Commitment held by such Lender (and so extended) accepting an Extension Offer are referred to herein as “**Extended Loans**” and “**Extended Commitments**”.
- (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 tranches in respect of Extended Commitments (and related Extended Loans) 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, in each case, on terms consistent with this Section 2.23. This Section 2.23 supersedes any provisions in Section 10.08 to the contrary.
- (3) Terms of Extension Offers and Extension Amendments. The terms of any Extended Commitments (and related Extended Loans) will be set forth in an Extension Offer and as agreed between the Borrower and the Extending Lenders accepting such Extension Offer; *provided* that:
  - (a) no Event of Default has occurred and is continuing at the time the offering document in respect of an Extension Offer is delivered to the Lenders;

- (b) except as to pricing terms (interest rate and fees) and maturity, the terms and conditions of such Revolving Facility Credit Exposure 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 Revolving Facility Commitments (and related Extended Loans) subject to such Extension Offer, as determined in good faith by a Responsible Officer of the Borrower.
- (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 conditioned), the Borrower and each Lender agreeing to such Extension with respect to one or more of its Revolving Facility Commitments. The transactions contemplated by this Section 2.23 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Commitments 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 2.09 and 2.16) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.23 will not apply to any of the transactions effected pursuant to this Section 2.23.

SECTION 2.24      [Reserved.].

SECTION 2.25      [Reserved.].

SECTION 2.26      Defaulting Lenders.

- (1) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:
- (a) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement is restricted as set forth in Section 10.08.
- (b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), will be applied at such time or times as may be determined by the Administrative Agent as follows:
- (i) *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder;
- (ii) *second*, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to the Issuing Bank or Swingline Lender hereunder;

- (iii) *third*, if so determined by the Administrative Agent or requested by the Issuing Bank or Swingline Lender, to be held as cash collateral for future funding obligations of such Defaulting Lender of any participation in any Swingline Loan or Letter of Credit;
- (iv) *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Revolving Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent;
- (v) *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Revolving Loans under this Agreement;
- (vi) *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Bank or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Bank or Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement;
- (vii) *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and
- (viii) *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction;

*provided* that if such payment is a payment of the principal amount of any Loans or L/C Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, such payment will be applied solely to pay the Loans of, and L/C Disbursements 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 Disbursements owed to, such Defaulting Lender. Any payments 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 2.26(1)(b) will be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

- (c) Certain Fees. Such Defaulting Lender (i) will not be entitled to receive any Commitment Fee pursuant to Section 2.12(1) for any period during which that Lender is a Defaulting Lender (and the Borrower will be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender) and (ii) will not be entitled to receive any L/C Participation Fee pursuant to Section 2.12(2) for any period during which that Lender is a Defaulting Lender

(although the Borrower will be required to pay any such L/C Participation Fee that otherwise would have been required to have been paid to such Defaulting Lender to the non-Defaulting Lenders or Issuing Bank, in accordance with any reallocation of Fronting Exposure to non-Defaulting Lenders or as may be retained by the Issuing Bank, as the case may be).

- (d) 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 Swingline Loans pursuant to Sections 2.04 and 2.05, the “**Revolving Facility Percentage**” of each non-Defaulting Lender will be computed without giving effect to the Commitment of such Defaulting Lender; *provided*, that, each such reallocation will be given effect only to the extent such that the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swingline Loans will not exceed the positive difference, if any, of (i) the Revolving Facility Commitment of such non-Defaulting Lender *minus* (ii) the aggregate outstanding amount of the Revolving Loans of such Defaulting Lender.
- (e) Elimination of Remaining Fronting Exposure. At any time that there exists a Defaulting Lender, (i) immediately upon the request of the Administrative Agent or the Issuing Bank, the Borrower will deliver to the Administrative Agent cash collateral in an amount sufficient to cover all Fronting Exposure of the Revolving L/C Exposure (after giving effect to Section 2.26(1)(d)) which will be held as security for the reimbursement obligations of the Borrower with respect to the Revolving L/C Exposure and (ii) immediately upon request of the Administrative Agent or the Swingline Lender, the Borrower will repay an amount of Swingline Loans sufficient to eliminate the Fronting Exposure of the Swingline Lender.
- (2) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lender and the Issuing Bank 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), such Lender will, to the extent applicable, purchase that portion of outstanding Revolving Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a *pro rata* basis by the Lenders in accordance with their Revolving Facility Percentages (without giving effect to Section 2.26(1)(d)), whereupon such 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 Borrower while such 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 such Lender’s having been a Defaulting Lender.

## ARTICLE III

### Representations and Warranties

Each of Merger Sub, the Company and the Restricted Subsidiaries of the Company represents and warrants to each Agent and to each of the Lenders, with respect to Borrowings made on the Closing Date, that on the Closing Date immediately prior to consummation of the Merger, the Specified Merger Agreement Representations and the Specified Representations are true and correct in all material respects.

With respect to any Borrowing made after the Closing Date, the Borrower, with respect to itself, each Borrowing Base Party, if any, and each of the Restricted Subsidiaries, and Holdings, solely with respect to Sections 3.01, 3.02, 3.03, 3.04, 3.08 and 3.20, 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 the Initial Borrower, Successor Borrower and Holdings 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      Borrowing Base Certificate. At the time of delivery of each Borrowing Base Certificate, assuming that any eligibility criteria that requires the approval or satisfaction of the Administrative Agent has been approved by or is satisfactory to the Administrative Agent, each material Account reflected therein as eligible for inclusion in the Borrowing Base is an Eligible Account, the material Inventory reflected therein as eligible for inclusion in the Borrowing Base constitutes Eligible Inventory and the cash and Cash Equivalents reflected therein as eligible for inclusion in the Borrowing Base constitute Qualified Cash.

SECTION 3.06      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 Borrowing Base Parties 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 Borrowing Base Parties' 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 3.06(2), on the Closing Date the Borrowing Base Parties 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 3.07     Subsidiaries.

- (1) Schedule 3.07(1) 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 3.08     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 the Borrowing Base Parties 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 3.14), 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 Borrowing Base Parties, the Restricted Subsidiaries 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 3.14) 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 3.09     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 Loan or Letter of Credit 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 3.10 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 3.11 Use of Proceeds. The Borrower shall use the proceeds of the Revolving Loans and Swingline Loans, and may request the issuance of Letters of Credit, for general corporate purposes or other transaction permitted by the Loan Documents (including for capital expenditures, Permitted Acquisitions, the repayment or refinancing of Indebtedness and the making of Investments and Restricted Payments, in each case to the extent not prohibited hereunder).

SECTION 3.12 Tax Returns. Except as set forth on Schedule 3.12:

- (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 extensions) on the returns referred to in clause (1) of this Section 3.12 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 3.13 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 3.14 Environmental Matters. Except as set forth on Schedule 3.14 or as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

- (1) each of the Borrowing Base Parties and the Restricted Subsidiaries is 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) none of the Borrowing Base Parties or 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 any Borrowing Base Party or any Restricted Subsidiary in violation of Environmental Law and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by any Borrowing Base Party 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 any Borrowing Base Party or any Restricted Subsidiary; and
- (4) there are no agreements in which any Borrowing Base Party 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 3.15 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, 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 3.15) 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 3.16      Location of Real Property and Leased Premises.

- (1) Schedule 3.16(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 3.16(1).
- (2) Schedule 3.16(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 3.16(2).

SECTION 3.17 Solvency. On the Closing Date, after giving effect to the consummation of the Transactions, including the Borrowing of the Loans hereunder, and after giving effect to the application of the proceeds of such Indebtedness:

- (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 3.17, 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 3.18 No Material Adverse Effect. Since January 31, 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 3.19 Insurance. Schedule 3.19 sets forth a true, complete and correct description of all material insurance maintained by or on behalf of any Borrowing Base Party or any Restricted Subsidiary as of the Closing Date. As of such date, such insurance is in full force and effect.

SECTION 3.20 USA PATRIOT Act; FCPA; OFAC; Anti-Terrorism.

- (1) To the extent applicable, each of Holdings, the Borrowing Base Parties and the Restricted Subsidiaries is in compliance, in all material respects, with the USA PATRIOT Act.
- (2) No part of the proceeds of the 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, as amended from time to time ("**FCPA**").
- (3) None of Holdings, the Borrower or any Restricted Subsidiary 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 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 3.21 Intellectual Property; Licenses, Etc. Except as set forth on Schedule 3.21:

- (1) except as would not reasonably be expected to have a Material Adverse Effect, each Borrowing Base Party and 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, no Borrowing Base Party or Restricted Subsidiary nor any Intellectual Property Rights, product, process, method, substance, part or other material now employed, sold or offered by any Borrowing Base Party or Restricted Subsidiary 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 3.22 Employee Benefit Plans.

The Borrowing Base Parties and each of their respective 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 3.23      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**

The obligations of (a) the Lenders (including the Swingline Lender) to make Loans and (b) any Issuing Bank to issue Letters of Credit or amend, extend or renew Letters of Credit hereunder (each, a “*Credit Event*”) are subject to the satisfaction of the following conditions:

SECTION 4.01      All Credit Events After the Closing Date. On the date of each Credit Event, other than Credit Events on the Closing Date:

- (1) The Administrative Agent shall have received, in the case of a Borrowing, a Borrowing Request as required by Section 2.03 (or a Borrowing Request shall have been deemed given in accordance with Section 2.03(4)) or, in the case of the issuance of a Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance of such Letter of Credit (and if requested by such Issuing Bank, a letter of credit application) as required by Section 2.05(2).
- (2) Except with respect to any Borrowing pursuant to Section 2.21 (solely when the proviso in Section 2.21(6)(b) is applicable and then only to the extent required thereby), the representations and warranties set forth in the Loan Documents will be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) as of such date, as applicable, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties will be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date).

- (3) At the time of and immediately after any Borrowing (other than a Borrowing pursuant to Section 2.21 (solely when the proviso in Section 2.21(6)(a) is applicable)) or issuance, amendment, extension or renewal of a Letter of Credit (other than an extension not beyond the Maturity Date, or renewal of a Letter of Credit without any increase in the stated amount thereof), as applicable, no Default or Event of Default shall have occurred and be continuing or would result therefrom.
- (4) At the time after such Borrowing or issuance, amendment, extension or renewal of a Letter of Credit, as applicable, the sum of, without duplication, of Revolving Loans (including Swingline Loans), unreimbursed drawings under Letters of Credit and the face amount of undrawn amount of outstanding Letters of Credit does not exceed the Line Cap.

Each such Credit Event occurring after the Closing Date will be deemed to constitute a representation and warranty by the Borrower on the date of such Credit Event as to the matters specified in paragraphs (2), (3) and (4) of this Section 4.01.

There are no conditions, implied or otherwise, to the making of Loans after the Closing Date other than as set forth in the preceding clauses (1) through (4) of this Section 4.01 and upon satisfaction or waiver of such conditions Loans will be made by the Lenders and any applicable Letters of Credit will be issued, amended, extended or renewed.

#### SECTION 4.02 Closing Date Conditions On the Closing Date:

- (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) Acquisition Transactions. Merger Sub shall have confirmed to the Administrative Agent that the following transactions have been consummated or will be consummated substantially concurrently with the making of the Revolving Loan on the Closing Date:
  - (a) the Merger;
  - (b) the Equity Contribution; and
  - (c) the Closing Date Refinancing and evidence that arrangements satisfactory to the Administrative Agent shall have been made for the termination and release of guarantees, Liens and security interests granted in connection therewith in a form reasonably satisfactory to the Administrative Agent.
- (4) Pro Forma Balance Sheet; Financial Statements. The Administrative Agent shall have received (a) unaudited consolidated balance sheets and related statements of income and cash flows of the Company for each fiscal quarter, if any, ended after August 1, 2015

- (other than the fourth fiscal quarter of the Company) and at least 45 days prior to the Closing Date and setting forth, with respect to statements of income and cash flows, comparative figures for the related period in the prior fiscal year, (b) audited consolidated balance sheets and related statements of income and cash flows of the Company, in each case, for the three fiscal years most recently ended at least 90 days before the Closing Date, and (c) a *pro forma* consolidated balance sheet and income statement of the Borrower as of October 31, 2015 and for the four-quarter period then ended, in each case, prepared on a pro forma basis giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such income statement).
- (5) Fees. Payment of all fees (a) required to be paid pursuant to the Fee Letter and (b) reasonable (and reasonably documented) out-of-pocket expenses required to be paid on the Closing Date pursuant to the Commitment Letter, in each case to the extent invoiced in reasonable detail at least five Business Days prior to the Closing Date.
- (6) Solvency Certificate. The Administrative Agent shall have received a solvency certificate substantially in the form attached hereto as Exhibit C.
- (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, as applicable, 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;
  - (d) as to the incumbency and specimen signature of each Responsible Officer executing the Loan Documents specified in Section 4.02(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 4.02(7)); and

- (e) that on the Closing Date following consummation of the Equity Contribution the Sponsors will control Merger Sub.
- (8) Legal Opinions. The Administrative Agent shall have received a customary legal opinion of Gibson, Dunn & Crutcher LLP, special New York and California counsel to the Loan Parties.
- (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, to the extent obtained by Merger Sub from the Company on or prior to the Closing Date, 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) No Material Adverse Effect. Since the date of the Merger Agreement, there shall not have occurred any facts, events, changes, developments or effects which, individually or in the aggregate, has had, or is reasonably expected to have, a Material Adverse Effect (as defined in the Merger Agreement).
- (12) Initial Borrowing Base Certificate. The Administrative Agent shall have received an executed Borrowing Base Certificate dated as of the Closing Date in form and substance reasonably satisfactory to the Administrative Agent.
- (13) 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 Purchase Date, will be provided not later than the date that is three Business Days prior to the Purchase Date.
- (14) Representations and Warranties. Subject to the Certain Funds Provisions, the Specified Merger Agreement Representations and Specified Representations will be true and correct in all material respects; *provided* that the failure of a Specified Merger Agreement Representation to be true and correct will not result in a failure of a condition precedent

under this Article IV unless such failure gives Merger Sub the right to terminate the Merger Agreement pursuant to its terms (after giving effect to any applicable notice and cure provisions).

There are no conditions, implied or otherwise, to the making of Loans on the Closing Date other than as set forth in the preceding clauses (1) through (14) of this Section 4.02 and upon satisfaction or waiver of such conditions Loans will be made by the Lenders and any applicable Letters of Credit will be issued, amended, extended or renewed.

## 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, 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 obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full and all Letters of Credit have expired, terminated or been cash-collateralized on terms satisfactory to the Issuing Bank, unless the Required Lenders otherwise consent in writing, the Borrower will, and will cause each Borrowing Base Party and each Restricted Subsidiary, 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 120 days following the end of the fiscal year ending on the earlier of (a) on or about January 30, 2016 or (b) the fiscal year ended after the Closing Date, and within 90

days following the end of each fiscal year thereafter, 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**");

- (2) within 60 days following the end of the fiscal quarters ending on or about April 30, 2016 and on or about July 31, 2016, and, thereafter, within 45 days following the end of each of the first three fiscal quarters of each fiscal year, 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 (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 in reasonable detail calculations of the Fixed Charge Coverage Ratio for the most recent period of four consecutive fiscal quarters as of the close of the fiscal year or fiscal quarter, as applicable;
  - (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;” and
  - (d) 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 120 days following the end of the fiscal year ending on or about January 30, 2017 and within 90 days following the end of each full fiscal year ended thereafter, 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);
  - (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; and

- (9) on or before the 15th Business Day of each month from and after the Closing Date, a Borrowing Base Certificate from the Borrower as of the last day of the immediately preceding month, with such supporting materials as the Administrative Agent may reasonably request (which requests may be more frequent with respect to information regarding Qualified Cash); *provided* that, after the occurrence and during the continuance of a Liquidity Condition or a Designated Event of Default, the Administrative Agent may require the Borrower to deliver the Borrowing Base Certificate more frequently as reasonably determined by the Administrative Agent. Notwithstanding the foregoing, the Administrative Agent may not require the Borrower to deliver a Borrowing Base Certificate more frequently than weekly, and in the case of such weekly reporting the Borrowing Base Certificate will be due on Wednesday of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day) calculated as of the close of business on Saturday of the immediately preceding calendar week.

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; and
- (4) any material change in accounting policies or financial reporting practices by any Loan Party with respect to the Borrower’s Accounts and Inventory or which otherwise could reasonably be expected to affect the calculation of the Borrowing Base or Reserves.

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.

- (1) 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).
- (2) At any time in the Administrative Agent's sole discretion upon the occurrence and during the continuance of a Designated Event of Default, and at such other times not more frequently than (a) once per 12-month period if subclause (b) does not apply and (b) twice per 12-month period during any period commencing upon the date on which Excess Availability has been less than the greater of \$65.0 million and 15.0% of the Line Cap then in effect for at least five consecutive Business Days and ending on the date on which Excess Availability has been less than the greater of \$65.0 million and 15.0% of the Line Cap then in effect for 20 consecutive calendar days, the Loan Parties will, at their expense and upon the Administrative Agent's request, permit any Persons designated by the Administrative Agent to conduct field examinations at reasonable business times and upon reasonable prior notice to the Borrower; *provided* that if a field exam has commenced pursuant to immediately preceding clause (b) but not completed prior to such time as Excess Availability has been less than the greater of \$65.0 million and 15.0% of the Line Cap then in effect for 20 consecutive Business Days, such field exam will be completed at the expense of the Loan Parties. The Loan Parties will reasonably cooperate with the Administrative Agent and such Persons in the conduct of such field examinations. The Administrative Agent shall provide a copy of any field examination to any Lender upon such Lender's request.
- (3) At any time in the Administrative Agent's sole discretion upon the occurrence and during the continuance of a Designated Event of Default, and at such other times not more frequently than (a) once per 12-month period if subclause (b) does not apply and (b) twice per 12-month period during any period commencing upon the date on which Excess Availability has been less than the greater of \$65.0 million and 15.0% of the Line Cap then in effect for at least five consecutive Business Days and ending on the date on which Excess Availability has been less than the greater of \$65.0 million and 15.0% of the Line Cap then in effect for 20 consecutive calendar days, the Loan Parties will, at their expense and upon the Administrative Agent's request, permit any Acceptable Appraiser to conduct appraisals of the Collateral at reasonable business times and upon reasonable prior notice to the Borrower; *provided* that if an appraisal of the Collateral has commenced pursuant to immediately preceding clause (b) but not completed prior to such time as Excess Availability has been less than the greater of \$65.0 million and 15.0% of the Line Cap then in effect for 20 consecutive Business Days, such appraisal will be completed at the expense of the Loan Parties. The Loan Parties will reasonably cooperate with the Administrative Agent and such Acceptable Appraiser in the conduct

of such appraisals. Such appraisals will be prepared in a form and on a basis reasonably satisfactory to the Administrative Agent, such appraisals to include, without limitation, information required by applicable law and by the internal policies of the Lenders. In addition, the Loan Parties will have the right (but not the obligation), at their expense, at any time and from time to time to provide the Administrative Agent with additional appraisals or updates thereof of any or all of the Collateral from any Acceptable Appraiser prepared in a form and on a basis reasonably satisfactory to the Administrative Agent, in which case such appraisals or updates shall be used in connection with the determination of the Net Orderly Liquidation Value and the calculation of the Borrowing Base hereunder. With respect to each appraisal made pursuant to this Section 5.07(3) after the Closing Date, (i) the Administrative Agent and the Loan Parties will each be given a reasonable amount of time to review and comment on a draft form of the appraisal prior to its finalization and (ii) any adjustments to the Net Orderly Liquidation Value or the Borrowing Base hereunder as a result of such appraisal shall be reflected in the Borrowing Base Certificate delivered immediately succeeding such appraisal. The Administrative Agent shall provide a copy of any appraisal to any Lender upon such Lender's request.

- (4) The Borrowing Base Parties will conduct a physical count of the Inventory after an occurrence and during the continuation of an Event of Default, at the Administrative Agent's request. The Borrowing Base Parties, at their own expense, shall deliver to the Administrative Agent the results of each physical verification that the Borrowing Base Parties have made, or have caused any other Person to make on its behalf, of all or any portion of its Inventory. The Borrowing Base Parties will maintain a retail stock ledger inventory reporting system at all times.
- (5) Notwithstanding anything to the contrary in this Agreement (including Sections 5.04(7), 5.05, 5.07(1) through (4) 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 Revolving Loans and the Swingline Loans and request issuance of Letters of Credit solely for general corporate purposes (including for capital expenditures, Permitted Acquisitions, the repayment or refinancing of Indebtedness and the making of Investments and Restricted Payments, in each case to the extent not prohibited hereunder).

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 Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, within five Business Days after the date such Restricted Subsidiary is formed or acquired or such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, as applicable, notify the Administrative Agent thereof and, within 20 Business Days after the date such Restricted Subsidiary is formed or acquired (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 \$7.5 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;
- (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) The Collateral Agent shall have received from each applicable Loan Party: (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;
  - (e) except, in the case of each of the foregoing clauses (a) through (c), in connection with the LLC Conversion.

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 Cash Management Systems; Application of Proceeds of Accounts.

- (1) Within 90 days after the Closing Date (or such longer period as may be consented to by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed):
  - (a) enter into blocked account agreements (each, a “**Blocked Account Agreement**”), in form reasonably satisfactory to the Administrative Agent, with the Collateral Agent and any bank with which any Borrowing Base Party or any Subsidiary Loan Party maintains any DDA other than an Excluded Account (a “**Blocked Account**”) covering each such Blocked Account maintained with such bank;

- (b) ensure that all cash, checks, proceeds of collections of Accounts and other amounts received by or on behalf of any Borrowing Base Party or any Subsidiary Loan Party are deposited promptly upon receipt in accordance with historical practices into a DDA maintained in the name of such Borrowing Base Party or such Subsidiary Loan Party; and
- (c) deliver notifications to each depository institution with which any DDA is maintained, in form reasonably satisfactory to the Administrative Agent (each, a “**DDA Notification**”), instructing such depository institution to sweep, no less frequently than once per Business Day, all available cash balances and cash receipts, including the then contents or then entire ledger balance of such DDA net of such minimum balance (not to exceed \$500,000 per account), if any, required by the bank at which such DDA is maintained to a concentration account of the Borrowing Base Parties and the other Subsidiary Loan Parties that are subject to Blocked Account Agreements; *provided* that Holdings, the Borrowing Base Parties and other Subsidiary Loan Parties may maintain credit balances (including cash and cash equivalents) in DDAs or other deposit or securities accounts that are Excluded Accounts.

Notwithstanding anything herein to the contrary, the provisions of this Section 5.11(a) will not apply to any deposit account that is acquired by a Loan Party in connection with a Permitted Acquisition or other Investment permitted under this Agreement prior to the date that is 90 days (or such later date as may be consented to by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed) following the date of such Permitted Acquisition or other Investment, and the balances held in such deposit accounts at the date of such Permitted Acquisition or other Investment shall not be counted toward the amount set forth in clause (1) of the definition of “Excluded Account” until the end of such 90 day period (or later period, if applicable).

- (2) Within 90 days after the Closing Date (or such longer period as may be consented to by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed), deliver to the Administrative Agent notifications in form reasonably satisfactory to the Administrative Agent executed on behalf of each applicable Borrowing Base Party and addressed to such Borrowing Base Party’s Credit Card Processors (each, a “**Credit Card Notification**”);

*provided* that, with respect to each of Sections 5.11(1) and (2):

- (a) Each Blocked Account Agreement and Credit Card Notification will require, during a Cash Dominion Period and upon receipt by the Borrower of written notice thereof by the Administrative Agent, the ACH or wire transfer no less frequently than once per Business Day of all available cash balances and cash receipts, including the then contents or then entire ledger balance of each Blocked Account net of such minimum balance (not to exceed \$100,000 per account), if any, required by the bank at which such Blocked Account is maintained to an account established with, and subject to the control of, the Administrative Agent (the “**Dominion Account**”).

- (b) All collected amounts received in the Dominion Account during a Cash Dominion Period and upon receipt by the Borrower of written notice thereof by the Administrative Agent shall be distributed and applied on a daily basis to the repayment of all Loans outstanding under this Agreement and to the payment of all other Obligations then due and owing pursuant to the waterfall set forth in Section 2.18(3); *provided* that amounts applied pursuant to subclauses (iv) and (v) thereof will be applied:
- (i) first, to ABR loans;
  - (ii) second, to Eurocurrency Revolving Loans; and
  - (iii) third, to the cash collateralization of Letters of Credit at 103% of the principal value thereof;
- with any excess, unless an Event of Default shall have occurred and be continuing, to be remitted to the Borrower.
- (c) At any time after the occurrence and during the continuance of a Cash Dominion Period as to which the Administrative Agent has notified the Borrower, any cash or Cash Equivalents owned by any Borrowing Base Party or Subsidiary Loan Party are deposited to any account, held or invested in any manner, otherwise than in a Blocked Account subject to a Blocked Account Agreement (or a DDA which is swept daily to such Blocked Account), the Administrative Agent will be entitled to require the applicable Borrowing Base Party or Subsidiary Loan Party to close such account and have all funds therein transferred to a Blocked Account;

*provided* that the foregoing will not apply to cash or Cash Equivalents constituting Term Priority Collateral required to be deposited in a blocked account in favor of the lenders under the Term Loan Credit Agreement pursuant to the terms of the Term Loan Credit Agreement; *provided, further*, that the foregoing will not apply to cash or Cash Equivalents deposited, held or invested in any of the following:

- (i) any Excluded Account;
  - (ii) an amount not to exceed \$20,000,000 in the aggregate that is on deposit in a segregated DDA that the Borrower designates in writing to the Agent as being the “uncontrolled cash account” (the “**Designated Disbursement Account**”), which funds will not be funded from, or when withdrawn from the Designated Disbursement Account, will not be replenished by, funds constituting Collateral (or proceeds of Collateral) so long as such Cash Dominion Period continues; or
  - (iii) de minimus cash or cash equivalents from time to time inadvertently misapplied by the Borrower or any Restricted Subsidiary.
- (d) The Loan Parties may close DDAs or Blocked Accounts and/or open new DDAs or Blocked Accounts, subject to the contemporaneous execution and delivery to

the Administrative Agent of a DDA Notification or Blocked Account Agreement consistent with the provisions of this Section 5.11; *provided*, that the Loan Parties may close DDAs or open new DDAs that are Excluded Accounts without executing or delivering any such DDA Notification or Blocked Account Agreement. Unless consented to in writing by the Administrative Agent, the Loan Parties will not enter into any agreements with credit card processors unless contemporaneously therewith a Credit Card Notification is executed by a Loan Party or Restricted Subsidiary and a copy thereof is delivered to the Administrative Agent.

- (e) The Dominion Account will at all times be under the sole dominion and control of the Collateral Agent.
- (f) So long as (i) no Event of Default has occurred and is continuing and (ii) no Cash Dominion Period is then in effect, the Loan Parties will have full and complete access to, and may direct the manner of disposition of, funds in the Blocked Accounts.
- (g) Any amounts held or received in the Dominion Account (including all interest and other earnings with respect thereto, if any) at any time (i) after this Agreement has been terminated, the Commitments have been terminated and the Obligations (other than contingent indemnification obligations for which no claim has been asserted) have been paid in full and all Letters of Credit have expired, terminated or been cash collateralized on terms satisfactory to the Issuing Bank or (ii) when all Events of Default have been cured and no Cash Dominion Period is then in effect will be remitted to the Loan Parties as the Borrower may direct.

SECTION 5.12      [Reserved.].

SECTION 5.13      Lender Calls. Participate in annual and quarterly conference calls with the Administrative Agent and the Lenders, such calls to be held at such time as may be agreed to by the Borrower and the Administrative Agent, but in any event not later than on or prior to the date that is 10 Business Days following the date after which the applicable Required Financial Statements are to be delivered pursuant to Section 5.04(1) and 5.04(2), with a Financial Officer of the Borrower, such other members of senior management of the Borrower as the Borrower deems appropriate, the Lenders and the Lenders' respective representatives and advisors to discuss the state of the Borrower's business, including, but not limited to, recent performance, cash and liquidity management, operational activities, current business and market conditions and material performance changes; *provided* that in no event shall more than one such call be requested in any fiscal quarter (in total with respect to this Agreement and the Term Loan Credit Agreement); *provided, further*, that the requirements set forth in this Section 5.13 may be satisfied with a public earnings call for the applicable period.

SECTION 5.14      Post-Closing Matters.

Deliver to Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, the items described on Schedule 5.14 hereof on or before the dates

specified with respect to such items on Schedule 5.14 (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 Term Priority Collateral, in the sole discretion of the administrative agent under the Term Loan 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 5.14 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 and Letters of Credit have expired, terminated or been cash-collateralized on terms satisfactory to the Issuing Bank, unless the Required Lenders otherwise consent in writing, it will not and will not permit any Borrower or any Restricted Subsidiary to:

SECTION 6.01 Indebtedness. Issue, incur or assume any Indebtedness; *provided* that the Borrower, any Borrowing Base Party 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 may not exceed \$75.0 million at any time outstanding.

The foregoing limitation will not apply to (collectively, “*Permitted Debt*”):

- (1) Indebtedness created under the Loan Documents (including Indebtedness created under Incremental Revolving Facility Increases and Extended Commitments);
- (2) (a) Indebtedness incurred pursuant to the Term Loan Credit Agreement (including all Incremental Term Loans, Other Term Loans and Extended Term Loans, in each case, as defined in the Term Loan Credit Agreement); (b) any Incremental Equivalent Term Debt; and (c) Credit Agreement Refinancing Indebtedness (as defined in the Term Loan Credit Agreement); *provided* that the aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (2) (and any successive Permitted Refinancing Indebtedness), as of the date any such Indebtedness is incurred, does not exceed the sum of:
  - (i) \$2,825.0 million; *plus*
  - (ii) (A) with respect to any such Incremental Term Loans or Incremental Equivalent Term Debt to be secured on a *pari passu* basis to the Term

Loans (as defined in the Term Loan Credit Agreement), such amount as would not result in the Senior Secured First Lien Net Leverage Ratio, as of the date of such incurrence, being greater than 4.50 to 1.00; and

(B) with respect to any such Incremental Term Loans or Incremental Equivalent Term Debt to be secured on a junior basis to the Term Loans (as defined in the Term Loan Credit Agreement), such amount as would not result in the Total Net Leverage Ratio, as of the date of such incurrence, being equal to, or greater than, the Closing Date Total Net Leverage Ratio (but in no event greater than 6.00 to 1.00);

*provided*, that in the case of any Indebtedness in the aggregate principal amount not to exceed \$300.0 million incurred under clause (i) above in reliance on Section 2.18 of the Term Loan Credit Agreement (including any Incremental Term Loans or Incremental Equivalent Term Debt incurred thereunder) (the “***Non-Ratio Based Incremental Facility Basket***”) on the same date as Indebtedness incurred pursuant to either clause (ii)(A) and (ii)(B) above, the First Lien Net Leverage Ratio or the Total Net Leverage Ratio, as applicable, with respect to the amounts incurred under either clause (ii)(A) and (ii)(B), will be calculated without including any such incurrence of Indebtedness under the Non- Ratio Based Incremental Facility Basket pursuant to clause (i) above;

- (3) the Senior Notes issued on the Closing Date, any notes issued in exchange for the Senior Notes pursuant to a registration rights agreement, 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);
- (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) \$125.0 million and (b) 2.25% 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(3) and (4);
- (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 (other than Section 6.04(18));
- (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 of the Borrower would increase; and

- (iii) the aggregate principal amount of any such Indebtedness incurred pursuant to this clause (12) 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 this clause (12) (and any successive Permitted Refinancing Indebtedness), may not exceed \$75.0 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, 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) proceeds of Excluded Contributions, (c) proceeds of Cure Amounts and (d) proceeds used prior to the date of incurrence to 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) \$50.0 million and (b) 1.00% 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 not exceed the greater of (a) \$75.0 million and (b) 1.50% 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 the Transactions or any Permitted Investment;
- (25) any Permitted Refinancing Indebtedness incurred to Refinance Indebtedness incurred under clauses (3), (4), (5), (12), (16), (21), (22), this clause (25) or clauses (28), (29) or (30) 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) (a) unsecured Indebtedness of the Borrower or any Restricted Subsidiary so long as (i) immediately after giving effect to the incurrence of such Indebtedness the Payment Conditions are satisfied and (ii) the maturity date and Weighted Average Life to Maturity of such Indebtedness is at least six months after the Latest Maturity Date at the time of incurrence of such Indebtedness, (b) other Indebtedness that is secured on a junior basis; *provided* that such Indebtedness (i) is subject to an intercreditor agreement containing terms that are at least as favorable to the Secured Parties as those contained in the Intercreditor Agreement (as reasonably determined by a Responsible Officer of the Borrower) and (ii) has a maturity date and Weighted Average Life to Maturity that is at least six months after the Latest Maturity Date at the time of incurrence of such Indebtedness and (c) any Permitted Refinancing Indebtedness incurred to Refinance any

Indebtedness originally incurred pursuant to this clause (28) (and any successive Permitted Refinancing Indebtedness);

- (29) Indebtedness incurred in respect of any mortgage financing or similar financing in respect of the Headquarters; and
- (30) additional Indebtedness in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (30) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) \$100.0 million and (b) 1.85% of Consolidated Total Assets as of the date any such Indebtedness is incurred.

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 this Agreement and the Term Loan 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 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; *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 securing Indebtedness incurred in accordance with Section 6.01(13) solely encumbering the assets that are the subject of such Indebtedness;
- (5) 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);
- (6) Liens on assets or Equity Interests of Foreign Subsidiaries securing Indebtedness incurred in accordance with Section 6.01(22);
- (7) 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);
- (8) (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;
- (9) Liens on property or assets of any Restricted Subsidiary that is not a Guarantor;

- (10) Liens for Taxes, assessments or other governmental charges or levies not yet delinquent or that are being contested in compliance with Section 5.03;
- (11) 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;
- (12) 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;
- (13) 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;
- (14) (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;
- (15) 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;
- (16) 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;
- (17) 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;
  - (18) 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;
  - (19) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;
  - (20) 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;
  - (21) 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;
  - (22) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;
  - (23) Liens arising from precautionary Uniform Commercial Code financing statements;
  - (24) 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;
  - (25) 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;
  - (26) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition thereof;
  - (27) Liens securing insurance premium financing arrangements;
  - (28) Liens on vehicles or equipment of the Borrower or any of the Restricted Subsidiaries granted in the ordinary course of business;
  - (29) Liens on property or assets used to defease or to satisfy and discharge Indebtedness; *provided* that such defeasance or satisfaction and discharge is not prohibited by this Agreement;

- (30) 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;
- (31) 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;
- (32) Liens that rank *pari passu* with the Liens securing the Term Loan 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 the lesser of (a) the Closing Date Senior Secured First Lien Net Leverage Ratio and (b) 4.50 to 1.00, subject to appropriate reserves being taken by the Administrative Agent in its Reasonable Credit Judgment; *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 Credit Agreement) and (y) the pricing of such Indebtedness complies with Section 2.18(8) of the Term Loan Credit Agreement;
- (33) Liens that rank junior to the Liens securing both the Obligations and the Term Loan Obligations, if the Total Net Leverage Ratio as of the date on which such Liens are first created is less than or equal to the lesser of (a) the Closing Date Total Net Leverage Ratio and (b) 6.00 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 Credit Agreement) or (y) an intercreditor agreement in form and substance satisfactory to the Administrative Agent;
- (34) Liens securing additional obligations in an aggregate outstanding principal amount not to exceed the greater of (a) \$100.0 million and (b) 1.85% of Consolidated Total Assets as of the date such Liens are first created;
- (35) Liens securing (a) amounts owing to any Qualified Counterparty under any Specified Hedge Agreement and Cash Management Obligations, which amounts are secured under the Loan Documents and (b) Specified Hedge Obligations (as defined in the Term Loan Credit Agreement) and Cash Management Obligations (as defined in the Term Loan Credit Agreement), which amounts are secured under the Term 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; and

(36) Liens securing Indebtedness incurred in accordance with Section 6.01(29), solely encumbering the Headquarters.

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, (a) in respect of any Sale and Lease-Back Transaction in respect of the Headquarters and (b) in respect of any other property of the Borrower, 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 \$150.0 million, provided that in each case the, the Net Cash Proceeds (as defined in the Term Loan Credit Agreement) are applied in accordance with the Term Loan Credit Agreement to the extent applicable.

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 (including payment of the purchase consideration under the Merger Agreement);
- (2) loans and advances to officers, directors, employees or consultants of any Parent Entity, the Borrower or any Restricted Subsidiary not to exceed \$15.0 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) 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(5) may not exceed the greater of (i) \$25.0 million and (ii) 0.50% 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);
- (4) 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 in such entities 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 following Permitted Acquisitions, may not exceed the greater of (i) \$75.0 million and (ii) 1.50% 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);
- (5) 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(3), may not exceed the greater of (i) \$25.0 million and (ii) 0.50% 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);
- (6) 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;
  - (7) 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;
  - (8) 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;
  - (9) 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;
  - (10) Hedge Agreements;
  - (11) 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 (11) 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);
  - (12) Investments resulting from pledges and deposits that are Permitted Liens;
  - (13) intercompany loans among Foreign Subsidiaries and Guarantees by Foreign Subsidiaries permitted by Section 6.01(22);
  - (14) 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;
  - (15) 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;

- (16) Investments to the extent that payment for such Investments is made with Equity Interests of any Parent Entity;
- (17) Investments consisting of the redemption, purchase, repurchase or retirement of any Equity Interests permitted under Section 6.06;
- (18) 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;
- (19) Guarantees permitted under Section 6.01;
- (20) 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;
- (21) 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;
- (22) 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;
- (23) 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;
- (24) 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 (as defined in the Term Loan Credit Agreement as originally in effect) 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;
- (25) 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;
- (26) 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;
- (27) Investments that are made with Excluded Contributions;

- (28) 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)(a) and Restricted Payments pursuant to Section 6.06(15) does not exceed, as of the date such Investments are made, the greater of (i) \$100.0 million and (ii) 1.85% of Consolidated Total Assets (plus any returns of capital actually received by the respective investor in respect of such Investments);
- (29) 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 \$50.0 million plus an additional \$10.0 million per fiscal year following the fiscal year in which such initial investment was made; and
- (30) additional Investments (including Permitted Acquisitions); *provided* that both immediately before such Investment is made and immediately after giving effect to such Investment, the Payment Conditions are satisfied.

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 clause (a) and this clause (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; or
  - (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;
- (2) any sale, transfer or other disposition if:
- (a) at least 75% of the consideration therefor is in the form of cash and Cash Equivalents; and
  - (b) 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) \$125.0 million and (B) 2.25% 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 merger, consolidation or amalgamation in order to effect a Permitted Acquisition; provided that following any such merger, consolidation or amalgamation: (a) involving a Borrowing Base Party, such Borrowing Base Party is the surviving person; and (b), immediately before and immediately after such transaction, the Payment Conditions are satisfied), Permitted Liens, and Restricted Payments permitted by Section 6.06;
- (6) the sale of defaulted receivables in the ordinary course of business and not as part of an accounts receivables financing transaction;
- (7) [Reserved];
- (8) leases, licenses, or subleases or sublicenses of any real or personal property in the ordinary course of business;
- (9) 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;
- (10) acquisitions and purchases made with Below Threshold Asset Sale Proceeds;
- (11) 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; or
- (12) 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 \$10.0 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, 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) Cure Amounts and (c) any such proceeds that are used prior to the date of determination to make a Restricted Payment under Section 6.06(2)(b) or 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) \$20.0 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) Cure Amounts and (c) any such proceeds that are used prior to the date of determination to (1) make a Restricted Payment under Section 6.06(1) or (2) 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 or to pay any amounts pursuant to the Merger Agreement;
- (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 (including Holdings) that files, or to any Parent Entity for the purpose of paying to any other Parent Entity that files, a consolidated U.S. federal consolidated or combined or unitary state 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, 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 federal or state or local income or franchise taxes (including franchise taxes and similar taxes) in an amount not to exceed the liability of Borrower and its relevant subsidiaries for such 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 to 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 Subsidiaries 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 a 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 a 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) [Reserved.];
- (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) 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)(a) and Investments made pursuant to Section 6.04(28) that remain outstanding, not to exceed, as of the date such Restricted Payment is made, \$50.0 million; and
- (16) Restricted Payments; *provided* that both immediately before such Restricted Payment is made and immediately after giving effect thereto, the Payment Conditions are satisfied.

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 \$15.0 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) the Transactions and transactions pursuant to the Transaction Documents 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 the Transactions;
- (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 (x) Junior Financing, or (y) 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) aggregate payments which when taken together with the aggregate amount of payments made with respect to Investments pursuant to Section 6.04(28) and the aggregate Restricted Payments pursuant to Section 6.06(15), do not exceed the greater of (i) \$50.0 million and (ii) 1.00% of Consolidated Total Assets;
  - (b) additional payments if immediately before and immediately after consummation of such payment, the Payment Conditions are satisfied;
  - (c) (i) the conversion or exchange of any Indebtedness into or for Equity Interests of any Parent Entity 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;
  - (d) any conversion or exchange of any Indebtedness into or for Indebtedness incurred (and permitted to be incurred) under Section 6.01 (other than Permitted Debt under clause (1) of the definition thereof), or any payment of Indebtedness with net cash proceeds of any substantially contemporaneous issue of Indebtedness incurred (and permitted to be incurred) under Section 6.01 (other than Permitted Debt under clause (1) of the definition thereof);

- (e) (i) payments of regularly scheduled principal and interest (including capitalized “paid-in-kind” 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 Indebtedness;
  - (f) payments or distributions in respect of all or any portion of such Indebtedness 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 or Borrower, 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 Term Loan Documents;
    - (ii) under the 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), (28), (29) or (30), Indebtedness that is secured on a *pari passu* basis with Indebtedness under the Loan Documents or the Term Loan 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.

SECTION 6.10 Financial Performance Covenant. Upon the occurrence and during the continuance of a Covenant Trigger Event, the Borrower will maintain a Fixed Charge Coverage Ratio of not less than 1.0 to 1.0 measured for the most recent period of four consecutive fiscal quarters for which Required Financial Statements are available (or were required to be furnished) at the time of occurrence of such Covenant Trigger Event, and each subsequent four fiscal quarter period ending during the continuance of such Covenant Trigger Event.

## ARTICLE VII

### Holdings Covenant

SECTION 7.01 Holdings Covenant. Holdings will not, so long as this Agreement is in effect and until the Commitments have been terminated, 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 and Letters of Credit have expired, terminated or been cash-collateralized on terms satisfactory to the Issuing Bank, 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 Revolving Facility, the Term Loan Credit Agreement, other Indebtedness permitted by this Agreement, the Merger Agreement and the other agreements contemplated by the Merger 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 LLC Conversion or any other Transactions on the Closing Date; 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 or deemed made;
- (2) default is made in the payment of any principal of any 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 (other than Swingline Loans that become Revolving Loans in accordance with Article II);
- (3) default is made in the payment of any interest on any Loan or the reimbursement of any L/C Disbursement 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 other Restricted Subsidiary Loan Party or, solely with respect to Article VII, Holdings, of any covenant, condition or agreement contained in (a) Section 5.01(1), 5.05(1), 5.07, 5.08, 5.11 (but only if such default occurs during a Cash Dominion Period), or in Article VI or Article VII or (b) Section 5.04(9) and such default shall continue unremedied for a period of five Business Days (or, after the occurrence and during the continuance of a

Liquidity Condition or a Designated Event of Default, two Business Days) following notice thereof from the Administrative Agent to the Borrower;

- (5) default is made in the due observance or performance by the Borrower or any other Restricted Subsidiary Loan Party 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), 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 Borrowing Base Parties or any Restricted Subsidiary fail 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 Loans and termination of the Commitments pursuant to the final paragraph of this Section 8.01;
- (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, any Borrowing Base Party or any of the Material Subsidiaries, or of a substantial part of the property or assets of Holdings, any Borrowing Base Party 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, any Borrowing Base Party or any of the Material Subsidiaries or for a substantial part of the property or assets of Holdings, any Borrowing Base Party or any Restricted Subsidiary; or
  - (c) the winding up or liquidation of Holdings, any Borrowing Base Party 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) any Borrowing Base Party or any Restricted Subsidiary fails to pay one or more final judgments aggregating in excess of (a) if Excess Availability is less than or equal to \$62.5 million as of the date of such judgment, \$25.0 million or (b) if Excess Availability is greater than \$62.5 million as of the date of such judgment, \$50.0 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 any Borrowing Base Party or any other Restricted Subsidiary 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 included in the Borrowing Base or otherwise 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 or take any other action 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, any Borrowing Base Party or any 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 with respect to any Borrower Party 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 may and, 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) terminate forthwith the Commitments, (B) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the 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; (C) if the Loans have been declared due and payable pursuant to clause (B) above, demand cash collateral pursuant to Section 2.05(11); and (D) 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 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 and the Administrative Agent shall be deemed to have made a demand for cash collateral to the full extent permitted under Section 2.05(11), 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.

SECTION 8.02 Right to Cure. Notwithstanding anything to the contrary contained in Section 8.01, in the event that the Borrower fails (or, but for the operation of this Section 8.02, would fail) to comply with the requirements of the Financial Performance Covenant, until the expiration of the tenth Business Day subsequent to the date the Required Financial Statements are required to be delivered pursuant to Section 5.04(1) or (2) for the applicable fiscal quarter, Holdings shall have the right to issue Permitted Cure Securities for cash or otherwise receive cash contributions to the capital of Holdings, and, in each case, to contribute any such cash to the capital of the Borrower (collectively, the "**Cure Right**") and, upon the receipt by the Borrower of such cash (the "**Cure Amount**") pursuant to the exercise by Holdings of such Cure Right, the Financial Performance Covenant shall be recalculated giving effect to a *pro forma* adjustment by which Consolidated EBITDA shall be increased with respect to such applicable fiscal quarter and any four-quarter period that contains such 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. The resulting increase to Consolidated EBITDA from the application of a Cure Amount shall not result in any adjustment to Consolidated EBITDA or any other financial definition for any purpose under this Agreement other than for purposes of calculating the Financial Performance Covenant. In each four fiscal quarter period there shall be at least two fiscal quarters in which the Cure Right is not exercised and the Cure Right may not be exercised more than five times during the term of this Agreement and, for purposes of this Section 8.02, the Cure Amount shall be no greater than the amount required for purposes of complying with the Financial Performance Covenant. If, after giving effect to the adjustments in this Section 8.02, the Borrower shall then be in compliance with the requirements of the Financial Performance Covenant, the Borrower 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 of the Financial Performance Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement.

## ARTICLE IX

### The Agents

#### SECTION 9.01 Appointment.

- (1) Each Lender (in its capacities as a Lender and the Swingline Lender (if applicable) and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) and each Issuing Bank (in such capacities 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 and the Issuing Banks 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 or Issuing Bank'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 the Swingline Lender (if applicable) and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) and each Issuing Bank (in such capacities 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 the Swingline Lender (if applicable) and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) and each Issuing Bank (in such capacities 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)

and the expiration, termination or cash-collateralization (to the satisfaction of the respective Issuing Bank) of all Letters of Credit;

- (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, the Issuing Banks 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 and Issuing Bank 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 and the Issuing Banks, 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 or Issuing Bank any plan of reorganization, arrangement, adjustment or composition (each, a "***Plan of Reorganization***") affecting the Obligations or the rights of any Lender or Issuing Bank

or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank 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 and subject to the proviso to the final paragraph of Section 8.01, 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 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, (a) 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 (b) 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:

- (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 or Event of 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 Security Documents;
- (v) the value or the sufficiency of any Collateral; or
- (vi) 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 Credit Event, that by its terms must be fulfilled to the satisfaction of a Lender or any Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Bank 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 (including, after the Discharge of ABL Revolving Claims, the Required Term 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 (including, after the Discharge of ABL Revolving Claims, the Required Term Lenders)), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

SECTION 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 (including, after the Discharge of ABL Revolving Claims, the Required Term 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 neither the Agents, Arrangers, Syndication Agents, Senior Managing Agents or Documentation Agents, nor 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, Arrangers, Syndication Agents, Senior Managing Agents and Documentation Agents, that it has,

independently and without reliance upon the Administrative Agent, Arrangers, Syndication Agents, Senior Managing Agents or Documentation Agents, 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 Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent, Arrangers, Syndication Agents, Senior Managing Agents or Documentation Agents, 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 and each Issuing Bank, in each case in its capacity as such (to the extent not reimbursed by Holdings or the Borrower and without limiting the obligation Holdings or the Borrower to do so), in the amount of its pro rata share (based on its aggregate Revolving Facility Credit Exposure and, in the case of the indemnification of each Agent, unused Commitments hereunder; *provided* that the aggregate principal amount of Swingline Loans owing to the Swingline Lender and of L/C Disbursements owing to any Issuing Bank shall be considered to be owed to the Revolving Lenders ratably in accordance with their respective Revolving Facility Credit Exposure) (determined at the time such indemnity is sought), 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 Loans) be imposed on, incurred by or asserted against the Administrative Agent or such Issuing Bank 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 or such Issuing Bank 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 or such Issuing Bank's gross negligence or willful misconduct. The failure of any Lender to reimburse the Administrative Agent or any Issuing Bank, as the case may be, promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the Administrative Agent or such Issuing Bank, as the case may be, as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Administrative Agent or such Issuing Bank, as the case may be, 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 or such Issuing Bank, as the case may be, for such

other Lender's ratable share of such amount. The agreements in this Section 9.07 shall survive the payment of the 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 Loans made or renewed by it and with respect to any Letter of Credit issued, or Letter of Credit or Swingline Loan participated in 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. Any such resignation by the Administrative Agent hereunder shall also constitute its resignation as an Issuing Bank and the Swingline Lender, in which case the resigning Administrative Agent (x) shall not be required to issue any further Letters of Credit or make any additional Swingline Loans hereunder and (y) shall maintain all of its rights as Issuing Bank or Swingline Lender, as the case may be, with respect to any Letters of Credit issued by it, or Swingline Loans made by it, prior to the date of such resignation. 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 Loans. 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 shall nevertheless thereupon become effective, and the retiring Administrative Agent hereunder shall, on behalf of the Lenders and the Issuing Bank appoint a successor 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 Arrangers; Syndication Agents; Senior Managing Agents Documentation Agents. None of the Arrangers, Syndication Agents, Senior Managing Agents or Documentation Agents will have any duties, responsibilities or liabilities hereunder in their respective capacities 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, the Administrative Agent, any Issuing Bank as of the Closing Date or the Swingline Lender, 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 or Issuing Bank, to the address, facsimile number, e-mail address or telephone number specified in its Administrative Questionnaire.
- (2) Notices and other communications to the Lenders and any Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender or any Issuing Bank pursuant to Article II if such Lender or any Issuing Bank, as applicable, 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 shall be considered to have been relied upon by the Lenders and each Issuing Bank and shall survive the making by the Lenders of the Loans, the execution and delivery of the Loan Documents and the issuance of the Letters of Credit, 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 Loan or L/C Disbursement or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding 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 2.15, 2.17 and 10.05) shall survive the payment in full of the principal and interest hereunder, the expiration of the Letters of Credit 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, Merger Sub 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 Loan Parties, each Agent, each Issuing Bank, 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 (including any affiliate of the Issuing Bank that issues any Letter of Credit), 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), except pursuant to the Merger on

the Closing Date pursuant to the Transactions, 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, will be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), 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, any Issuing Bank 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, 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 its Commitments and Revolving 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; and
  - (ii) the Administrative Agent, each Issuing Bank and the Swingline Lender; *provided* that no consent of the Administrative Agent will be required for an assignment of all or any portion of Loan to a Lender, an Affiliate of a Lender or an Approved Fund; and
- (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 Commitments or Loans, the amount of the Commitments or 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 \$5.0 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 for 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, except in the case of an assignment to an Approved Fund, 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); *provided* that such processing and recordation fee shall not be payable in the case of assignments by any Lead Arranger or any Affiliate of the Lead Arrangers;
- (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 2.17;
- (iv) the Assignee will not be the Borrower or any of the Borrower's Affiliates or Subsidiaries; and
- (v) the assignor shall deliver to the Administrative Agent any Note issued to it with respect to the assigned 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 2.15, 2.16, 2.17 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 Commitments of, and principal amount (and stated interest with respect thereto) of the Loans and Revolving L/C Exposure 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 Bank and the Lenders may 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, the Issuing Bank and any Lender (solely with respect to such Lender’s 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 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 and that its Revolving Facility Commitment, and the outstanding balances of its Revolving Loans, in each case, without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance; (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 its Commitments and 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 Borrower, the Administrative Agent, the Issuing Bank 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. 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 2.15, 2.16 and 2.17 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 2.19(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 2.19(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 2.18(4) 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 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 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant shall not be entitled to the benefits of Section 2.17 to the extent such Participant fails to comply with Section 2.17(5) as though it were a Lender.

- (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 Loans or Commitments with ones having different terms (which would otherwise have been permitted in accordance with Section 10.08(4) if made as new Loans or Commitments), it shall have the option, with the consent of the Administrative Agent and, where relevant, the Swingline Lender and each Issuing Bank, and subject to at least three Business Days' advance notice to the Lenders, instead of repaying the Loans or reducing or terminating the Commitments to be replaced, to (i) require the Lenders to assign such Loans or Commitments to the Administrative Agent or its designees and (ii) 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 Loans and Commitments to be replaced shall be purchased at par (allocated among the Lenders in the same manner as would be required if such Loans were being optionally prepaid or such Commitments were being optionally reduced or terminated by the Borrower), 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 Loans or Commitments 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, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Commitment of such Disqualified Institution and repay all obligations of the Borrower owing to such Disqualified Institution in connection with such Commitment, (B) [reserved.] 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 lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, 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 under this Agreement (including all or a portion of their Commitments and the Loans owing to them) to Disqualified Institutions if the Borrower has not posted the list of Disqualified Institutions to the Platform.

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, the Arrangers, Syndication Agents, Senior Managing Agents and Documentation Agents in connection with the syndication of Revolving Facility, 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, Issuing Bank and the Swingline Lender) in connection with the 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, the Arrangers, Syndication Agents, Senior Managing Agents and Documentation Agents, 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, the Arrangers, Syndication Agents, Senior Managing Agents and Documentation Agents and, in the case of enforcement of this Agreement, each Lender, Issuing Bank and the Swingline Lender.

- (2) The Borrower agrees to indemnify the Administrative Agent, each Arranger, each Syndication Agent, each Senior Managing Agent, each Documentation Agent, each Lender, each Issuing Bank, the Swingline 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 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, Arrangers, Syndication Agents, Senior Managing Agents or Documentation Agents or their respective Affiliates, in each case, in their capacity or in fulfilling their role as the agent or arranger, syndication agents, senior managing agent or documentation agents or any other similar role under the Revolving Facility (excluding their role as a Lender) to the extent such Persons are otherwise entitled to receive indemnification under this Section 10.05(2) or (B) claims arising out of any act or omission on the part of Holdings, the Borrower or their Restricted Subsidiaries.

- (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 2.17.
- (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 Commitment, any Letter of Credit, any 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 Revolving Lender and each Issuing Bank 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 Revolving Lender or such Issuing Bank to or for the credit or the account of Holdings, any Borrowing Base Party or any Subsidiary Loan Party against any and all of the Obligations of Holdings, any Borrowing Base Party or any Subsidiary

Loan Party now or hereafter existing under this Agreement or any other Loan Document held by such Revolving Lender or such Issuing Bank, irrespective of whether or not such Revolving Lender or such Issuing Bank shall have made any demand under this Agreement or such other Loan Document and although such Obligations may be unmatured. The rights of each Revolving Lender and each Issuing Bank under this Section 10.06 are in addition to other rights and remedies (including other rights of set-off) that such Revolving Lender or such Issuing Bank may have, but 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, any Issuing Bank 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, each Issuing Bank 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 2.21, 2.23 and 10.20;
  - (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 (or after the Discharge of ABL Revolving Claims, the Required Term 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 (or after the Discharge of ABL Revolving Claims, the Required Term Lenders);

*provided, however*, that, except as provided in Sections 2.21, 2.23 and 10.20, no such agreement will:

- (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 Loan or any L/C Disbursement, or extend the stated expiration of any Letter of Credit beyond the Maturity Date, without the prior written consent of each Lender adversely directly affected thereby, except as provided in Section 2.05(3) with respect to the expiration of Letters of Credit;
- (ii) increase or extend the Commitment of any Lender or decrease, waive or excuse the Commitment Fees or L/C Participation Fees or other fees of any Lender, Agent or Issuing Bank without the prior written consent of such Lender, Agent or Issuing Bank (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the aggregate Commitments shall not constitute an increase of the Commitments of any Lender);
- (iii) extend any date on which payment of principal or interest on any Loan or any L/C Disbursement or any Fees is due, without the prior written consent of each Lender adversely affected thereby;
- (iv) amend the provisions of Section 2.18 of this Agreement, Section 5.02 of the Collateral Agreement or Section 4.2 of the Intercreditor Agreement or any analogous provision of any of this Agreement or any other Loan Document, in a manner that would by its terms alter the pro rata sharing of payments required thereby or the relative priorities of such payments, without the prior written consent of each Lender adversely affected thereby;
- (v) change the definition of the term “Borrowing Base” or any component definition thereof if as a result thereof the amounts available to be borrowed by the Borrower would be increased, or increase any of the percentages set forth in the definition of “Borrowing Base”, without the prior written consent of Lenders which would constitute the Required Lenders if the percentage “50.0%” contained in the definition thereof were changed to “66-2/3%” (such Lenders, the “**Supermajority Lenders**”); *provided* that the foregoing shall not limit the ability of the Administrative Agent to implement, change or eliminate any Reserves in its Reasonable Credit Judgment as permitted hereunder without the prior written consent of any Lenders;

- (vi) amend or modify the provisions of this Section 10.08 or the definition of the term “Supermajority Lenders” or “Required Lenders”, as the case may be, or any other provision hereof specifying the number or percentage of Supermajority Lenders or Required Lenders, as the case may be, 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 applicable Lender;
- (vii) 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 ABL Priority Collateral in the Intercreditor Agreement), unless pursuant to a transaction permitted by this Agreement, or release any of Holdings, any Borrowing Base Party or any Subsidiary Loan Party from their respective obligations as a Borrowing Base Party or Subsidiary Loan Party under this Agreement or from their respective Guarantees under the Collateral Agreement (as applicable), 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 are sold or otherwise disposed of in a transaction permitted by this Agreement, without the prior written consent of each Lender;
- (viii) increase the aggregate Revolving Facility Commitments, other than as provided in Section 2.21, without the prior written consent of each Revolving Lender; or
- (ix) at any time when there is outstanding more than one tranche of Loans, amend, modify or waive any provision of this Agreement which adversely impacts one or more tranches in a manner different than that which applies to one or more other tranches, without the consent of Lenders holding a majority of each tranche of such adversely affected Loans;

*provided* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or an Issuing Bank hereunder without the prior written consent of the Administrative Agent or such Issuing Bank 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 or Issuing Bank, 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) 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 2.21, Extension Amendments in accordance with Section 2.23, and such Incremental Facility Amendments and Extension 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.
- (5) 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 Commitments on substantially the same basis as the Revolving Loans.
- (6) Notwithstanding the foregoing, no consent of any Defaulting Lender will be required other than with respect to any amendment or waiver set forth in clauses (a) through (c) of Section 10.08(2) that directly and adversely affects such Lender.
- (7) 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 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 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. Notwithstanding the foregoing, the Fee Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. 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, 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, each Issuing Bank and each of the Agents agrees (and agrees to cause each of its respective 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 Merger or 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, such Issuing Bank or the Administrative Agent without violating this Section 10.16; or (3) was available to such Lender, such Issuing Bank 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) 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 Revolving Facility 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).

Notwithstanding the foregoing, no such information 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 Arrangers will make available to the Lenders and the Issuing Bank 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 Arrangers, the Issuing Bank 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 Arrangers 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.”

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 a Borrowing Base Party) 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 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 a Borrowing Base Party) 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 this Agreement and the Collateral Agreement (as applicable) 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 this Agreement and the Collateral Agreement (as applicable). 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 all Commitments are terminated Letters of Credit expired, terminated or cash collateralized on terms satisfactory to the Issuing Bank.

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 Term Loan Claims (as defined in the Intercreditor Agreement), the Loan Parties shall not be required to act or refrain from acting under any Security Document with respect to the Term Loan Priority Collateral in any manner that would result in a "Default" or "Event of Default" (as defined in any Term Loan Document) under the terms and provisions of the Term Loan Documents. Each Lender hereunder (i) consents to the subordination of Liens on Term Priority Collateral provided for in the Intercreditor Agreement, (ii) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement and (iii) authorizes and instructs the Administrative Agent to enter into the Intercreditor Agreement as ABL Agent (as defined in the Intercreditor Agreement) and on behalf of such Lender. The foregoing provisions are intended as an inducement to the lenders under the Term Loan 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 (x) Junior Lien Intercreditor Agreement in the form attached hereto or in such other form as may be satisfactory to the Administrative Agent and (y) any other intercreditor agreement as may be contemplated herein or determined by the Administrative Agent to be consistent herewith, in such 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 Junior Lien Intercreditor Agreement or any other 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 Liability of the Issuing Banks. The Borrower assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letter of Credit. Neither any Issuing Bank nor any of its officers or directors shall be liable or responsible for: (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by such Issuing Bank against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, except that the Borrower shall have a claim against such Issuing Bank, and such Issuing Bank shall be liable to the Borrower, to the extent of any direct, but not consequential, damages suffered by the Borrower that the Borrower prove were caused by (i) such Issuing Bank's willful misconduct or gross negligence as determined in a final, non-appealable judgment by a court of competent jurisdiction in determining whether documents presented under any Letter of Credit comply with the terms of the Letter of Credit or (ii) such Issuing Bank's willful failure to make lawful payment under a Letter of Credit after the presentation to it of a draft and certificates strictly complying with the terms and conditions of the Letter of Credit. In furtherance and not in limitation of the foregoing, such Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

SECTION 10.22 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 Arrangers are arm's-length commercial transactions between Holdings and the Borrower, on the one hand, and the Agents and the Arrangers, 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 any Borrowing Base Party, Holdings, or any other Person and (b) neither any Agent nor any Arranger has any obligation to any Borrowing Base Party, 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 Arrangers 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 neither any Agent nor 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 Borrowing Base Party and Holdings hereby waives and releases any claims that it may have against the Agents and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 10.23 Assumption and Release.

(1) The Administrative Agent, the Collateral Agent, each Lender, each Issuing Bank, the Swingline Lender, Merger Sub as Initial Borrower, Successor Borrower, Petco Holdings, Inc., as Holdings, agree that, immediately upon consummation of the Merger, pursuant to this Section 10.23, (A) Merger Sub hereby assigns to Petco Animal Supplies, Inc., in its capacity as Successor Borrower, and Successor Borrower hereby expressly, unconditionally and irrevocably assumes all obligations of Merger Sub as "Initial Borrower" and "Borrower" hereunder and of all other obligations and liabilities of Merger Sub under this Agreement and each other Loan Document, in each case as if Merger Sub were never a party hereto or thereto as "Borrower" and (B) Successor Borrower agrees to perform and observe all of the obligations (including, without limitation, all obligations in respect of the Term Loans and other indebtedness), covenants, agreements, terms, conditions, duties and liabilities of the Initial Borrower as the "Initial Borrower" and "Borrower" under or with respect to this Agreement, any Notes and any of the other Loan Documents to which the Initial Borrower is a party in its capacity as the "Initial Borrower" and "Borrower" as fully as if the Successor Borrower was originally the obligor in respect thereof and the signatory in the capacity of "Borrower" thereto.

(2) The Administrative Agent, the Collateral Agent, each Lender, each Issuing Bank, and the Swingline Lender, agree that, immediately after the assignment of the obligations of the Company as the Initial Borrower on the Closing Date pursuant to this Section 10.23 and the Merger and the LLC Conversion have been completed, the Company, as survivor of the Merger, ceases to be a party to this Agreement and each other Loan Document as a "Borrower," and

Company shall be released from the payment and performance of any and all obligations of a Borrower and from all other obligations and liabilities of a “Borrower” under this Agreement and each other Loan Document, in each case as if it were never a party hereto or thereto in such capacity. For the avoidance of doubt, after giving effect to the assignment of the obligations of the Company as the Initial Borrower on the Closing Date pursuant to this Section 10.23, the Merger and the LLC Conversion, Company’s sole obligations under this Agreement and each other Loan Document shall be as “Holdings” hereunder and thereunder (including any definition or covenant applicable thereto that applies to Holdings in such capacity).

(3) The Successor Borrower hereby represents and warrants to the Administrative Agent, the Collateral Agent and the Lenders that all of the representations and warranties of the Successor Borrower set forth in this Agreement and each of the other Loan Documents are true and correct in all material respects as of the Closing Date, except to the extent such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(4) The Successor Borrower hereby acknowledges that it has reviewed the terms and provisions of this Agreement and consents hereto. The Successor Borrower acknowledges and agrees that each of the Loan Documents to which it is a party or otherwise bound shall continue in full force and effect and that all of its obligations thereunder shall be valid and enforceable and shall not be impaired or limited by the execution or effectiveness of this Agreement.

SECTION 10.24 Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Revolving 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 10.25 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

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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]*



The undersigned hereby confirms that, as a result of its merger with PET ACQUISITION MERGER SUB LLC on the Closing Date, it hereby assumes all of the rights and obligations of PET ACQUISITION MERGER SUB LLC under this Agreement (in furtherance of, and not in lieu of, any assumption or deemed assumption as a matter of law) and hereby agrees to be joined to this Agreement as the Holdings hereunder.

Holdings:

PETCO HOLDINGS, INC.

By           /s/ Cameron Breitner          

Name: Cameron Breitner

Title: President

*[Signature Page to ABL Credit Agreement]*



CITIBANK, N.A.,  
as Administrative Agent, Collateral Agent, Issuing Bank, Swingline Lender  
and a Lender

By /s/ K. Kelly Gunness

Name: K. Kelly Gunness

Title: Vice President and Director

*[Signature Page to ABL Credit Agreement]*

BARCLAYS BANK PLC,  
as a Lender and Issuing Bank

By /s/ Joseph Jordan  
Name: Joseph Jordan  
Title: Managing Director

*[Signature Page to ABL Credit Agreement]*

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as a Lender and as Issuing Bank

By /s/ Michael Stavrakos  
Name: Michael Stavrakos  
Title: Assistant Vice President

*[Signature Page to ABL Credit Agreement]*

ROYAL BANK OF CANADA,  
as a Lender and as Issuing Bank

By /s/ Pierre Noriega  
Name: Pierre Noriega  
Title: Authorized Signatory

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*[Signature Page to ABL Credit Agreement]*

BANK OF AMERICA, N.A.,  
as a Lender

By /s/ Joseph Becker  
Name: Joseph Becker  
Title: Managing Director

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*[Signature Page to ABL Credit Agreement]*

MUFG UNION BANK, N.A.,  
as a Lender

By /s/ Peter Ehlinger  
Name: Peter Ehlinger  
Title: Vice President

*[Signature Page to ABL Credit Agreement]*

CITY NATIONAL BANK, a National Banking  
Association, as a Lender

By /s/ Catherine Chiavetta

Name: Catherine Chiavetta

Title: Senior Vice President

*[Signature Page to ABL Credit Agreement]*

U.S. BANK NATIONAL ASSOCIATION,  
as a Lender

By /s/ William Patton  
Name: William Patton  
Title: VP

*[Signature Page to ABL Credit Agreement]*

REGIONS BANK,  
as a Lender

By /s/ Richard A. Gere  
Name: Richard A. Gere  
Title: SVP

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*[Signature Page to ABL Credit Agreement]*

NOMURA CORPORATE FUNDING AMERICAS, LLC,  
as a Lender

By /s/ Carl Mayer

Name: Carl Mayer

Title: Managing Director

*[Signature Page to ABL Credit Agreement]*

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,  
as a Lender

By /s/ JUDITH SMITH

Name: JUDITH SMITH

Title: AUTHORIZED SIGNATORY

By /s/ Max Wallins

Name: Max Wallins

Title: Authorized Signatory

*[Signature Page to ABL Credit Agreement]*

MIHI LLC,  
as a Lender

By /s/ Michael Banish  
Name: Michael Banish  
Title: Authorized Signatory

By /s/ Ayesha Farooqi  
Name: Ayesha Farooqi  
Title: Authorized Signatory

*[Signature Page to ABL Credit Agreement]*

**TERM LOAN GUARANTEE AND COLLATERAL AGREEMENT,**

**dated as of January 26, 2016,**

**among**

**PET ACQUISITION MERGER SUB LLC,**

(to be merged with and into PETCO HOLDINGS, INC.) as the Initial Borrower, and  
immediately after giving effect to the Merger, as Holdings

**PETCO ANIMAL SUPPLIES, INC.,**

as the Successor Borrower,

**each other Grantor party hereto,**

**and**

**CITIBANK, N.A.,**

as Administrative Agent and Collateral Agent

Reference is made to the Intercreditor Agreement dated as of January 26, 2016 (as amended, restated, supplemented or otherwise modified from time to time, the "*Intercreditor Agreement*"), among Citibank, N.A., as ABL Agent (as defined therein) and Citibank, N.A., as Term Loan Agent (as defined therein), and acknowledged by Holdings, the Borrower and the Subsidiaries from time to time party thereto. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent, for the benefit of the secured parties hereunder, pursuant to this Agreement and the exercise of any right or remedy by the Collateral Agent and the other secured parties hereunder are subject to the provisions of the Intercreditor Agreement. In the event of any conflict or inconsistency between the provisions of the Intercreditor Agreement and this Agreement, the provisions of the Intercreditor Agreement shall control.

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Exhibit A	Form of Supplement to the Guarantee and Collateral Agreement
Exhibit B	Form of Trademark Security Agreement
Exhibit C	Form of Patent Security Agreement
Exhibit D	Form of Copyright Security Agreement

TERM LOAN GUARANTEE AND COLLATERAL AGREEMENT dated as of January 26, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time, this “*Agreement*”), among each party identified as a “Grantor” on the signature pages hereto (together with any other entity that may become a party hereto as a Grantor as provided herein, each a “*Grantor*” and, collectively, the “*Grantors*”), and CITIBANK, N.A., as Administrative Agent for the Lenders under the Credit Agreement referred to below (in such capacity, the “*Administrative Agent*”) and as Collateral Agent for the Secured Parties (as defined below) (in such capacity, the “*Collateral Agent*”).

#### RECITALS

- (1) Reference is made to that certain TERM LOAN CREDIT AGREEMENT, dated as of January 26, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “*Credit Agreement*”), among initially PET ACQUISITION MERGER SUB LLC, a Delaware limited liability company (in its capacity as the borrower thereunder, and after the assignment of the obligations of initial borrower on the closing date pursuant to Section 10.22 therein and the merger and the LLC Conversion have been completed, in its capacity as Holdings thereunder) and after the consummation of the merger, and upon assumption of the initial borrower’s obligations thereunder pursuant to Section 10.22 therein, PETCO ANIMAL SUPPLIES, INC., a Delaware corporation, the Lenders party thereto from time to time and CITIBANK, N.A., as Administrative Agent and as Collateral Agent.
- (2) In consideration of the extensions of credit and other accommodations of the Lenders as set forth in the Credit Agreement, each Guarantor has agreed to guarantee the obligations of the Borrower under the Credit Agreement and each Grantor has agreed to secure such Grantor’s obligations under the Loan Documents, in each case as set forth herein.

#### AGREEMENT

Accordingly, the parties hereto agree as follows:

#### ARTICLE I

#### DEFINITIONS

##### Section 1.01. Credit Agreement.

- (1) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein have the meanings assigned to them in the Credit Agreement, and the following terms which are defined in the UCC are used herein as so defined (and if defined in more than one article of the UCC have the meaning specified in Article 9 thereof): Accounts, Account Debtor, Certificated Security, Chattel Paper, Commodity Account, Deposit Account, Documents, Equipment, Goods, Instruments, Inventory, Letter of Credit Rights, Money, Securities Account, Security Entitlement, Supporting Obligations, Tangible Chattel Paper and Uncertificated Security.

(2) The rules of construction specified in Section 1.02 of the Credit Agreement also apply, *mutatis mutandis*, to this Agreement.

Section 1.02. Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“**ABL Collateral Agent**” means Citibank, N.A., as “Collateral Agent” under the ABL Credit Agreement, and any duly appointed successor in such capacity.

“**ABL Priority Collateral**” has the meaning assigned to such term in the Intercreditor Agreement as in effect on the date hereof.

“**Administrative Agent**” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“**Agreement**” has the meaning assigned to such term in the introductory paragraph hereto.

“**Article 9 Collateral**” has the meaning assigned to such term in Section 4.01(1).

“**Collateral**” means the collective reference to Article 9 Collateral and Pledged Collateral.

“**Collateral Agent**” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“**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.

“**Control**” has the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

“**Control Agreement**” means a deposit account control agreement, a securities account control agreement or a commodity account control agreement, as applicable, which provides the Collateral Agent with Control of any such accounts, in form and substance reasonably satisfactory to the Collateral Agent.

“**Copyright License**” means any written agreement, now or hereafter in effect, granting any right to any Grantor under any Copyright now or hereafter owned by any third party, and all rights of any Grantor under any such agreement (including any such rights that such Grantor has the right to license) and all grants from a Grantor of any rights to use Copyrights of such Grantor.

“**Copyrights**” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Copyright License or otherwise):

- (1) all copyright rights in any work subject to the copyright laws of the United States or any other country or group of countries, whether as author, assignee, transferee or otherwise;
- (2) all registrations and applications for registration of any such copyright in the United States or any other country or group of countries, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule II;
- (3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
- (4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“**Credit Agreement**” has the meaning assigned to such term in the recitals to this Agreement.

“**DDA**” means any checking or other demand deposit account maintained by the Grantors.

“**Discharge of ABL Claims**” has the meaning assigned to such term in the Intercreditor Agreement.

“**Excluded Accounts**” means any DDA, Securities Account, Commodity Account or any other Deposit Account of any Grantor (and all cash, Cash Equivalents and other securities or investments credited thereto or deposited therein): (1) that does not have an individual daily balance in excess of \$500,000, or in the aggregate with each other account described in this clause (1), in excess of \$5.0 million; (2) the balance of which is swept at the end of each Business Day into a Deposit Account, Securities Account or Commodity Account subject to a Control Agreement, so long as such daily sweep is not terminated or modified (other than to provide that the balance in such Deposit Account, Securities Account or Commodity Account is swept into another Deposit Account, Securities Account or Commodity Account subject to a Control Agreement) without the consent of the Collateral Agent; (3) that is a Trust Account, Specified Segregated Account (as defined in the ABL Credit Agreement) or Designated Disbursement Account (as defined in the ABL Credit Agreement); or (4) to the extent that it is cash collateral for letters of credit to the extent permitted under Section 6.02 of the Credit Agreement.

“**Excluded Assets**” means all of the following, whether now owned or hereafter acquired:

- (1) all Excluded Equity Interests;
- (2) all leasehold Real Property interests;

- (3) all fee simple Real Property interests with a fair market value (as determined in good faith by a Responsible Officer of the Borrower), less than \$7.5 million on a per property basis;
- (4) security interests to the extent the same would result in materially adverse tax consequences or materially adverse regulatory consequences, in each case, as reasonably determined by a Responsible Officer of the Borrower in good faith and identified in writing to the Collateral Agent;
- (5) [reserved];
- (6) any governmental licenses or state or local franchises, charters and authorizations that are not permitted to be pledged under applicable law;
- (7) any “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act;
- (8) any Excluded Account;
- (9) any assets owned directly or indirectly by a Foreign Subsidiary or a FSHCO;
- (10) vehicles and any other assets subject to certificates of title;
- (11) [reserved];
- (12) any Grantor’s right, title or interest in any lease, license, contract or agreement to which such Grantor is a party or any of its right, title or interest thereunder to the extent, but only to the extent, that such a grant would, under the terms of such lease, license, contract or agreement, result in a breach of the terms of, or constitute a default under, or result in the abandonment, invalidation or unenforceability of or create a right of termination in favor of or require the consent of any other party thereto (other than Holdings, the Borrower or any of their respective Subsidiaries), such lease, license, contract or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC or any other applicable law (including Title 11 of the United States Code) or principles of equity); provided, however, that the Collateral shall include (and such security interest shall attach and the definition of “Excluded Assets” shall not then include) immediately at such time as the contractual or legal provisions referred to above shall no longer be applicable and to the extent severable, and shall attach immediately to any portion of such lease, license, contract or agreement not subject to the provisions specified in this clause (12); provided further that the exclusions referred to in this

clause shall not include any proceeds of such lease, license, contract or agreement;

- (13) assets to the extent the granting of a security interest therein would be prohibited or restricted by applicable law, rule or regulation (including any requirement to obtain the consent of any Governmental Authority which has not been obtained) other than to the extent that such prohibition or restriction would be overridden by the applicable Uniform Commercial Code;
- (14) [reserved];
- (15) any assets 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 the Borrower and the Administrative Agent; or
- (16) (a) any assets and proceeds thereof subject to a Lien permitted under Section 6.02(3) of the Credit Agreement to the extent that the documents providing for the Indebtedness secured by such Liens do not permit such assets and proceeds thereof to be pledged to the Collateral Agent; provided further that the exclusions referred to in this clause (a) shall not include any proceeds of such document or (b) any assets subject to a Lien permitted by Section 6.02(7) so long as the documents providing for such Lien do not permit such assets to be pledged to the Collateral Agent.

“**Excluded Equity Interests**” means any and all of the following Equity Interests, whether now owned or hereafter acquired:

- (1) interests in partnerships, joint ventures and non-wholly owned subsidiaries which cannot be pledged without the consent of one or more unaffiliated third parties or not permitted by the terms of such person’s organizational or joint venture documents (so long as such prohibition did not arise as part of the acquisition or formation thereof or in anticipation of the Credit Agreement);
- (2) interests in Immaterial Subsidiaries (except to the extent the security interest therein can be perfected by the filing of a Form UCC-1 financing statement), captive insurance subsidiaries, not-for-profit subsidiaries, special purpose entities used for securitization facilities and Unrestricted Subsidiaries;
- (3) margin stock;
- (4) voting Equity Interests of any Foreign Subsidiary or any FSHCO, in excess of 65% of the issued and outstanding voting Equity Interests of such Foreign Subsidiary or FSHCO;
- (5) subject to Section 7.15(5), any Equity Interests to the extent that a pledge of such Equity Interests would give rise to additional subsidiary reporting

requirements under Rule 3-10 or Rule 3-16 of Regulation S-X promulgated under the Exchange Act;

- (6) to the extent applicable law requires that a Subsidiary of such Grantor issue directors' qualifying shares, nominee shares or similar shares which are required by applicable law to be held by persons other than the Grantors, such qualifying shares, nominee shares or similar shares held by Persons other than Grantors;
- (7) any Equity Interests if, to the extent and for so long as the pledge of such Equity Interests hereunder is prohibited or restricted by any applicable law, including any requirement to obtain consent of any Governmental Authority which has not been obtained (other than to the extent such prohibition would be rendered ineffective under the UCC or any other applicable law); *provided* that such Equity Interests shall cease to be Excluded Equity Interests at such time as such prohibition ceases to be in effect; or
- (8) Equity Interests to the extent the same would result in materially adverse tax consequences or materially adverse regulatory consequences, in each case, as reasonably determined by the Borrower.

***“Excluded Swap Obligation”*** has the meaning assigned to such term in the Credit Agreement.

***“Federal Securities Laws”*** has the meaning assigned to such term in Section 5.03.

***“FSHCO”*** means any direct or indirect Domestic Subsidiary substantially all of the assets of which consist of the equity and, if any, indebtedness of one or more direct or indirect Foreign Subsidiaries.

***“Grantor”*** and ***“Grantors”*** have the meanings assigned to such terms in the introductory paragraph to this Agreement.

***“Guarantor”*** means Holdings, the Borrower and each Subsidiary Loan Party.

***“Intellectual Property”*** means all intellectual property of every kind and nature that any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest, including inventions, designs, Patents, Copyrights, Trademarks, trade secrets, domain names, confidential or proprietary technical and business information or know-how.

***“Intellectual Property Collateral”*** has the meaning assigned to such term in Section 4.02(8).

***“Intellectual Property Security Agreement”*** means a Trademark Security Agreement in substantially the form of Exhibit B hereto, a Patent Security Agreement in substantially the form of Exhibit C hereto, or a Copyright Security Agreement in substantially the form of Exhibit D hereto.

“**IP Agreements**” means all material Copyright Licenses, Patent Licenses and Trademark Licenses, and all other agreements, permits, consents, orders and franchises relating to the license, development, use or disclosure of any material Intellectual Property to which a Grantor, now or hereafter, is a party or a beneficiary, including, without limitation, the agreements set forth on Schedule II hereto.

“**Patent License**” means any written agreement, now or hereafter in effect, granting to any Grantor any right to make, use or sell any invention covered by a Patent, now or hereafter owned by any third party (including any such rights that such Grantor has the right to license) and all rights of any Grantor under any such agreement and all grants from a Grantor of any right to use a Patent of such Grantor.

“**Patents**” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Patent License or otherwise):

- (1) all letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II, and all applications for letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II;
- (2) all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;
- (3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
- (4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“**Pledged Collateral**” has the meaning assigned to such term in Section 3.01(5).

“**Pledged Debt**” has the meaning assigned to such term in Section 3.01.

“**Pledged Securities**” means any promissory notes, stock certificates or other certificated securities now or hereafter included in the Pledged Collateral, including all certificates, instruments or other documents representing or evidencing any Pledged Collateral (regardless of whether constituting securities under the UCC).

“**Pledged Stock**” has the meaning assigned to such term in Section 3.01.

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

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

“**Secured Obligations**” means the (i) the Obligations, (ii) each guarantee of the Obligations pursuant to this Agreement and (iii) whether or not constituting Obligations, the unpaid principal of and interest on (including, without limitation, interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to the Borrower or any other Grantor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) and all other obligations and liabilities of the Borrower or any other Grantor to any Agent, any Lender or any Qualified Counterparty which may arise under or in connection with any Loan Document, any Specified Hedge Agreement and/or Cash Management Obligations; provided, however, that the Secured Obligations will not include any Excluded Swap Obligations.

“**Secured Parties**” means (a) the Lenders, (b) the Agents (including each co-agent or sub-agent appointed by the Agent from time to time pursuant to the Credit Agreement), (c) the Cash Management Banks, (d) any Qualified Counterparties, (e) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (f) the successors and permitted assigns of each of the foregoing.

“**Security Interest**” has the meaning assigned to such term in Section 4.01(1).

“**Swap Obligation**” has the meaning assigned to such term in the Credit Agreement.

“**Trademark License**” means any written agreement, now or hereafter in effect, granting to any Grantor any right to use any Trademark now or hereafter owned by any third party (including any such rights that such Grantor has the right to license) and all grants from a Grantor of any right to use a Trademark of such Grantor.

“**Trademarks**” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Trademark License or otherwise):

- (1) all trademarks, service marks, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations thereof (if any), and all registration applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof (except for “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use”

application prior to such filing would violate the Lanham Act), and all renewals thereof, including those listed on Schedule II;

- (2) all goodwill associated therewith or symbolized thereby;
- (3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
- (4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“**Trust Account**” means any accounts or trusts used solely to hold Trust Funds.

“**Trust Funds**” means, to the extent segregated from other assets of the Loan Parties in a segregated account that contains amounts comprised solely and exclusively of such Trust Funds, cash, cash equivalents or other assets comprised solely of:

- (1) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Loan Party’s employees;
- (2) all taxes required to be collected, remitted or withheld (including Federal and state withholding taxes (including the employer’s share thereof)); and
- (3) any other funds which the Borrower or any of the Restricted Subsidiaries holds in trust or as an escrow or fiduciary for another person which is not a Restricted Subsidiary of the Borrower.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided, however*, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “**Uniform Commercial Code**” or “**UCC**” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

“**Vehicles**” shall mean all cars, trucks, trailers, construction and earth moving equipment and other Equipment of any nature covered by a certificate of title law of any, and all tires and other appurtenances to any of the foregoing.

## ARTICLE II

### GUARANTEE

Section 2.01. Guarantee. Each of the Guarantors hereby, jointly and severally, absolutely, unconditionally and irrevocably guarantees, to the Collateral Agent for the benefit of

the Secured Parties as primary obligor and not merely as surety, the due and punctual payment and performance of the Secured Obligations. Each Guarantor further agrees that the Secured Obligations may be extended or renewed, in whole or in part, without notice to or further assent from such Guarantor, and that such Guarantor will remain bound upon its guarantee hereunder notwithstanding any extension or renewal of any Secured Obligation. Each Guarantor waives presentment to, demand of payment from and protest to the Borrower or any other Loan Party of any of the Secured Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment.

Section 2.02. Guarantee of Payment. Each Guarantor further agrees that its guarantee hereunder constitutes a guarantee of payment when due (whether at the stated maturity, by acceleration or otherwise) and not of collection, and waives any right to require that any resort be had by the Collateral Agent or any other Secured Party to any security held for the payment of the Secured Obligations or to any balance of any Deposit Account or credit on the books of the Collateral Agent or any other Secured Party in favor of any Loan Party or any other person.

Section 2.03. No Limitations, Etc.

(1) Except for termination of a Guarantor's obligations hereunder as expressly provided for in Section 7.15 and except as provided in Section 2.07, the obligations of each Guarantor hereunder will not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and will not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Secured Obligations or otherwise (other than defense of payment or performance). Without limiting the generality of the foregoing, except for termination or release of a Guarantor's obligations hereunder in accordance with the terms of Section 7.15 the obligations of each Guarantor hereunder, to the fullest extent permitted by applicable law, will not be discharged or impaired or otherwise affected by, and each Guarantor hereby waives any defense to the enforcement hereof by reason of:

- (a) any failure or omission of the Collateral Agent or any other Secured Party to assert or enforce or agreement or election not to assert or enforce, delay in enforcement, or stay or enjoining, by the order of court, by operation of law or otherwise, the exercise or enforcement of, any claim or demand or to exercise or enforce any right, power or remedy (whether arising under or in connection with any Loan Document, any Specified Hedge Agreement or any Cash Management Obligation, at law, in equity or otherwise) with respect to the Secured Obligations or any agreements relating thereto, or with respect to any other guaranty of or security for the payment of the Secured Obligations;
- (b) the validity or enforceability or any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Loan Document or any other agreement, including with respect to any other Guarantor under this Agreement;

- (c) any renewal, extension or acceleration of, or any increase in the amount of the Secured Obligations, or any amendment, supplement, modification or waiver of, or any consent to departure from, the Loan Documents or any Specified Hedge Agreement or Cash Management Obligation;
  - (d) the validity, perfection, the failure to perfect (or lapse in perfection) any security interest in, or the release of, any of the Collateral held by or on behalf of the Collateral Agent or any other Secured Party for the Secured Obligations;
  - (e) any default, failure or delay, willful or otherwise, in the performance of the Secured Obligations;
  - (f) any illegality, lack of validity or enforceability of any Secured Obligation;
  - (g) any change in the corporate existence, structure or ownership of any Loan Party, or any insolvency, bankruptcy or reorganization of any Loan Party and any corresponding restructuring of the Secured Obligations;
  - (h) the existence of any claim, set-off or other rights that the Guarantors may have at any time against the Borrower, the Collateral Agent, any other Secured Party or any other person, whether in connection herewith, the other Loan Documents or any unrelated transactions; provided that nothing herein will prevent the assertion of any such claim by separate suit or compulsory counterclaim;
  - (i) any action permitted or authorized hereunder; or
  - (j) any other circumstance (including any statute of limitations) or any act or omission that may in any manner or to any extent vary the risk of any Guarantor or otherwise operate as a defense to, or a legal or equitable discharge of, the Borrower or any Guarantor or any other guarantor or surety (other than the payment in full in cash or immediately available funds of the Secured Obligations).
- (2) Each Guarantor expressly authorizes the Secured Parties to take and hold security for the payment and performance of the Secured Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the Secured Obligations, all without affecting the obligations of any Guarantor hereunder.
- (3) To the fullest extent permitted by applicable law and except for termination or release of a Guarantor's obligations hereunder in accordance with the terms of Section 7.15 hereof, each Guarantor waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Secured Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than, after all Commitments have been terminated, the payment in full in

cash or immediately available funds of all the Secured Obligations (other than Secured Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted). The Collateral Agent and the other Secured Parties may exercise any right or remedy available to them against any other Loan Party pursuant to this Agreement or the other Loan Documents, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent that after giving effect thereto all Secured Obligations have been terminated and paid in full (other than contingent indemnity or expense reimbursement obligations that are not yet due and payable and for which no claim has been made). To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against any other Loan Party, as the case may be, or any security.

Section 2.04. Reinstatement. Each Guarantor agrees that its guarantee hereunder will continue to be effective or be reinstated if, at any time, payment, or any part thereof, of any Secured Obligation is rescinded or must otherwise be restored by the Collateral Agent or any other Secured Party upon the bankruptcy or reorganization of the Borrower or any other Loan Party or otherwise.

Section 2.05. Agreement To Pay; Contribution; Subrogation.

- (1) In furtherance of the foregoing and not in limitation of any other right that the Administrative Agent or any other Secured Party has at law or in equity against any Guarantor by virtue hereof, upon the failure of any Loan Party to pay any Secured Obligation when and as the same becomes due and payable, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the Collateral Agent for distribution to the applicable Secured Parties in cash the amount of such unpaid Secured Obligation.
- (2) Subject to the foregoing clause (1), to the extent that any Guarantor, under this Agreement or the Credit Agreement as a joint and several obligor, repays any of the Secured Obligations constituting Loans or other advances made to or reimbursement obligations owed by another Loan Party under the Credit Agreement (an "**Accommodation Payment**"), then the Guarantor making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Guarantors in an amount equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Guarantor's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Guarantors; *provided* that such rights of contribution and indemnification shall be subordinated to the discharge of Secured Obligations. As of any date of determination, the "**Allocable Amount**" of each Guarantor shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Guarantor hereunder and under the Credit Agreement without:

- (a) rendering such Guarantor “insolvent” within the meaning of Section 101 (31) of the Bankruptcy Code of the United States, Section 2 of the Uniform Fraudulent Transfer Act (“*UFTA*”) or Section 2 of the Uniform Fraudulent Conveyance Act (“*UFCA*”);
- (b) leaving such Guarantor with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code of the United States, Section 4 of the UFTA, or Section 5 of the UFCA; or
- (c) leaving such Guarantor unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code of the United States or Section 4 of the UFTA, or Section 5 of the UFCA.

Upon payment by any Guarantor of any sums to the Collateral Agent as provided above, all rights of such Guarantor against the Borrower, any other Loan Party or any other Guarantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subject to Article VI.

Section 2.06. Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the financial condition and assets of the Borrower and each other Loan Party, and of all other circumstances bearing upon the risk of nonpayment of the Secured Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that no Agent nor any other Secured Party will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

Section 2.07. Maximum Liability. Each Guarantor, and by its acceptance of this guarantee, each Agent and each other Secured Party hereby confirms that it is the intention of all such persons that this guarantee and the Secured Obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the U.S. Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this guarantee and the Secured Obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Secured Parties and the Guarantors hereby irrevocably agree that the Secured Obligations of the Guarantors under this guarantee at any time are limited to the maximum amount as will result in the Secured Obligations of such Guarantor under this guarantee not constituting a fraudulent transfer or conveyance.

Section 2.08. Taxes. Any and all payments by or on account of any obligation of any Guarantor hereunder shall be made free and clear of and without deduction for, any Indemnified Taxes or Other Taxes; *provided* that if a Guarantor shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.08) the Collateral Agent or any Secured Party, as applicable, receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Guarantor shall make such deductions and (iii) such Guarantor shall timely

pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law. The provisions of Section 2.14 of the Credit Agreement shall apply to each Guarantor mutatis mutandis. Any amounts payable by any Guarantor pursuant to this Section 2.08 shall be made without duplication (including with any amount otherwise payable under Section 2.14 of the Credit Agreement). For the avoidance of doubt, no Guarantor shall be required to pay any greater amount under this Section 2.08 than such Guarantor would have been required to pay had it been a Loan Party that was a party to the Credit Agreement.

Section 2.09. Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 2.09 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 2.09, or otherwise under this Guaranty, as it relates to such Loan Party, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until a Discharge of Secured Obligations. Each Qualified ECP Guarantor intends that this Section 2.09 constitute, and this Section 2.09 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

### ARTICLE III

#### PLEDGE OF SECURITIES

Section 3.01. Pledge. As security for the payment or performance, as the case may be, in full of its Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title and interest in, to and under:

- (1) the Equity Interests (a) directly owned by such Grantor as of the Closing Date and (b) obtained by such Grantor after the Closing Date and, in each case, the certificates representing all such Equity Interests, in each case, other than any Excluded Assets (the Equity Interests described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “**Pledged Stock**”);
- (2) the promissory notes and any instruments and any security certificates evidencing Indebtedness (a) owned by such Grantor as of the Closing Date and (b) issued to such Grantor after the Closing Date and having an aggregate principal amount in excess of \$7.5 million, in each case, other than any Excluded Assets (the instruments described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “**Pledged Debt**”);

in each case, including all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all Pledged Debt (except to the extent constituting an Excluded Asset or otherwise excluded from the Collateral pursuant to this Agreement), but excluding (i) Indebtedness owed by another Grantor, (ii) intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of the Borrower and its Subsidiaries or (iii) to the extent the pledge of such promissory note or instrument would violate any applicable law (after giving effect to the relevant anti-assignment provisions of the Uniform Commercial Code);

- (3) subject to Section 3.05 hereof, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other proceeds received in respect of, the securities referred to in the foregoing clauses (1) and (2);
- (4) subject to Section 3.05 hereof, all rights and privileges of such Grantor with respect to the securities and other property referred to in the foregoing clauses (1), (2) and (3) above; and
- (5) all proceeds of any of the foregoing items referred to in clauses (1) through (4) above, but excluding any Excluded Assets (the items referred to in clauses (1) through (5) of this Section 3.01, collectively, the “**Pledged Collateral**”).

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, none of the Pledged Stock, Pledged Debt or Pledged Collateral will include nor will the security interests granted hereunder attach to any Excluded Asset.

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, forever, subject, however, to the terms, covenants and conditions hereinafter set forth and in each case subject to the Credit Agreement.

Section 3.02. Delivery of the Pledged Collateral.

- (1) Each Grantor agrees promptly to deliver or cause to be delivered to the Collateral Agent, for the benefit of the Secured Parties, any and all Pledged Securities to the extent such Pledged Securities, in the case of promissory notes or other instruments, are required to be delivered pursuant to paragraph (2) of this Section 3.02.
- (2) Each Grantor will use its commercially reasonable efforts to cause any Indebtedness for borrowed money having an aggregate principal amount in excess of \$7.5 million owed to such Grantor by any Person to be evidenced by a duly executed promissory note that is pledged and delivered to the Collateral Agent, for the benefit of the Secured Parties, pursuant to the terms hereof; *provided* that the foregoing requirement will not apply to (a) Indebtedness owed by another Grantor, (b) intercompany current liabilities incurred in the ordinary course of business in connection with the cash

management operations of Holdings, the Borrower and its Subsidiaries or (c) to the extent that a pledge of such promissory note or instrument would violate applicable law. To the extent any such promissory note is a demand note, each Grantor party thereto agrees, if requested by the Collateral Agent, to immediately demand payment thereunder upon a Specified Event of Default unless such demand would not be commercially reasonable or would otherwise expose such Grantor to liability to the maker.

- (3) Upon delivery to the Collateral Agent, (a) any Pledged Securities required to be delivered pursuant to the foregoing paragraphs (1) and (2) of this Section 3.02 will be accompanied by stock powers or note powers, as applicable, duly executed in blank or other instruments of transfer reasonably satisfactory to the Collateral Agent and by such other instruments and documents as the Collateral Agent may reasonably request and (b) all other property composing part of the Pledged Collateral delivered pursuant to the terms of this Agreement shall be accompanied, to the extent necessary to perfect the security interest in or allow realization on the Pledged Collateral, by proper instruments of assignment duly executed by the applicable Grantor and such other instruments or documents as the Collateral Agent may reasonably request. Each delivery of Pledged Securities shall be accompanied by a schedule describing the securities, which schedule shall be attached hereto as Schedule I (or a supplement to Schedule I, as applicable) and made a part hereof; *provided* that failure to attach any such schedule hereto shall not affect the validity of such pledge of such Pledged Securities. Each schedule so delivered shall supplement any prior schedules so delivered.
- (4) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no Grantor will be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Pledged Collateral of such Grantor.

Section 3.03. Representations, Warranties and Covenants. Each Grantor represents and warrants (but solely with respect to any Borrowing made after closing pursuant to Section 2.18, to the extent required by Section 2.18(6) of the Credit Agreement) and covenants to the Collateral Agent, for the benefit of the Secured Parties that:

- (1) Schedule I correctly sets forth, as of the Closing Date, (a) the percentage of the issued and outstanding shares of each class of the Equity Interests of the issuer thereof represented by such Pledged Stock and (b) all debt securities and promissory notes or instruments evidencing Indebtedness required to be pledged pursuant to the terms of the Credit Agreement on the Closing Date;
- (2) the Pledged Stock and Pledged Debt (solely with respect to Pledged Debt issued by a Person that is not a Subsidiary of Holdings or an Affiliate of any such Subsidiary, to the best of each Grantor's knowledge) have been duly and validly authorized and issued by the issuers thereof and (a) in the case of Pledged Stock, are fully paid and non-assessable (to the extent such concepts are applicable to such Pledged Stock and other than with respect to Pledged Stock consisting of membership interests of limited liability

companies to the extent provided in Sections 18-502 and 18-607 of the Delaware Limited Liability Company Act) and (b) in the case of Pledged Debt (solely with respect to Pledged Debt issued by a Person that is not a Subsidiary of Holdings or an Affiliate of any such Subsidiary, to the best of each Grantor's knowledge) are legal, valid and binding obligations of the issuers thereof, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding at law or in equity) and an implied covenant of good faith and fair dealing;

- (3) except for the security interests granted hereunder, each Grantor:
- (a) is and, subject to any transfers made in compliance with the Credit Agreement, will continue to be the direct owner, beneficially and of record, of the Pledged Securities indicated on Schedule I as owned by such Grantor;
  - (b) holds the same free and clear of all Liens, other than Permitted Liens;
  - (c) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral, other than pursuant to a transaction permitted by the Credit Agreement and other than Permitted Liens; and
  - (d) subject to the rights of such Grantor under the Loan Documents to dispose of Pledged Collateral, will use commercially reasonable efforts to defend its title or interest hereto or therein against any and all Liens (other than Permitted Liens), however arising, of all persons;
- (4) other than as set forth in the Credit Agreement or the schedules thereto, and except for restrictions and limitations imposed by the Loan Documents or securities laws generally or otherwise permitted to exist pursuant to the terms of the Credit Agreement, the Pledged Stock (other than Pledged Stock that is partnership interests) is and will continue to be freely transferable and assignable, and, except for limitations existing on the Closing Date in the articles or certificate of incorporation, bylaws or other organizational documents of any Subsidiary that is not a wholly owned Subsidiary, none of the Pledged Stock is or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that would prohibit, impair, delay or otherwise affect the pledge of such Pledged Stock hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder;
- (5) each Grantor has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated;
- (6) other than as set forth in the Credit Agreement or the schedules thereto, no consent or approval of any Governmental Authority, any securities exchange or any other

Person was or is necessary to the validity of the pledge effected hereby (other than such as have been obtained and are in full force and effect);

- (7) this Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) a legal, valid and enforceable security interest in the Collateral described herein and proceeds thereof;
- (8) none of the Equity Interests in limited liability companies or partnerships that are pledged by the Grantors hereunder constitute a security under Section 8-103 of the UCC or the corresponding code or statute of any other applicable jurisdiction other than any Equity Interest represented by security certificates that have been delivered to the Collateral Agent; and
- (9) the Grantors shall not amend, or permit to be amended, the limited liability company agreement (or operating agreement or similar agreement) or partnership agreement of any subsidiary of any Loan Party whose Equity Interests are, or are required to be, Collateral in a manner to cause such Equity Interests to constitute a security under Section 8-103 of the New York UCC or the corresponding code or statute of any other applicable jurisdiction unless such Loan Party shall have first delivered reasonable prior written notice to the Collateral Agent and shall have taken all actions contemplated hereby and as otherwise reasonably required by the Collateral Agent to maintain the security interest of the Collateral Agent therein as a valid, perfected, first priority security interest, subject to the relative priorities set forth in the Intercreditor Agreement.

Section 3.04. Registration in Nominee Name; Denominations. The Collateral Agent, on behalf of the Secured Parties, has the right (in its sole and absolute discretion) to hold the Pledged Securities in the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent or, if an Event of Default shall have occurred and be continuing, in its own name as pledgee or the name of its nominee (as pledgee or as sub-agent). Each Grantor will promptly give to the Collateral Agent copies of any notices or other communications received by it with respect to Pledged Securities registered in the name of such Grantor. If an Event of Default shall have occurred and be continuing, the Collateral Agent will have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement. Each Grantor will use its commercially reasonable efforts to cause any Loan Party that is not a party to this Agreement to comply with a request by the Collateral Agent, pursuant to this Section 3.04, to exchange certificates representing Pledged Securities of such Loan Party for certificates of smaller or larger denominations.

Section 3.05. Voting Rights; Dividends and Interest, Etc.

- (1) Unless and until an Event of Default has occurred and is continuing and the Collateral Agent has given written notice to the Borrower of the Collateral Agent's intention to exercise its rights hereunder:
  - (a) each Grantor will be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Collateral or any

part thereof for any purpose consistent with the terms of this Agreement, the Credit Agreement and the other Loan Documents; *provided* that, except as permitted under the Credit Agreement, such rights and powers will not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Collateral, the rights and remedies of any of the Collateral Agent or the other Secured Parties under this Agreement, the Credit Agreement or any other Loan Document or the ability of the Secured Parties to exercise the same;

- (b) the Collateral Agent will promptly execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (a) above; and
  - (c) each Grantor will be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Credit Agreement, the other Loan Documents and applicable laws; *provided* that (i) any noncash dividends, interest, principal or other distributions, payments or other consideration in respect thereof, including any rights to receive the same to the extent not so distributed or paid, that would constitute Pledged Securities, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities, received in exchange for Pledged Securities or any part thereof, or in redemption thereof, as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise and (ii) any noncash dividends and other distributions paid or payable in respect of any Pledged Securities that would constitute Pledged Securities in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid in surplus, will be and become part of the Pledged Collateral, and, if received by any Grantor, will not be commingled by such Grantor with any of its other funds or property, but will be held separate and apart therefrom, will be held in trust for the benefit of the Collateral Agent, for the benefit of the Secured Parties, and will be forthwith delivered to the Collateral Agent, for the benefit of the Secured Parties, in the same form as so received (endorsed in a manner reasonably satisfactory to the Collateral Agent).
- (2) Upon the occurrence and during the continuance of an Event of Default and after written notice by the Administrative Agent to the Borrower of the Administrative Agent's intention to exercise its rights hereunder, all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to paragraph (1)(c) of this Section 3.05 will cease, and all such rights will thereupon become vested, for the benefit of the Secured Parties, in the Collateral Agent, which will have the

sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions; *provided, however*, that even after the occurrence and during the continuance of an Event of Default, any Grantor may continue to receive dividends and distributions solely to the extent permitted under subclauses (6)(a), (6)(c) and (6)(e) of Section 6.06 of the Credit Agreement.

- (3) All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of this Section 3.05 will not be commingled by such Grantor with any of its other funds or property, but will be held separate and apart therefrom, will be held in trust for the benefit of the Collateral Agent, for the benefit of the Secured Parties, and will be forthwith delivered to the Collateral Agent, for the benefit of the Secured Parties, in the same form as so received (endorsed in a manner reasonably satisfactory to the Collateral Agent). Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this paragraph (3) subject to the Intercreditor Agreement will be retained by the Collateral Agent in an account to be established by the Collateral Agent upon receipt of such money or other property and will be applied in accordance with the provisions of Section 5.02 hereof. After all such Events of Default have been cured or waived, the Collateral Agent will promptly repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of paragraph (1)(c) of this Section 3.05 and that remain in such account.
- (4) Upon the occurrence and during the continuance of an Event of Default and after the Collateral Agent shall have given written notice to the Borrower of the Collateral Agent's intention to exercise its rights hereunder, all rights of any Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to paragraph (1)(a) of this Section 3.05, and the obligations of the Collateral Agent under paragraph (1)(b) of this Section 3.05, will cease, and all such rights will thereupon become vested in the Collateral Agent, for the benefit of the Secured Parties, which will have the sole and exclusive right and authority to exercise such voting and consensual rights and powers (subject to the Intercreditor Agreement); *provided* that unless otherwise directed by the Required Lenders, the Collateral Agent will have the right from time to time following and during the continuance of an Event of Default to permit the Grantors to exercise such rights. After all such Events of Default have been cured or waived, each Grantor will have the right to exercise the voting and/or consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of paragraph (1)(a) above.

#### ARTICLE IV

##### SECURITY INTERESTS IN OTHER PERSONAL PROPERTY

###### Section 4.01. Security Interest.

- (1) As security for the payment or performance when due (whether at the stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured

Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest (the “**Security Interest**”) in all of such Grantor’s right, title and interest in or to any and all of the following assets and properties now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “**Article 9 Collateral**”):

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all cash, Cash Equivalents and Deposit Accounts;
- (d) all Documents;
- (e) all Equipment;
- (f) all General Intangibles;
- (g) all Goods
- (h) all Instruments;
- (i) all Inventory;
- (j) all Investment Property;
- (k) all Letter of Credit Rights;
- (l) all Intellectual Property;
- (m) all Commercial Tort Claims, including those described on Schedule IV hereto;
- (n) each of the following:
  - (i) Securities Accounts;
  - (ii) Investment Property credited to Securities Accounts or Deposit Accounts from time to time and all Security Entitlements in respect thereof;
  - (iii) all cash held in any Securities Account or Deposit Account; and
  - (iv) all other Money in the possession of the Collateral Agent;

- (o) all books and Records pertaining to the Article 9 Collateral; and
- (p) all proceeds, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any person with respect to any of the foregoing.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, the Article 9 Collateral will not include, this Agreement will not constitute a grant of a security interest in and the security interest granted hereunder will not attach to, any Excluded Asset.

- (2) Each Grantor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any financing statements (including fixture filings) with respect to the Article 9 Collateral (including all Article 9 Collateral consisting of Pledged Collateral) or any part thereof and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including:
  - (a) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor;
  - (b) in the case of a financing statement filed as a fixture filing, a sufficient description of the property to which such Article 9 Collateral relates; and
  - (c) a description of collateral that describes such property in any other manner as the Collateral Agent may reasonably determine is necessary to ensure the perfection of the security interest in the Article 9 Collateral granted under this Agreement, including describing such property as “all assets”, whether now owned or hereafter acquired, or words of similar effect.

Each Grantor agrees to provide such information to the Collateral Agent promptly upon request.

- (3) The Collateral Agent is further authorized to file with the United States Patent and Trademark Office or United States Copyright Office (or any successor office) such documents as may be reasonably necessary for the purpose of perfecting, continuing, enforcing or protecting the Security Interest granted by each Grantor, without the signature of any Grantor, and naming any Grantor or the Grantors as debtors and the Collateral Agent as secured party.
- (4) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no Grantor shall be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Article 9 Collateral of such Grantor.
- (5) The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any

obligation or liability of any Grantor with respect to or arising out of the Article 9 Collateral.

- (6) Notwithstanding anything to the contrary in any Loan Document, no Grantor will be required:
- (a) to take, or cause to be taken, any actions to perfect the Security Interest by any means other than (to the extent reasonably applicable):
    - (i) filings pursuant to the Uniform Commercial Code in the office of the Secretary of State (or equivalent filing office) of the relevant State(s) of the respective jurisdictions of organization of each Grantor;
    - (ii) filings in the United States Patent and Trademark Office and the United States Copyright Office of an Intellectual Property Security Agreement;
    - (iii) delivery of Collateral consisting of instruments, notes and debt securities in a principal amount in excess of \$7.5 million; *provided* that such delivery shall not be required with respect to:
      - (A) instruments, notes and debt securities that are promptly deposited into an investment or securities account;
      - (B) checks received in the ordinary course of business;
      - (C) notes and debt securities issued in connection with the extension of trade creditor by a grantor of a security interest; and
      - (D) instruments, notes and debt securities issued by a Grantor;
    - (iv) delivery of Collateral consisting of certificated Equity Interests included in the Collateral;
  - (b) to enter, or cause to be entered, any Control Agreements or similar arrangements with respect to any Deposit Accounts (except with respect to the Blocked Accounts (as defined under the ABL Credit Agreement) and the Asset Sale Proceeds Account), Securities Accounts, Commodities Accounts or other Collateral that requires perfection by Control;
  - (c) to take any actions outside the United States to create or perfect any security interests in any Collateral (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any foreign jurisdiction); or
  - (d) to take any actions to create or perfect any security interests in any (i) Vehicles, (ii) any Letter of Credit Rights to the extent not perfected as Supporting

Obligations by the filing of a UCC financing statement on, or possession of, the primary Collateral and (iii) any Commercial Tort Claim with a value not in excess of \$7.5 million, as determined in good faith by the Borrower.

Section 4.02. Representations and Warranties. Each Grantor represents and warrants (but solely with respect to any Borrowing made after the Closing Date pursuant to Section 2.18 of the Credit Agreement, to the extent required by Section 2.18(6) of the Credit Agreement) to the Collateral Agent and the Secured Parties that:

- (1) Each Grantor has good and valid rights in and title to the Article 9 Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained and is in full force and effect or has otherwise been disclosed herein or in the Credit Agreement.
- (2) The Uniform Commercial Code financing statements containing a description of the Article 9 Collateral that have been prepared by the Collateral Agent for filing in the office specified in Schedule III constitute all the filings, recordings and registrations (except as set forth in the following clause (3)) that are, as of the Closing Date, necessary to publish notice of and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the benefit of the Secured Parties) in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing.
- (3) A fully executed Intellectual Property Security Agreement containing a description of all Article 9 Collateral existing on the Closing Date and consisting of Intellectual Property owned by such Grantor with respect to United States Patents (and Patents for which United States applications are pending), United States registered Trademarks (and Trademarks for which United States registration applications are pending) and United States registered Copyrights (and Copyrights for which United States registration applications are pending) was delivered on the Closing Date to the Collateral Agent for recording with the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder, as applicable.
- (4) The Security Interest constitutes (a) a legal and valid security interest in all the Article 9 Collateral securing the payment and performance of the Secured Obligations; (b) subject to the filings described in Section 4.02(2), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code or other applicable law in such jurisdictions; and (c) a security interest that shall be perfected in all Article 9 Collateral in which a security interest may be perfected upon the receipt and recording of an Intellectual Property Security Agreement

with the United States Patent and Trademark Office and the United States Copyright Office, as applicable. The Security Interest is and shall be prior to any other Lien on any of the Article 9 Collateral other than Permitted Liens.

- (5) The Article 9 Collateral is owned by the Grantors free and clear of any Lien, other than Permitted Liens. None of the Grantors has filed or consented to the filing after the Closing Date of (a) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Article 9 Collateral; (b) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with the United States Patent and Trademark Office or the United States Copyright Office; or (c) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Permitted Liens.
- (6) None of the Grantors holds any Commercial Tort Claim individually in excess of \$7.5 million as of the Closing Date except as indicated on Schedule IV.
- (7) The names of the obligors, amounts owing, due dates and other information with respect to each Grantor's Accounts and Chattel Paper that are Collateral are and will be correctly stated, at the time furnished, in all records of such Grantor relating thereto and in all invoices furnished to the Agent by such Grantor from time to time.
- (8) As to itself and its Article 9 Collateral consisting of Intellectual Property (the "***Intellectual Property Collateral***"), to each Grantor's knowledge, as of the Closing Date:
- (a) The Intellectual Property Collateral set forth on Schedule II includes all of the material Patents, Trademarks and Copyrights owned by such Grantor as of the date hereof;
- (b) The Intellectual Property Collateral owned by such Grantors has not been adjudged invalid or unenforceable in whole or part (except for office actions issued in the ordinary course by the United States Patent and Trademark Office or any similar office in any foreign jurisdiction), and is valid and enforceable, except as would not reasonably be expected to have a Material Adverse Effect. Such Grantor is not aware of any uses of any item of Intellectual Property Collateral that would be expected to lead to such item becoming invalid or unenforceable, except as would not reasonably be expected to have a Material Adverse Effect;
- (c) Such Grantor has made or performed in the ordinary course of Grantor's business, acts, including filings, recordings and payment of all required fees and taxes, required to maintain and protect its interest in each and every item of Intellectual Property Collateral owned by such Grantor in full force and effect in the United States, and such Grantor has used proper statutory notice in connection with its use of each Patent, Trademark and Copyright owned by such Grantor in

the Intellectual Property Collateral, in each case, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect;

- (d) With respect to each IP Agreement, the absence, termination or violation of which would reasonably be expected to have a Material Adverse Effect: (A) such Grantor has not received any notice of termination or cancellation under such IP Agreement; (B) such Grantor has not received any notice of a breach or default under such IP Agreement, which breach or default has not been cured or waived; and (C) neither such Grantor nor any other party to such IP Agreement is in breach or default thereof in any material respect, and no event has occurred that, with notice or lapse of time or both, would constitute such a breach or default or permit termination, modification or acceleration under such IP Agreement.
- (e) Except as would not reasonably be expected to have a Material Adverse Effect, no Grantor or Intellectual Property Collateral owned by such Grantor is subject to any outstanding consent, settlement, decree, order, injunction, judgment or ruling restricting the use of any Intellectual Property Collateral owned by such Grantor or that would impair the validity or enforceability of such Intellectual Property Collateral owned by such Grantor.

Section 4.03. Covenants.

- (1) Each Grantor agrees to comply with Section 5.10(3) of the Credit Agreement.
- (2) Subject to the rights of such Grantor under the Loan Documents to dispose of Collateral and except as would otherwise be permitted by the Credit Agreement, each Grantor will, at its own expense, use commercially reasonable efforts to defend title to the Article 9 Collateral against all persons and to defend the Security Interest of the Collateral Agent, for the benefit of the Secured Parties, in the Article 9 Collateral and the priority thereof against any Lien that is not a Permitted Lien.
- (3) Each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Collateral Agent may from time to time reasonably request to preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement and the granting of the Security Interest and the filing of any financing statements (including fixture filings) or other documents in connection herewith or therewith.
- (4) If any amount payable under or in connection with any of the Article 9 Collateral that is in excess of \$7.5 million is or becomes evidenced by any promissory note or other instrument, such note or instrument, subject to the Intercreditor Agreement, will be promptly pledged and delivered to the Collateral Agent, for the benefit of the Secured Parties, duly endorsed in a manner reasonably satisfactory to the Collateral Agent.

- (5) After the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent will have the right to verify under reasonable procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Article 9 Collateral, including, in the case of Accounts or Article 9 Collateral in the possession of any third person, by contacting Account Debtors or the third person possessing such Article 9 Collateral for the purpose of making such a verification. The Collateral Agent shall have the right to share any information it gains from such inspection or verification with any Secured Party.
- (6) None of the Grantors will, without the Collateral Agent's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned), grant any extension of the time of payment of any Accounts included in the Article 9 Collateral, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any person liable for the payment thereof or allow any credit or discount whatsoever thereon, in each case, other than extensions, credits, discounts, compromises or settlements granted or made in the ordinary course of business and consistent with prudent business practices or as otherwise permitted under the Credit Agreement.
- (7) At its option after the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Article 9 Collateral and not a Permitted Lien, and may pay for the maintenance and preservation of the Article 9 Collateral to the extent any Grantor fails to do so as required by the Credit Agreement or this Agreement, and each Grantor jointly and severally agrees to reimburse the Collateral Agent on demand for any reasonable payment made or any reasonable expense incurred by the Collateral Agent pursuant to the foregoing authorization; *provided, however*, that nothing in this Section 4.03(7) will excuse any Grantor from the performance of, or impose any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Loan Documents.
- (8) Each Grantor (rather than the Collateral Agent or any Secured Party) will remain liable for the observance and performance of all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Article 9 Collateral.
- (9) Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent for such purpose) as such Grantor's true and lawful agent (and attorney-in-fact) for the purpose, during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Article 9 Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto.

- (10) In the event that any Grantor at any time or times fails to obtain or maintain any of the policies of insurance required hereby or under the Credit Agreement or to pay any premium in whole or part relating thereto, the Collateral Agent may, after the occurrence and during the continuation of an Event of Default, without waiving or releasing any obligation or liability of the Grantors hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent reasonably deems advisable. All sums disbursed by the Collateral Agent in connection with this Section 4.03(10), including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Collateral Agent and shall be additional Secured Obligations secured hereby.

Section 4.04. Other Actions. In order to further ensure the attachment and perfection of, and the ability of the Collateral Agent to enforce, for the benefit of the Secured Parties, the Collateral Agent's security interest in the Article 9 Collateral, each Grantor agrees, in each case at such Grantor's own expense, to take the following actions with respect to the following Article 9 Collateral:

- (1) Instruments and Tangible Chattel Paper. If any Grantor at any time holds or acquires any Instruments (other than checks received and processed in the ordinary course of business) or Tangible Chattel Paper evidencing an amount in excess of \$7.5 million, such Grantor will forthwith endorse, assign and deliver the same to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement), accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably request.
- (2) Investment Property. Except to the extent otherwise provided in Article III, if any Grantor at any time holds or acquires any Certificated Security constituting Pledged Collateral or Article 9 Collateral, such Grantor will forthwith endorse, assign and deliver the same to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement), accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably specify. If any security of a domestic issuer now owned or hereafter acquired by any Grantor is uncertificated and is issued to such Grantor or its nominee directly by the issuer thereof, such Grantor shall promptly notify the Collateral Agent of such uncertificated securities and upon the occurrence and during the continuance of an Event of Default, such Grantor shall pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, either (a) cause the issuer to agree to comply with instructions from the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) as to such security, without further consent of any Grantor or such nominee or (b) cause the issuer to register the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) as the registered owner of such security.
- (3) Commercial Tort Claims. If any Grantor shall at any time hold or acquire a Commercial Tort Claim in an amount reasonably estimated to exceed \$7.5 million, such Grantor shall promptly notify the Collateral Agent thereof in a writing signed by such

Grantor, including a summary description of such claim, and grant to the Collateral Agent in writing a security interest therein and in the proceeds thereof, all under the terms and provisions of this Agreement, with such writing to be in form and substance reasonably satisfactory to the Collateral Agent.

Section 4.05. Covenants Regarding Patent, Trademark and Copyright Collateral. Except as permitted by the Credit Agreement:

- (1) Each Grantor agrees that it will not knowingly do any act or omit to do any act (and will exercise commercially reasonable efforts to contractually prohibit its licensees from doing any act or omitting to do any act) whereby any material Patent owned by such Grantor that is necessary to the normal conduct of such Grantor's business may become prematurely invalidated, abandoned, lapsed or dedicated to the public, and agrees that it will take commercially reasonable steps with respect to any material products covered by any such Patent as necessary to establish and preserve its rights under applicable patent laws.
- (2) Each Grantor will, and will use its commercially reasonable efforts to contractually require its licensees and its sublicensees to, for each material Trademark owned by such Grantor and necessary to the normal conduct of such Grantor's business:
  - (a) maintain such Trademark in full force free from any adjudication of abandonment or invalidity for non-use;
  - (b) maintain the quality of products and services offered under such Trademark;
  - (c) display such Trademark with notice of federal or foreign registration or claim of trademark or service mark as required under applicable law; and
  - (d) not knowingly use or knowingly permit its licensees' use of such Trademark in violation of any third-party rights.
- (3) Each Grantor will, and will use its commercially reasonable efforts to cause its licensees and its sublicensees to, for each work covered by a material Copyright owned by such Grantor and necessary to the normal conduct of such Grantor's business and that it publishes, displays and distributes, use a copyright notice as necessary and sufficient to establish and preserve its rights under applicable copyright laws.
- (4) Each Grantor shall notify the Collateral Agent promptly if it knows that any material Patent, Trademark or Copyright owned by such Grantor and necessary to the normal conduct of such Grantor's business may imminently become abandoned, lapsed or dedicated to the public, or of any materially adverse determination or development, excluding office actions and similar determinations or developments in the United States Patent and Trademark Office, United States Copyright Office, any court or any similar office of any country, regarding such Grantor's ownership of any such material Patent, Trademark or Copyright or its right to register or to maintain the same.

- (5) Each Grantor, either itself or through any agent, employee, licensee or designee, will, upon the reasonable request of the Collateral Agent, execute and deliver any and all agreements, instruments, documents and papers as the Collateral Agent may reasonably request to evidence the Collateral Agent's security interest in each Patent, Trademark, or Copyright listed in each updated Perfection Certificate (or in any applicable specified information contained in the Perfection Certificate) furnished pursuant to Section 5.04(6) of the Credit Agreement.
- (6) Each Grantor will exercise its reasonable business judgment consistent with the practice in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office with respect to maintaining and pursuing each application owned by such Grantor relating to any material Patent, Trademark and/or Copyright (and obtaining the relevant grant or registration) necessary to the normal conduct of such Grantor's business and to maintain (a) each such Patent and (b) the registrations of each such Trademark and each such Copyright, including, when applicable and necessary in such Grantor's reasonable business judgment, timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if any Grantor believes necessary in its reasonable business judgment, to initiate opposition, interference and cancellation proceedings against third parties.
- (7) In the event that any Grantor knows or has reason to know that any Article 9 Collateral consisting of a material Patent, Trademark or Copyright necessary to the normal conduct of its business has been materially infringed, misappropriated or diluted by a third party, such Grantor will promptly notify the Collateral Agent and will, if such Grantor deems it necessary in its reasonable business judgment, promptly take actions as are reasonably appropriate under the circumstances.

Section 4.06. Intercreditor Relations. Notwithstanding anything herein to the contrary, (1) the Grantors and the Collateral Agent acknowledge that the exercise of certain of the Collateral Agent's rights and remedies hereunder are subject to the provisions of the Intercreditor Agreement and (2) prior to the Discharge of ABL Claims, any obligation hereunder to physically deliver any ABL Priority Collateral to the Collateral Agent shall be deemed satisfied by the delivery to the ABL Collateral Agent, acting as gratuitous bailee for the Collateral Agent in accordance with the Intercreditor Agreement. The failure of the Collateral Agent or any other Secured Party to immediately enforce any of its rights and remedies hereunder (as a result of the terms of the Intercreditor Agreement or otherwise) shall not constitute a waiver of any such rights and remedies. In the event of any conflict or inconsistency between the terms of the Intercreditor Agreement and this Agreement regarding the relative priorities of the ABL Collateral Agent and the Collateral Agent in the Collateral, the terms of the Intercreditor Agreement shall govern and control.

## ARTICLE V

### REMEDIES

Section 5.01. Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, each Grantor agrees to deliver each item of Collateral to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) on demand, and it is agreed that the Collateral Agent shall have the right, subject to applicable law, to take any of or all the following actions at the same or different times: (1) with respect to any Article 9 Collateral consisting of Intellectual Property, on demand, to cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Article 9 Collateral by the applicable Grantors to the Collateral Agent or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or a non-exclusive basis, any such Article 9 Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers thereunder cannot be obtained with the use of commercially reasonable efforts, which each Grantor hereby agrees to use) and (2) to take possession of the Article 9 Collateral and without liability for trespass to the applicable Grantor to enter any premises where the Article 9 Collateral may be located for the purpose of taking possession of, removing or selling the Article 9 Collateral and, generally, to exercise any and all rights afforded to a secured party under the applicable Uniform Commercial Code or other applicable law. Without limiting the generality of the foregoing rights and remedies, each Grantor agrees that the Collateral Agent shall have the right, subject to the mandatory requirements of applicable law (including the Uniform Commercial Code), to sell or otherwise dispose of all or any part of the Collateral at a public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized in connection with any sale of a security (if it deems it advisable to do so) pursuant to the foregoing to restrict the prospective bidders or purchasers to persons who represent and agree that they are purchasing such security for their own account, for investment, and not with a view to the distribution or sale thereof. Upon consummation of any such sale of Collateral pursuant to this Section 5.01, the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives and releases (to the extent permitted by law) all rights of redemption, stay, valuation and appraisal that such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

Except for collateral of the type specified in Section 9-611(d) of the UCC, the Collateral Agent shall give the applicable Grantors ten Business Days' written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Collateral Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix

and state in the notice (if any) of such sale. The Collateral, or the portion thereof, to be sold at any such sale may be sold in one lot as an entirety or in separate parcels in the Collateral Agent's own right or by one or more agents and contractors, upon any premises owned, leased, or occupied by any Grantor and the Collateral Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory to be sold with other goods (all of which other goods shall remain the sole property of the Collateral Agent or such agent or contractor), all as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In the case of any sale of all or any part of the Collateral made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in the event that any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in the case of any such failure, such Collateral may be sold again upon notice given in accordance with provisions above. At any public (or, to the extent permitted by law, private) sale made pursuant to this Section 5.01, any Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all such rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property in accordance with Section 5.02 hereof without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Secured Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 5.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the UCC or its equivalent in other jurisdictions.

Without limiting any other rights of the Collateral Agent granted pursuant to this Agreement, each Grantor hereby grants to the Collateral Agent, and the representatives and independent contractors of the Collateral Agent, a royalty free, non-exclusive, irrevocable license (such license to be effective upon the occurrence and during the continuance of any Event of Default), to use, apply, and affix any Trademark, trade name, logo, or the like in which any Grantor now or hereafter has rights, solely in connection with the Collateral Agent's enforcement of rights or remedies hereunder, including in connection with any sale or other disposition of Inventory. As to each Grantor, the license granted hereby shall remain in full force and effect

until such Grantor hereunder is released hereunder in accordance with Section 7.15 of this Agreement.

Section 5.02. Application of Proceeds.

- (1) Subject to the terms of the Intercreditor Agreement, the Collateral Agent will promptly apply the proceeds, moneys or balances of any collection or sale of Collateral, as well as any Collateral consisting of cash, in the following order of priority:
  - (a) *first*, to all amounts owing to the Collateral Agent or the Administrative Agent pursuant to any of the Loan Documents in its capacity as such in respect of (i) the preservation of Collateral or its security interest in the Collateral or (ii) with respect to enforcing the rights of the Secured Parties under the Loan Documents;
  - (b) *second*, to the extent proceeds remain after the application pursuant to preceding clause (a), to all other amounts owing to the Administrative Agent or Collateral Agent pursuant to any of the Loan Documents in its capacity as such;
  - (c) *third*, to the extent proceeds remain after the application pursuant to preceding clauses (a) through (b), to an amount equal to the outstanding Secured Obligations; and
  - (d) *fourth*, to the extent proceeds remain after the application pursuant to preceding clauses (a) through (c), inclusive, and following the payment in full of the Secured Obligations, to the relevant Loan Party, their successors or assigns, or as a court of competent jurisdiction may otherwise direct or as otherwise required by the Intercreditor Agreement.
- (2) If any payment to any Secured Party pursuant to this Section 5.02 of its pro rata share of any distribution would result in overpayment to such Secured Party, such excess amount shall instead be distributed in respect of the unpaid Secured Obligations of the other Secured Parties, with each Secured Party whose Secured Obligations have not been paid in full to receive an amount equal to such excess amount multiplied by a fraction the numerator of which is the unpaid Secured Obligations of such Secured Party and the denominator of which is the unpaid Secured Obligations of all Secured Parties entitled to such distribution.
- (3) Subject to the terms of the Intercreditor Agreement, all payments required to be made hereunder shall be made to the Administrative Agent for the account of such Secured Parties or as the Administrative Agent may otherwise direct in accordance with the Loan Documents.
- (4) For purposes of applying payments received in accordance with this Section 5.02, the Collateral Agent will be entitled to rely upon (a) the Administrative Agent and (b) the applicable Secured Parties with respect to payments of Specified Hedge Agreements or any Cash Management Obligations (which the Administrative Agent and each other

Secured Party agrees (or shall agree) to provide upon request of the Collateral Agent) of the outstanding Secured Obligations of the Loan Parties owed to the Secured Parties.

- (5) Subject to the other limitations (if any) set forth herein and in the other Loan Documents, it is understood that the Loan Parties will remain liable (as and to the extent set forth in herein 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 the Collateral Agent's gross negligence or willful misconduct) to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Secured Obligations of the Loan Parties.
- (6) It is understood and agreed by each Loan Party that the Collateral Agent will have no liability for any determinations made by it in this Section 5.02 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, bad faith or willful misconduct. Each Loan Party also agrees that the Collateral Agent may (but shall not be required to), at any time and in its sole discretion, and with no liability resulting therefrom, petition a court of competent jurisdiction regarding any application of Collateral in accordance with the requirements hereof and of each Intercreditor Agreement, and the Collateral Agent shall be entitled to wait for, and may conclusively rely on, any such determination.
- (7) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Collateral Agent will not be required to marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such Guarantee in any particular order.

Section 5.03. Securities Act, Etc. In view of the position of the Grantors in relation to the Pledged Collateral, or because of other current or future circumstances, a question may arise under the Securities Act of 1933, as now or hereafter in effect, or any similar federal statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the "***Federal Securities Laws***") with respect to any disposition of the Pledged Collateral permitted hereunder. Each Grantor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Collateral Agent if the Collateral Agent were to attempt to dispose of all or any part of the Pledged Collateral, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Collateral could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Collateral Agent in any attempt to dispose of all or part of the Pledged Collateral under applicable Blue Sky or other state securities laws or similar laws analogous in purpose or effect. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Collateral Agent, in its sole and absolute discretion, may (1) proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under the Federal Securities Laws or, to the extent applicable, Blue Sky or other state securities laws and (2) approach and negotiate with a single potential purchaser to effect such sale. Each Grantor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if

such sale were a public sale without such restrictions. In the event of any such sale, the Collateral Agent will incur no responsibility or liability for selling all or any part of the Pledged Collateral at a price that the Collateral Agent, in its sole and absolute discretion, may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section 5.03 will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices may exceed substantially the price at which the Collateral Agent sells.

## ARTICLE VI

### INDEMNITY, SUBROGATION AND SUBORDINATION

Section 6.01. Indemnity. In addition to all such rights of indemnity and subrogation as the Guarantors may have under applicable law (but subject to Section 6.03 hereof), the Borrower agrees that (a) in the event a payment is made by any Guarantor under this Agreement in respect of any Secured Obligation of the Borrower, the Borrower shall indemnify such Guarantor for the full amount of such payment and such Guarantor shall be subrogated to the rights of the person to whom such payment shall have been made to the extent of such payment and (b) in the event any assets of any Guarantor are sold pursuant to this Agreement or any other Security Document to satisfy in whole or in part a Secured Obligation of the Borrower, the Borrower will indemnify such Guarantor in an amount equal to the greater of the book value or the fair market value of the assets so sold.

Section 6.02. Contribution and Subrogation. Subject to Section 2.07, each Guarantor (a "**Contributing Guarantor**") agrees (subject to Section 6.03 hereof) that, in the event a payment shall be made by any other Guarantor hereunder in respect of any Secured Obligation or assets of any other Guarantor are sold pursuant to any Security Document to satisfy any Secured Obligation owed to any Secured Party and such other Guarantor (the "**Claiming Guarantor**") shall not have been fully indemnified by the Borrower as provided in Section 6.01 hereof, the Contributing Guarantor shall indemnify the Claiming Guarantor in an amount equal to the amount of such payment or the greater of the book value or the fair market value of such assets, as applicable, in each case multiplied by a fraction of which the numerator shall be the net worth of such Contributing Guarantor on the date hereof and the denominator shall be the aggregate net worth of all the Guarantors on the date hereof (or, in the case of any Guarantor becoming a party hereto pursuant to Section 7.16 hereof, the date of the supplement hereto executed and delivered by such Guarantor). Any Contributing Guarantor making any payment to a Claiming Guarantor pursuant to this Section 6.02 shall be subrogated to the rights of such Claiming Guarantor under Section 6.01 hereof to the extent of such payment.

Section 6.03. Subordination.

- (1) Notwithstanding any provision of this Agreement to the contrary, all rights of the Guarantors under Sections 6.01 and 6.02 hereof and all other rights of indemnity, contribution or subrogation of the Guarantors under applicable law or

otherwise will be fully subordinated to the payment in full in cash or immediately available funds of the Secured Obligations (other than Secured Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) until such time as this Agreement has been terminated in accordance with Section 7.15(a). No failure on the part of the Borrower or any Guarantor to make the payments required by Sections 6.01 and 6.02 hereof (or any other payments required under applicable law or otherwise) will in any respect limit the obligations and liabilities of the Borrower with respect to the Secured Obligations or any Guarantor with respect to its obligations hereunder, and the Borrower shall remain liable for the full amount of the Secured Obligations and each Guarantor shall remain liable for the full amount of its obligations hereunder.

- (2) The Borrower and each Guarantor hereby agree that all Indebtedness and other monetary obligations owed by it to the Borrower, any other Guarantor or any Subsidiary will be fully subordinated to the payment in full in cash or immediately available funds of the Secured Obligations (other than Secured Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted).

## ARTICLE VII

### MISCELLANEOUS

Section 7.01. Notices. All communications and notices hereunder shall (except as otherwise permitted herein) be in writing and given as provided in Section 10.01 of the Credit Agreement. All communications and notices hereunder to any Grantor will be given to it in care of the Borrower, with such notice to be given as provided in Section 10.01 of the Credit Agreement.

Section 7.02. Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest in the Article 9 Collateral, the security interest in the Pledged Collateral and all obligations of each Grantor hereunder will be absolute and unconditional irrespective of:

- (1) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing;
- (2) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument;

- (3) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations; or
- (4) subject only to termination or release of a Guarantor's obligations hereunder in accordance with the terms of Section 7.15 hereof any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement (other than a defense of payment or performance).

Section 7.03. Limitation By Law. All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 7.04. Binding Effect; Several Agreement. This Agreement will become effective as to any party to this Agreement when a counterpart hereof executed on behalf of such party is delivered to the Collateral Agent and a counterpart hereof is executed on behalf of the Collateral Agent, and thereafter will be binding upon such party and the Collateral Agent and their respective permitted successors and assigns, and will inure to the benefit of such party, the Collateral Agent and the other Secured Parties and their respective permitted successors and assigns, except that no party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement, the Credit Agreement. This Agreement will be construed as a separate agreement with respect to each Loan Party and may be amended, modified, supplemented, waived or released with respect to any Loan Party without the approval of any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

Section 7.05. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference will be deemed to include the permitted successors and assigns of such party, and all covenants, promises and agreements by or on behalf of any Grantor or the Collateral Agent that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns; *provided* that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent. The Collateral Agent hereunder will at all times be the same person that is the Collateral Agent under the Credit Agreement. Written notice of resignation by the Administrative Agent pursuant to the Credit Agreement will also constitute notice of resignation as the Collateral Agent under this Agreement. Upon the acceptance of any appointment as the Administrative Agent under the Credit Agreement by a successor Administrative Agent, that successor Administrative Agent will thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent pursuant hereto.

Section 7.06. Collateral Agent's Fees and Expenses; Indemnification. The parties hereto agree that the Collateral Agent will be entitled to reimbursement of its expenses incurred hereunder as provided in Section 10.05 of the Credit Agreement and the provisions of Section 10.05 shall be incorporated by reference herein and apply to each Grantor *mutatis mutandis*.

Section 7.07. Collateral Agent Appointed Attorney-in-Fact. Each Grantor hereby appoints the Collateral Agent the attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest. The Collateral Agent will have the right, upon the occurrence and during the continuance of an Event of Default, with full power of substitution either in the Collateral Agent's name or in the name of such Grantor, to:

- (1) receive, endorse, assign or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof;
- (2) demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral;
- (3) ask for, demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due under and by virtue of any Collateral;
- (4) sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral;
- (5) send verifications of Accounts to any Account Debtor;
- (6) commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral;
- (7) settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral;
- (8) notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Collateral Agent;  
and
- (9) use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes;

*provided* that nothing herein contained will be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in

respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties will be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

Section 7.08. APPLICABLE LAW. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY WILL 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 7.09. Waivers; Amendment.

- (1) No failure or delay by the Collateral Agent or any Lender in exercising any right, power or remedy hereunder or under any other Loan Document will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or remedy, or any abandonment or discontinuance of steps to enforce such a right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies of the Collateral Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights, powers or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Loan Party therefrom will in any event be effective unless the same is permitted by paragraph (2) of this Section 7.09, and then such waiver or consent will be effective only in the specific instance and for the purpose for which given.
- (2) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Loan Party or Loan Parties with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 10.08 of the Credit Agreement.

Section 7.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY HERETO (1) 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 (2) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN

INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.10.

Section 7.11. Severability. In the event any one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein will not in any way be affected or impaired thereby.

Section 7.12. Counterparts. This Agreement may be executed in two or more counterparts, each of which will constitute an original but all of which when taken together will constitute but one contract, and will become effective as provided in Section 7.04 hereof. Delivery of an executed counterpart to this Agreement by facsimile or other electronic transmission will be as effective as delivery of a manually signed original.

Section 7.13. 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 7.14. Jurisdiction; Consent to Service of Process.

(1) Each party to this Agreement 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, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement will affect any right that the Administrative Agent, the Collateral Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Grantor, or its properties, in the courts of any jurisdiction.

(2) Each party to this Agreement hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement 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 7.15. Termination or Release.

(1) This Agreement, the guarantees made herein, the pledges made herein, the Security Interest and all other security interests granted hereby shall terminate when all the Secured Obligations (other than Secured Obligations in respect of Specified Hedge

Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations, in each case, that are not yet due and payable and for which no claim has been asserted) have been paid in full in cash or immediately available funds and the Lenders have no further commitment to lend under the Credit Agreement; *provided, however*, that if any secured debt is outstanding under the ABL Credit Agreement, all such Collateral in the form of possessory collateral shall be transferred to the collateral agent under the ABL Credit Agreement, notwithstanding anything in the foregoing to the contrary.

- (2) A Grantor that is a Subsidiary shall automatically be released from its obligations hereunder and the security interests in the Collateral of such Grantor shall be automatically released upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Grantor ceases to be a Subsidiary Loan Party or otherwise ceases to be a Guarantor; *provided* that such portion of the Lenders as are required by the terms of the Credit Agreement to consent to such transaction shall have consented thereto; *provided*, further, to the extent the ABL Collateral Documents (as defined in the Intercreditor Agreement) are in effect on such date, such Grantor (and the security interests in the Collateral in respect thereof) shall be released under the ABL Collateral Documents concurrently with the release referred to in this clause (2).
- (3) Upon any sale or other transfer by any Grantor of any Collateral that is permitted under the Credit Agreement to any person that is not a Grantor, upon the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral pursuant to Sections 10.08 and 10.18 of the Credit Agreement or pursuant to Section 5.1 of the Intercreditor Agreement, the security interest in such Collateral shall be automatically released; *provided* to the extent the ABL Collateral Documents are in effect on such date, the security interests in such Collateral shall be released under the ABL Collateral Documents concurrently with the release referred to in this clause (3).
- (4) In connection with any termination or release pursuant to paragraph (1), (2) or (3) of this Section 7.15, the Collateral Agent shall execute and deliver to any Grantor, at such Grantor's expense, all documents that such Grantor reasonably requests to evidence such termination or release (including UCC termination statements) and will duly assign and transfer to such Grantor such of the Pledged Collateral that may be in the possession of the Collateral Agent and has not theretofore been sold or otherwise applied or released pursuant to this Agreement; *provided* that the Collateral Agent will not be required to take any action under this Section 7.15(4) unless such Grantor shall have delivered to the Collateral Agent together with such request, which may be incorporated into such request: (a) a reasonably detailed description of the Collateral, which in any event is sufficient to effect the appropriate termination or release without affecting any other Collateral and (b) a certificate of a Responsible Officer of the Borrower or such Grantor certifying that the transaction giving rise to such termination or release is permitted by the Credit Agreement and was or is consummated in compliance with the Loan Documents. Any execution and delivery of documents pursuant to this Section 7.15 shall be without recourse to or warranty by the Collateral Agent.

(5)

In the event that Rule 3-10 or Rule 3-16 of Regulation S-X of the Exchange Act is amended, modified or interpreted by the SEC or any other relevant Governmental Authority to require (or is replaced with another rule or regulation, or any other law, rule or regulation is adopted, which would require) the filing with the SEC (or any other Governmental Authority) of separate financial statements of any Subsidiary of the Borrower due to the fact that the Equity Interests of such Subsidiary are pledged under this Agreement, then the Equity Interests of such Subsidiary shall automatically be deemed not to be part of the Collateral to the extent necessary not to be subject to such requirement. Notwithstanding anything to the contrary in this Agreement, if Equity Interests of any Subsidiary are not required to be pledged under this Agreement because Rule 3-10 or Rule 3-16 of Regulation S-X of the Exchange Act would require the filing of separate financial statements of such Subsidiary if its Equity Interests were so pledged, in the event that Rule 3-10 or Rule 3-16 of Regulation S-X of the Exchange Act is amended, modified or interpreted by the SEC or any other relevant Governmental Authority to no longer require (or is replaced with another rule or regulation that would not require) the filing of separate financial statements of such Subsidiary if some or all of its Equity Interests are pledged under this Agreement, then such Equity Interests of such Subsidiary shall automatically be deemed part of the Collateral and pledged under this Agreement.

Section 7.16. Additional Subsidiaries. Upon execution and delivery by the Collateral Agent and any Subsidiary that is required to become a party hereto by Section 5.10 of the Credit Agreement of a supplement in the form of Exhibit A hereto, such Subsidiary will become a Grantor and a Guarantor hereunder with the same force and effect as if originally named as a Grantor and a Guarantor herein. The execution and delivery of any such supplement will not require the consent of any other party to this Agreement. The rights and obligations of each party to this Agreement will remain in full force and effect notwithstanding the addition of any new party to this Agreement.

Section 7.17. Precedence. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of the Credit Agreement, the terms and conditions of the Credit Agreement shall prevail.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

MERGER SUB:

PET ACQUISITION MERGER SUB LLC (which on the Closing Date shall be merged with and into PETCO HOLDINGS, INC., with PETCO HOLDINGS, INC., surviving such merger as Holdings),  
as a Grantor

By: /s/ Cameron Breitner  
Name: Cameron Breitner  
Title: President

*[Signature Page to Term Loan Guarantee and Collateral Agreement]*

The undersigned hereby confirms that, as a result of its merger with PET ACQUISITION MERGER SUB LLC on the Closing Date, it hereby assumes all of the rights and obligations of PET ACQUISITION MERGER SUB LLC under this Agreement (in furtherance of, and not in lieu of, any assumption or deemed assumption as a matter of law) and hereby agrees to be joined to this Agreement.

Holdings:

PETCO HOLDINGS, INC.,  
as a Grantor

By: /s/ Cameron Breitner  
Name: Cameron Breitner  
Title: President

*[Signature Page to Term Loan Guarantee and Collateral Agreement]*

The undersigned hereby confirms that, pursuant to Section 10.22 of the Credit Agreement, it hereby assumes all of the rights and obligations of PET ACQUISITION MERGER SUB LLC as “Initial Borrower” and “Borrower” under the Credit Agreement and hereby agrees to be joined to this Agreement.

Successor Borrower:

PETCO ANIMAL SUPPLIES, INC.,  
as a Grantor

By /s/ Michael Nuzzo  
Name: Michael Nuzzo  
Title: Chief Financial Officer

*[Signature Page to Term Loan Guarantee and Collateral Agreement]*

PETCO WELLNESS, LLC, as a Grantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward

Title: President

PETCO ANIMAL SUPPLIES STORES, INC., as a Grantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward

Title: President

INTERNATIONAL PET SUPPLIES AND  
DISTRIBUTION, INC., as a Grantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward

Title: President

STORES SHIPPING SERVICES, LLC, as a Grantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward

Title: President

PETCO SUPPORT SERVICES, LLC, as a Grantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward

Title: President

PETCO PUERTO RICO, LLC, as a Grantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward

Title: President

*[Signature Page to Term Loan Guarantee and Collateral Agreement]*

E-PET SERVICES, LLC, as a Grantor  
by PETCO ANIMAL SUPPLIES STORES, INC.,  
as its sole member

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: Authorized Signatory

PETCO ASIA, LLC, as a Grantor

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

PETCO REAL ESTATE HOLDINGS I LLC, as a Grantor

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

PETCO REAL ESTATE HOLDINGS II LLC, as a Grantor

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

PETCO REAL ESTATE HOLDINGS III LLC, as a  
Grantor

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

*[Signature Page to Term Loan Guarantee and Collateral Agreement]*

CITIBANK, N.A., as Administrative Agent and Collateral Agent

By: /s/ Caesar Wyszomirski  
Name: Caesar Wyszomirski  
Title: Director

*[Signature Page to Term Loan Guarantee and Collateral Agreement]*

**ABL GUARANTEE AND COLLATERAL AGREEMENT,**

**dated as of January 26, 2016,**

**among**

**PET ACQUISITION MERGER SUB LLC,**

(to be merged with and into PETCO HOLDINGS, INC.) as the Initial Borrower, and  
immediately after giving effect to the Merger, as Holdings,

**PETCO ANIMAL SUPPLIES, INC.,**

as the Successor Borrower,

**each other Grantor party hereto**

**and**

**CITIBANK, N.A.,**

as Administrative Agent and Collateral Agent

Reference is made to the Intercreditor Agreement dated as of January 26, 2016 (as amended, restated, supplemented or otherwise modified from time to time, the “*Intercreditor Agreement*”), among Citibank, N.A., as ABL Agent (as defined therein) and Citibank, N.A., as Term Loan Agent (as defined therein), and acknowledged by Holdings, the Borrower and the Subsidiaries from time to time party thereto. Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent, for the benefit of the secured parties hereunder, pursuant to this Agreement and the exercise of any right or remedy by the Collateral Agent and the other secured parties hereunder are subject to the provisions of the Intercreditor Agreement. In the event of any conflict or inconsistency between the provisions of the Intercreditor Agreement and this Agreement, the provisions of the Intercreditor Agreement shall control.

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#### Schedules

Schedule I	Pledged Stock; Debt Securities
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#### Exhibits

Exhibit A	Form of Supplement to the Guarantee and Collateral Agreement
Exhibit B	Form of Trademark Security Agreement
Exhibit C	Form of Patent Security Agreement
Exhibit D	Form of Copyright Security Agreement

ABL GUARANTEE AND COLLATERAL AGREEMENT, dated as of January 26, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time, this “*Agreement*”), among each party identified as a “Grantor” on the signature pages hereto (together with any other entity that may become a party hereto as a Grantor as provided herein, each a “Grantor” and, collectively, the “*Grantors*”), and CITIBANK, N.A., as Administrative Agent for the Lenders under the Credit Agreement referred to below (in such capacity, the “*Administrative Agent*”) and as Collateral Agent for the Secured Parties (as defined below) (in such capacity, the “*Collateral Agent*”).

## RECITALS

- (1) Reference is made to that certain REVOLVING CREDIT AGREEMENT, dated as of January 26, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “*Credit Agreement*”), among initially PET ACQUISITION MERGER SUB LLC, a Delaware limited liability company (in its capacity as the borrower thereunder, and after the assignment of the obligations of initial borrower on the closing date pursuant to Section 10.23 therein and the merger and the LLC Conversion have been completed, in its capacity as Holdings thereunder) and after the consummation of the merger, and upon assumption of the initial borrower’s obligations thereunder pursuant to Section 10.23 therein, PETCO ANIMAL SUPPLIES, INC., a Delaware corporation, the Lenders party thereto from time to time and CITIBANK, N.A., as Administrative Agent, as Collateral Agent, as Swingline Lender and as Issuing Bank.
- (2) In consideration of the extensions of credit and other accommodations of the Lenders as set forth in the Credit Agreement, each Guarantor has agreed to guarantee the obligations of the Borrowers under the Credit Agreement and each Grantor has agreed to secure such Grantor’s obligations under the Loan Documents, in each case as set forth herein.

## AGREEMENT

Accordingly, the parties hereto agree as follows:

### ARTICLE I. DEFINITIONS

#### Section 1.01 Credit Agreement.

(a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein have the meanings assigned to them in the Credit Agreement, and the following terms which are defined in the UCC are used herein as so defined (and if defined in more than one article of the UCC have the meaning specified in Article 9 thereof): Accounts, Account Debtor, Certificated Security, Chattel Paper, Deposit Account, Documents, Equipment, Goods, Instruments, Inventory, Letter of Credit Rights, Money, Securities Account, Security Entitlement, Supporting Obligations, Tangible Chattel Paper and Uncertificated Security.

(b) The rules of construction specified in Section 1.02 of the Credit Agreement also apply, *mutatis mutandis*, to this Agreement.

Section 1.02 Other Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“**ABL Collateral Agent**” means Citibank, N.A., as “Collateral Agent” under the Credit Agreement, and any duly appointed successor in such capacity.

“**Administrative Agent**” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“**Agreement**” has the meaning assigned to such term in the introductory paragraph hereto.

“**Article 9 Collateral**” has the meaning assigned to such term in Section 4.01(1).

“**Collateral**” means the collective reference to Article 9 Collateral and Pledged Collateral.

“**Collateral Agent**” has the meaning assigned to such term in the introductory paragraph to this Agreement.

“**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.

“**Control**” has the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

“**Control Agreement**” means a deposit account control agreement, a securities account control agreement or a commodity account control agreement, as applicable, which provides the Collateral Agent with Control of any such accounts, in form and substance reasonably satisfactory to the Collateral Agent.

“**Copyright License**” means any written agreement, now or hereafter in effect, granting any right to any Grantor under any Copyright now or hereafter owned by any third party, and all rights of any Grantor under any such agreement (including any such rights that such Grantor has the right to license) and all grants from a Grantor of any rights to use Copyrights of such Grantor.

“**Copyrights**” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Copyright License or otherwise):

- (1) all copyright rights in any work subject to the copyright laws of the United States or any other country or group of countries, whether as author, assignee, transferee or otherwise;
- (2) all registrations and applications for registration of any such copyright in the United States or any other country or group of countries, including registrations, supplemental registrations and pending applications for registration in the United States Copyright Office and the right to obtain all renewals thereof, including those listed on Schedule II;

- (3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
- (4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“*Credit Agreement*” has the meaning assigned to such term in the recitals to this Agreement.

“*DDA*” has the meaning assigned to such term in the Credit Agreement.

“*Discharge of Term Loan Claims*” has the meaning assigned to such term in the Intercreditor Agreement.

“*Excluded Accounts*” has the meaning assigned to such term in the Credit Agreement.

“*Excluded Assets*” means all of the following, whether now owned or hereafter acquired:

- (1) all Excluded Equity Interests;
- (2) all leasehold Real Property interests;
- (3) all fee simple Real Property interests with a fair market value (as determined in good faith by a Responsible Officer of the Borrower), less than \$7.5 million on a per property basis;
- (4) security interests to the extent the same would result in materially adverse tax consequences or materially adverse regulatory consequences, in each case, as reasonably determined by a Responsible Officer of the Borrower in good faith and identified in writing to the Collateral Agent;
- (5) [reserved];
- (6) any governmental licenses or state or local franchises, charters and authorizations that are not permitted to be pledged under applicable law;
- (7) any “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act;
- (8) any Excluded Account (other than any DDA referenced in clause (4) of the definition of “Excluded Account” set forth in the Credit Agreement as in effect on the Closing Date);
- (9) any assets owned directly or indirectly by a Foreign Subsidiary or a FSHCO;

- 
- (10) vehicles and any other assets subject to certificates of title;
- (11) [reserved];
- (12) any Grantor's right, title or interest in any lease, license, contract or agreement to which such Grantor is a party or any of its right, title or interest thereunder to the extent, but only to the extent, that such a grant would, under the terms of such lease, license, contract or agreement, result in a breach of the terms of, or constitute a default under, or result in the abandonment, invalidation or unenforceability of or create a right of termination in favor of or require the consent of any other party thereto (other than Holdings, the Borrower or any of their respective Subsidiaries), such lease, license, contract or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC or any other applicable law (including Title 11 of the United States Code) or principles of equity); provided, however, that the Collateral shall include (and such security interest shall attach and the definition of "Excluded Assets" shall not then include) immediately at such time as the contractual or legal provisions referred to above shall no longer be applicable and to the extent severable, and shall attach immediately to any portion of such lease, license, contract or agreement not subject to the provisions specified in this clause (12); provided further that the exclusions referred to in this clause shall not include any proceeds of such lease, license, contract or agreement;
- (13) assets to the extent the granting of a security interest therein would be prohibited or restricted by applicable law, rule or regulation (including any requirement to obtain the consent of any Governmental Authority which has not been obtained) other than to the extent that such prohibition or restriction would be overridden by the applicable Uniform Commercial Code;
- (14) [reserved];
- (15) any assets 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 the Borrower and the Administrative Agent; or
- (16) (a) any assets and proceeds thereof subject to a Lien permitted under Section 6.02(3) of the Credit Agreement to the extent that the documents providing for the Indebtedness secured by such Liens do not permit such assets and proceeds thereof to be pledged to the Collateral Agent; provided further that the exclusions referred to in this clause (a) shall not include any proceeds of such document or (b) any assets subject to a Lien permitted by Section 6.02(7) so long as the documents providing for such Lien do not permit such assets to be pledged to the Collateral Agent.

**"Excluded Equity Interests"** means any and all of the following Equity Interests, whether now owned or hereafter acquired:

- (1) interests in partnerships, joint ventures and non-wholly owned subsidiaries which cannot be pledged without the consent of one or more unaffiliated third parties or not permitted

by the terms of such person's organizational or joint venture documents (so long as such prohibition did not arise as part of the acquisition or formation thereof or in anticipation of the Credit Agreement);

- (2) interests in Immaterial Subsidiaries (except to the extent the security interest therein can be perfected by the filing of a Form UCC-1 financing statement), captive insurance subsidiaries, not-for-profit subsidiaries, special purpose entities used for securitization facilities and Unrestricted Subsidiaries;
- (3) margin stock;
- (4) voting Equity Interests of any Foreign Subsidiary or any FSHCO, in excess of 65% of the issued and outstanding voting Equity Interests of such Foreign Subsidiary or FSHCO;
- (5) subject to Section 7.15(5), any Equity Interests to the extent that a pledge of such Equity Interests would give rise to additional subsidiary reporting requirements under Rule 3-10 or Rule 3-16 of Regulation S-X promulgated under the Exchange Act;
- (6) to the extent applicable law requires that a Subsidiary of such Grantor issue directors' qualifying shares, nominee shares or similar shares which are required by applicable law to be held by persons other than the Grantors, such qualifying shares, nominee shares or similar shares held by Persons other than Grantors;
- (7) any Equity Interests if, to the extent and for so long as the pledge of such Equity Interests hereunder is prohibited or restricted by any applicable law, including any requirement to obtain consent of any Governmental Authority which has not been obtained (other than to the extent such prohibition would be rendered ineffective under the UCC or any other applicable law); *provided* that such Equity Interests shall cease to be Excluded Equity Interests at such time as such prohibition ceases to be in effect; or
- (8) Equity Interests to the extent the same would result in materially adverse tax consequences or materially adverse regulatory consequences, in each case, as reasonably determined by the Borrower.

**"Excluded Swap Obligation"** has the meaning assigned to such term in the Credit Agreement.

**"Federal Securities Laws"** has the meaning assigned to such term in Section 5.03.

**"FSHCO"** means any direct or indirect Domestic Subsidiary substantially all of the assets of which consist of the equity and, if any, indebtedness of one or more direct or indirect Foreign Subsidiaries.

**"Grantor"** and **"Grantors"** have the meanings assigned to such terms in the introductory paragraph to this Agreement.

**"Guarantor"** means Holdings, the Borrower and each Subsidiary Loan Party.

**“Intellectual Property”** means all intellectual property of every kind and nature that any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest, including inventions, designs, Patents, Copyrights, Trademarks, trade secrets, domain names, confidential or proprietary technical and business information or know-how.

**“Intellectual Property Collateral”** has the meaning assigned to such term in Section 4.02(8).

**“Intellectual Property Security Agreement”** means a Trademark Security Agreement in substantially the form of Exhibit B hereto, a Patent Security Agreement in substantially the form of Exhibit C hereto, or a Copyright Security Agreement in substantially the form of Exhibit D hereto.

**“IP Agreements”** means all material Copyright Licenses, Patent Licenses and Trademark Licenses, and all other agreements, permits, consents, orders and franchises relating to the license, development, use or disclosure of any material Intellectual Property to which a Grantor, now or hereafter, is a party or a beneficiary, including, without limitation, the agreements set forth on Schedule II hereto.

**“Patent License”** means any written agreement, now or hereafter in effect, granting to any Grantor any right to make, use or sell any invention covered by a Patent, now or hereafter owned by any third party (including any such rights that such Grantor has the right to license) and all rights of any Grantor under any such agreement and all grants from a Grantor of any right to use a Patent of such Grantor.

**“Patents”** means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Patent License or otherwise):

- (1) all letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II, and all applications for letters patent of the United States or the equivalent thereof in any other country or jurisdiction, including those listed on Schedule II;
- (2) all provisionals, reissues, extensions, continuations, divisions, continuations-in-part, reexaminations or revisions thereof, and the inventions disclosed or claimed therein, including the right to make, use, import and/or sell the inventions disclosed or claimed therein;
- (3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
- (4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

**“Pledged Collateral”** has the meaning assigned to such term in Section 3.01(5).

**“Pledged Debt”** has the meaning assigned to such term in Section 3.01.

“**Pledged Securities**” means any promissory notes, stock certificates or other certificated securities now or hereafter included in the Pledged Collateral, including all certificates, instruments or other documents representing or evidencing any Pledged Collateral (regardless of whether constituting securities under the UCC).

“**Pledged Stock**” has the meaning assigned to such term in Section 3.01.

“**Qualified ECP Guarantor**” means, in respect of any Swap Obligations, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“**Secured Obligations**” means the (i) the Obligations, (ii) each guarantee of the Obligations pursuant to this Agreement and (iii) whether or not constituting Obligations, the unpaid principal of and interest on (including, without limitation, interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to the Borrower or any other Grantor, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) and all other obligations and liabilities of the Borrower or any other Grantor to any Agent, any Lender or any Qualified Counterparty which may arise under or in connection with any Loan Document, any Specified Hedge Agreement and/or Cash Management Obligations; provided, however, that the Secured Obligations will not include any Excluded Swap Obligations.

“**Secured Parties**” means (a) the Lenders, (b) the Agents (including each co-agent or sub-agent appointed by the Agent from time to time pursuant to the Credit Agreement), (c) each Issuing Bank, (d) the Swingline Lender, (e) the Cash Management Banks, (f) any Qualified Counterparties, (g) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (h) the successors and permitted assigns of each of the foregoing.

“**Security Interest**” has the meaning assigned to such term in Section 4.01(1).

“**Swap Obligation**” has the meaning assigned to such term in the Credit Agreement.

“**Term Loan Collateral Agent**” means Citibank, N.A., as Collateral Agent under the Term Loan Credit Agreement, and any duly appointed successor in such capacity.

“**Term Loan Priority Collateral**” has the meaning assigned to such term in the Intercreditor Agreement as in effect on the date hereof.

“**Trademark License**” means any written agreement, now or hereafter in effect, granting to any Grantor any right to use any Trademark now or hereafter owned by any third party (including any such rights that such Grantor has the right to license) and all grants from a Grantor of any right to use a Trademark of such Grantor.

“**Trademarks**” means all of the following which any Grantor now or hereafter owns or in which any Grantor now or hereafter has an interest (pursuant to a Trademark License or otherwise):

- (1) all trademarks, service marks, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations thereof (if any), and all registration applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office or any similar offices in any State of the United States or any other country or any political subdivision thereof (except for “intent-to-use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of the Lanham Act has been filed, to the extent that, and solely during the period for which, any assignment of an “intent-to-use” application prior to such filing would violate the Lanham Act), and all renewals thereof, including those listed on Schedule II;
- (2) all goodwill associated therewith or symbolized thereby;
- (3) all claims for, and rights to sue for, past or future infringements of any of the foregoing; and
- (4) all income, royalties, damages and payments now or hereafter due and payable with respect to any of the foregoing, including damages and payments for past or future infringement thereof.

“**Trust Account**” has the meaning assigned to such term in the Credit Agreement.

“**Trust Funds**” has the meaning assigned to such term in the Credit Agreement.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided, however*, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “**Uniform Commercial Code**” or “**UCC**” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

“**Vehicles**” shall mean all cars, trucks, trailers, construction and earth moving equipment and other Equipment of any nature covered by a certificate of title law of any, and all tires and other appurtenances to any of the foregoing.

ARTICLE II.

GUARANTEE

Section 2.01 Guarantee. Each of the Guarantors hereby, jointly and severally, absolutely, unconditionally and irrevocably guarantees, to the Collateral Agent for the benefit of the Secured Parties as primary obligor and not merely as surety, the due and punctual payment and performance of the Secured Obligations. Each Guarantor further agrees that the Secured Obligations may be extended or renewed, in whole or in part, without notice to or further assent from such Guarantor, and that such Guarantor will remain bound upon its guarantee hereunder notwithstanding any extension or renewal of any Secured Obligation. Each Guarantor waives presentment to, demand of payment from and protest to the Borrower or any other Loan Party of any of the Secured Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment.

Section 2.02 Guarantee of Payment. Each Guarantor further agrees that its guarantee hereunder constitutes a guarantee of payment when due (whether at the stated maturity, by acceleration or otherwise) and not of collection, and waives any right to require that any resort be had by the Collateral Agent or any other Secured Party to any security held for the payment of the Secured Obligations or to any balance of any Deposit Account or credit on the books of the Collateral Agent or any other Secured Party in favor of any Loan Party or any other person.

Section 2.03 No Limitations, Etc.

- (1) Except for termination of a Guarantor's obligations hereunder as expressly provided for in Section 7.15 and except as provided in Section 2.07, the obligations of each Guarantor hereunder will not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and will not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Secured Obligations or otherwise (other than defense of payment or performance). Without limiting the generality of the foregoing, except for termination or release of a Guarantor's obligations hereunder in accordance with the terms of Section 7.15 the obligations of each Guarantor hereunder, to the fullest extent permitted by applicable law, will not be discharged or impaired or otherwise affected by, and each Guarantor hereby waives any defense to the enforcement hereof by reason of:
  - (a) any failure or omission of the Collateral Agent or any other Secured Party to assert or enforce or agreement or election not to assert or enforce, delay in enforcement, or stay or enjoining, by the order of court, by operation of law or otherwise, the exercise or enforcement of, any claim or demand or to exercise or enforce any right, power or remedy (whether arising under or in connection with any Loan Document, any Specified Hedge Agreement or any Cash Management Obligation, at law, in equity or otherwise) with respect to the Secured Obligations or any agreements relating thereto, or with respect to any other guaranty of or security for the payment of the Secured Obligations;

- (b) the validity or enforceability or any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, any Loan Document or any other agreement, including with respect to any other Guarantor under this Agreement;
  - (c) any renewal, extension or acceleration of, or any increase in the amount of the Secured Obligations, or any amendment, supplement, modification or waiver of, or any consent to departure from, the Loan Documents or any Specified Hedge Agreement or Cash Management Obligation;
  - (d) the validity, perfection, the failure to perfect (or lapse in perfection) any security interest in, or the release of, any of the Collateral held by or on behalf of the Collateral Agent or any other Secured Party for the Secured Obligations;
  - (e) any default, failure or delay, willful or otherwise, in the performance of the Secured Obligations;
  - (f) any illegality, lack of validity or enforceability of any Secured Obligation;
  - (g) any change in the corporate existence, structure or ownership of any Loan Party, or any insolvency, bankruptcy or reorganization of any Loan Party and any corresponding restructuring of the Secured Obligations;
  - (h) the existence of any claim, set-off or other rights that the Guarantors may have at any time against the Borrower, the Collateral Agent, any other Secured Party or any other person, whether in connection herewith, the other Loan Documents or any unrelated transactions; provided that nothing herein will prevent the assertion of any such claim by separate suit or compulsory counterclaim;
  - (i) any action permitted or authorized hereunder; or
  - (j) any other circumstance (including any statute of limitations) or any act or omission that may in any manner or to any extent vary the risk of any Guarantor or otherwise operate as a defense to, or a legal or equitable discharge of, the Borrower or any Guarantor or any other guarantor or surety (other than the payment in full in cash or immediately available funds of the Secured Obligations).
- (2) Each Guarantor expressly authorizes the Secured Parties to take and hold security for the payment and performance of the Secured Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the Secured Obligations, all without affecting the obligations of any Guarantor hereunder.
- (3) To the fullest extent permitted by applicable law and except for termination or release of a Guarantor's obligations hereunder in accordance with the terms of Section 7.15 hereof,

each Guarantor waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Secured Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than, after all Commitments have been terminated, the return of all Letters of Credit (or cash collateralization thereof on terms satisfactory to the Issuing Bank), the payment in full in cash or immediately available funds of all the Secured Obligations (other than Secured Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted). The Collateral Agent and the other Secured Parties may exercise any right or remedy available to them against any other Loan Party pursuant to this Agreement or the other Loan Documents, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent that after giving effect thereto all Secured Obligations have been terminated and paid in full (other than contingent indemnity or expense reimbursement obligations that are not yet due and payable and for which no claim has been made). To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against any other Loan Party, as the case may be, or any security.

Section 2.04 Reinstatement. Each Guarantor agrees that its guarantee hereunder will continue to be effective or be reinstated if, at any time, payment, or any part thereof, of any Secured Obligation is rescinded or must otherwise be restored by the Collateral Agent or any other Secured Party upon the bankruptcy or reorganization of the Borrower or any other Loan Party or otherwise.

Section 2.05 Agreement To Pay; Contribution; Subrogation.

- (1) In furtherance of the foregoing and not in limitation of any other right that the Administrative Agent or any other Secured Party has at law or in equity against any Guarantor by virtue hereof, upon the failure of any Loan Party to pay any Secured Obligation when and as the same becomes due and payable, whether at maturity, by acceleration, after notice of prepayment or otherwise, each Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the Collateral Agent for distribution to the applicable Secured Parties in cash the amount of such unpaid Secured Obligation.
- (2) Subject to the foregoing clause (1), to the extent that any Guarantor, under this Agreement or the Credit Agreement as a joint and several obligor, repays any of the Secured Obligations constituting Loans or other advances made to or reimbursement obligations owed by another Loan Party under the Credit Agreement (an “**Accommodation Payment**”), then the Guarantor making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Guarantors in an amount equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Guarantor’s Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Guarantors; provided that such rights of contribution and indemnification shall be subordinated to the discharge of Secured Obligations. As of any date of determination, the “Allocable

Amount” of each Guarantor shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Guarantor hereunder and under the Credit Agreement without:

- (a) rendering such Guarantor “insolvent” within the meaning of Section 101 (31) of the Bankruptcy Code of the United States, Section 2 of the Uniform Fraudulent Transfer Act (“*UFTA*”) or Section 2 of the Uniform Fraudulent Conveyance Act (“*UFCA*”);
- (b) leaving such Guarantor with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code of the United States, Section 4 of the UFTA, or Section 5 of the UFCA; or
- (c) leaving such Guarantor unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code of the United States or Section 4 of the UFTA, or Section 5 of the UFCA. Upon payment by any Guarantor of any sums to the Collateral Agent as provided above, all rights of such Guarantor against the Borrower, any other Loan Party or any other Guarantor arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subject to Article VI.

Section 2.06 Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the financial condition and assets of the Borrower and each other Loan Party, and of all other circumstances bearing upon the risk of nonpayment of the Secured Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that no Agent nor any other Secured Party will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

Section 2.07 Maximum Liability. Each Guarantor, and by its acceptance of this guarantee, each Agent and each other Secured Party hereby confirms that it is the intention of all such persons that this guarantee and the Secured Obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the U.S. Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this guarantee and the Secured Obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Secured Parties and the Guarantors hereby irrevocably agree that the Secured Obligations of the Guarantors under this guarantee at any time are limited to the maximum amount as will result in the Secured Obligations of such Guarantor under this guarantee not constituting a fraudulent transfer or conveyance.

Section 2.08 Taxes. Any and all payments by or on account of any obligation of any Guarantor hereunder shall be made free and clear of and without deduction for, any Indemnified Taxes or Other Taxes; *provided* that if a Guarantor shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.08) the Collateral Agent or any Secured Party, as

applicable, receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Guarantor shall make such deductions and (iii) such Guarantor shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law. The provisions of Section 2.17 of the Credit Agreement shall apply to each Guarantor mutatis mutandis. Any amounts payable by any Guarantor pursuant to this Section 2.08 shall be made without duplication (including with any amount otherwise payable under Section 2.17 of the Credit Agreement). For the avoidance of doubt, no Guarantor shall be required to pay any greater amount under this Section 2.08 than such Guarantor would have been required to pay had it been a Loan Party that was a party to the Credit Agreement.

Section 2.09 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 2.09 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 2.09, or otherwise under this Guaranty, as it relates to such Loan Party, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until a Discharge of Secured Obligations. Each Qualified ECP Guarantor intends that this Section 2.09 constitute, and this Section 2.09 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

### ARTICLE III.

#### PLEDGE OF SECURITIES

Section 3.01 Pledge. As security for the payment or performance, as the case may be, in full of its Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title and interest in, to and under:

- (1) the Equity Interests (a) directly owned by such Grantor as of the Closing Date and (b) obtained by such Grantor after the Closing Date and, in each case, the certificates representing all such Equity Interests, in each case, other than any Excluded Assets (the Equity Interests described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “*Pledged Stock*”);
- (2) the promissory notes and any instruments and any security certificates evidencing Indebtedness (a) owned by such Grantor as of the Closing Date and (b) issued to such Grantor after the Closing Date and having an aggregate principal amount in excess of \$7.5 million, in each case, other than any Excluded Assets (the instruments described in the foregoing clauses (a) and (b), collectively, but excluding any Excluded Assets, the “*Pledged Debt*”);

in each case, including all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all Pledged Debt (except to the extent constituting an Excluded Asset or otherwise excluded from the Collateral pursuant to this Agreement), but excluding (i) Indebtedness owed by another Grantor, (ii) intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of the Borrower and its Subsidiaries or (iii) to the extent the pledge of such promissory note or instrument would violate any applicable law (after giving effect to the relevant anti-assignment provisions of the Uniform Commercial Code);

- (3) subject to Section 3.05 hereof, all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other proceeds received in respect of, the securities referred to in the foregoing clauses (1) and (2);
- (4) subject to Section 3.05 hereof, all rights and privileges of such Grantor with respect to the securities and other property referred to in the foregoing clauses (1), (2) and (3) above; and
- (5) all proceeds of any of the foregoing items referred to in clauses (1) through (4) above, but excluding any Excluded Assets (the items referred to in clauses (1) through (5) of this Section 3.01, collectively, the "Pledged Collateral").

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, none of the Pledged Stock, Pledged Debt or Pledged Collateral will include nor will the security interests granted hereunder attach to any Excluded Asset.

TO HAVE AND TO HOLD the Pledged Collateral, together with all right, title, interest, powers, privileges and preferences pertaining or incidental thereto, unto the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, forever, subject, however, to the terms, covenants and conditions hereinafter set forth and in each case subject to the Credit Agreement.

#### Section 3.02 Delivery of the Pledged Collateral.

- (1) Each Grantor agrees promptly to deliver or cause to be delivered to the Collateral Agent, for the benefit of the Secured Parties, any and all Pledged Securities to the extent such Pledged Securities, in the case of promissory notes or other instruments, are required to be delivered pursuant to paragraph (2) of this Section 3.02.
- (2) Each Grantor will use its commercially reasonable efforts to cause any Indebtedness for borrowed money having an aggregate principal amount in excess of \$7.5 million owed to such Grantor by any Person to be evidenced by a duly executed promissory note that is pledged and delivered to the Collateral Agent, for the benefit of the Secured Parties, pursuant to the terms hereof; *provided* that the foregoing requirement will not apply to (a) Indebtedness owed by another Grantor, (b) intercompany current liabilities incurred in the ordinary course of business in connection with the cash management operations of

Holdings, the Borrower and its Subsidiaries or (c) to the extent that a pledge of such promissory note or instrument would violate applicable law. To the extent any such promissory note is a demand note, each Grantor party thereto agrees, if requested by the Collateral Agent, to immediately demand payment thereunder upon a Specified Event of Default unless such demand would not be commercially reasonable or would otherwise expose such Grantor to liability to the maker.

- (3) Upon delivery to the Collateral Agent, (a) any Pledged Securities required to be delivered pursuant to the foregoing paragraphs (1) and (2) of this Section 3.02 will be accompanied by stock powers or note powers, as applicable, duly executed in blank or other instruments of transfer reasonably satisfactory to the Collateral Agent and by such other instruments and documents as the Collateral Agent may reasonably request and (b) all other property composing part of the Pledged Collateral delivered pursuant to the terms of this Agreement shall be accompanied, to the extent necessary to perfect the security interest in or allow realization on the Pledged Collateral, by proper instruments of assignment duly executed by the applicable Grantor and such other instruments or documents as the Collateral Agent may reasonably request. Each delivery of Pledged Securities shall be accompanied by a schedule describing the securities, which schedule shall be attached hereto as Schedule I (or a supplement to Schedule I, as applicable) and made a part hereof; provided that failure to attach any such schedule hereto shall not affect the validity of such pledge of such Pledged Securities. Each schedule so delivered shall supplement any prior schedules so delivered.
- (4) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no Grantor will be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Pledged Collateral of such Grantor.

Section 3.03 Representations, Warranties and Covenants. Each Grantor represents and warrants (but only with respect to any Borrowing made after the Closing Date pursuant to (a) Section 2.21 of the Credit Agreement, to the extent required by Section 2.21(6) of the Credit Agreement, and (b) Section 4.01 of the Credit Agreement) and covenants to and with the Collateral Agent, for the benefit of the Secured Parties that:

- (1) Schedule I correctly sets forth, as of the Closing Date, (a) the percentage of the issued and outstanding shares of each class of the Equity Interests of the issuer thereof represented by such Pledged Stock and (b) all debt securities and promissory notes or instruments evidencing Indebtedness required to be pledged pursuant to the terms of the Credit Agreement on the Closing Date;
- (2) the Pledged Stock and Pledged Debt (solely with respect to Pledged Debt issued by a Person that is not a Subsidiary of Holdings or an Affiliate of any such Subsidiary, to the best of each Grantor's knowledge) have been duly and validly authorized and issued by the issuers thereof and (a) in the case of Pledged Stock, are fully paid and non-assessable (to the extent such concepts are applicable to such Pledged Stock and other than with respect to Pledged Stock consisting of membership interests of limited liability

companies to the extent provided in Sections 18-502 and 18-607 of the Delaware Limited Liability Company Act) and (b) in the case of Pledged Debt (solely with respect to Pledged Debt issued by a Person that is not a Subsidiary of Holdings or an Affiliate of any such Subsidiary, to the best of each Grantor's knowledge) are legal, valid and binding obligations of the issuers thereof, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding at law or in equity) and an implied covenant of good faith and fair dealing;

- (3) except for the security interests granted hereunder, each Grantor:
- (a) is and, subject to any transfers made in compliance with the Credit Agreement, will continue to be the direct owner, beneficially and of record, of the Pledged Securities indicated on Schedule I as owned by such Grantor;
  - (b) holds the same free and clear of all Liens, other than Permitted Liens;
  - (c) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral, other than pursuant to a transaction permitted by the Credit Agreement and other than Permitted Liens; and
  - (d) subject to the rights of such Grantor under the Loan Documents to dispose of Pledged Collateral, will use commercially reasonable efforts to defend its title or interest hereto or therein against any and all Liens (other than Permitted Liens), however arising, of all persons;
- (4) other than as set forth in the Credit Agreement or the schedules thereto, and except for restrictions and limitations imposed by the Loan Documents or securities laws generally or otherwise permitted to exist pursuant to the terms of the Credit Agreement, the Pledged Stock (other than Pledged Stock that is partnership interests) is and will continue to be freely transferable and assignable, and, except for limitations existing on the Closing Date in the articles or certificate of incorporation, bylaws or other organizational documents of any Subsidiary that is not a wholly owned Subsidiary, none of the Pledged Stock is or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that would prohibit, impair, delay or otherwise affect the pledge of such Pledged Stock hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder;
- (5) each Grantor has the power and authority to pledge the Pledged Collateral pledged by it hereunder in the manner hereby done or contemplated;
- (6) other than as set forth in the Credit Agreement or the schedules thereto, no consent or approval of any Governmental Authority, any securities exchange or any other Person

was or is necessary to the validity of the pledge effected hereby (other than such as have been obtained and are in full force and effect);

- (7) this Agreement is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) a legal, valid and enforceable security interest in the Collateral described herein and proceeds thereof;
- (8) none of the Equity Interests in limited liability companies or partnerships that are pledged by the Grantors hereunder constitute a security under Section 8-103 of the UCC or the corresponding code or statute of any other applicable jurisdiction other than any Equity Interest represented by security certificates that have been delivered to the Collateral Agent; and
- (9) the Grantors shall not amend, or permit to be amended, the limited liability company agreement (or operating agreement or similar agreement) or partnership agreement of any subsidiary of any Loan Party whose Equity Interests are, or are required to be, Collateral in a manner to cause such Equity Interests to constitute a security under Section 8-103 of the New York UCC or the corresponding code or statute of any other applicable jurisdiction unless such Loan Party shall have first delivered reasonable prior written notice to the Collateral Agent and shall have taken all actions contemplated hereby and as otherwise reasonably required by the Collateral Agent to maintain the security interest of the Collateral Agent therein as a valid, perfected, first priority security interest, subject to the relative priorities set forth in the Intercreditor Agreement.

Section 3.04 Registration in Nominee Name; Denominations. The Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement), on behalf of the Secured Parties, has the right (in its sole and absolute discretion) to hold the Pledged Securities in the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) or, if an Event of Default shall have occurred and be continuing, in its own name as pledgee or the name of its nominee (as pledgee or as sub-agent). Each Grantor will promptly give to the Collateral Agent copies of any notices or other communications received by it with respect to Pledged Securities registered in the name of such Grantor. If an Event of Default shall have occurred and be continuing, the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) will have the right to exchange the certificates representing Pledged Securities for certificates of smaller or larger denominations for any purpose consistent with this Agreement. Each Grantor will use its commercially reasonable efforts to cause any Loan Party that is not a party to this Agreement to comply with a request by the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement), pursuant to this Section 3.04, to exchange certificates representing Pledged Securities of such Loan Party for certificates of smaller or larger denominations.

Section 3.05 Voting Rights; Dividends and Interest, Etc.

- (1) Unless and until an Event of Default has occurred and is continuing and the Collateral Agent has given written notice to the Borrower of the Collateral Agent's intention to exercise its rights hereunder:

- (a) each Grantor will be entitled to exercise any and all voting and/or other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose consistent with the terms of this Agreement, the Credit Agreement and the other Loan Documents; *provided* that except as permitted under the Credit Agreement, such rights and powers will not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Collateral, the rights and remedies of any of the Collateral Agent or the other Secured Parties under this Agreement, the Credit Agreement or any other Loan Document or the ability of the Secured Parties to exercise the same;
  - (b) the Collateral Agent will promptly execute and deliver to each Grantor, or cause to be executed and delivered to such Grantor, all such proxies, powers of attorney and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to subparagraph (a) above; and
  - (c) each Grantor will be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of the Credit Agreement, the other Loan Documents and applicable laws; *provided* that (i) any noncash dividends, interest, principal or other distributions, payments or other consideration in respect thereof, including any rights to receive the same to the extent not so distributed or paid, that would constitute Pledged Securities, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Securities, received in exchange for Pledged Securities or any part thereof, or in redemption thereof, as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise and (ii) any noncash dividends and other distributions paid or payable in respect of any Pledged Securities that would constitute Pledged Securities in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid in surplus, will be and become part of the Pledged Collateral, and, if received by any Grantor, will not be commingled by such Grantor with any of its other funds or property, but will be held separate and apart therefrom, will be held in trust for the benefit of the Collateral Agent, for the benefit of the Secured Parties, and will be forthwith delivered to the Collateral Agent, for the benefit of the Secured Parties, in the same form as so received (endorsed in a manner reasonably satisfactory to the Collateral Agent).
- (2) Upon the occurrence and during the continuance of an Event of Default and after written notice by the Administrative Agent to the Borrower of the Administrative Agent's intention to exercise its rights hereunder, all rights of any Grantor to dividends, interest, principal or other distributions that such Grantor is authorized to receive pursuant to

paragraph (1)(c) of this Section 3.05 will cease, and all such rights will thereupon become vested, for the benefit of the Secured Parties, in the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement), which will have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions; *provided, however*, that even after the occurrence and during the continuance of an Event of Default, any Grantor may continue to receive dividends and distributions solely to the extent permitted under subclauses (6)(a), (6)(c) and (6)(e) of Section 6.06 of the Credit Agreement.

- (3) All dividends, interest, principal or other distributions received by any Grantor contrary to the provisions of this Section 3.05 will not be commingled by such Grantor with any of its other funds or property, but will be held separate and apart therefrom, will be held in trust for the benefit of the Collateral Agent, for the benefit of the Secured Parties, and will be forthwith delivered to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement), for the benefit of the Secured Parties, in the same form as so received (endorsed in a manner reasonably satisfactory to the Collateral Agent). Any and all money and other property paid over to or received by the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) pursuant to the provisions of this paragraph (3) subject to the Intercreditor Agreement will be retained by the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) in an account to be established by the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) upon receipt of such money or other property and will be applied in accordance with the provisions of Section 5.02 hereof. After all such Events of Default have been cured or waived, the Collateral Agent will promptly repay to each Grantor (without interest) all dividends, interest, principal or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of paragraph (1)(c) of this Section 3.05 and that remain in such account.
- (4) Upon the occurrence and during the continuance of an Event of Default and after the Collateral Agent shall have given written notice to the Borrower of the Collateral Agent's intention to exercise its rights hereunder, all rights of any Grantor to exercise the voting and/or consensual rights and powers it is entitled to exercise pursuant to paragraph (1)(a) of this Section 3.05, and the obligations of the Collateral Agent under paragraph (1)(b) of this Section 3.05, will cease, and all such rights will thereupon become vested in the Collateral Agent, for the benefit of the Secured Parties, which will have the sole and exclusive right and authority to exercise such voting and consensual rights and powers (subject to the Intercreditor Agreement); *provided* that unless otherwise directed by the Required Lenders, the Collateral Agent will have the right from time to time following and during the continuance of an Event of Default to permit the Grantors to exercise such rights. After all such Events of Default have been cured or waived, each Grantor will have the right to exercise the voting and/or consensual rights and powers that such Grantor would otherwise be entitled to exercise pursuant to the terms of paragraph (1)(a) above.

ARTICLE IV.

SECURITY INTERESTS IN OTHER PERSONAL PROPERTY

Section 4.01 Security Interest.

- (1) As security for the payment or performance when due (whether at the stated maturity, by acceleration or otherwise), as the case may be, in full of the Secured Obligations, each Grantor hereby pledges to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, and hereby grants to the Collateral Agent, its successors and permitted assigns, for the benefit of the Secured Parties, a security interest (the “**Security Interest**”) in all of such Grantor’s right, title and interest in or to any and all of the following assets and properties now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “**Article 9 Collateral**”):
- (a) all Accounts;
  - (b) all Chattel Paper;
  - (c) all cash, Cash Equivalents and Deposit Accounts;
  - (d) all Documents;
  - (e) all Equipment;
  - (f) all General Intangibles;
  - (g) all Goods
  - (h) all Instruments;
  - (i) all Inventory;
  - (j) all Investment Property;
  - (k) all Letter of Credit Rights;
  - (l) all Intellectual Property;
  - (m) all Commercial Tort Claims, including those described on Schedule IV hereto;
  - (n) each of the following:
    - (i) Securities Accounts;
    - (ii) Investment Property credited to Securities Accounts or Deposit Accounts from time to time and all Security Entitlements in respect thereof;

- (iii) all cash held in any Securities Account or Deposit Account; and
- (iv) all other Money in the possession of the Collateral Agent;
- (o) all books and Records pertaining to the Article 9 Collateral; and
- (p) all proceeds, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any person with respect to any of the foregoing.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, the Article 9 Collateral will not include, this Agreement will not constitute a grant of a security interest in and the security interest granted hereunder will not attach to any Excluded Asset.

- (2) Each Grantor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any financing statements (including fixture filings) with respect to the Article 9 Collateral (including all Article 9 Collateral consisting of Pledged Collateral) or any part thereof and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment, including:
  - (a) whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor;
  - (b) in the case of a financing statement filed as a fixture filing, a sufficient description of the property to which such Article 9 Collateral relates; and
  - (c) a description of collateral that describes such property in any other manner as the Collateral Agent may reasonably determine is necessary to ensure the perfection of the security interest in the Article 9 Collateral granted under this Agreement, including describing such property as “all assets”, whether now owned or hereafter acquired, or words of similar effect.

Each Grantor agrees to provide such information to the Collateral Agent promptly upon request.

- (3) The Collateral Agent is further authorized to file with the United States Patent and Trademark Office or United States Copyright Office (or any successor office) such documents as may be reasonably necessary for the purpose of perfecting, continuing, enforcing or protecting the Security Interest granted by each Grantor, without the signature of any Grantor, and naming any Grantor or the Grantors as debtors and the Collateral Agent as secured party.
- (4) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no Grantor shall be required to take any action under the laws of any jurisdiction other than the United States (or any political subdivision thereof) and its territories and possessions for the purpose of perfecting the Security Interest in any Article 9 Collateral of such Grantor.

- (5) The Security Interest is granted as security only and shall not subject the Collateral Agent or any other Secured Party to, or in any way alter or modify, any obligation or liability of any Grantor with respect to or arising out of the Article 9 Collateral.
- (6) Notwithstanding anything to the contrary in any Loan Document, no Grantor will be required:
- (a) to take, or cause to be taken, any actions to perfect the Security Interest by any means other than (to the extent reasonably applicable):
    - (i) filings pursuant to the Uniform Commercial Code in the office of the Secretary of State (or equivalent filing office) of the relevant State(s) of the respective jurisdictions of organization of each Grantor;
    - (ii) filings in the United States Patent and Trademark Office and the United States Copyright Office of an Intellectual Property Security Agreement;
    - (iii) delivery of Collateral consisting of instruments, notes and debt securities in a principal amount in excess of \$7.5 million; *provided* that such delivery shall not be required with respect to:
      - (A) instruments, notes and debt securities that are promptly deposited into an investment or securities account;
      - (B) checks received in the ordinary course of business;
      - (C) notes and debt securities issued in connection with the extension of trade creditor by a grantor of a security interest; and
      - (D) instruments, notes and debt securities issued by a Grantor;
    - (iv) delivery of Collateral consisting of certificated Equity Interests included in the Collateral;
  - (b) to enter, or cause to be entered, any Control Agreements or similar arrangements with respect to any Deposit Accounts (except with respect to the Blocked Accounts and the Asset Sale Proceeds Account), Securities Accounts, Commodities Accounts or other Collateral that requires perfection by Control;
  - (c) to take any actions outside the United States to create or perfect any security interests in any Collateral (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any foreign jurisdiction); or
  - (d) to take any actions to create or perfect any security interests in any (i) Vehicles, (ii) any Letter of Credit Rights to the extent not perfected as Supporting Obligations by the filing of a UCC financing statement on, or possession of, the

primary Collateral and (iii) any Commercial Tort Claim with a value not in excess of \$7.5 million, as determined in good faith by the Borrower.

Section 4.02 Representations and Warranties. Each Grantor represents and warrants (but only with respect to any Borrowing made after the Closing Date pursuant to (a) Section 2.21 of the Credit Agreement, to the extent required by Section 2.21(6) of the Credit Agreement, and (b) Section 4.01 of the Credit Agreement) to the Collateral Agent and the Secured Parties that:

- (1) Each Grantor has good and valid rights in and title to the Article 9 Collateral with respect to which it has purported to grant a Security Interest hereunder and has full power and authority to grant to the Collateral Agent the Security Interest in such Article 9 Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained and is in full force and effect or has otherwise been disclosed herein or in the Credit Agreement.
- (2) The Uniform Commercial Code financing statements containing a description of the Article 9 Collateral that have been prepared by the Collateral Agent for filing in the office specified in Schedule III constitute all the filings, recordings and registrations (except as set forth in the following clause (3)) that are, as of the Closing Date, necessary to publish notice of and protect the validity of and to establish a legal, valid and perfected security interest in favor of the Collateral Agent (for the benefit of the Secured Parties) in respect of all Article 9 Collateral in which the Security Interest may be perfected by filing.
- (3) A fully executed Intellectual Property Security Agreement containing a description of all Article 9 Collateral existing on the Closing Date and consisting of Intellectual Property owned by such Grantor with respect to United States Patents (and Patents for which United States applications are pending), United States registered Trademarks (and Trademarks for which United States registration applications are pending) and United States registered Copyrights (and Copyrights for which United States registration applications are pending) was delivered on the Closing Date to the Collateral Agent for recording with the United States Patent and Trademark Office and the United States Copyright Office pursuant to 35 U.S.C. § 261, 15 U.S.C. § 1060 or 17 U.S.C. § 205 and the regulations thereunder, as applicable.
- (4) The Security Interest constitutes (a) a legal and valid security interest in all the Article 9 Collateral securing the payment and performance of the Secured Obligations; (b) subject to the filings described in Section 4.02(2), a perfected security interest in all Article 9 Collateral in which a security interest may be perfected by filing, recording or registering a financing statement or analogous document in the United States (or any political subdivision thereof) and its territories and possessions pursuant to the Uniform Commercial Code or other applicable law in such jurisdictions; and (c) a security interest that shall be perfected in all Article 9 Collateral in which a security interest may be perfected upon the receipt and recording of an Intellectual Property Security Agreement with the United States Patent and Trademark Office and the United States Copyright

Office, as applicable. The Security Interest is and shall be prior to any other Lien on any of the Article 9 Collateral other than Permitted Liens.

- (5) The Article 9 Collateral is owned by the Grantors free and clear of any Lien, other than Permitted Liens. None of the Grantors has filed or consented to the filing after the Closing Date of (a) any financing statement or analogous document under the Uniform Commercial Code or any other applicable laws covering any Article 9 Collateral; (b) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with the United States Patent and Trademark Office or the United States Copyright Office; or (c) any assignment in which any Grantor assigns any Article 9 Collateral or any security agreement or similar instrument covering any Article 9 Collateral with any foreign governmental, municipal or other office, which financing statement or analogous document, assignment, security agreement or similar instrument is still in effect, except, in each case, for Permitted Liens.
- (6) None of the Grantors holds any Commercial Tort Claim individually in excess of \$7.5 million as of the Closing Date except as indicated on Schedule IV.
- (7) The names of the obligors, amounts owing, due dates and other information with respect to each Grantor's Accounts and Chattel Paper that are Collateral are and will be correctly stated, at the time furnished, in all records of such Grantor relating thereto and in all invoices furnished to the Agent by such Grantor from time to time.
- (8) As to itself and its Article 9 Collateral consisting of Intellectual Property (the "***Intellectual Property Collateral***"), to each Grantor's knowledge, as of the Closing Date:
  - (a) The Intellectual Property Collateral set forth on Schedule II includes all of the material Patents, Trademarks and Copyrights owned by such Grantor as of the date hereof;
  - (b) The Intellectual Property Collateral owned by such Grantors has not been adjudged invalid or unenforceable in whole or part (except for office actions issued in the ordinary course by the United States Patent and Trademark Office or any similar office in any foreign jurisdiction), and is valid and enforceable, except as would not reasonably be expected to have a Material Adverse Effect. Such Grantor is not aware of any uses of any item of Intellectual Property Collateral that would be expected to lead to such item becoming invalid or unenforceable, except as would not reasonably be expected to have a Material Adverse Effect;
  - (c) Such Grantor has made or performed in the ordinary course of Grantor's business, acts, including filings, recordings and payment of all required fees and taxes, required to maintain and protect its interest in each and every item of Intellectual Property Collateral owned by such Grantor in full force and effect in the United States, and such Grantor has used proper statutory notice in connection with its use of each Patent, Trademark and Copyright owned by such Grantor in the

Intellectual Property Collateral, in each case, except to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect;

- (d) With respect to each IP Agreement, the absence, termination or violation of which would reasonably be expected to have a Material Adverse Effect: (A) such Grantor has not received any notice of termination or cancellation under such IP Agreement; (B) such Grantor has not received any notice of a breach or default under such IP Agreement, which breach or default has not been cured or waived; and (C) neither such Grantor nor any other party to such IP Agreement is in breach or default thereof in any material respect, and no event has occurred that, with notice or lapse of time or both, would constitute such a breach or default or permit termination, modification or acceleration under such IP Agreement.
- (e) Except as would not reasonably be expected to have a Material Adverse Effect, no Grantor or Intellectual Property Collateral owned by such Grantor is subject to any outstanding consent, settlement, decree, order, injunction, judgment or ruling restricting the use of any Intellectual Property Collateral owned by such Grantor or that would impair the validity or enforceability of such Intellectual Property Collateral owned by such Grantor.

Section 4.03 Covenants.

- (1) Each Grantor agrees to comply with Section 5.10(3) of the Credit Agreement.
- (2) Subject to the rights of such Grantor under the Loan Documents to dispose of Collateral and except as would otherwise be permitted by the Credit Agreement, each Grantor will, at its own expense, use commercially reasonable efforts to defend title to the Article 9 Collateral against all persons and to defend the Security Interest of the Collateral Agent, for the benefit of the Secured Parties, in the Article 9 Collateral and the priority thereof against any Lien that is not a Permitted Lien.
- (3) Each Grantor agrees, at its own expense, to execute, acknowledge, deliver and cause to be duly filed all such further instruments and documents and take all such actions as the Collateral Agent may from time to time reasonably request to preserve, protect and perfect the Security Interest and the rights and remedies created hereby, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement and the granting of the Security Interest and the filing of any financing statements (including fixture filings) or other documents in connection herewith or therewith.
- (4) If any amount payable under or in connection with any of the Article 9 Collateral that is in excess of \$7.5 million is or becomes evidenced by any promissory note or other instrument, such note or instrument, subject to the Intercreditor Agreement, will be promptly pledged and delivered to the Collateral Agent, for the benefit of the Secured Parties, duly endorsed in a manner reasonably satisfactory to the Collateral Agent.

- (5) After the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent will have the right to verify under reasonable procedures the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to, the Article 9 Collateral, including, in the case of Accounts or Article 9 Collateral in the possession of any third person, by contacting Account Debtors or the third person possessing such Article 9 Collateral for the purpose of making such a verification. The Collateral Agent shall have the right to share any information it gains from such inspection or verification with any Secured Party.
- (6) None of the Grantors will, without the Collateral Agent's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned), grant any extension of the time of payment of any Accounts included in the Article 9 Collateral, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any person liable for the payment thereof or allow any credit or discount whatsoever thereon, in each case, other than extensions, credits, discounts, compromises or settlements granted or made in the ordinary course of business and consistent with prudent business practices or as otherwise permitted under the Credit Agreement.
- (7) At its option after the occurrence of an Event of Default and during the continuance thereof, the Collateral Agent may discharge past due taxes, assessments, charges, fees, Liens, security interests or other encumbrances at any time levied or placed on the Article 9 Collateral and not a Permitted Lien, and may pay for the maintenance and preservation of the Article 9 Collateral to the extent any Grantor fails to do so as required by the Credit Agreement or this Agreement, and each Grantor jointly and severally agrees to reimburse the Collateral Agent on demand for any reasonable payment made or any reasonable expense incurred by the Collateral Agent pursuant to the foregoing authorization; *provided, however*, that nothing in this Section 4.03(7) will excuse any Grantor from the performance of, or impose any obligation on the Collateral Agent or any Secured Party to cure or perform, any covenants or other promises of any Grantor with respect to taxes, assessments, charges, fees, Liens, security interests or other encumbrances and maintenance as set forth herein or in the other Loan Documents.
- (8) Each Grantor (rather than the Collateral Agent or any Secured Party) will remain liable for the observance and performance of all the conditions and obligations to be observed and performed by it under each contract, agreement or instrument relating to the Article 9 Collateral.
- (9) Each Grantor irrevocably makes, constitutes and appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent for such purpose) as such Grantor's true and lawful agent (and attorney-in-fact) for the purpose, during the continuance of an Event of Default, of making, settling and adjusting claims in respect of Article 9 Collateral under policies of insurance, endorsing the name of such Grantor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect thereto.
- (10) In the event that any Grantor at any time or times fails to obtain or maintain any of the policies of insurance required hereby or under the Credit Agreement or to pay any

premium in whole or part relating thereto, the Collateral Agent may, after the occurrence and during the continuation of an Event of Default, without waiving or releasing any obligation or liability of the Grantors hereunder or any Event of Default, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Collateral Agent reasonably deems advisable. All sums disbursed by the Collateral Agent in connection with this Section 4.03(10), including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Grantors to the Collateral Agent and shall be additional Secured Obligations secured hereby.

Section 4.04 Other Actions. In order to further ensure the attachment and perfection of, and the ability of the Collateral Agent to enforce, for the benefit of the Secured Parties, the Collateral Agent's security interest in the Article 9 Collateral, each Grantor agrees, in each case at such Grantor's own expense, to take the following actions with respect to the following Article 9 Collateral:

- (1) Instruments and Tangible Chattel Paper. If any Grantor at any time holds or acquires any Instruments (other than checks received and processed in the ordinary course of business) or Tangible Chattel Paper evidencing an amount in excess of \$7.5 million, such Grantor will forthwith endorse, assign and deliver the same to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement), accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably request.
- (2) Investment Property. Except to the extent otherwise provided in Article III, if any Grantor at any time holds or acquires any Certificated Security constituting Pledged Collateral or Article 9 Collateral, such Grantor will forthwith endorse, assign and deliver the same to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement), accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time reasonably specify. If any security of a domestic issuer now owned or hereafter acquired by any Grantor is uncertificated and is issued to such Grantor or its nominee directly by the issuer thereof, such Grantor shall promptly notify the Collateral Agent of such uncertificated securities and upon the occurrence and during the continuance of an Event of Default, such Grantor shall pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, either (a) cause the issuer to agree to comply with instructions from the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) as to such security, without further consent of any Grantor or such nominee or (b) cause the issuer to register the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) as the registered owner of such security.
- (3) Commercial Tort Claims. If any Grantor shall at any time hold or acquire a Commercial Tort Claim in an amount reasonably estimated to exceed \$7.5 million, such Grantor shall promptly notify the Collateral Agent thereof in a writing signed by such Grantor, including a summary description of such claim, and grant to the Collateral Agent in writing a security interest therein and in the proceeds thereof, all under the terms and

provisions of this Agreement, with such writing to be in form and substance reasonably satisfactory to the Collateral Agent.

Section 4.05 Covenants Regarding Patent, Trademark and Copyright Collateral. Except as permitted by the Credit Agreement:

- (1) Each Grantor agrees that it will not knowingly do any act or omit to do any act (and will exercise commercially reasonable efforts to contractually prohibit its licensees from doing any act or omitting to do any act) whereby any material Patent owned by such Grantor that is necessary to the normal conduct of such Grantor's business may become prematurely invalidated, abandoned, lapsed or dedicated to the public, and agrees that it will take commercially reasonable steps with respect to any material products covered by any such Patent as necessary to establish and preserve its rights under applicable patent laws.
- (2) Each Grantor will, and will use its commercially reasonable efforts to contractually require its licensees and its sublicensees to, for each material Trademark owned by such Grantor and necessary to the normal conduct of such Grantor's business:
  - (a) maintain such Trademark in full force free from any adjudication of abandonment or invalidity for non-use;
  - (b) maintain the quality of products and services offered under such Trademark;
  - (c) display such Trademark with notice of federal or foreign registration or claim of trademark or service mark as required under applicable law; and
  - (d) not knowingly use or knowingly permit its licensees' use of such Trademark in violation of any third-party rights.
- (3) Each Grantor will, and will use its commercially reasonable efforts to cause its licensees and its sublicensees to, for each work covered by a material Copyright owned by such Grantor and necessary to the normal conduct of such Grantor's business and that it publishes, displays and distributes, use a copyright notice as necessary and sufficient to establish and preserve its rights under applicable copyright laws.
- (4) Each Grantor shall notify the Collateral Agent promptly if it knows that any material Patent, Trademark or Copyright owned by such Grantor and necessary to the normal conduct of such Grantor's business may imminently become abandoned, lapsed or dedicated to the public, or of any materially adverse determination or development, excluding office actions and similar determinations or developments in the United States Patent and Trademark Office, United States Copyright Office, any court or any similar office of any country, regarding such Grantor's ownership of any such material Patent, Trademark or Copyright or its right to register or to maintain the same.
- (5) Each Grantor, either itself or through any agent, employee, licensee or designee, will, upon the reasonable request of the Collateral Agent, execute and deliver any and all

agreements, instruments, documents and papers as the Collateral Agent may reasonably request to evidence the Collateral Agent's security interest in each Patent, Trademark, or Copyright listed in each updated Perfection Certificate (or in any applicable specified information contained in the Perfection Certificate) furnished pursuant to Section 5.04(6) of the Credit Agreement.

- (6) Each Grantor will exercise its reasonable business judgment consistent with the practice in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office with respect to maintaining and pursuing each application owned by such Grantor relating to any material Patent, Trademark and/or Copyright (and obtaining the relevant grant or registration) necessary to the normal conduct of such Grantor's business and to maintain (a) each such Patent and (b) the registrations of each such Trademark and each such Copyright, including, when applicable and necessary in such Grantor's reasonable business judgment, timely filings of applications for renewal, affidavits of use, affidavits of incontestability and payment of maintenance fees, and, if any Grantor believes necessary in its reasonable business judgment, to initiate opposition, interference and cancellation proceedings against third parties.
- (7) In the event that any Grantor knows or has reason to know that any Article 9 Collateral consisting of a material Patent, Trademark or Copyright necessary to the normal conduct of its business has been materially infringed, misappropriated or diluted by a third party, such Grantor will promptly notify the Collateral Agent and will, if such Grantor deems it necessary in its reasonable business judgment, promptly take actions as are reasonably appropriate under the circumstances.

Section 4.06 Intercreditor Relations. Notwithstanding anything herein to the contrary, (1) the Grantors and the Collateral Agent acknowledge that the exercise of certain of the Collateral Agent's rights and remedies hereunder are subject to the provisions of the Intercreditor Agreement and (2) prior to the Discharge of Term Loan Claims, any obligation hereunder to physically deliver any Term Loan Priority Collateral to the Collateral Agent shall be deemed satisfied by the delivery to the Term Loan Collateral Agent, acting as gratuitous bailee for the Collateral Agent in accordance with the Intercreditor Agreement. The failure of the Collateral Agent or any other Secured Party to immediately enforce any of its rights and remedies hereunder (as a result of the terms of the Intercreditor Agreement or otherwise) shall not constitute a waiver of any such rights and remedies. In the event of any conflict or inconsistency between the terms of the Intercreditor Agreement and this Agreement regarding the relative priorities of the Term Loan Collateral Agent and the Collateral Agent in the Collateral, the terms of the Intercreditor Agreement shall govern and control.

## ARTICLE V.

### REMEDIES

Section 5.01 Remedies Upon Default. Upon the occurrence and during the continuance of an Event of Default, each Grantor agrees to deliver each item of Collateral to the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) on demand, and it is agreed that the Collateral Agent shall have the right, subject to applicable law, to take any of

or all the following actions at the same or different times: (1) with respect to any Article 9 Collateral consisting of Intellectual Property, on demand, to cause the Security Interest to become an assignment, transfer and conveyance of any of or all such Article 9 Collateral by the applicable Grantors to the Collateral Agent or to license or sublicense, whether general, special or otherwise, and whether on an exclusive or a non-exclusive basis, any such Article 9 Collateral throughout the world on such terms and conditions and in such manner as the Collateral Agent shall determine (other than in violation of any then-existing licensing arrangements to the extent that waivers thereunder cannot be obtained with the use of commercially reasonable efforts, which each Grantor hereby agrees to use) and (2) to take possession of the Article 9 Collateral and without liability for trespass to the applicable Grantor to enter any premises where the Article 9 Collateral may be located for the purpose of taking possession of, removing or selling the Article 9 Collateral and, generally, to exercise any and all rights afforded to a secured party under the applicable Uniform Commercial Code or other applicable law. Without limiting the generality of the foregoing rights and remedies, each Grantor agrees that the Collateral Agent shall have the right, subject to the mandatory requirements of applicable law (including the Uniform Commercial Code), to sell or otherwise dispose of all or any part of the Collateral at a public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized in connection with any sale of a security (if it deems it advisable to do so) pursuant to the foregoing to restrict the prospective bidders or purchasers to persons who represent and agree that they are purchasing such security for their own account, for investment, and not with a view to the distribution or sale thereof. Upon consummation of any such sale of Collateral pursuant to this Section 5.01, the Collateral Agent shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of any Grantor, and each Grantor hereby waives and releases (to the extent permitted by law) all rights of redemption, stay, valuation and appraisal that such Grantor now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted.

Except for collateral of the type specified in Section 9-611(d) of the UCC, the Collateral Agent shall give the applicable Grantors ten Business Days' written notice (which each Grantor agrees is reasonable notice within the meaning of Section 9-611 of the UCC or its equivalent in other jurisdictions) of the Collateral Agent's intention to make any sale of Collateral. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and state in the notice (if any) of such sale. The Collateral, or the portion thereof, to be sold at any such sale may be sold in one lot as an entirety or in separate parcels, in the Collateral Agent's own right or by one or more agents and contractors, upon any premises owned, leased, or occupied by any Grantor and the Collateral Agent and any such agent or contractor, in conjunction with any such sale, may augment the Inventory to be sold with other goods (all of which other goods shall remain the sole property of the Collateral Agent or such agent or contractor), all as the Collateral Agent may (in its sole and absolute discretion) determine. The Collateral Agent shall not be obligated to make any sale of any Collateral if it shall determine not

to do so, regardless of the fact that notice of sale of such Collateral shall have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In the case of any sale of all or any part of the Collateral made on credit or for future delivery, the Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but the Collateral Agent shall not incur any liability in the event that any such purchaser or purchasers shall fail to take up and pay for the Collateral so sold and, in the case of any such failure, such Collateral may be sold again upon notice given in accordance with provisions above. At any public (or, to the extent permitted by law, private) sale made pursuant to this Section 5.01, any Secured Party may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay, valuation or appraisal on the part of any Grantor (all such rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to such Secured Party from any Grantor as a credit against the purchase price, and such Secured Party may, upon compliance with the terms of sale, hold, retain and dispose of such property in accordance with Section 5.02 hereof without further accountability to any Grantor therefor. For purposes hereof, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Grantor shall be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default shall have been remedied and the Secured Obligations paid in full. As an alternative to exercising the power of sale herein conferred upon it, the Collateral Agent may proceed by a suit or suits at law or in equity to foreclose this Agreement and to sell the Collateral or any portion thereof pursuant to a judgment or decree of a court or courts having competent jurisdiction or pursuant to a proceeding by a court-appointed receiver. Any sale pursuant to the provisions of this Section 5.01 shall be deemed to conform to the commercially reasonable standards as provided in Section 9-610(b) of the UCC or its equivalent in other jurisdictions.

Without limiting any other rights of the Collateral Agent granted pursuant to this Agreement, each Grantor hereby grants to the Collateral Agent, and the representatives and independent contractors of the Collateral Agent, a royalty free, non-exclusive, irrevocable license (such license to be effective upon the occurrence and during the continuance of any Event of Default), to use, apply, and affix any Trademark, trade name, logo, or the like in which any Grantor now or hereafter has rights, solely in connection with the Collateral Agent's enforcement of rights or remedies hereunder, including in connection with any sale or other disposition of Inventory. As to each Grantor, the license granted hereby shall remain in full force and effect until such Grantor hereunder is released hereunder in accordance with Section 7.15 of this Agreement.

#### Section 5.02 Application of Proceeds.

- (1) Subject to the terms of the Intercreditor Agreement, the Collateral Agent will promptly apply the proceeds, moneys or balances of any collection or sale of Collateral, as well as any Collateral consisting of cash, in the manner specified in the Credit Agreement.

- (2) The Collateral Agent will have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the purchase money by the Collateral Agent or of the officer making the sale will be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers will not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.
- (3) Notwithstanding anything in this Agreement or any other Loan Document to the contrary, the Collateral Agent will not be required to marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such Guarantee in any particular order.

Section 5.03 Securities Act, Etc. In view of the position of the Grantors in relation to the Pledged Collateral, or because of other current or future circumstances, a question may arise under the Securities Act of 1933, as now or hereafter in effect, or any similar federal statute hereafter enacted analogous in purpose or effect (such Act and any such similar statute as from time to time in effect being called the “**Federal Securities Laws**”) with respect to any disposition of the Pledged Collateral permitted hereunder. Each Grantor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Collateral Agent if the Collateral Agent were to attempt to dispose of all or any part of the Pledged Collateral, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Collateral could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Collateral Agent in any attempt to dispose of all or part of the Pledged Collateral under applicable Blue Sky or other state securities laws or similar laws analogous in purpose or effect. Each Grantor acknowledges and agrees that in light of such restrictions and limitations, the Collateral Agent, in its sole and absolute discretion, may (1) proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under the Federal Securities Laws or, to the extent applicable, Blue Sky or other state securities laws and (2) approach and negotiate with a single potential purchaser to effect such sale. Each Grantor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, the Collateral Agent will incur no responsibility or liability for selling all or any part of the Pledged Collateral at a price that the Collateral Agent, in its sole and absolute discretion, may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section 5.03 will apply notwithstanding the existence of a public or private market upon which the quotations or sales prices may exceed substantially the price at which the Collateral Agent sells.

ARTICLE VI.

INDEMNITY, SUBROGATION AND SUBORDINATION

Section 6.01 Indemnity. In addition to all such rights of indemnity and subrogation as the Guarantors may have under applicable law (but subject to Section 6.03 hereof), the Borrower agrees that (a) in the event a payment is made by any Guarantor under this Agreement in respect of any Secured Obligation of the Borrower, the Borrower shall indemnify such Guarantor for the full amount of such payment and such Guarantor shall be subrogated to the rights of the person to whom such payment shall have been made to the extent of such payment and (b) in the event any assets of any Guarantor are sold pursuant to this Agreement or any other Security Document to satisfy in whole or in part a Secured Obligation of the Borrower, the Borrower will indemnify such Guarantor in an amount equal to the greater of the book value or the fair market value of the assets so sold.

Section 6.02 Contribution and Subrogation. Subject to Section 2.07, each Guarantor (a “*Contributing Guarantor*”) agrees (subject to Section 6.03 hereof) that, in the event a payment shall be made by any other Guarantor hereunder in respect of any Secured Obligation or assets of any other Guarantor are sold pursuant to any Security Document to satisfy any Secured Obligation owed to any Secured Party and such other Guarantor (the “*Claiming Guarantor*”) shall not have been fully indemnified by the Borrower as provided in Section 6.01 hereof, the Contributing Guarantor shall indemnify the Claiming Guarantor in an amount equal to the amount of such payment or the greater of the book value or the fair market value of such assets, as applicable, in each case multiplied by a fraction of which the numerator shall be the net worth of such Contributing Guarantor on the date hereof and the denominator shall be the aggregate net worth of all the Guarantors on the date hereof (or, in the case of any Guarantor becoming a party hereto pursuant to Section 7.16 hereof, the date of the supplement hereto executed and delivered by such Guarantor). Any Contributing Guarantor making any payment to a Claiming Guarantor pursuant to this Section 6.02 shall be subrogated to the rights of such Claiming Guarantor under Section 6.01 hereof to the extent of such payment.

Section 6.03 Subordination.

- (1) Notwithstanding any provision of this Agreement to the contrary, all rights of the Guarantors under Sections 6.01 and 6.02 hereof and all other rights of indemnity, contribution or subrogation of the Guarantors under applicable law or otherwise will be fully subordinated to the payment in full in cash or immediately available funds of the Secured Obligations (other than Secured Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted) until such time as this Agreement has been terminated in accordance with Section 7.15(a). No failure on the part of the Borrower or any Guarantor to make the payments required by Sections 6.01 and 6.02 hereof (or any other payments required under applicable law or otherwise) will in any respect limit the obligations and liabilities of the Borrower with respect to the Secured Obligations or any Guarantor with respect to its obligations hereunder, and the Borrower shall remain liable for the full amount of the

Secured Obligations and each Guarantor shall remain liable for the full amount of its obligations hereunder.

- (2) The Borrower and each Guarantor hereby agree that all Indebtedness and other monetary obligations owed by it to the Borrower, any other Guarantor or any Subsidiary will be fully subordinated to the payment in full in cash or immediately available funds of the Secured Obligations (other than Secured Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations that are not yet due and payable and for which no claim has been asserted).

## ARTICLE VII.

### MISCELLANEOUS

Section 7.01 Notices. All communications and notices hereunder shall (except as otherwise permitted herein) be in writing and given as provided in Section 10.01 of the Credit Agreement. All communications and notices hereunder to any Grantor will be given to it in care of the Borrower, with such notice to be given as provided in Section 10.01 of the Credit Agreement.

Section 7.02 Security Interest Absolute. All rights of the Collateral Agent hereunder, the Security Interest in the Article 9 Collateral, the security interest in the Pledged Collateral and all obligations of each Grantor hereunder will be absolute and unconditional irrespective of:

- (1) any lack of validity or enforceability of the Credit Agreement, any other Loan Document, any agreement with respect to any of the Secured Obligations or any other agreement or instrument relating to any of the foregoing;
- (2) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Credit Agreement, any other Loan Document or any other agreement or instrument;
- (3) any exchange, release or non-perfection of any Lien on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Secured Obligations; or
- (4) subject only to termination or release of a Guarantor's obligations hereunder in accordance with the terms of Section 7.15 hereof any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Grantor in respect of the Secured Obligations or this Agreement (other than a defense of payment or performance).

Section 7.03 Limitation By Law. All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to

all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 7.04 Binding Effect; Several Agreement. This Agreement will become effective as to any party to this Agreement when a counterpart hereof executed on behalf of such party is delivered to the Collateral Agent and a counterpart hereof is executed on behalf of the Collateral Agent, and thereafter will be binding upon such party and the Collateral Agent and their respective permitted successors and assigns, and will inure to the benefit of such party, the Collateral Agent and the other Secured Parties and their respective permitted successors and assigns, except that no party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein or in the Collateral (and any such assignment or transfer shall be void) except as expressly contemplated by this Agreement, the Credit Agreement. This Agreement will be construed as a separate agreement with respect to each Loan Party and may be amended, modified, supplemented, waived or released with respect to any Loan Party without the approval of any other Loan Party and without affecting the obligations of any other Loan Party hereunder.

Section 7.05 Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference will be deemed to include the permitted successors and assigns of such party, and all covenants, promises and agreements by or on behalf of any Grantor or the Collateral Agent that are contained in this Agreement shall bind and inure to the benefit of their respective permitted successors and assigns; *provided* that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Collateral Agent. The Collateral Agent hereunder will at all times be the same person that is the Collateral Agent under the Credit Agreement. Written notice of resignation by the Administrative Agent pursuant to the Credit Agreement will also constitute notice of resignation as the Collateral Agent under this Agreement. Upon the acceptance of any appointment as the Administrative Agent under the Credit Agreement by a successor Administrative Agent, that successor Administrative Agent will thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent pursuant hereto.

Section 7.06 Collateral Agent's Fees and Expenses; Indemnification. The parties hereto agree that the Collateral Agent will be entitled to reimbursement of its expenses incurred hereunder as provided in Section 10.05 of the Credit Agreement and the provisions of Section 10.05 shall be incorporated by reference herein and apply to each Grantor *mutatis mutandis*.

Section 7.07 Collateral Agent Appointed Attorney-in-Fact. Each Grantor hereby appoints the Collateral Agent the attorney-in-fact of such Grantor for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest. The Collateral Agent will have the right, upon the occurrence and during the continuance of an Event of Default, with full power of substitution either in the Collateral Agent's name or in the name of such Grantor, to:

- (1) receive, endorse, assign or deliver any and all notes, acceptances, checks, drafts, money orders or other evidences of payment relating to the Collateral or any part thereof;

- (2) demand, collect, receive payment of, give receipt for and give discharges and releases of all or any of the Collateral;
- (3) ask for, demand, sue for, collect, receive and give acquittance for any and all moneys due or to become due under and by virtue of any Collateral;
- (4) sign the name of any Grantor on any invoice or bill of lading relating to any of the Collateral;
- (5) send verifications of Accounts to any Account Debtor;
- (6) commence and prosecute any and all suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect or otherwise realize on all or any of the Collateral or to enforce any rights in respect of any Collateral;
- (7) settle, compromise, compound, adjust or defend any actions, suits or proceedings relating to all or any of the Collateral;
- (8) notify, or to require any Grantor to notify, Account Debtors to make payment directly to the Collateral Agent; and
- (9) use, sell, assign, transfer, pledge, make any agreement with respect to or otherwise deal with all or any of the Collateral, and to do all other acts and things necessary to carry out the purposes of this Agreement, as fully and completely as though the Collateral Agent were the absolute owner of the Collateral for all purposes;

*provided* that nothing herein contained will be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby. The Collateral Agent and the other Secured Parties will be accountable only for amounts actually received as a result of the exercise of the powers granted to them herein, and neither they nor their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

Section 7.08 APPLICABLE LAW. THIS AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY WILL 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 7.09 Waivers; Amendment.

- (1) No failure or delay by the Collateral Agent or any Lender in exercising any right, power or remedy hereunder or under any other Loan Document will operate as a waiver thereof, nor will any single or partial exercise of any such right, power or remedy, or any abandonment or discontinuance of steps to enforce such a right, power or remedy, preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies of the Collateral Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights, powers or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Loan Party therefrom will in any event be effective unless the same is permitted by paragraph (2) of this Section 7.09, and then such waiver or consent will be effective only in the specific instance and for the purpose for which given.
- (2) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent and the Loan Party or Loan Parties with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 10.08 of the Credit Agreement.

Section 7.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY HERETO (1) 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 (2) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.10.

Section 7.11 Severability. In the event any one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein will not in any way be affected or impaired thereby.

Section 7.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which will constitute an original but all of which when taken together will constitute but one contract, and will become effective as provided in Section 7.04 hereof. Delivery of an executed counterpart to this Agreement by facsimile or other electronic transmission will be as effective as delivery of a manually signed original.

Section 7.13 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 7.14 Jurisdiction; Consent to Service of Process.

- (1) Each party to this Agreement 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, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York State or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement will affect any right that the Administrative Agent, the Collateral Agent, any Issuing Bank, any Swingline Lender, or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Grantor, or its properties, in the courts of any jurisdiction.
- (2) Each party to this Agreement hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement 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 7.15 Termination or Release.

- (1) This Agreement, the guarantees made herein, the pledges made herein, the Security Interest and all other security interests granted hereby shall terminate when all the Secured Obligations (other than Secured Obligations in respect of Specified Hedge Agreements, Cash Management Obligations and contingent indemnification and reimbursement obligations, in each case, that are not yet due and payable and for which no claim has been asserted) have been paid in full in cash or immediately available funds and the Lenders have no further commitment to lend under the Credit Agreement, the L/C Exposure has been reduced to zero and each Issuing Bank has no further obligations to issue Letters of Credit under the Credit Agreement; *provided, however*, that if any secured debt is outstanding under the Term Loan Credit Agreement, all such Collateral in the form of possessory collateral shall be transferred to the collateral agent under the Term Loan Credit Agreement, notwithstanding anything in the foregoing to the contrary.
- (2) A Grantor that is a Subsidiary shall automatically be released from its obligations hereunder and the security interests in the Collateral of such Grantor shall be automatically released upon the consummation of any transaction permitted by the Credit Agreement as a result of which such Grantor ceases to be a Subsidiary Loan Party or otherwise ceases to be a Guarantor; *provided* that such portion of the Lenders as are required by the terms of the Credit Agreement to consent to such transaction shall have consented thereto; *provided, further*, to the extent the Term Loan Collateral Documents (as defined in the Intercreditor Agreement) are in effect on such date, such Grantor (and the security interests in the Collateral in respect thereof) shall be released under the Term Loan Collateral Documents concurrently with the release referred to in this clause (2).

- (3) Upon any sale or other transfer by any Grantor of any Collateral that is permitted under the Credit Agreement to any person that is not a Grantor, upon the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral pursuant to Sections 10.08 and 10.18 of the Credit Agreement or pursuant to Section 5.1 of the Intercreditor Agreement, the security interest in such Collateral shall be automatically released; *provided* to the extent the Term Loan Collateral Documents are in effect on such date, the security interests in such Collateral shall be released under the Term Loan Collateral Documents concurrently with the release referred to in this clause (3).
- (4) In connection with any termination or release pursuant to paragraph (1), (2) or (3) of this Section 7.15, the Collateral Agent shall execute and deliver to any Grantor, at such Grantor's expense, all documents that such Grantor reasonably requests to evidence such termination or release (including UCC termination statements) and will duly assign and transfer to such Grantor such of the Pledged Collateral that may be in the possession of the Collateral Agent (or a designated bailee, in accordance with the Intercreditor Agreement) and has not theretofore been sold or otherwise applied or released pursuant to this Agreement; *provided* that the Collateral Agent will not be required to take any action under this Section 7.15(4) unless such Grantor shall have delivered to the Collateral Agent together with such request, which may be incorporated into such request: (a) a reasonably detailed description of the Collateral, which in any event is sufficient to effect the appropriate termination or release without affecting any other Collateral and (b) a certificate of a Responsible Officer of the Borrower or such Grantor certifying that the transaction giving rise to such termination or release is permitted by the Credit Agreement and was or is consummated in compliance with the Loan Documents. Any execution and delivery of documents pursuant to this Section 7.15 shall be without recourse to or warranty by the Collateral Agent.
- (5) In the event that Rule 3-10 or Rule 3-16 of Regulation S-X of the Exchange Act is amended, modified or interpreted by the SEC or any other relevant Governmental Authority to require (or is replaced with another rule or regulation, or any other law, rule or regulation is adopted, which would require) the filing with the SEC (or any other Governmental Authority) of separate financial statements of any Subsidiary of the Borrower due to the fact that the Equity Interests of such Subsidiary are pledged under this Agreement, then the Equity Interests of such Subsidiary shall automatically be deemed not to be part of the Collateral to the extent necessary not to be subject to such requirement. Notwithstanding anything to the contrary in this Agreement, if Equity Interests of any Subsidiary are not required to be pledged under this Agreement because Rule 3-10 or Rule 3-16 of Regulation S-X of the Exchange Act would require the filing of separate financial statements of such Subsidiary if its Equity Interests were so pledged, in the event that Rule 3-10 or Rule 3-16 of Regulation S-X of the Exchange Act is amended, modified or interpreted by the SEC or any other relevant Governmental Authority to no longer require (or is replaced with another rule or regulation that would not require) the filing of separate financial statements of such Subsidiary if some or all of its Equity Interests are pledged under this Agreement, then such Equity Interests of such

Subsidiary shall automatically be deemed part of the Collateral and pledged under this Agreement.

Section 7.16 Additional Subsidiaries. Upon execution and delivery by the Collateral Agent and any Subsidiary that is required to become a party hereto by Section 5.10 of the Credit Agreement of a supplement in the form of Exhibit A hereto, such Subsidiary will become a Grantor and a Guarantor hereunder with the same force and effect as if originally named as a Grantor and a Guarantor herein. The execution and delivery of any such supplement will not require the consent of any other party to this Agreement. The rights and obligations of each party to this Agreement will remain in full force and effect notwithstanding the addition of any new party to this Agreement.

Section 7.17 Precedence. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of the Credit Agreement, the terms and conditions of the Credit Agreement shall prevail.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

MERGER SUB:

PET ACQUISITION MERGER SUB LLC (which on the Closing Date shall be merged with and into PETCO HOLDINGS, INC., with PETCO HOLDINGS, INC., surviving such merger as Holdings),  
as a Grantor

By: /s/ Cameron Breitner

Name: Cameron Breitner

Title: President

*[Signature Page to ABL Guarantee and Collateral Agreement]*

The undersigned hereby confirms that, as a result of its merger with PET ACQUISITION MERGER SUB LLC on the Closing Date, it hereby assumes all of the rights and obligations of PET ACQUISITION MERGER SUB LLC under this Agreement (in furtherance of, and not in lieu of, any assumption or deemed assumption as a matter of law) and hereby agrees to be joined to this Agreement.

Holdings:

PETCO HOLDINGS, INC.,  
as a Grantor

By: /s/ Cameron Breitner

Name: Cameron Breitner

Title: President

*[Signature Page to ABL Guarantee and Collateral Agreement]*

The undersigned hereby confirms that, pursuant to Section 10.23 of the Credit Agreement, it hereby assumes all of the rights and obligations of PET ACQUISITION MERGER SUB LLC as “Initial Borrower” and “Borrower under the Credit Agreement and hereby agrees to be joined to this Agreement.

Successor Borrower:

PETCO ANIMAL SUPPLIES, INC.,  
as a Grantor

By /s/ Michael Nuzzo  
Name: Michael Nuzzo  
Title: Chief Financial Officer

*[Signature Page to ABL Guarantee and Collateral Agreement]*

PETCO WELLNESS, LLC, as a Grantor

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

PETCO ANIMAL SUPPLIES STORES, INC., as a Grantor

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

INTERNATIONAL PET SUPPLIES AND  
DISTRIBUTION, INC., as a Grantor

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

STORES SHIPPING SERVICES, LLC, as a Grantor

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

PETCO SUPPORT SERVICES, LLC, as a Grantor

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

PETCO PUERTO RICO, LLC, as a Grantor

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

*[Signature Page to ABL Guarantee and Collateral Agreement]*

E-PET SERVICES, LLC, as a Grantor

by PETCO ANIMAL SUPPLIES STORES, INC.,  
as its sole member

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: Authorized Signatory

PETCO ASIA, LLC, as a Grantor

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

PETCO REAL ESTATE HOLDINGS I LLC, as a Grantor

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

PETCO REAL ESTATE HOLDINGS II LLC, as a Grantor

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

PETCO REAL ESTATE HOLDINGS III LLC, as a  
Grantor

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

*[Signature Page to ABL Guarantee and Collateral Agreement]*

CITIBANK, N.A., as Administrative Agent and  
Collateral Agent

By: /s/ K. Kelly Gunness

Name: K. Kelly Gunness

Title: Vice President and Director

*[Signature Page to ABL Guarantee and Collateral Agreement]*

## INTERCREDITOR AGREEMENT

INTERCREDITOR AGREEMENT dated as of January 26, 2016, among CITIBANK, N.A., as ABL Agent (as defined below) and CITIBANK, N.A., as Initial Term Loan Agent (as defined below), and acknowledged and agreed to by PET ACQUISITION MERGER SUB LLC, a Delaware limited liability company ("**Merger Sub**"), as the initial borrower under the Initial Term Loan Credit Agreement and the ABL Credit Agreement (each as defined below) and concurrently with and following the assignment of the obligations of initial borrower on the Closing Date pursuant the Initial Term Loan Credit Agreement and the ABL Credit Agreement, the Merger and the LLC Conversion have been completed, in its capacity as Holdings ("**Holdings**") and concurrently with and following the consummation of the Merger, and assumption of the initial borrower's obligations pursuant to the Initial Term Loan Credit Agreement and ABL Credit Agreement, PETCO ANIMAL SUPPLIES, INC., a Delaware corporation (the "**Company**"), as the borrower under the Initial Term Loan Credit Agreement and a borrower under the ABL Credit Agreement, and each Subsidiary of Holdings that becomes a party hereto pursuant to Section 9.20 below.

## RECITALS

A. Holdings, Merger Sub, and the Company named therein are party to the ABL Credit Agreement dated as of the date hereof (as same may be amended, supplemented, restated, extended, renewed, Refinanced, replaced, amended and restated or otherwise modified from time to time, the "**ABL Credit Agreement**") among Holdings, Merger Sub, the Company, the lenders party thereto from time to time, the ABL Agent (as defined below) and the other parties thereto.

B. Holdings, Merger Sub and the Company are party to the Term Loan Credit Agreement dated as of the date hereof (as same may be amended, supplemented, restated, extended, renewed, Refinanced, replaced, amended and restated or otherwise modified from time to time, the "**Initial Term Loan Credit Agreement**", together with and in addition to any new or Refinanced Term Loan Credit Agreement entered into in accordance with Section 9.3(b), collectively with the Initial Term Loan Credit Agreement, the "**Term Loan Credit Agreement**") among Holdings, Merger Sub, the Company, the lenders party thereto from time to time, the Initial Term Loan Agent (as defined below) and the other parties thereto.

## AGREEMENT

Accordingly, in consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

## **Section 1. Definitions.**

1.1. **Defined Terms.** As used in this Agreement, the following terms have the meanings specified below:

“**ABL Agent**” shall mean Citibank, N.A., in its capacity as administrative agent and collateral agent for the ABL Lenders under the ABL Credit Agreement and the other ABL Loan Documents entered into pursuant to the ABL Credit Agreement, together with its successors and permitted assigns under the ABL Credit Agreement exercising substantially the same rights and powers (the “**ABL Agent**”).

“**ABL Claims**” shall mean the aggregate of (i) the principal amount of all Indebtedness (other than ABL Lender Cash Management Obligations and ABL Lender Hedging Obligations) and the face amount of all letters of credit incurred under the ABL Credit Agreement together with any interest, fees, attorneys’ fees, costs, expenses and indemnities payable on account of such principal amount or otherwise in respect of, or arising under, the ABL Credit Agreement or the ABL Loan Documents related thereto or any of them, including all fees and expenses of the ABL Agent thereunder and (ii) the maximum amount of all ABL Lender Cash Management Obligations and ABL Lender Hedging Obligations (calculated, in the case of ABL Lender Hedging Obligations at any given date, as the maximum aggregate amount then due and owing, giving effect to any netting agreements, that would be required to be paid if all Specified ABL Hedging Agreements underlying such ABL Lender Hedging Obligations were terminated as of such date), plus, in each case, all interest and expenses accrued or accruing (or that would, absent the commencement of an Insolvency or Liquidation Proceeding, accrue) after the commencement of an Insolvency or Liquidation Proceeding in accordance with and at the rate specified in the relevant ABL Loan Document to the extent that the claim for such interest or expense is allowed or allowable as a claim in such Insolvency or Liquidation Proceeding.

“**ABL Collateral**” shall mean all of the assets of any Grantor, whether real, personal or mixed, upon which a Lien is granted or purported to be granted to the ABL Agent under any of the ABL Collateral Documents.

“**ABL Collateral Agreement**” shall mean the ABL Guarantee and Collateral Agreement dated as of the date hereof, among Holdings, Merger Sub, the Company, the other Grantors, and Citibank, N.A., as administrative agent and collateral agent for the secured parties referred to therein, as amended, restated, amended and restated, modified or replaced from time to time.

“**ABL Collateral Documents**” shall mean the ABL Collateral Agreement and any security agreement, mortgage or other agreement, document or instrument pursuant to which a Lien is now or hereafter granted securing any ABL Claims or under which rights or remedies with respect to such Liens are at any time governed.

“**ABL Credit Agreement**” shall have the meaning set forth in the recitals.

“**ABL Declined Lien**” shall have the meaning set forth in Section 2.3 hereof.

“**ABL DIP Financing Liens**” shall have the meaning set forth in Section 6.1(a).

“**ABL Enforcement Notice**” shall have the meaning set forth in Section 3.1(b).

“**ABL Lender Cash Management Obligations**” shall mean “Cash Management Obligations” or similar term as defined in the ABL Credit Agreement.

“**ABL Lender Hedging Obligations**” shall mean all amounts owing under any Specified ABL Hedging Agreement.

“**ABL Lenders**” shall mean the Persons holding ABL Claims, including the ABL Agent.

“**ABL Loan Documents**” shall mean (i) the ABL Credit Agreement, the ABL Collateral Documents and each of the other agreements, documents and instruments providing for, evidencing or securing any Obligation under the ABL Credit Agreement, (ii) each agreement, document or instrument providing for or evidencing an ABL Lender Hedging Obligation or ABL Lender Cash Management Obligation and (iii) any other related document or instrument executed or delivered pursuant to any document in subclause (i) or (ii) at any time or otherwise evidencing or securing any Obligation arising under any such ABL Loan Document.

“**ABL Loan Parties**” shall mean the “Loan Parties” or similar term as defined in the ABL Credit Agreement.

“**ABL Priority Collateral**” shall mean all Common Collateral consisting of the following:

- (1) all Accounts, but excluding identifiable proceeds of Term Loan Priority Collateral;
- (2) all Chattel Paper (including Tangible Chattel Paper and Electronic Chattel Paper), but excluding identifiable proceeds of Term Loan Priority Collateral (including Term Loan Priority Proceeds);
- (3) (x) all Deposit Accounts and Money and all cash, checks, other negotiable instruments, funds and other evidences of payments held therein and (y) all Securities, Security Entitlements and Securities Accounts; provided that the foregoing shall not include the Asset Sale Proceeds Account and all cash, checks and other property held therein or credited thereto;
- (4) all Inventory;
- (5) to the extent involving or governing any of the items referred to in the preceding clauses (1) through (4), all Documents, General Intangibles (including all Payment Intangibles but excluding Intellectual Property), Instruments (including, without

limitation, promissory notes), Commercial Tort Claims (it being understood that a Commercial Tort Claim does not “involve” or “govern” any of clauses (1) through (4) solely because a claim for money damages is made) and Letter-of-Credit Rights;

(6) to the extent evidencing or governing any of the items referred to in the preceding clauses (1) through (5), all Supporting Obligations;

(7) all books and Records relating to the foregoing (including, without limitation, all books, databases, customer lists, engineer drawings, and Records, whether tangible or electronic, which contain any information relating to any of the foregoing);

(8) all collateral security and guarantees with respect to any of the foregoing and all proceeds and products of any or all of the foregoing in whatever form received, including cash, Money, Instruments, Securities, Financial Assets, Deposit Accounts and insurance payments directly received as proceeds of any ABL Priority Collateral (“**ABL Priority Proceeds**”)

For the avoidance of doubt, except as provided in Section 2.3, under no circumstances shall any assets excluded from the ABL Collateral pursuant to any ABL Collateral Document constitute ABL Priority Collateral.

“**ABL Priority Proceeds**” shall have the meaning set forth in the definition of “ABL Priority Collateral”.

“**ABL Recovery**” shall have the meaning set forth in Section 6.5.

“**ABL Standstill Period**” shall have the meaning set forth in Section 3.1(b).

“**Accounts**” shall have the meaning set forth in the ABL Credit Agreement in effect on the date hereof (whether or not such agreement is then in effect).

“**Account Agreements**” shall mean any lockbox account agreement, pledged account agreement, blocked account agreement, deposit account control agreement, securities account control agreement, or any similar deposit or securities account agreements among any Term Loan Agent and/or the ABL Agent, one or more Grantors and the relevant financial institution depository or securities intermediary.

“**Affiliate**” shall have the meaning set forth in the ABL Credit Agreement as in effect on the date hereof.

“**Agreement**” shall mean this Agreement, as amended, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“**Asset Sale Proceeds Account**” shall mean one or more Deposit Accounts or Securities Accounts holding only the proceeds of any sale or disposition of any Term Loan Priority Collateral and the proceeds or investment thereof.

“**Bankruptcy Law**” shall mean Title 11 of the United States Code and any similar Federal, state or foreign law for the relief of debtors.

“**Business Day**” shall have the meaning set forth in the Credit Agreements as in effect on the date hereof.

“**Cash Collateral**” shall mean any Common Collateral consisting of Money or cash equivalents, any Security Entitlement and any Financial Assets.

“**Common Collateral**” shall mean, collectively, the ABL Collateral and the Term Loan Collateral. If, at any time, any portion of the ABL Collateral does not constitute Term Loan Collateral for all Term Loan Claims, then such portion of such ABL Collateral shall constitute Common Collateral only with respect to the Term Loan Claims for which it constitutes Term Loan Collateral and shall not constitute Common Collateral for any Term Loan Claims which do not have a security interest in such Collateral at such time.

“**Company**” shall have the meaning set forth in the preamble.

“**Credit Agreements**” shall mean, collectively, the ABL Credit Agreement, the Term Loan Credit Agreement, and any other credit agreement that is entered into by the Company in connection with its incurrence of Future Term Indebtedness.

“**Designated Term Loan Agent**” shall mean (i) if at any time there is only one Term Loan Agent party hereto, such Term Loan Agent or (ii) at any time when clause (i) does not apply, the Term Loan Agent designated as such pursuant to the Term Loan Pari Passu Intercreditor Agreement.

“**Deposit Account Collateral**” shall mean that part of the Common Collateral comprised of or contained in Deposit Accounts.

“**DIP Financing**” shall have the meaning set forth in Section 6.1.

“**Discharge of ABL Claims**” shall mean, except to the extent otherwise provided in Section 5.7 below, payment in full in cash or immediately available funds (except for contingent indemnities and cost and reimbursement obligations to the extent no claim therefor has been made) of all Obligations in respect of all outstanding ABL Claims and, with respect to letters of credit outstanding thereunder, delivery of cash collateral or backstop letters of credit in respect thereof in compliance with the ABL Credit Agreement (or such other arrangements as are acceptable to the letter of credit issuer in its sole discretion), in each case after or concurrently with the termination of all commitments to extend credit thereunder; provided that the Discharge of ABL Claims shall not be deemed to have occurred if such payments are made with the proceeds of other ABL Claims that constitute an exchange or replacement for or a Refinancing of such Obligations or ABL Claims, in compliance with Section 9.3. In the event the ABL Claims are modified and the Obligations in respect thereof are paid over time or otherwise modified pursuant to Section 1129 of the Bankruptcy Code, the ABL Claims

shall be deemed to be discharged when the final payment is made, in cash, in respect of such Obligations and any obligations pursuant to such new indebtedness shall have been satisfied.

**“Discharge of Term Loan Claims”** shall mean, except to the extent otherwise provided in Section 5.7 below, payment in full in cash or immediately available funds (except for contingent indemnities and cost and reimbursement obligations to the extent no claim therefor has been made) of all Obligations in respect of all outstanding Term Loan Claims; provided that the Discharge of Term Loan Claims shall not be deemed to have occurred if such payments are made with the proceeds of other Term Loan Claims that constitute an exchange or replacement for or a Refinancing of such Obligations or Term Loan Claims, in compliance with Section 9.3. In the event the Term Loan Claims are modified and the Obligations in respect thereof are paid over time or otherwise modified pursuant to Section 1129 of the Bankruptcy Code, the Term Loan Claims shall be deemed to be discharged when the final payment is made, in cash, in respect of such Obligations and any obligations pursuant to such new indebtedness shall have been satisfied.

**“Domestic Subsidiary”** shall have the meaning set forth in the Credit Agreements as in effect on the date hereof.

**“Equity Interests”** shall have the meaning set forth in the Credit Agreements as in effect on the date hereof.

**“Exercise Any Secured Creditor Remedies”** or **“Exercise of Any Secured Creditor Remedies”** shall mean, except as otherwise provided in the final sentence of this definition:

(a) the taking by any Lender of any action to enforce or realize upon any Lien, including the institution of any foreclosure proceedings or the noticing of any public or private sale pursuant to Article 9 of the Uniform Commercial Code or other applicable law;

(b) the exercise by any Lender of any remedy provided to a secured creditor on account of a Lien under any of the ABL Loan Documents or the Term Loan Documents, as applicable, under applicable law, in an Insolvency or Liquidation Proceeding or otherwise, including the election to retain any of the Common Collateral in satisfaction of a Lien;

(c) the taking of any action by any Lender or the exercise of any right or remedy by any Lender in respect of the collection on, set off against, marshaling of, injunction respecting or foreclosure on the Common Collateral or the proceeds thereof;

(d) the appointment, on the application of a Lender, of a receiver, receiver and manager or interim receiver of all or part of the Common Collateral;

- (e) the sale, lease, license or other disposition of all or any portion of the Common Collateral by private or public sale conducted by a Lender or by any other means at the direction of a Lender permissible under applicable law;
- (f) the exercise of any other right of a secured creditor under Part 6 of Article 9 of the Uniform Commercial Code or under provisions of similar effect other applicable law; and
- (g) the exercise by a Lender of any voting rights relating to any Equity Interests included in the Common Collateral.

For the avoidance of doubt, and notwithstanding the foregoing, none of the following shall be deemed to constitute an Exercise of Any Secured Creditor Remedies: (i) the filing of a proof of claim in any Insolvency or Liquidation Proceeding, (ii) the exercise of rights pursuant to Section 5.11 of the ABL Credit Agreement (or any substantially similar provision in any replacement or Refinanced ABL Credit Agreement) by the ABL Lenders during the continuance of a Cash Dominion Period (as defined in the ABL Credit Agreement), including the notification of account debtors, depository institutions or any other Person to deliver proceeds of ABL Priority Collateral to the ABL Agent in accordance with Section 5.11 of the ABL Credit Agreement (or any substantially similar provision in any replacement or Refinanced ABL Credit Agreement), (iii) the consent by the ABL Lenders to a store closing sale, going out of business sale or other disposition by any Grantor of any of the ABL Priority Collateral, (iv) the reduction of advance rates or sub-limits by the ABL Agent and the ABL Lenders, (v) the imposition of Reserves (as defined in the ABL Credit Agreement) by the ABL Agent, (vi) the acceleration of any ABL Claims or Term Loan Claims or (vii) the establishment or modification of borrowing base and/or availability reserves or other reserves against collateral or eligibility criteria for Accounts or Inventory.

“**First Priority Agent**” shall mean, with respect to (a) any ABL Priority Collateral, the ABL Agent and (b) any Term Loan Priority Collateral, the Term Loan Agents.

“**First Priority Claims**” shall mean, with respect to (a) any ABL Priority Collateral, the ABL Claims and (b) any Term Loan Priority Collateral, the Term Loan Claims.

“**First Priority Collateral**” shall mean, with respect to (a) the Term Loan Agents and the Term Loan Lenders, the ABL Priority Collateral and (b) the ABL Agent and the ABL Lenders, the Term Loan Priority Collateral.

“**First Priority Documents**” shall mean, with respect to (a) any ABL Priority Collateral, the ABL Loan Documents and (b) any Term Loan Priority Collateral, the Term Loan Documents.

“**First Priority Lenders**” shall mean, with respect to (a) any ABL Priority Collateral, the ABL Lenders and (b) any Term Loan Priority Collateral, the Term Loan Lenders.

“**Future Junior Lien Indebtedness**” shall mean future Indebtedness that is to be secured on a junior basis to both the ABL Claims and the Term Loan Claims and is so designated by the Company at the time of incurrence thereof as Future Junior Lien Indebtedness hereunder in accordance with Section 9.3; provided that such Indebtedness and the Liens thereon are incurred in compliance with the ABL Credit Agreement and the Term Loan Credit Agreement, in each case as in effect on the date of such incurrence; provided, further, that (i) the holders of such Future Junior Lien Indebtedness (or an agent or trustee on their behalf) shall enter into (or join, if such agreement is already in effect) a Junior Lien Intercreditor Agreement substantially in the form of Exhibit H to the Term Loan Credit Agreement and the ABL Credit Agreement (the “**Junior Lien Intercreditor Agreement**”), acknowledging that such holders shall be bound by the terms thereof and (ii) the other requirements of Section 9.3 shall have been complied with.

“**Future Secured Term Indebtedness**” shall mean secured Indebtedness or Obligations (other than Term Loan Claims contemplated by clause (i) of the definition of “Term Loan Claims” and ABL Claims) of the Company and its Subsidiaries.

“**Future Term Indebtedness**” shall mean Future Secured Term Indebtedness that is to be secured on a pari passu basis with the Term Loan Claims and is so designated by the Company at the time of incurrence thereof as Future Term Indebtedness hereunder in accordance with Section 9.3; provided that (i) the holders of such Future Term Indebtedness (or a Term Loan Agent on their behalf) shall enter into (x) an Intercreditor Agreement Joinder pursuant to Section 9.3 and (y) a Term Loan Pari Passu Intercreditor Agreement, in each case, acknowledging that such holders shall be bound by the terms hereof and thereof applicable to Term Loan Lenders and (ii) the other requirements of Section 9.3 shall have been complied with.

“**Grantors**” shall mean Holdings, Merger Sub, the Company, and each of Holdings’ other subsidiaries that has executed and delivered an ABL Collateral Document and a Term Loan Collateral Document.

“**Holdings**” shall have the meaning set forth in the preamble.

“**Indebtedness**” shall mean and include all obligations that constitute “Indebtedness” within the meaning of the ABL Credit Agreement or the Term Loan Credit Agreement.

“**Initial Term Loan Agent**” shall have the meaning set forth in the definition of the term “Term Loan Agents”.

“**Initial Term Loan Credit Agreement**” shall have the meaning set forth in the recitals.

**“Insolvency or Liquidation Proceeding”** shall mean (a) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to any Grantor, (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Grantor or with respect to any of its assets, (c) any liquidation, dissolution, reorganization or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Grantor.

**“Intellectual Property”** shall have the meaning set forth in the ABL Collateral Agreement in effect on the date hereof (whether or not such agreement is then in effect).

**“Intercreditor Agreement Joinder”** shall mean, with respect to any Grantor, (a) an agreement substantially in the form of Exhibit A hereto, (b) supplements to the ABL Collateral Agreement and the Term Loan Collateral Agreement in substantially the form set forth in Exhibit A to the ABL Collateral Agreement and the Term Loan Collateral Agreement (so long as each such supplement provides for the joinder of the applicable Grantors for purposes of this Agreement) or (c) any other form of joinder as may be reasonably acceptable to the ABL Agent and each Term Loan Agent, in each of cases (a) through (c) above, executed by the respective Grantor and delivered by it to each Term Loan Agent and the ABL Agent.

**“Inventory”** shall have the meaning set forth in the ABL Credit Agreement in effect on the date hereof (whether or not such agreement is then in effect).

**“Lenders”** shall mean the collective reference to the ABL Lenders and the Term Loan Lenders.

**“Lien”** shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar encumbrance in or on such asset and (b) 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.

**“Loan Document”** shall have the meaning set forth in the Credit Agreements.

**“Merger”** shall have the meaning set forth in the Credit Agreements.

**“Merger Sub”** shall have the meaning set forth in the preamble.

**“New ABL Agent”** shall have the meaning set forth in Section 9.3(d).

**“New Term Loan Agent”** shall have the meaning set forth in Section 9.3(d).

**“New York Courts”** shall have the meaning set forth in Section 9.7.

“**Obligations**” shall mean, with respect to any Person, any payment, performance or other obligations of such Person of any kind, including any liability of such Person on any claim, whether or not the right of any creditor to payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured or unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any Insolvency or Liquidation Proceeding. Without limiting the generality of the foregoing, the Obligations of any Grantor under any ABL Loan Document or Term Loan Document include the obligations to pay principal, reimbursement obligations under letters of credit, interest (including interest accrued on or accruing after the commencement of any Insolvency or Liquidation Proceeding to the extent that a claim for post-filing interest is allowed in such proceeding) or premium on any Indebtedness, letter of credit commissions (if applicable), charges, expenses, fees, attorneys’ fees and disbursements, indemnities and other amounts payable by such Grantor to reimburse any amount in respect of any of the foregoing that any ABL Lender or Term Loan Lender, in its sole discretion, may elect to pay or advance on behalf of such Grantor.

“**Patent**” shall have the meaning set forth in the ABL Collateral Agreement in effect on the date hereof (whether or not such agreement is then in effect).

“**Payment Collateral**” shall mean all Accounts, Instruments, Chattel Paper, Letter-of-Credit Rights, Deposit Accounts (other than the Asset Sales Proceeds Account), Securities Accounts, and Payment Intangibles, together with all Supporting Obligations for ABL Priority Collateral, in each case composing a portion of the Common Collateral.

“**Person**” shall mean an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof.

“**Pledged Collateral**” shall mean the Common Collateral in the possession or control of the ABL Agent (or its agents or bailees) or the Term Loan Agents (or their respective agents or bailees), to the extent that possession or control thereof perfects a Lien thereon under the Uniform Commercial Code.

“**Refinance**” shall mean, in respect of any Indebtedness, to refinance, extend, renew, retire, defease, amend, modify, supplement, amend and restate, restructure, replace, refund or repay, or to issue other Indebtedness, in exchange or replacement for, such Indebtedness in whole or in part, and, in each case, whether or not with same or different lenders, investors, arrangers, trustees or agents, as applicable. “**Refinanced**” and “**Refinancing**” shall have correlative meanings.

“**Required Lenders**” shall mean, with respect to any Credit Agreement, those Lenders the approval of which is required to approve an amendment or modification of, termination or waiver of any provision of or consent to any departure from such Credit Agreement (or would be required to effect such consent under this Agreement if such consent were treated as an amendment of the Credit Agreement).

“**Second Priority Agent**” shall mean, with respect to (a) any ABL Priority Collateral, the Term Loan Agents and (b) any Term Loan Priority Collateral, the ABL Agent.

“**Second Priority Claims**” shall mean, with respect to (a) any ABL Priority Collateral, the Term Loan Claims and (b) any Term Loan Priority Collateral, the ABL Claims.

“**Second Priority Documents**” shall mean, with respect to (a) any ABL Priority Collateral, the Term Loan Documents and (b) any Term Loan Priority Collateral, the ABL Loan Documents.

“**Second Priority Lenders**” shall mean, with respect to (a) any ABL Priority Collateral, the Term Loan Lenders and (b) any Term Loan Priority Collateral, the ABL Lenders.

“**Specified ABL Hedging Agreement**” shall mean a “Specified Hedge Agreement” as such term is defined in the ABL Credit Agreement as in effect on the date hereof.

“**Specified Term Hedging Agreement**” shall mean a “Specified Hedge Agreement” as such term is defined in the Term Loan Credit Agreement as in effect on the date hereof.

“**Subsidiary**” shall mean any “Subsidiary” of Holdings under (and as defined in) each of the Credit Agreements.

“**Term Declined Lien**” shall have the meaning set forth in Section 2.3 hereof.

“**Term Lender Cash Management Obligations**” shall mean “Cash Management Obligations” as such term is defined in the Term Loan Credit Agreement as in effect on the date hereof.

“**Term Lender Hedging Obligations**” shall mean obligations in respect of the Specified Term Hedging Agreements.

“**Term Loan Agents**” shall mean, collectively, (i) Citibank, N.A., in its capacity as administrative agent and collateral agent for the Term Loan Lenders under the Initial Term Loan Credit Agreement and the other Term Loan Documents entered into pursuant to the Initial Term Loan Credit Agreement, together with its successors and permitted assigns under the Initial Term Loan Credit Agreement exercising substantially the same rights and powers (the “**Initial Term Loan Agent**”) and (ii) each collateral agent for any Future Term Indebtedness.

“**Term Loan Claims**” shall mean (i) the principal amount of all Indebtedness (other than Term Lender Cash Management Obligations and Term Lender Hedging Obligations) incurred under the Term Loan Credit Agreement together with any interest,

fees, attorneys fees, costs, expenses and indemnities payable on account of such principal amount or otherwise in respect of, or arising under, the Term Loan Credit Agreement or the Term Loan Documents related thereto or any of them, including all fees and expenses of the applicable Term Loan Agent thereunder, (ii) the principal amount of all Future Term Indebtedness (other than Term Lender Cash Management Obligations and Term Lender Hedging Obligations), plus any interest, fees, attorneys fees, costs, expenses and indemnities payable on account of such principal amount or otherwise in respect of, or arising under, the Term Loan Documents related to such Future Term Indebtedness, including all fees and expenses of the collateral agent for any Future Term Indebtedness, and (iii) Term Lender Cash Management Obligations and Term Lender Hedging Obligations (calculated, in the case of Term Lender Hedging Obligations at any given date, as the maximum aggregate amount then due and owing, giving effect to any netting agreements, that would be required to be paid if all Specified Term Hedging Agreements underlying such Term Lender Hedging Obligations were terminated as of such date), plus, in each case, all interest and expenses accrued or accruing (or that would, absent the commencement of an Insolvency or Liquidation Proceeding, accrue) after the commencement of an Insolvency or Liquidation Proceeding in accordance with and at the rate specified in the relevant Term Loan Document to the extent that the claim for such interest or expense is allowed or allowable as a claim in such Insolvency or Liquidation Proceeding.

“**Term Loan Collateral**” shall mean all of the assets of any Grantor, whether real, personal or mixed, upon which a Lien is granted or purported to be granted to the Term Loan Agents under any of the Term Loan Collateral Documents.

“**Term Loan Collateral Agreement**” shall mean the Term Loan Guarantee and Collateral Agreement dated as of the date hereof, among Holdings, Merger Sub, the Company, the other Grantors, and Citibank, N.A., as administrative agent and collateral agent for the secured parties referred to therein, as amended, restated, modified or replaced from time to time.

“**Term Loan Collateral Documents**” shall mean the Term Loan Collateral Agreement and any security agreement, mortgage or other agreement, document or instrument pursuant to which a Lien is now or hereafter granted securing any Term Loan Claims or under which rights or remedies with respect to such Liens are at any time governed.

“**Term Loan Credit Agreement**” shall have the meaning set forth in the recitals.

“**Term Loan DIP Financing Lien**” shall have the meaning set forth in Section 6.1(b).

“**Term Loan Documents**” shall mean (i) the Term Loan Credit Agreement, the Term Loan Collateral Documents and each of the other agreements, documents and instruments providing for, evidencing or securing any Obligation under the Term Loan Credit Agreement, (ii) each agreement, document or instrument providing for or evidencing a Term Lender Hedging Obligation or Term Lender Cash Management

Obligation, (iii) any other document or instrument evidencing or governing any Future Term Indebtedness, (iv) the Term Loan Pari Passu Intercreditor Agreement, and (v) any other related document or instrument executed or delivered pursuant to any document in subclause (i), (ii), (iii) or (iv) at any time or otherwise evidencing or securing any Obligation arising under any such Term Loan Document.

“**Term Loan Lenders**” shall mean the Persons holding Term Loan Claims, including the Term Loan Agents.

“**Term Loan Pari Passu Intercreditor Agreement**” shall mean an agreement between the Term Loan Agent and each other Term Loan Agent for Future Term Indebtedness.

“**Term Loan Parties**” shall mean the “Loan Parties” or similar term as defined in the Term Loan Credit Agreement.

“**Term Loan Priority Collateral**” shall mean all Common Collateral other than ABL Priority Collateral (and specifically including the Asset Sale Proceed Account), and all collateral security and guarantees with respect to any Term Loan Priority Collateral and all cash, Money, Instruments, Securities, Financial Assets and Deposit Accounts directly received as proceeds of any Term Loan Priority Collateral (“**Term Loan Priority Proceeds**”); provided, however, that no proceeds of Term Loan Priority Proceeds will constitute Term Loan Priority Collateral unless such proceeds of Term Loan Priority Proceeds would otherwise constitute Term Loan Priority Collateral.

For the avoidance of doubt, except as provided in Section 2.3, under no circumstances shall any assets excluded from the Term Loan Priority Collateral pursuant to any Term Loan Document constitute Term Loan Priority Collateral.

“**Term Loan Priority Proceeds**” shall have the meaning set forth in the definition of “Term Loan Priority Collateral”.

“**Term Loan Recovery**” shall have the meaning set forth in Section 6.5.

“**Term Loan Standstill Period**” shall have the meaning set forth in Section 3.1(a).

“**Trademark**” shall have the meaning set forth in the Term Loan Collateral Agreement and the ABL Collateral Agreement, each as in effect on the date hereof.

“**Uniform Commercial Code**” or “UCC” shall mean the Uniform Commercial Code as from time to time in effect in the State of New York.

1.2. Terms Generally. 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 (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, renewed, restated, extended, supplemented, or otherwise modified from time to time, (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein," "hereof and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections shall be construed to refer to Sections of this Agreement, (e) 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 and (f) the term "or" is not exclusive. All capitalized terms not defined herein or by reference to another agreement shall have the meaning assigned to such term in the UCC. The term "Instrument" shall have the meaning specified in Article 9 of the UCC.

## **Section 2. Lien Priorities.**

2.1. Subordination of Liens. Notwithstanding (i) the date, time, method, manner or order of filing or recordation of any document or instrument or grant, attachment or perfection (including any defect or deficiency or alleged defect or deficiency in any of the foregoing) of any Liens granted to the ABL Agent or the ABL Lenders on the Common Collateral, of any Liens granted to the Term Loan Agents or the Term Loan Lenders on the Common Collateral, (ii) any provision of the UCC, the Bankruptcy Code, or any applicable law or the ABL Loan Documents or the Term Loan Documents, (iii) whether the ABL Agent or a Term Loan Agent, either directly or through agents, holds possession of, or has control over, all or any part of the Common Collateral, (iv) the fact that any such Liens may be subordinated, voided, avoided, invalidated or lapsed or (v) any other circumstance of any kind or nature whatsoever, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, the ABL Agent, on behalf of itself and each ABL Lender, and each Term Loan Agent, on behalf of itself and each applicable Term Loan Lender, hereby agrees that:

(a) any Lien on the ABL Priority Collateral securing any ABL Claims now or hereafter held by or on behalf of the ABL Agent or any ABL Lenders or any agent or trustee therefor regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, shall have priority over and be senior in all respects and prior to any Lien on the ABL Priority Collateral securing any Term Loan Claims,

(b) any Lien on the ABL Priority Collateral securing any Term Loan Claims now or hereafter held by or on behalf of a Term Loan Agent, any Term Loan Lenders or any agent or trustee therefor regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the ABL Priority Collateral securing any ABL Claims,

(c) any Lien on the Term Loan Priority Collateral securing any Term Loan Claims now or hereafter held by or on behalf of a Term Loan Agent, any Term Loan Lenders or any agent or trustee therefor regardless of how acquired, whether by grant, statute, operation of

law, subrogation or otherwise, shall have priority over and be senior in all respects and prior to any Lien on the Term Loan Priority Collateral securing any ABL Claims, and

(d) any Lien on the Term Loan Priority Collateral securing any ABL Claims now or hereafter held by or on behalf of the ABL Agent or any ABL Lenders or any agent or trustee therefor regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Term Loan Priority Collateral securing any Term Loan Claims.

All Liens on the ABL Priority Collateral securing any ABL Claims shall be and remain senior in all respects and prior to all Liens on the ABL Priority Collateral securing any Term Loan Claims for all purposes, whether or not such Liens securing any ABL Claims are subordinated to any Lien securing any other obligation of the Company, any other Grantor or any other Person, and all Liens on the Term Loan Priority Collateral securing any Term Loan Claims shall be and remain senior in all respects and prior to all Liens on the Term Loan Priority Collateral securing any ABL Claims for all purposes, whether or not such Liens securing any Term Loan Claims are subordinated to any Lien securing any other obligation of the Company, any other Grantor or any other Person.

2.2. Prohibition on Contesting Liens. The ABL Agent, for itself and on behalf of each applicable ABL Lender represented by it, and each Term Loan Agent, for itself and on behalf of each applicable Term Loan Lender represented by it, agrees that it shall not (and hereby waives any right to) take any action to challenge, contest or support any other Person in contesting or challenging, directly or indirectly, in any proceeding (including any Insolvency or Liquidation Proceeding), the validity, perfection, priority or enforceability of (a) a Lien securing any ABL Claims held (or purported to be held) by or on behalf of the ABL Agent or any of the ABL Lenders or any agent or trustee therefor in any Common Collateral or (b) a Lien securing any Term Loan Claims held (or purported to be held) by or on behalf of any Term Loan Agent or any of the Term Loan Lenders in any Common Collateral, as the case may be; provided, however, that nothing in this Agreement shall be construed (x) to prevent or impair the rights of the ABL Agent or any ABL Lender to enforce this Agreement (including the priority of the Liens securing the ABL Claims as provided in Section 2.1 with respect to any ABL Priority Collateral) or any of the ABL Loan Documents or (y) to prevent or impair the rights of a Term Loan Agent or any Term Loan Lender to enforce this Agreement (including the priority of the Liens securing the Term Loan Claims as provided in Section 2.1 with respect to any Term Loan Priority Collateral) or any of the Term Loan Documents.

2.3. No New Liens.

(a) So long as the Discharge of ABL Claims has not occurred, each Term Loan Agent agrees, for itself and on behalf of each applicable Term Loan Lender represented by it, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, that it shall not acquire or hold any Lien on any assets of the Company or any other Grantor securing any Term Loan Claims that, to the extent permissible under applicable law, are not also subject to the Lien in respect of the ABL Claims under the ABL Loan Documents; provided that this provision will not be violated with respect to any ABL Obligations if the ABL Agent is given a reasonable opportunity to accept a Lien on any asset or

property and the ABL Agent states in writing that the ABL Documents in respect thereof prohibit the ABL Agent from accepting a Lien on such asset or property or the ABL Agent otherwise expressly declines to accept a Lien on such asset or property (any such prohibited or declined Lien, an “**ABL Declined Lien**”). If a Term Loan Agent or any Term Loan Lender shall nonetheless acquire or hold any Lien on any collateral of a Grantor that is not also subject to the Lien in respect of the ABL Claims under the ABL Loan Documents (other than an ABL Declined Lien), then the applicable Term Loan Agent shall, to the extent permissible under applicable law, without the need for any further consent of any party and notwithstanding anything to the contrary in any other document, be deemed to also hold and have held such Lien for the benefit of the ABL Agent as security for the ABL Claims (subject to the Lien priority and other terms hereof) and shall promptly notify the ABL Agent in writing of the existence of such Lien and in any event take such actions as may be requested by the ABL Agent to assign or release such Liens to the ABL Agent (and/or its designee) as security for the ABL Claims.

(b) So long as the Discharge of Term Loan Claims has not occurred, the ABL Agent agrees, for itself and on behalf of each applicable ABL Lender represented by it, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, that it shall not acquire or hold any Lien on any assets of the Company or any other Grantor securing any ABL Claims that, to the extent permissible under applicable law, are not also subject to the Liens in respect of the Term Loan Claims under the Term Loan Documents; provided that this provision will not be violated with respect to any Term Loan Obligations if the applicable Term Loan Agent is given a reasonable opportunity to accept a Lien on any asset or property and such Term Loan Agent states in writing that the Term Loan Documents in respect thereof prohibit such Term Loan Agent from accepting a Lien on such asset or property or such Term Loan Agent otherwise expressly declines to accept a Lien on such asset or property (any such prohibited or declined Lien, a “**Term Declined Lien**”). If the ABL Agent or any ABL Lender shall nonetheless acquire or hold any Lien on any collateral of a Grantor that is not also subject to the Liens in respect of the Term Loan Claims under the Term Loan Documents (other than a Term Declined Lien), then the ABL Agent shall, to the extent permissible under applicable law, without the need for any further consent of any party and notwithstanding anything to the contrary in any other document, be deemed to also hold and have held such Lien for the benefit of the Term Loan Agents as security for the Term Loan Claims (subject to the Lien priority and other terms hereof) and shall promptly notify each Term Loan Agent in writing of the existence of such Lien and in any event take such actions as may be requested by the Term Loan Agents to assign or release such Liens to the applicable Term Loan Agent (and/or its designees) as security for the applicable Term Loan Claims.

Notwithstanding anything in this Agreement to the contrary, cash and cash equivalents may be pledged to secure ABL Claims consisting of reimbursement obligations in respect of letters of credit without granting a Lien thereon to secure any other ABL Claims or any other Term Loan Claims.

To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to (i) the ABL Agent and/or the ABL Lenders or (ii) the Term Loan Agents and/or the Term Loan Lenders, each party to this Agreement agrees that any

amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.

2.4. Perfection of Liens. Except for the arrangements contemplated by Section 5.5, with respect to any portion of the Common Collateral, neither the First Priority Agent nor the First Priority Lenders shall be responsible for perfecting and maintaining the perfection of Liens with respect to such Common Collateral for the benefit of the Second Priority Agent and the Second Priority Lenders. The provisions of this Agreement are intended solely to govern the respective Lien priorities as between the ABL Lenders and the Term Loan Lenders and shall not impose on the ABL Agent, the Term Loan Agents, the ABL Lenders or the Term Loan Lenders or any agent or trustee therefor any obligations in respect of the disposition of proceeds of any Common Collateral which would conflict with prior perfected claims therein in favor of any other Person or any order or decree of any court or governmental authority or any applicable law.

2.5. Waiver of Marshalling.

(a) Until the Discharge of ABL Claims, each Term Loan Agent, on behalf of itself and the applicable Term Loan Lenders, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the ABL Priority Collateral or any other similar rights a junior secured creditor may have under applicable law with respect to the ABL Priority Collateral.

(b) Until the Discharge of Term Loan Claims, the ABL Agent, on behalf of itself and the ABL Lenders, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Term Loan Priority Collateral or any other similar rights a junior secured creditor may have under applicable law with respect to the Term Loan Priority Collateral.

### **Section 3. Enforcement.**

3.1. Exercise of Remedies.

(a) So long as the Discharge of ABL Claims has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, subject to Section 5.6, (i) no Term Loan Agent or Term Loan Lender will (x) Exercise Any Secured Creditor Remedies or seek to Exercise Any Secured Creditor Remedies (including setoff or recoupment) with respect to any ABL Priority Collateral, or exercise any right under any lockbox agreement, control agreement, landlord waiver or bailee's letter or similar agreement or arrangement, or institute any action or proceeding with respect to such rights or remedies (including any action of foreclosure), (y) contest, protest or object to any foreclosure proceeding or action brought with respect to the ABL Priority Collateral by the ABL Agent or any ABL Lender in respect of the ABL Claims, the exercise of any right by the ABL Agent or any ABL Lender (or any agent or sub-agent on their behalf) in respect of the ABL

Claims under any lockbox agreement, control agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which a Term Loan Agent or any Term Loan Lender either is a party or may have rights as a third party beneficiary, or any other exercise by any such party, of any rights and remedies relating to the ABL Priority Collateral under the ABL Loan Documents or otherwise in respect of ABL Claims, so long as any proceeds received by the ABL Agent in excess of those necessary to achieve a Discharge of ABL Claims are distributed in accordance with Section 4.2 and applicable law or (z) object to the forbearance by the ABL Lenders from bringing or pursuing any foreclosure proceeding or action or any other Exercise of Any Secured Creditor Remedies relating to the ABL Priority Collateral in respect of ABL Claims and (ii) except as otherwise provided herein, the ABL Agent and the ABL Lenders shall have the exclusive right to enforce rights, exercise remedies (including setoff and, subject to clause (C) of the proviso in Section 3.1(b), the right to credit bid their debt) and make determinations regarding the release, disposition or restrictions with respect to the ABL Priority Collateral without any consultation with or the consent of any Term Loan Agent or any Term Loan Lender; provided, however, that in the case of the foregoing clauses (i) and (ii), (A) in any Insolvency or Liquidation Proceeding commenced by or against the Company or any other Grantor, a Term Loan Agent may file a proof of claim or statement of interest with respect to the applicable Term Loan Claims and may file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims of the Term Loan Lenders, including any claims secured by the ABL Priority Collateral, in accordance with the terms of this Agreement, (B) a Term Loan Agent may take any action (not adverse to the prior Liens on the ABL Priority Collateral securing the ABL Claims, or the rights of the ABL Agent or the ABL Lenders to exercise remedies in respect thereof) in order to create, prove, perfect, preserve or protect (but not enforce) its rights in, and perfection and priority of its Lien on, the ABL Priority Collateral and (C) a Term Loan Agent or any Term Loan Lender may bid for or purchase ABL Priority Collateral at any public, private or judicial foreclosure on such Collateral initiated by the ABL Agent or any sale of ABL Priority Collateral during an Insolvency or Liquidation proceeding (provided that such bid may not include a "credit bid" in respect of any Term Loan Claims unless the cash proceeds of such bid are otherwise sufficient to cause the Discharge of ABL Claims); provided, further, that a Term Loan Agent or any Term Loan Lender may exercise any or all of such rights, powers, or remedies after a period of at least 180 days has elapsed since the later of: (i) the date on which a Term Loan Agent declared the existence of an "Event of Default" under the applicable Term Loan Documents, accelerated (to the extent such amount was not already due and owing) the payment of the principal amount of all Term Loan Obligations, and demanded payment thereof and (ii) the date on which the ABL Agent has received notice thereof from such Term Loan Agent (such notice, a "**Term Loan Enforcement Notice**"); provided, further, however, that neither any Term Loan Agent nor any other Term Loan Lender shall exercise any rights or remedies with respect to the ABL Priority Collateral if, notwithstanding the expiration of such 180-day period, the ABL Agent or the other ABL Lenders (A) shall have commenced, whether before or after the expiration of such 180-day period, and be diligently pursuing the exercise of their rights, powers, or remedies with respect to all or any material portion of the ABL Priority Collateral (prompt written notice of such exercise to be given to the Term Loan Agents), or (B) shall have been stayed by operation of law or any court order from pursuing any such exercise of remedies (the period during which the Term Loan Agents and the Term Loan Lenders may not pursuant to this Section 3.1(a) exercise any rights,

powers, or remedies with respect to the ABL Priority Collateral, the “**Term Loan Standstill Period**”). In exercising rights and remedies with respect to the ABL Priority Collateral, the ABL Agent and the ABL Lenders may enforce the provisions of the ABL Loan Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of ABL Priority Collateral or other collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured lender under the uniform commercial code of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(b) So long as the Discharge of Term Loan Claims has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, subject to and without limiting the rights of the ABL Agent under Section 5.6, (i) neither the ABL Agent nor any ABL Lender will (x) Exercise Any Secured Creditor Remedies or seek to Exercise Any Secured Creditor Remedies (including setoff or recoupment) with respect to any Term Loan Priority Collateral, or exercise any right under any lockbox agreement, control agreement, landlord waiver or bailee’s letter or similar agreement or arrangement, or institute any action or proceeding with respect to such rights or remedies (including any action of foreclosure), (y) contest, protest or object to any foreclosure proceeding or action brought with respect to the Term Loan Priority Collateral by a Term Loan Agent or any Term Loan Lender in respect of the Term Loan Claims, the exercise of any right by a Term Loan Agent or any Term Loan Lender (or any agent or sub-agent on their behalf) in respect of the Term Loan Claims, under any lockbox agreement, control agreement, landlord waiver or bailee’s letter or similar agreement or arrangement to which the ABL Agent or any ABL Lender either is a party or may have rights as a third party beneficiary, or any other exercise by any such party, of any rights and remedies relating to the Term Loan Priority Collateral under the Term Loan Documents or otherwise in respect of Term Loan Claims, so long as any proceeds received by such Term Loan Agent in excess of those necessary to achieve a Discharge of Term Loan Claims are distributed in accordance with Section 4.3 and applicable law or (z) object to the forbearance by the Term Loan Lenders from bringing or pursuing any foreclosure proceeding or action or any other Exercise of Any Secured Creditor Remedies relating to the Term Loan Priority Collateral in respect of Term Loan Claims and (ii) except as otherwise provided herein, the Term Loan Agents and the Term Loan Lenders shall have the exclusive right to enforce rights, exercise remedies (including setoff and, subject to clause (C) of the proviso in Section 3.1(a), the right to credit bid their debt) and make determinations regarding the release, disposition or restrictions with respect to the Term Loan Priority Collateral without any consultation with or the consent of the ABL Agent or any ABL Lender; provided, however, that (A) in any Insolvency or Liquidation Proceeding commenced by or against the Company or any other Grantor, the ABL Agent may file a proof of claim or statement of interest with respect to the applicable ABL Claims and may file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims of the ABL Lenders, including any claims secured by the Term Loan Priority Collateral, in accordance with the terms of this Agreement, (B) the ABL Agent may take any action (not adverse to the prior Liens on the Term Loan Priority Collateral securing the Term Loan Claims, or the rights of the Term Loan Agents or the

Term Loan Lenders to exercise remedies in respect thereof) in order to create, prove, perfect, preserve or protect (but not enforce) its rights in, and perfection and priority of its Lien on, the Term Loan Priority Collateral and (C) the ABL Agent or any ABL Lender may bid for or purchase Term Loan Priority Collateral at any public, private or judicial foreclosure on such Collateral initiated by any Term Loan Agent or any sale of Term Loan Priority Collateral during an Insolvency or Liquidation proceeding (provided that such bid may not include a “credit bid” in respect of any ABL Claims unless the cash proceeds of such bid are otherwise sufficient to cause the Discharge of Term Loan Claims); provided, further, that the ABL Agent or any ABL Lender may exercise any or all of such rights, powers, or remedies after a period of at least 180 days has elapsed since the later of: (i) the date on which the ABL Agent declared the existence of an “Event of Default” under the applicable ABL Loan Documents, accelerated (to the extent such amount was not already due and owing) the payment of the principal amount of all ABL Claims under the ABL Credit Agreement, and demanded payment thereof and (ii) the date on which each of the Term Loan Agents have received notice thereof from the ABL Agent (such notice, an “**ABL Enforcement Notice**”); provided, further, however, that neither the ABL Agent nor any other ABL Lender shall exercise any rights or remedies with respect to the Term Loan Priority Collateral if, notwithstanding the expiration of such 180-day period, the Term Loan Agents or the other Term Loan Lenders (A) shall have commenced, whether before or after the expiration of such 180-day period, and be diligently pursuing the exercise of their rights, powers, or remedies with respect to all or any material portion of the Term Loan Priority Collateral (prompt written notice of such exercise to be given to the ABL Agent), or (B) shall have been stayed by operation of law or any court order from pursuing any such exercise of remedies (the period during which the ABL Agent and the ABL Lenders may not pursuant to this Section 3.1(b) exercise any rights, powers, or remedies with respect to the Term Loan Priority Collateral, the “**ABL Standstill Period**”). In exercising rights and remedies with respect to the Term Loan Priority Collateral, the Term Loan Agents and the Term Loan Lenders may enforce the provisions of the Term Loan Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion consistent with the terms of the Term Loan Documents. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of Term Loan Priority Collateral or other collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured lender under the uniform commercial code of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(c) So long as the Discharge of ABL Claims has not occurred, each Term Loan Agent, on behalf of itself and each applicable Term Loan Lender, agrees that it will not take or receive any ABL Priority Collateral or any proceeds of ABL Priority Collateral in connection with the exercise of any right or remedy (including setoff or recoupment) with respect to any ABL Priority Collateral. Without limiting the generality of the foregoing, unless and until the Discharge of ABL Claims has occurred, except as expressly provided in the provisos in each of Section 3.1(a) and Section 6.3(c)(i)(1), the sole right of each Term Loan Agent and the Term Loan Lenders with respect to the ABL Priority Collateral is to hold a Lien on the ABL Priority Collateral pursuant to the Term Loan Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of ABL Claims has occurred. So long as the Discharge of Term Loan Claims has not occurred,

the ABL Agent, on behalf of itself and each applicable ABL Lender, agrees that it will not take or receive any Term Loan Priority Collateral or any proceeds of Term Loan Priority Collateral in connection with the exercise of any right or remedy (including setoff or recoupment) with respect to any Term Loan Priority Collateral. Without limiting the generality of the foregoing, unless and until the Discharge of Term Loan Claims has occurred, except as expressly provided in the provisos in each of Section 3.1(b) and Section 6.3(c)(ii)(1), the sole right of the ABL Agent and the ABL Lenders with respect to the Term Loan Priority Collateral is to hold a Lien on the Term Loan Priority Collateral pursuant to the ABL Loan Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of Term Loan Claims has occurred.

(d) Subject to the provisos in each of Section 3.1(a) and Section 5.6, each Term Loan Agent, for itself and on behalf of each applicable Term Loan Lender, (i) agrees that the Term Loan Agents and the Term Loan Lenders will not take any action that would hinder any Exercise of Any Secured Creditor Remedies undertaken by the ABL Agent or the ABL Lenders with respect to the ABL Priority Collateral under the ABL Loan Documents, including any sale, lease, exchange, transfer or other disposition of the ABL Priority Collateral, whether by foreclosure or otherwise, and (ii) hereby waives any and all rights it or any such Term Loan Lender may have as a junior lien creditor or otherwise to object to the manner in which the ABL Agent or the ABL Lenders seek to enforce or collect the ABL Claims with respect to the ABL Priority Collateral or the Liens granted in any of the ABL Priority Collateral, regardless of whether any action or failure to act by or on behalf of the ABL Agent or ABL Lenders is adverse to the interests of the Term Loan Lenders. Subject to the provisos in each of Section 3.1(b) and Section 5.6, the ABL Agent, for itself and on behalf of each applicable ABL Lender, (i) agrees that the ABL Agent and the ABL Lenders will not take any action that would hinder any Exercise of Any Secured Creditor Remedies undertaken by any Term Loan Agent or the Term Loan Lenders with respect to the Term Loan Priority Collateral under the Term Loan Documents, including any sale, lease, exchange, transfer or other disposition of the Term Loan Priority Collateral, whether by foreclosure or otherwise, and (ii) hereby waives any and all rights it or any ABL Lender may have as a junior lien creditor or otherwise to object to the manner in which the Term Loan Agents or the Term Loan Lenders seek to enforce or collect the Term Loan Claims with respect to the Term Loan Priority Collateral or the Liens granted in any of the Term Loan Priority Collateral, regardless of whether any action or failure to act by or on behalf of the Term Loan Agents or Term Loan Lenders is adverse to the interests of the ABL Lenders.

(e) Each Term Loan Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in any applicable Term Loan Document shall be deemed to restrict in any way the rights and remedies of the ABL Agent or the ABL Lenders with respect to the ABL Priority Collateral as set forth in this Agreement and the ABL Loan Documents. The ABL Agent hereby acknowledges and agrees that no covenant, agreement or restriction contained in any applicable ABL Loan Document shall be deemed to restrict in any way the rights and remedies of the Term Loan Agents or the Term Loan Lenders with respect to the Term Loan Priority Collateral as set forth in this Agreement and the Term Loan Documents.

(f) Each Term Loan Agent, on behalf of the Term Loan Lenders represented by it, agrees not to Exercise Any Secured Creditor Remedies until a Term Loan Enforcement

Notice has been given to the ABL Agent. The ABL Agent, on behalf of the ABL Lenders represented by it, agrees not to Exercise Any Secured Creditor Remedies until an ABL Enforcement Notice has been given to the Designated Term Loan Agent.

### 3.2. Cooperation.

(a) Subject to the provisos in Section 3.1(a), each Term Loan Agent, on behalf of itself and each applicable Term Loan Lender, agrees that, unless and until the Discharge of ABL Claims has occurred, it will not commence, or join with any Person (other than the ABL Lenders or the ABL Agent upon the request thereof) in commencing, any enforcement, collection, execution, levy or foreclosure action or proceeding with respect to any Lien held by it in the ABL Priority Collateral under any of the applicable Term Loan Documents or otherwise in respect of the applicable Term Loan Claims relating to the ABL Priority Collateral.

(b) Subject to the provisos in Section 3.1(b), the ABL Agent, on behalf of itself and each ABL Lender, agrees that, unless and until the Discharge of Term Loan Claims has occurred, it will not commence, or join with any Person (other than the Term Loan Lenders or the Term Loan Agents upon the request thereof) in commencing, any enforcement, collection, execution, levy or foreclosure action or proceeding with respect to any Lien held by it in the Term Loan Priority Collateral under any of the applicable ABL Loan Documents or otherwise in respect of the applicable ABL Claims relating to the Term Loan Priority Collateral.

### 3.3. Actions Upon Breach.

(a) If any Term Loan Lender, in contravention of the terms of this Agreement, in any way takes or attempts or threatens to take any action with respect to the ABL Priority Collateral (including any attempt to realize upon or enforce any remedy with respect to this Agreement except as provided in the provisos to Section 3.1(a)), this Agreement shall create an irrebuttable presumption and admission by such Term Loan Lender that relief against such Term Loan Lender by injunction, specific performance and/or other appropriate equitable relief is necessary to prevent irreparable harm to the ABL Lenders, it being understood and agreed by each Term Loan Agent on behalf of each applicable Term Loan Lender that (i) the ABL Lenders' damages from its actions may at that time be difficult to ascertain and may be irreparable, and (ii) each Term Loan Lender waives any defense that the Grantors and/or the ABL Lenders cannot demonstrate damage and/or be made whole by the awarding of damages.

(b) If any ABL Lender, in contravention of the terms of this Agreement, in any way takes or attempts or threatens to take any action with respect to the Term Loan Priority Collateral (including any attempt to realize upon or enforce any remedy with respect to this Agreement except as provided in the provisos to Section 3.1(b)), this Agreement shall create an irrebuttable presumption and admission by such ABL Lender that relief against such ABL Lender by injunction, specific performance and/or other appropriate equitable relief is necessary to prevent irreparable harm to the Term Loan Lenders, it being understood and agreed by the ABL Agent on behalf of each applicable ABL Lender that (i) the Term Loan Lenders' damages from its actions may at that time be difficult to ascertain and may be irreparable, and (ii) each

ABL Lender waives any defense that the Grantors, the Term Loan Lenders cannot demonstrate damage and/or be made whole by the awarding of damages.

#### **Section 4. Payments.**

4.1. Revolving Nature of ABL Claims. Each Term Loan Agent, for and on behalf of itself and each applicable Term Loan Lender, expressly acknowledges and agrees that (i) as of the date hereof, the ABL Credit Agreement includes a revolving commitment, that in the ordinary course of business the ABL Agent under the ABL Credit Agreement and the ABL Lenders will apply payments and make advances thereunder, and that no application of any Payment Collateral or Cash Collateral or the release of any Lien by the ABL Agent upon any portion of the Common Collateral in connection with a permitted disposition under the ABL Credit Agreement shall constitute the exercise of remedies prohibited under this Agreement; (ii) subject to the limitations set forth herein, the amount of the ABL Claims that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, and that the terms of the ABL Claims may be modified, extended or amended from time to time, and that the aggregate amount of the ABL Claims may be increased and, subject to Section 9.3, replaced or Refinanced, in each event, without notice to or consent by the Term Loan Lenders and without affecting the provisions hereof; and (iii) all Payment Collateral or Cash Collateral received by the ABL Agent may be applied, reversed, reapplied, credited, or reborrowed, in whole or in part, to the ABL Claims at any time; provided, however, that from and after the date on which the ABL Agent (or any ABL Lender) commences the Exercise of Any Secured Creditor Remedies with respect to any of the Common Collateral, all amounts received by the ABL Agent or any ABL Lender in respect of any ABL Claims shall be applied as specified in this Section 4. The Lien priority set forth in this Agreement shall not be altered or otherwise affected by any such amendment, modification, supplement, extension, repayment, reborrowing, increase, replacement, renewal, restatement or Refinancing of the ABL Claims, the Term Loan Claims, or any portion thereof, in each case, in accordance with Section 9.3 (to the extent applicable).

4.2. Application of Proceeds of ABL Priority Collateral. The ABL Agent, on behalf of itself and each ABL Lender, and each Term Loan Agent, on behalf of itself and each applicable Term Loan Lender, hereby agrees that the ABL Priority Collateral or proceeds thereof received in connection with the sale or other disposition of, or collection on, such ABL Priority Collateral upon the Exercise of Any Secured Creditor Remedies:

first, shall be applied to the payment of the ABL Claims in accordance with the ABL Loan Documents until a Discharge of ABL Claims has occurred,

second, shall be delivered to the Designated Term Loan Agent for application to the payment of the Term Loan Claims in accordance with the Term Loan Documents until a Discharge of Term Loan Claims has occurred,

third, if the Junior Lien Intercreditor Agreement is then in effect, shall be delivered to the Designated Junior Lien Representative (as defined in the Junior Lien Intercreditor Agreement) for application to the payment of Future Junior Lien Indebtedness in

accordance with the Junior Lien Intercreditor Agreement until a Discharge of Junior Lien Obligations (as defined in the Junior Lien Intercreditor Agreement) has occurred, and

fourth, the balance, if any, shall be delivered to the Grantors or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

4.3. Application of Proceeds of Term Loan Priority Collateral. The ABL Agent, on behalf of itself and each applicable ABL Lender, and each Term Loan Agent, on behalf of itself and each applicable Term Loan Lender, hereby agrees that the Term Loan Priority Collateral or proceeds thereof received in connection with the sale or other disposition of, or collection on, such Term Loan Priority Collateral upon the Exercise of Any Secured Creditor Remedies:

first, shall be applied to the payment of the Term Loan Claims in accordance with the Term Loan Documents until a Discharge of Term Loan Claims has occurred,

second, shall be delivered to the ABL Agent for application to the payment of the ABL Claims in accordance with the ABL Loan Documents until a Discharge of ABL Claims has occurred,

third, if the Junior Lien Intercreditor Agreement is then in effect, shall be delivered to the Designated Junior Lien Representative (as defined in the Junior Lien Intercreditor Agreement) for application to the payment of Future Junior Lien Indebtedness in accordance with the Junior Lien Intercreditor Agreement until a Discharge of Junior Lien Obligations (as defined in the Junior Lien Intercreditor Agreement) has occurred, and

fourth, the balance, if any, shall be delivered to the Grantors or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

4.4. Payments Over.

(a) Any ABL Priority Collateral or proceeds thereof received by a Term Loan Agent or any Term Loan Lender in connection with the exercise of any right or remedy (including setoff or recoupment) relating to the ABL Priority Collateral shall be segregated and held in trust for the benefit of and forthwith paid over to the ABL Agent (and/or its designees) for the benefit of the ABL Lenders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The ABL Agent is hereby authorized to make any such endorsements as agent for each Term Loan Agent or any such Term Loan Lender. This authorization is coupled with an interest and is irrevocable.

(b) Any Term Loan Priority Collateral or proceeds thereof received by the ABL Agent or any ABL Lender in connection with the exercise of any right or remedy (including setoff or recoupment) relating to the Term Loan Priority Collateral shall be segregated and held in trust for the benefit of and forthwith paid over to the Designated Term Loan Agent (and/or its designees) for the benefit of the Term Loan Lenders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Designated Term Loan Agent is hereby authorized to make any such endorsements as agent

for the ABL Agent or any such ABL Lender. This authorization is coupled with an interest and is irrevocable.

(c) Promptly upon the Discharge of ABL Claims, the ABL Agent shall deliver written notice confirming the same to the Term Loan Agents; provided that the failure to give any such notice shall not result in any liability of the ABL Agent or the other ABL Lenders hereunder or in the modification, alteration, impairment, or waiver of the rights of any party hereunder. Promptly upon the Discharge of Term Loan Claims, the Term Loan Agents shall deliver written notice confirming the same to the ABL Agent; provided that the failure to give any such notice shall not result in any liability of the Term Loan Agents or the other Term Loan Lenders hereunder or in the modification, alteration, impairment, or waiver of the rights of any party hereunder.

#### 4.5. Set-Off and Tracing of and Priorities in Proceeds.

(a) Each Term Loan Agent, on behalf of the Term Loan Lenders represented by it, acknowledges and agrees that, to the extent such Term Loan Agent or any other Term Loan Lender exercises its rights of set-off against any ABL Priority Collateral, the amount of such set-off shall be held and distributed pursuant to Section 4.2. The ABL Agent, on behalf of the ABL Lenders represented by it, acknowledges and agrees that, to the extent the ABL Agent or any other ABL Lender exercises its rights to set-off against any Term Loan Priority Collateral, the amount of such set-off shall be held and distributed pursuant to Section 4.3.

(b) The ABL Agent, for itself and on behalf of each other ABL Lender represented by it, and each Term Loan Agent, for itself and on behalf of each other Term Loan Lender represented by it, agree that prior to an issuance of an ABL Enforcement Notice or Term Loan Enforcement Notice (as applicable) or the commencement of any Insolvency or Liquidation Proceeding, any proceeds of Collateral, whether or not deposited under Account Agreements, used by any Grantor to acquire property constituting Collateral shall not (solely as between the ABL Agent and the Term Loan Agents and as between the ABL Lenders and the Fixed Asset Lenders) be treated as proceeds of Collateral for purposes of determining the relative priorities of the ABL Lenders and the Term Loan Lenders in the Collateral so acquired.

(c) Unless and until the earlier of (w) the Company or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding, (x) Discharge of ABL Claims occurs (y) the delivery of an ABL Enforcement Notice to the Designated Term Loan Agent or (z) the delivery of a Term Loan Enforcement Notice to the ABL Agent, the ABL Agent is hereby permitted to deem all collections and payments deposited in any Deposit Account subject to an Account Agreement in favor of the ABL Agent to be proceeds of ABL Priority Collateral and the Term Loan Agent and the other Term Loan Lenders each consents to the application of such funds to the ABL Claims, and no such funds credited to any such Deposit Account shall be subject to disgorgement or be deemed to be held in trust by the ABL Agent for the benefit of the Term Loan Agents and the other Term Loan Lenders (and all claims of the Term Loan Agents and the other Term Loan Lenders to such amounts are hereby waived); provided, however, that the provisions of this Section 4.5(c) shall not be applicable to any proceeds of Term Loan Priority Collateral so deposited into any Deposit Account if prior to such deposit a Term Loan Agent shall have notified the ABL Agent of such proceeds to be deposited.

(d) Except as otherwise provided in Section 4.5(c) above, the ABL Agent, on behalf of itself and the ABL Lenders represented by it, and each Term Loan Agent, on behalf of itself and the Term Loan Lenders represented by it, agrees that after an issuance of an ABL Enforcement Notice or Term Loan Enforcement Notice, each such Person shall cooperate in good faith to identify the proceeds of the ABL Priority Collateral and the Term Loan Priority Collateral, as the case may be (it being agreed that after an issuance of an ABL Enforcement Notice, unless the ABL Agent has actual knowledge to the contrary, all funds deposited under Account Agreements and then applied to the ABL Claims shall be presumed to be ABL Priority Collateral (a presumption that can be rebutted by any Term Loan Agent); provided, however, that neither any ABL Lender nor any Term Loan Lender shall be liable or in any way responsible for any claims or damages from conversion of the ABL Priority Collateral or Term Loan Priority Collateral, as the case may be (it being understood and agreed that (A) the only obligation of any ABL Lender is to pay over to the Designated Term Loan Agent, in the same form as received, with any necessary endorsements, all proceeds that such ABL Lender received that have been identified as proceeds of the Term Loan Priority Collateral and (B) the only obligation of any Term Loan Lender is to pay over to the ABL Agent, in the same form as received, with any necessary endorsements, all proceeds that such Term Loan Lender received that have been identified as proceeds of the ABL Priority Collateral). The ABL Agent and the Term Loan Agents may request from the other agents an accounting of the identification of the proceeds of Collateral (and the ABL Agent and the Term Loan Agents, as the case may be, upon which such request is made shall deliver such accounting reasonably promptly after such request is made).

4.6. Application of Proceeds of Mixed Collateral. Notwithstanding anything to the contrary contained above, but subject to Section 4.5, or in the definition of ABL Priority Collateral or Term Loan Priority Collateral, in the event that Proceeds of Common Collateral are received from (or are otherwise attributable to the value of) a sale or other disposition of Common Collateral that involves a combination of ABL Priority Collateral and Term Loan Priority Collateral, the portion of such Proceeds that shall be allocated as Proceeds of ABL Priority Collateral for purposes of this Agreement shall be an amount equal to the net book value of such ABL Priority Collateral (except in the case of Accounts, which amount shall be equal to the face amount of such Accounts). In addition, notwithstanding anything to the contrary contained above or in the definition of ABL Priority Collateral or Term Loan Priority Collateral, to the extent Proceeds of Common Collateral are Proceeds received from (or are otherwise attributable to the value of) the sale or disposition of all or substantially all of the Equity Interests of any Subsidiary of Holdings that is a Grantor or all or substantially all of the assets of any such Subsidiary, such Proceeds shall constitute (1) first, in an amount equal to the face amount of the Accounts (excluding any Term Loan Priority Proceeds), cash in Deposit Accounts and Securities Accounts (other than the Asset Sale Proceeds Account and all cash, checks and other property held therein or credited thereto or any other account that holds only Term Loan Priority Proceeds), and the net book value of the Inventory owned by such Subsidiary at the time of such sale, ABL Priority Collateral and (2) second, to the extent in excess of the amounts described in preceding clause (1), Term Loan Priority Collateral. In the event that amounts are received in respect of Equity Interests of or intercompany loans issued to any Grantor in an Insolvency or Liquidation Proceeding, such amounts shall be deemed to be Proceeds received from a sale or disposition of ABL Priority Collateral and Term Loan Priority Collateral and shall be allocated as Proceeds of ABL Priority Collateral and Term Loan Priority Collateral in proportion to the

ABL Priority Collateral and Term Loan Priority Collateral owned at such time by the issuer of such Equity Interests (with such proportion to be determined in the same manner as is set forth in the immediately preceding sentence as it relates to a sale or disposition of Equity Interests).

## **Section 5. Other Agreements.**

### **5.1. Releases.**

(a) If, at any time any Grantor or the holder of any ABL Claim delivers notice to the Term Loan Agents that any specified ABL Priority Collateral is sold, transferred or otherwise disposed of (including for such purpose, in the case of the sale of Equity Interests in any Subsidiary, any ABL Priority Collateral held by such Subsidiary or any direct or indirect Subsidiary thereof):

(i) by the owner of such ABL Priority Collateral in a transaction permitted under the ABL Credit Agreement and the Term Loan Credit Agreement and not prohibited under any other ABL Loan Document (if any) and Term Loan Document (if any); or

(ii) during the existence of any Event of Default under (and as defined in) the ABL Credit Agreement by the owner of such ABL Priority Collateral (to the extent the ABL Agent has consented to such sale, transfer or disposition) or by the ABL Agent in connection with the Exercise of Any Secured Creditor Remedies;

then (whether or not any Insolvency or Liquidation Proceeding is pending at the time) the Liens in favor of the Term Loan Lenders upon such ABL Priority Collateral will automatically be released and discharged as and when, but only to the extent, such Liens on such ABL Priority Collateral securing ABL Claims are released and discharged. Upon delivery to each Term Loan Agent of a notice from the ABL Agent stating that any release of Liens by the ABL Agent securing or supporting the ABL Claims on any ABL Priority Collateral has become effective (or shall become effective upon each Term Loan Agent's release), each Term Loan Agent will promptly execute, file and deliver such instruments, releases, termination statements or other documents (including UCC-3 termination statements, mortgage releases and termination of USPTO and copyright filings) confirming such release on customary terms at the expense of the Company.

Each Term Loan Agent, for itself and on behalf of each applicable Term Loan Lender, hereby irrevocably constitutes and appoints the ABL Agent and any officer or agent of the ABL Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Term Loan Agent or such Term Loan Lender or in the ABL Agent's own name, from time to time in the ABL Agent's discretion, for the purpose of carrying out the terms of this Section 5.1(a), to take any and all appropriate action and to execute any and all documents and instruments and make filings that may be necessary or desirable to accomplish the purposes of this Section 5.1(a), including filing any termination statements, endorsements or other instruments of transfer or release; provided that the ABL Agent shall not exercise such power of attorney unless the Term Loan Agents have

failed to comply with their obligations under this Section 5.1 within two Business Days after demand by the ABL Agent. This power is coupled with an interest and is irrevocable.

(b) Subject to Section 5.6, if, at any time any Grantor or the holder of any Term Loan Claim delivers notice to the ABL Agent that any specified Term Loan Priority Collateral (including all or substantially all of the Equity Interests of a Grantor or any of its Subsidiaries) (including for such purpose, in the case of the sale of Equity Interests in any Subsidiary, any Term Loan Priority Collateral held by such Subsidiary or any direct or indirect Subsidiary thereof) is sold, transferred or otherwise disposed of:

(i) by the owner of such Term Loan Priority Collateral in a transaction permitted under the Term Loan Credit Agreement and the ABL Credit Agreement and not prohibited under any other Term Loan Document (if any) and ABL Loan Document (if any); or

(ii) during the existence of any Event of Default under (and as defined in) the Term Loan Credit Agreement (or any other Credit Agreement governing Future Term Indebtedness) by the owner of such Term Loan Priority Collateral (to the extent the applicable Term Loan Agents have consented to such sale, transfer or disposition) or by a Term Loan Agent in connection with the Exercise of Any Secured Creditor Remedies;

then (whether or not any Insolvency or Liquidation Proceeding is pending at the time) the Liens in favor of the ABL Lenders upon such Term Loan Priority Collateral will automatically be released and discharged as and when, but only to the extent, such Liens on such Term Loan Priority Collateral securing Term Loan Claims are released and discharged. Upon delivery to the ABL Agent of a notice from the applicable Term Loan Agent stating that any release of Liens by the Term Loan Agents securing or supporting the Term Loan Claims on any Term Loan Priority Collateral has become effective (or shall become effective upon the ABL Agent's release), the ABL Agent will promptly execute, file and deliver such instruments, releases, termination statements or other documents (including UCC-3 termination statements, mortgage releases and termination of USPTO and copyright filings) confirming such release on customary terms at the expense of the Company.

The ABL Agent, for itself and on behalf of each applicable ABL Lender, hereby irrevocably constitutes and appoints each Term Loan Agent and any officer or agent of such Term Loan Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the ABL Agent or such ABL Lender or in such Term Loan Agent's own name, from time to time in such Term Loan Agent's discretion, for the purpose of carrying out the terms of this Section 5.1(b), to take any and all appropriate action and to execute any and all documents and instruments and make any filings that may be necessary or desirable to accomplish the purposes of this Section 5.1(b), including filing any termination statements, endorsements or other instruments of transfer or release; provided that the applicable Term Loan Agent shall not exercise such power of attorney unless the ABL Agent has failed to comply with their obligations under this Section 5.1 within two Business Days after demand by the applicable Term Loan Agent. This power is coupled with an interest and is irrevocable.

(c) Unless and until the Discharge of ABL Claims has occurred, each Term Loan Agent, for itself and on behalf of each applicable Term Loan Lender, hereby consents to the application, whether prior to or after a default, of proceeds of ABL Priority Collateral to the repayment of ABL Claims pursuant to the ABL Credit Agreement; provided that nothing in this Section 5.1(c) shall be construed to prevent or impair the rights of the Term Loan Agents or the Term Loan Lenders to receive proceeds in connection with the Term Loan Claims not otherwise in contravention of this Agreement.

(d) Unless and until the Discharge of Term Loan Claims has occurred, the ABL Agent, for itself and on behalf of each applicable ABL Lender, hereby consents to the application, whether prior to or after a default, of proceeds of Term Loan Priority Collateral to the repayment of Term Loan Claims pursuant to the Term Loan Credit Agreement; provided that nothing in this Section 5.1(d) shall be construed to prevent or impair the rights of the ABL Agent or the ABL Lenders to receive proceeds in connection with the ABL Claims not otherwise in contravention of this Agreement.

## 5.2. Insurance.

(a) Proceeds of Common Collateral include insurance proceeds and, therefore, the Lien priority set forth in this Agreement shall govern the ultimate disposition of casualty insurance proceeds.

(b) Unless and until the Discharge of ABL Claims has occurred, the ABL Agent shall have the sole and exclusive right, subject to the rights of the Grantors under the ABL Loan Documents, to adjust settlement for any insurance policy covering the Common Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding affecting the Common Collateral. Unless and until the Discharge of ABL Claims has occurred, all proceeds of any such policy and any such award if in respect of the ABL Priority Collateral shall be paid in accordance with the terms of Section 4.2. If a Term Loan Agent or any Term Loan Lender shall, at any time, receive any proceeds of any such insurance policy or any such award in respect of ABL Priority Collateral in contravention of this Agreement, it shall pay such proceeds over to the ABL Agent in accordance with the terms of Section 4.4. Unless and until the Discharge of Term Loan Claims has occurred, all proceeds of any such policy and any such award if in respect of the Term Loan Priority Collateral shall be paid in accordance with the terms of Section 4.3. If the ABL Agent or any ABL Lender shall, at any time, receive any proceeds of any such insurance policy or any such award in respect of Term Loan Priority Collateral, it shall pay such proceeds over to the Designated Term Loan Agent in accordance with the terms of Section 4.4.

## 5.3. Amendments to ABL Loan Documents and Term Loan Documents.

(a) Each Term Loan Agent, on behalf of itself and the applicable Term Loan Lenders, hereby agrees that, without affecting the obligations of the Term Loan Agents and the Term Loan Lenders hereunder, the ABL Agent and the ABL Lenders may, at any time and from time to time, in their sole discretion without the consent of or notice to a Term Loan Agent or any Term Loan Lender (except to the extent such notice or consent is required pursuant to the express provisions of this Agreement), and without incurring any liability to a Term Loan Agent

or any Term Loan Lender or impairing or releasing the lien subordination provided for herein or other provisions of this Agreement, amend, restate, supplement, replace, Refinance (in compliance with Section 5.3(c)), extend, consolidate, restructure, or otherwise modify any of the ABL Loan Documents in any manner whatsoever (in compliance with Section 9.3, to the extent applicable), including, to:

(i) change the manner, place, time, or terms of payment or renew or alter or increase, all or any of the Obligations under the ABL Loan Documents or otherwise amend, restate, supplement, or otherwise modify in any manner, or grant any waiver or release with respect to, all or any part of the Obligations under the ABL Loan Documents or any of the ABL Loan Documents;

(ii) retain or, subject to Section 2.3, obtain a Lien on any property of any Person to secure any of the ABL Claims, and in connection therewith to enter into any additional ABL Loan Documents;

(iii) amend, or grant any waiver, compromise, or, subject to Section 5.1, release with respect to, or consent to any departure from, any guaranty or other obligations of any Person obligated in any manner under or in respect of the ABL Claims;

(iv) subject to Section 5.1, release its Lien on any Common Collateral or other property;

(v) exercise or refrain from exercising any rights against the Company, any Grantor, or any other Person;

(vi) retain or obtain the primary or secondary obligation of any other Person with respect to any of the ABL Claims; and

(vii) otherwise manage and supervise the ABL Claims as the ABL Agent shall deem appropriate.

(b) The ABL Agent, on behalf of itself and the ABL Lenders, hereby agrees that, without affecting the obligations of the ABL Agent and the ABL Lenders hereunder, each Term Loan Agent and the Term Loan Lenders may, at any time and from time to time, in their sole discretion without the consent of or notice to the ABL Agent or any ABL Lender (except to the extent such notice or consent is required pursuant to the express provisions of this Agreement), and without incurring any liability to the ABL Agent or any ABL Lender or impairing or releasing the lien subordination provided for herein or other provisions of this Agreement, amend, restate, supplement, replace, Refinance (in compliance with Section 5.3(c)), extend, consolidate, restructure, or otherwise modify any of the Term Loan Documents in any manner whatsoever (in compliance with Section 9.3, to the extent applicable), including, to:

(i) change the manner, place, time, or terms of payment or renew, alter or increase, all or any of the Obligations under the Term Loan Documents or otherwise amend, restate, supplement, or otherwise modify in any manner, or grant any

waiver or release with respect to, all or any part of the Obligations under the Term Loan Documents or any of the Term Loan Documents;

(ii) retain or, subject to Section 2.3, obtain a Lien on any property of any Person to secure any of the Term Loan Claims, and in connection therewith to enter into any additional Term Loan Documents;

(iii) amend, or grant any waiver, compromise, or, subject to Section 5.1, release with respect to, or consent to any departure from, any guaranty or other obligations of any Person obligated in any manner under or in respect of the Term Loan Claims;

(iv) subject to Section 5.1, release its respective Lien on any Common Collateral or other property;

(v) exercise or refrain from exercising any rights against the Company, any Grantor, or any other Person;

(vi) retain or obtain the primary or secondary obligation of any other Person with respect to any of the Term Loan Claims; and

(vii) otherwise manage and supervise the Term Loan Claims as the applicable Term Loan Agent shall deem appropriate.

(c) The ABL Claims and the Term Loan Claims may be Refinanced, in whole or in part, in each case, without notice to, or the consent (except to the extent a consent is required to permit the Refinancing transaction under any ABL Loan Document or any Term Loan Document) of the ABL Agent, the ABL Lenders, the Term Loan Agents or the Term Loan Lenders, as the case may be, all without affecting the Lien priorities provided for herein or the other provisions hereof; provided, however, that the holders of such Refinancing indebtedness (or an authorized agent or trustee on their behalf) comply with Section 9.3 (to the extent applicable), and any such Refinancing transaction shall be in accordance with any applicable provisions of the ABL Loan Documents and the Term Loan Documents.

(d) In the event that the ABL Agent or the ABL Lenders enter into any amendment, waiver or consent in respect of or replace any of the ABL Collateral Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any ABL Collateral Document or changing in any manner the rights of the ABL Agent, the ABL Lenders, the Company or any other Grantor thereunder in respect of the ABL Priority Collateral, then such amendment, waiver or consent shall apply automatically to any comparable provision of each comparable Term Loan Collateral Document (but solely as to ABL Priority Collateral) without the consent of any Term Loan Agent or any Term Loan Lender and without any action by the Term Loan Lenders, the Company or any other Grantor; provided that such amendment, waiver or consent may not materially adversely affect the rights of the applicable Term Loan Lenders or the interests of the applicable Term Loan Lenders in the ABL Priority Collateral unless the rights and interests of all other creditors of the Company or such Grantor, as the case may be, that have a security interest in the affected collateral are affected in

a like or similar manner (without regard to the fact that the Lien of such ABL Collateral Document is senior to the Lien of the comparable Term Loan Collateral Document). The ABL Agent shall give written notice of such amendment, waiver or consent to the Term Loan Agents within 10 Business Days of the effectiveness thereof; provided that the failure to give such notice shall not affect the effectiveness of such amendment, waiver or consent with respect to the provisions of any Term Loan Collateral Document as set forth in this Section 5.3(d).

(e) In the event that a Term Loan Agent or the Term Loan Lenders enter into any amendment, waiver or consent in respect of or replace any of the Term Loan Collateral Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any Term Loan Collateral Document or changing in any manner the rights of the Term Loan Agents, the Term Loan Lenders, the Company or any other Grantor thereunder in respect of the Term Loan Priority Collateral, then such amendment, waiver or consent shall apply automatically to any comparable provision of each comparable ABL Collateral Document (but solely as to Term Loan Priority Collateral) without the consent of the ABL Agent or any ABL Lender and without any action by the ABL Lenders, the Company or any other Grantor; provided that such amendment, waiver or consent may not materially adversely affect the rights of the ABL Lenders or the interests of the ABL Lenders in the Term Loan Priority Collateral unless the rights and interests of all other creditors of the Company or such Grantor, as the case may be, that have a security interest in the affected collateral are affected in a like or similar manner (without regard to the fact that the Lien of such Term Loan Collateral Document is senior to the Lien of the comparable ABL Collateral Document). The applicable Term Loan Agent shall give written notice of such amendment, waiver or consent to the ABL Agent; provided that the failure to give such notice shall not affect the effectiveness of such amendment, waiver or consent with respect to the provisions of any ABL Collateral Document as set forth in this Section 5.3(e).

5.4. Rights As Unsecured Creditors. Except as specifically set forth in this Agreement, the Second Priority Agents and the Second Priority Lenders may exercise rights and remedies as an unsecured creditor against Holdings, the Company or any Subsidiary that has guaranteed the Second Priority Claims in accordance with the terms of the applicable Second Priority Documents and applicable law. Nothing in this Agreement shall prohibit the receipt by any Second Priority Agent or any Second Priority Lender of the required payments of interest and principal so long as such receipt is not the direct or indirect result of (a) the exercise by any Second Priority Agent or any Second Priority Lender of rights or remedies as a secured creditor (including setoff and recoupment) in respect of the applicable portion of the Common Collateral or (b) enforcement in contravention of this Agreement of any Lien in respect of Second Priority Claims held by any of them. In the event any Second Priority Agent or any Second Priority Lender becomes a judgment lien creditor or other secured creditor in respect of Common Collateral as a result of its enforcement of its rights as an unsecured creditor in respect of Second Priority Claims or otherwise, such judgment or other lien shall be subordinated to the Liens securing First Priority Claims on the same basis as the other Liens securing the Second Priority Claims are so subordinated to such Liens securing First Priority Claims under this Agreement.

5.5. First Priority Agent as Gratuitous Bailee for Perfection.

(a) The ABL Agent agrees to hold the Pledged Collateral that is part of the ABL Priority Collateral in its possession or control (or in the possession or control of its agents or bailees) as gratuitous bailee for each Term Loan Agent and any assignee solely for the purpose of perfecting the security interest granted in such Pledged Collateral pursuant to the Term Loan Collateral Documents, subject to the terms and conditions of this Section 5.5 (such bailment being intended, among other things, to satisfy the requirements of Sections 8-106(d)(3), 8-301(a)(2), 9-104(a)(5) and 9-313(c) of the UCC). Each Term Loan Agent agrees to hold the Pledged Collateral that is part of the Term Loan Priority Collateral in its possession or control (or in the possession or control of its agents or bailees) as gratuitous bailee for the ABL Agent and any assignee solely for the purpose of perfecting the security interest granted in such Pledged Collateral pursuant to the ABL Collateral Documents, subject to the terms and conditions of this Section 5.5 (such bailment being intended, among other things, to satisfy the requirements of Sections 8-106(d)(3), 8-301(a)(2), 9-104(a)(5) and 9-313(c) of the UCC).

(b) The ABL Agent agrees to hold the Deposit Account Collateral that is part of the Collateral and controlled by the ABL Agent as gratuitous agent for each Term Loan Agent and any assignee solely for the purpose of perfecting the security interest granted in such Deposit Account Collateral pursuant to the Term Loan Collateral Documents, subject to the terms and conditions of this Section 5.5.

(c) Except as otherwise specifically provided herein (including Sections 3.1, 4 and 8.2), until the Discharge of ABL Claims has occurred, the ABL Agent shall be entitled to deal with the Pledged Collateral constituting ABL Priority Collateral in accordance with the terms of the ABL Loan Documents as if the Liens under the Term Loan Collateral Documents did not exist. The rights of each Term Loan Agent and the Term Loan Lenders with respect to such Pledged Collateral shall at all times be subject to the terms of this Agreement. Except as otherwise specifically provided herein (including Sections 3.1, 4 and 8.2), until the Discharge of Term Loan Claims has occurred, each Term Loan Agent shall be entitled to deal with the Pledged Collateral constituting Term Loan Priority Collateral in accordance with the terms of the Term Loan Documents as if the Liens under the ABL Collateral Documents did not exist. The rights of the ABL Agent and the ABL Lenders with respect to such Pledged Collateral shall at all times be subject to the terms of this Agreement.

(d) The First Priority Agent shall have no obligation whatsoever to any Second Priority Agent or any Second Priority Lender to assure that the Pledged Collateral is genuine or owned by the Grantors or to protect or preserve rights or benefits of any Person or any rights pertaining to the applicable portion of the Common Collateral except as expressly set forth in this Section 5.5. The duties or responsibilities of the First Priority Agent under this Section 5.5 shall be limited solely to holding the Pledged Collateral as gratuitous bailee (and with respect to Deposit Accounts, as agent) for each Second Priority Agent for purposes of perfecting the Lien held by the Second Priority Lenders and delivering the Pledged Collateral upon a Discharge of ABL Claims as provided in Section 5.5(f) or upon a Discharge of Term Loan Claims as provided in Section 5.5(g), as applicable.

(e) The First Priority Agent shall not have by reason of the Second Priority Documents or this Agreement or any other document a fiduciary relationship in respect of any Second Priority Agent or any Second Priority Lender and the Second Priority Agent and the Second Priority Lenders hereby waive and release the First Priority Agent from all claims and liabilities arising pursuant to the First Priority Agent's role under this Section 5.5, as agent and gratuitous bailee with respect to the applicable portion of the Common Collateral.

(f) Upon the Discharge of ABL Claims, the ABL Agent shall deliver to the Designated Term Loan Agent, to the extent that it is legally permitted to do so, the remaining Pledged Collateral (if any) and Deposit Account Collateral (if any) constituting ABL Priority Collateral in its possession or under its control, together with any necessary endorsements (or otherwise allow the Designated Term Loan Agent to obtain control of such Pledged Collateral and Deposit Account Collateral) or as a court of competent jurisdiction may otherwise direct. The Company shall take such further action as is required to effectuate the transfer contemplated hereby and shall indemnify the ABL Agent for loss or damage suffered by the ABL Agent as a result of such transfer except for loss or damage suffered by the ABL Agent as a result of its own willful misconduct, gross negligence or bad faith. The ABL Agent has no obligation to follow instructions from a Term Loan Agent in contravention of this Agreement.

(g) Upon the Discharge of Term Loan Claims, each Term Loan Agent shall deliver to the ABL Agent, to the extent that it is legally permitted to do so, the remaining Pledged Collateral (if any) constituting Term Loan Priority Collateral in its possession or under its control, together with any necessary endorsements (or otherwise allow the ABL Agent to obtain control of such Pledged Collateral) or as a court of competent jurisdiction may otherwise direct. The Company shall take such further action as is required to effectuate the transfer contemplated hereby and shall indemnify each Term Loan Agent for loss or damage suffered by such Term Loan Agent as a result of such transfer except for loss or damage suffered by such Term Loan Agent as a result of its own willful misconduct, gross negligence or bad faith. No Term Loan Agent has any obligation to follow instructions from the ABL Agent in contravention of this Agreement.

#### 5.6. Access to Premises and Cooperation.

(a) If the ABL Agent takes any enforcement action with respect to the ABL Priority Collateral, each Term Loan Agent and the Term Loan Lenders (i) shall cooperate with the ABL Agent (at the sole cost and expense of the ABL Agent and the ABL Lenders and subject to the condition that the Term Loan Agents and the Term Loan Lenders shall have no obligation or duty to take any action or refrain from taking any action that could reasonably be expected to result in the incurrance of any liability or damage to a Term Loan Agent or the Term Loan Lenders) in its efforts to enforce its security interest in the ABL Priority Collateral and to allow the ABL Agent to finish any work-in-process and assemble the ABL Priority Collateral, (ii) shall not take any action designed or intended to hinder or restrict in any respect the ABL Agent from enforcing its security interest in the ABL Priority Collateral or from finishing any work-in-process or assembling the ABL Priority Collateral and (iii) shall permit and hereby grants (to the full extent of its rights, if any) to the ABL Agent, its employees, agents, advisers and representatives, at the sole cost and expense of the ABL Lenders and upon reasonable advance notice, to use the Term Loan Priority Collateral (including (x) equipment, processors, computers

and other machinery related to the storage or processing of records, documents or files and (y) Intellectual Property, in each case only to the extent and for so long as required to effect an enforcement action with respect to the ABL Priority Collateral), for a period not to exceed 180 days after the taking of such enforcement action, for purposes of (A) assembling and storing the ABL Priority Collateral and completing the processing of and turning into finished goods of any ABL Priority Collateral consisting of work-in-process, (B) selling any or all of the ABL Priority Collateral, whether in bulk, in lots or to customers in the ordinary course of business or otherwise, (C) removing and transporting any or all of the ABL Priority Collateral located in or on such Term Loan Priority Collateral, if any, (D) otherwise processing, shipping, producing, storing, completing, supplying, leasing, selling or otherwise handling, dealing with, assembling or disposing of, in any lawful manner, the ABL Priority Collateral, (E) taking reasonable actions to protect, secure, and otherwise enforce the rights of the ABL Agent and the ABL Lenders in and to the ABL Priority Collateral, (F) collecting all Accounts included in the ABL Priority Collateral or (G) copying, using or preserving any and all information relating to any of the ABL Priority Collateral; provided, however, that nothing contained in this Agreement shall restrict the rights of the Term Loan Agents or the Term Loan Lenders from selling, assigning or otherwise transferring any Term Loan Priority Collateral prior to the expiration of such 180-day period if the purchaser, assignee or transferee thereof agrees to be bound by the provisions of this Section 5.6. The rights of the ABL Agent and the other ABL Lenders under this Section 5.6 during such 180-day period shall continue notwithstanding such sale or other disposition by any Term Loan Agent. If any stay or other order prohibiting the exercise of remedies with respect to the ABL Priority Collateral has been entered by a court of competent jurisdiction, such 180-day period shall be tolled during the pendency of any such stay or other order. In connection with the use of Intellectual Property constituting Term Loan Priority Collateral pursuant to clause (iii)(y) above in the first sentence of this clause (a), each Term Loan Agent (and any purchaser, assignee or transferee of assets as provided in the proviso to the first sentence of this clause (a)) (1) consents (without any representation, warranty or obligation whatsoever) to the grant by any Grantor to the ABL Agent of a non-exclusive royalty-free license to use any Patent, Trademark or proprietary information of such Grantor that is subject to a Lien held by such Term Loan Agent (or any Patent, Trademark or proprietary information acquired by such purchaser, assignee or transferee from any Grantor, as the case may be) and (2) grants, in its capacity as a secured party (or as a purchaser, assignee or transferee, as the case may be), to the ABL Agent a non-exclusive royalty-free license to use any Patent, Trademark or proprietary information that is subject to a Lien held by such Term Loan Agent (or subject to such purchase, assignment or transfer, as the case may be), in each case for the purposes set forth in clauses (A) through (G) of this paragraph.

(b) During the period of actual use or control by the ABL Agent or its agents or representatives of any Term Loan Priority Collateral, the ABL Agent and the ABL Lenders shall (i) be responsible for the ordinary course third party expenses related thereto, and (ii) be obligated to repair at their expense any physical damage to such Term Loan Priority Collateral resulting from such use or control, and to leave such Term Loan Priority Collateral in substantially the same condition as it was at the commencement of such use or control, ordinary wear and tear excepted. The ABL Agent and the ABL Lenders jointly and severally agree to pay, indemnify and hold each Term Loan Agent and their respective officers, directors, employees and agents harmless from and against any liability, cost, expense, loss or damages, including legal fees and expenses, resulting from the gross negligence or willful misconduct of

the ABL Agent or any of its agents, representatives or invitees in its or their operation of such Term Loan Priority Collateral. Notwithstanding the foregoing, in no event shall the ABL Agent or the ABL Lenders have any liability to the Term Loan Agents or the Term Loan Lenders pursuant to this Section 5.6 as a result of the condition (including any environmental condition, claim or liability) of any Term Loan Priority Collateral existing prior to the date of the exercise by the ABL Agent and the ABL Lenders of their rights under this Section 5.6, and the ABL Agent and the ABL Lenders shall have no duty or liability to maintain the Term Loan Priority Collateral in a condition or manner better than that in which it was maintained prior to the use thereof by the ABL Agent, or for any diminution in the value of the Term Loan Priority Collateral that results solely from ordinary wear and tear resulting from the use of the Term Loan Priority Collateral by the ABL Agent in the manner and for the time periods specified under this Section 5.6. Without limiting the rights granted in this paragraph, the ABL Agent and the ABL Lenders shall cooperate with the Term Loan Agents and the Term Loan Lenders in connection with any efforts made by the Term Loan Agents and the Term Loan Lenders to sell the Term Loan Priority Collateral.

(c) Each Term Loan Agent agrees that if the ABL Agent shall require rights available under any permit or license controlled by such Term Loan Agent in order to realize on any ABL Priority Collateral, such Term Loan Agent shall take all such actions as shall be available to it (at the sole expense of the Grantors), consistent with applicable law and reasonably requested by the ABL Agent to make such rights available to the ABL Agent, subject to the Liens of the Term Loan Agents, the Term Loan Lenders. The ABL Agent agrees that if a Term Loan Agent shall require rights available under any permit or license controlled by the ABL Agent in order to realize on any Term Loan Priority Collateral, the ABL Agent shall take all such actions as shall be available to it (at the sole expense of the Grantors), consistent with applicable law and reasonably requested by the applicable Term Loan Agent to make such rights available to such Term Loan Agent, subject to the Liens of the ABL Agent and the ABL Lenders.

5.7. No Release If Event of Default; Reinstatement.

(a) If, concurrently with (or after) the Discharge of ABL Claims has occurred, the Company incurs any ABL Claims in accordance with Section 9.3, then such Discharge of ABL Claims shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken by a Term Loan Agent or otherwise prior to the date of such designation as a result of the occurrence of such prior Discharge of ABL Claims), and the applicable agreement governing such ABL Claims shall automatically be treated as the ABL Credit Agreement for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Common Collateral set forth herein and the granting by the ABL Agent of amendments, waivers and consents hereunder. Upon receipt of a designation from the Company in accordance with Section 9.3, each Term Loan Agent shall promptly (a) enter into such documents and agreements (including amendments or supplements to this Agreement) as the Company or such new ABL Agent shall reasonably request in order to provide to the new ABL Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement and (b) deliver to the new ABL Agent any Pledged Collateral constituting ABL Priority Collateral held by it together with any necessary

endorsements (or otherwise allow the new ABL Agent to obtain control of such Pledged Collateral). As provided in Section 9.3 hereof, the new ABL Agent shall agree in a writing addressed to the Designated Term Loan Agent and the Term Loan Lenders to be bound by the terms of this Agreement. If the new ABL Claims under the new ABL Loan Documents are secured by assets of the Grantors constituting Collateral that do not also secure the Term Loan Claims, then the Term Loan Claims shall be secured at such time by a second-priority Lien on such assets to the same extent provided in the Term Loan Collateral Documents and this Agreement except to the extent such Lien on such assets constitutes a Term Declined Lien.

(b) If, concurrently with (or after) the Discharge of Term Loan Claims has occurred, the Company incurs any Term Loan Claims in accordance with Section 9.3, then such Discharge of Term Loan Claims shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken by the ABL Agent or otherwise prior to the date of such designation as a result of the occurrence of such prior Discharge of Term Loan Claims), and the applicable agreement governing such Term Loan Claims shall automatically be treated as the Term Loan Credit Agreement for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Common Collateral set forth herein and the granting by the applicable Term Loan Agent of amendments, waivers and consents hereunder. Upon receipt of a designation from the Company in accordance with Section 9.3, the ABL Agent shall promptly (a) enter into such documents and agreements (including amendments or supplements to this Agreement) as the Company or such new Term Loan Agent shall reasonably request in order to provide to the new Term Loan Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement and (b) deliver to the new Term Loan Agent any Pledged Collateral constituting Term Loan Priority Collateral held by it together with any necessary endorsements (or otherwise allow the new Term Loan Agent to obtain control of such Pledged Collateral). As provided in Section 9.3 hereof, the new Term Loan Agent shall agree in a writing addressed to the ABL Agent and the ABL Lenders to be bound by the terms of this Agreement. If the new Term Loan Claims under the new Term Loan Documents are secured by assets of the Grantors constituting Collateral that do not also secure the ABL Claims, then the ABL Claims shall be secured at such time by a second-priority Lien on such assets to the same extent provided in the ABL Collateral Documents and this Agreement except to the extent such Lien on such assets constitutes an ABL Declined Lien.

5.8. Legends. Each party hereto agrees that each Credit Agreement, the Term Loan Collateral Agreement and the ABL Collateral Agreement shall contain the applicable provisions set forth on Schedule I hereto, or similar provisions approved by the ABL Agent and the Term Loan Agents, which approval shall not be unreasonably withheld or delayed.

## **Section 6. Insolvency or Liquidation Proceedings.**

### **6.1. Financing Issues.**

(a) Until the Discharge of ABL Claims has occurred, if the Company or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding and shall move for the approval of the use of cash collateral constituting ABL Priority Collateral or the proceeds thereof or of financing (“**DIP Financing**”) under Section 363 or Section 364 of Title 11 of the

United States Code or any similar provision in any Bankruptcy Law, then each Term Loan Agent, on behalf of itself and each Term Loan Lender, agrees that it will raise no objection to, and will not support any objection to, and will not otherwise contest (a) such DIP Financing, the Liens on ABL Priority Collateral securing such DIP Financing (the “**ABL DIP Financing Liens**”) or the use of cash collateral that constitutes ABL Priority Collateral or the proceeds thereof, in each case unless the ABL Agent or the ABL Lenders shall then object or support an objection to such DIP Financing, ABL DIP Financing Liens or use of such cash collateral, and will not object on the basis of lack of adequate protection or any other relief in connection therewith and, to the extent the Liens securing the ABL Claims under the ABL Credit Agreement or, if no such ABL Credit Agreement exists, under the other ABL Loan Documents are subordinated or pari passu with such ABL DIP Financing Liens, will subordinate its Liens in the ABL Priority Collateral to such ABL DIP Financing Liens on the same basis as the other Liens on ABL Priority Collateral securing the Term Loan Claims are so subordinated to Liens securing ABL Claims under this Agreement, (b) any motion for relief from the automatic stay or from any injunction against foreclosure or enforcement in respect of ABL Claims or ABL Priority Collateral made by the ABL Agent or any holder of ABL Claims, (c) any lawful exercise by any holder of ABL Claims of the right to credit bid ABL Claims at any sale in foreclosure of ABL Priority Collateral, (d) any other request for judicial relief made in any court by any holder of ABL Claims relating to the lawful enforcement of any Lien on ABL Priority Collateral or (e) any order relating to a sale of ABL Priority Collateral for which the ABL Agent has consented that provides, to the extent the sale is to be free and clear of Liens, that the Liens securing the ABL Claims and the Term Loan Claims will attach to the proceeds of the sale on the same basis of priority as set forth in this Agreement; provided that all Liens granted to the ABL Agent or the Term Loan Agents in any Insolvency or Liquidation Proceeding are intended by the parties hereto to be and shall be deemed to be subject to the Lien priority and the other terms and conditions of this Agreement.

(b) Until the Discharge of Term Loan Claims has occurred, if the Company or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding and shall move for the approval of the use of cash collateral constituting Term Loan Priority Collateral or the proceeds thereof or of DIP Financing under Section 363 or Section 364 of Title 11 of the United States Code or any similar provision in any Bankruptcy Law, then the ABL Agent, on behalf of itself and each ABL Lender, agrees that it will raise no objection to, and will not support any objection to, and will not otherwise contest (a) such DIP Financing, the Liens on Term Loan Priority Collateral securing such DIP Financing (the “**Term Loan DIP Financing Liens**”) or the use of cash collateral that constitutes Term Loan Priority Collateral or the proceeds thereof, in each case unless the Term Loan Agents or the Term Loan Lenders shall then object or support an objection to such DIP Financing, Term Loan DIP Financing Liens or use of such cash collateral, and will not object on the basis of lack of adequate protection or any other relief in connection therewith and, to the extent the Liens securing the Term Loan Claims under the Term Loan Credit Agreement or, if no such Term Loan Credit Agreement exists, under the other Term Loan Documents are subordinated or pari passu with such Term Loan DIP Financing Liens, will subordinate its Liens in the Term Loan Priority Collateral to such Term Loan DIP Financing Liens on the same basis as the other Liens on Term Loan Priority Collateral securing the ABL Claims are so subordinated to Liens securing Term Loan Claims under this Agreement, (b) any motion for relief from the automatic stay or from any injunction against foreclosure or

enforcement in respect of Term Loan Claims or Term Loan Priority Collateral made by the Term Loan Agents or any holder of Term Loan Claims, (c) any lawful exercise by any holder of Term Loan Claims of the right to credit bid Term Loan Claims at any sale in foreclosure of Term Loan Priority Collateral, (d) any other request for judicial relief made in any court by any holder of Term Loan Claims relating to the lawful enforcement of any Lien on Term Loan Priority Collateral or (e) any order relating to a sale of Term Loan Priority Collateral for which the Term Loan Agents have consented that provides, to the extent the sale is to be free and clear of Liens, that the Liens securing the Term Loan Claims and the ABL Claims will attach to the proceeds of the sale on the same basis of priority as set forth in this Agreement; provided that all Liens granted to the ABL Agent or the Term Loan Agents in any Insolvency or Liquidation Proceeding are intended by the parties hereto to be and shall be deemed to be subject to the Lien priority and the other terms and conditions of this Agreement.

6.2. Relief from the Automatic Stay. Until the Discharge of ABL Claims has occurred, each Term Loan Agent, on behalf of itself and each applicable Term Loan Lender, agrees that none of them shall seek (or support any other Person seeking) relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the ABL Priority Collateral, without the prior written consent of the ABL Agent. Until the Discharge of Term Loan Claims has occurred, the ABL Agent, on behalf of itself and each ABL Lender, agrees that none of them shall seek (or support any other Person seeking) relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Term Loan Priority Collateral, without the prior written consent of the Term Loan Agents.

6.3. Adequate Protection.

(a) Each Term Loan Agent, on behalf of itself and the applicable Term Loan Lenders, agrees that none of them shall be entitled to contest and none of them shall contest (or support any other Person contesting) (but instead shall be deemed to have hereby irrevocably, absolutely, and unconditionally waived any right to contest):

(i) any request by the ABL Agent or the ABL Lenders for adequate protection with respect to the ABL Priority Collateral (except to the extent any such adequate protection is a payment from Term Loan Priority Collateral); or

(ii) any objection by the ABL Agent or ABL Lender to any motion, relief, action or proceeding based on the ABL Agent or the other ABL Lender claiming a lack of adequate protection with respect to the ABL Priority Collateral.

(b) The ABL Agent, on behalf of itself and the ABL Lenders, agrees that none of them shall be entitled to contest and none of them shall contest (or support any other Person contesting) (but instead shall be deemed to have hereby irrevocably, absolutely, and unconditionally waived any right to contest):

(i) any request by any Term Loan Agent or the other Term Loan Lenders for adequate protection with respect to the Term Loan Priority Collateral (except to the extent any such adequate protection is a payment from ABL Priority Collateral); or

(ii) any objection by any Term Loan Agent or the Term Loan Lenders to any motion, relief, action or proceeding based on such Term Loan Agent, the applicable Term Loan Lenders claiming a lack of adequate protection with respect to the Term Loan Priority Collateral.

(c) Consistent with the foregoing provisions in this Section 6.3, and except as provided in Sections 6.1 and 6.7, in any Insolvency or Liquidation Proceeding:

(i) no Term Loan Agent or Term Loan Lender shall be entitled (and each Term Loan Agent and Term Loan Lender shall be deemed to have hereby irrevocably, absolutely, and unconditionally waived any right):

(1) to seek or otherwise be granted any type of adequate protection with respect to its interests in the ABL Priority Collateral; provided, however, subject to Section 6.1, the Term Loan Agents and the Term Loan Lenders may seek and obtain adequate protection in the form of an additional or replacement Lien on Common Collateral so long as (i) the ABL Agent and the ABL Lenders have been granted adequate protection in the form of an additional or replacement Lien on such Common Collateral, and (ii) any such Lien on ABL Priority Collateral (and on any Collateral granted as adequate protection for the ABL Agent and the ABL Lenders in respect of their interest in such ABL Priority Collateral) is subordinated to the Liens of the ABL Agent in such Common Collateral on the same basis as the other Liens of the Term Loan Agents on ABL Priority Collateral; and

(2) to seek or otherwise be granted any adequate protection payments with respect to its interests in the Common Collateral from Proceeds of ABL Priority Collateral;

(ii) Neither the ABL Agent nor any ABL Lender shall be entitled (and the ABL Agent and each ABL Lender shall be deemed to have hereby irrevocably, absolutely, and unconditionally waived any right):

(1) to seek or otherwise be granted any type of adequate protection in respect of Term Loan Priority Collateral except as may be consented to in writing by each Term Loan Agent in its sole and absolute discretion; provided, however, the ABL Agent and ABL Lenders may seek and obtain adequate protection in the form of an additional or replacement Lien on Common Collateral so long as (i) the Term Loan Agents and Term Loan Lenders have been granted adequate protection in the form of an additional or replacement lien on such Common Collateral, and (ii) any such Lien on Term Loan Priority Collateral (and on any Common Collateral granted as adequate protection for the Term Loan Agents and Term Loan Lenders in respect of their interest in such Term Loan Priority Collateral) is subordinated to the Liens of the Term Loan Agents in such Common Collateral on the same basis as the other Liens of the ABL Agent on Term Loan Priority Collateral; and

(2) to seek or otherwise be granted any adequate protection payments with respect to its interests in the Common Collateral from Proceeds of Term Loan Priority Collateral (except as may be consented to in writing by each Term Loan Agent in its sole and absolute discretion).

(d) With respect to (i) the ABL Priority Collateral, nothing herein shall limit the rights of the Term Loan Agents and the Term Loan Lenders from seeking adequate protection with respect to their rights in the Term Loan Priority Collateral in any Insolvency or Liquidation Proceeding (including adequate protection in the form of a cash payment, periodic cash payments or otherwise, other than from proceeds of ABL Priority Collateral) so long as such request is not otherwise inconsistent with this Agreement (and nothing herein shall be construed to prevent the ABL Agent from objecting to such request) and (ii) the Term Loan Priority Collateral, nothing herein shall limit the rights of the ABL Agent or the ABL Lenders from seeking adequate protection with respect to their rights in the ABL Priority Collateral in any Insolvency or Liquidation Proceeding (including adequate protection in the form of a cash payment, periodic cash payments or otherwise, other than from proceeds of Term Loan Priority Collateral) so long as such request is not otherwise inconsistent with this Agreement (and nothing herein shall be construed to prevent the Term Loan Agents from objecting to such request).

#### 6.4. Post-Petition Interest.

(a) Neither the Term Loan Agents nor any Term Loan Lender shall oppose or seek to challenge any claim by the ABL Agent or any ABL Lender for allowance in any Insolvency or Liquidation Proceeding of ABL Claims consisting of post-petition interest, fees or expenses to the extent of the value of the ABL Agent's or such ABL Lender's Lien on the ABL Priority Collateral, without regard to the existence of the Lien of the Term Loan Agent on behalf of the Term Loan Lenders on the ABL Priority Collateral. Neither the ABL Agent nor any ABL Lender shall oppose or seek to challenge any claim by any Term Loan Agent or any Term Loan Lender for allowance in any Insolvency or Liquidation Proceeding of Term Loan Claims consisting of post-petition interest, fees or expenses to the extent of the value of such Term Loan Agent's or such Term Loan Lender's Lien on the Term Loan Priority Collateral, without regard to the existence of the Lien of the ABL Agent on behalf of the ABL Lenders on the Term Loan Priority Collateral.

#### 6.5. Avoidance Issues.

(a) If any ABL Lender is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Company or any other Grantor (or any trustee, receiver or similar person therefor), because the payment of such amount was declared to be fraudulent or preferential in any respect or for any other reason, any amount paid in respect of the ABL Claims (an "**ABL Recovery**"), whether received as proceeds of security, enforcement of any right of setoff or otherwise, then as among the parties hereto the ABL Claims shall be deemed to be reinstated to the extent of such ABL Recovery and to be outstanding as if such payment had not occurred and from and after the date of such reinstatement the Discharge of ABL Claims shall be deemed not to have occurred for all purposes hereunder. If this Agreement shall have been terminated prior to such ABL Recovery,

this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto. This Section 6.5(a) shall survive termination of this Agreement.

(b) If any Term Loan Lender is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Company or any other Grantor (or any trustee, receiver or similar person therefor), because the payment of such amount was declared to be fraudulent or preferential in any respect or for any other reason, any amount paid in respect of the Term Loan Claims (an “**Term Loan Recovery**”), whether received as proceeds of security, enforcement of any right of setoff or otherwise, then as among the parties hereto the Term Loan Claims shall be deemed to be reinstated to the extent of such Term Loan Recovery and to be outstanding as if such payment had not occurred and from and after the date of such reinstatement the Discharge of Term Loan Claims shall be deemed not to have occurred for all purposes hereunder. If this Agreement shall have been terminated prior to such Term Loan Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto. This Section 6.5(b) shall survive termination of this Agreement.

6.6. Application. This Agreement, which the parties hereto expressly acknowledge is a “subordination agreement” under Section 510(a) of the Bankruptcy Code, shall be applicable prior to, during and after the commencement of any Insolvency or Liquidation Proceeding. All references herein to any Grantor shall apply to any trustee for such Person and such Person as debtor in possession. The relative rights as to the Common Collateral and proceeds thereof shall continue after the filing thereof on the same basis as prior to the date of the petition, subject to any court order approving the financing of, or use of cash collateral by, any Grantor.

6.7. Waivers. Until the Discharge of ABL Claims has occurred, each Term Loan Agent, on behalf of itself and each applicable Term Loan Lender waives any claim it may now or hereafter have arising out of the election by any ABL Lender of the application of Section 1111(b)(2) of the Bankruptcy Code with respect to any ABL Priority Collateral. Until the Discharge of Term Loan Claims has occurred, the ABL Agent, on behalf of itself and each applicable ABL Lender waives any claim it may now or hereafter have arising out of the election by any Term Loan Lender of the application of Section 1111(b)(2) of the Bankruptcy Code with respect to any Term Loan Priority Collateral.

6.8. Separate Grants of Liens. Each Term Loan Lender and each ABL Lender acknowledges and agrees that (i) the grants of Liens pursuant to the ABL Collateral Documents and the Term Loan Collateral Documents constitute two separate and distinct grants of Liens and (ii) because of, among other things, their differing rights in the Common Collateral, the Term Loan Claims are fundamentally different from the ABL Claims and must be separately classified in any plan of reorganization (or other plan of similar effect under any Bankruptcy Laws) proposed or adopted in an Insolvency or Liquidation Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the ABL Lenders and the Term Loan Lenders in respect of the Common Collateral constitute only one secured claim (rather than separate classes of secured claims with differing priority in the Common Collateral), then the ABL Lenders and the Term Loan Lenders hereby

acknowledge and agree that all distributions shall be made as if there were separate classes of ABL Claims, on the one hand, and the Term Loan Claims, on the other hand, against the Grantors, with the effect being that, to the extent that the aggregate value of the ABL Priority Collateral or Term Loan Priority Collateral is sufficient, the ABL Lenders or the Term Loan Lenders, respectively, shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest that is available from each pool of Collateral in which each of the ABL Lenders and the Term Loan Lenders, respectively, have a First Priority Claim, before any distribution is made in respect of the claims held by the other Lenders from such Collateral, with the other Lenders hereby acknowledging and agreeing to turn over to the respective other Lenders amounts otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the aggregate recoveries.

**Section 7. [Reserved]**

**Section 8. Reliance; Waivers; etc.**

8.1. Reliance. The consent by the First Priority Lenders to the execution and delivery of the Second Priority Documents to which the First Priority Lenders have consented and all loans and other extensions of credit made or deemed made on and after the date hereof by the First Priority Lenders to the Company or any Subsidiary shall be deemed to have been given and made in reliance upon this Agreement. The Second Priority Agent, on behalf of itself and each applicable Second Priority Lender, acknowledges that it and the applicable Second Priority Lenders are not entitled to rely on any credit decision or other decisions made by the First Priority Agent or any First Priority Lender in taking or not taking any action under the applicable Second Priority Document or this Agreement.

8.2. No Warranties or Liability. Except as set forth in Section 9.14, neither the First Priority Agent nor any First Priority Lender shall have been deemed to have made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the First Priority Documents, the ownership of any Common Collateral or the perfection or priority of any Liens thereon. The First Priority Lenders will be entitled to manage and supervise their respective loans and extensions of credit under the First Priority Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate, and the First Priority Lenders may manage their loans and extensions of credit without regard to any rights or interests that any Second Priority Agent or any of the Second Priority Lenders have in the Common Collateral or otherwise, except as otherwise provided in this Agreement. Neither the First Priority Agent nor any First Priority Lender shall have any duty to any Second Priority Agent or any Second Priority Lender to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Company or any Subsidiary (including the Second Priority Documents), regardless of any knowledge thereof that they may have or be charged with. Notwithstanding anything to the contrary herein contained, none of the parties hereto waives any claim that it may have against a Term Loan Agent or the ABL Agent, as applicable, on the grounds that any sale, transfer or other disposition by such Term Loan Agent or ABL Agent (as applicable) was not commercially reasonable to the extent required by the Uniform Commercial Code. Except as expressly set forth in this Agreement, the

First Priority Agent, the First Priority Lenders, the Second Priority Agent and the Second Priority Lenders have not otherwise made to each other, nor do they hereby make to each other, any warranties, express or implied, nor do they assume any liability to each other with respect to (a) the enforceability, validity, value or collectability of any of the First Priority Claims, the Second Priority Claims or any guarantee or security which may have been granted to any of them in connection therewith, (b) the Company's title to or right to transfer any of the Common Collateral or (c) any other matter except as expressly set forth in this Agreement.

8.3. **Obligations Unconditional.** All rights, interests, agreements and obligations of the First Priority Agent and the First Priority Lenders, and the Second Priority Agent and the Second Priority Lenders, respectively, hereunder shall remain in full force and effect irrespective of:

- (a) any lack of validity or enforceability of any First Priority Documents or any Second Priority Documents;
- (b) any change in the time, manner or place of payment of, or in any other terms of, all or any of the First Priority Claims or Second Priority Claims, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of the ABL Credit Agreement or any other ABL Loan Document, of the terms of the Term Loan Credit Agreement or any other Term Loan Document;
- (c) except as otherwise expressly set forth in this Agreement, any exchange of any security interest in any Common Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the First Priority Claims or Second Priority Claims or any guarantee thereof;
- (d) the commencement of any Insolvency or Liquidation Proceeding in respect of the Company or any other Grantor; or
- (e) any other circumstances that otherwise might constitute a defense available to, or a discharge of, the Company or any other Grantor in respect of the First Priority Claims, or of any Second Priority Agent or any Second Priority Lenders in respect of this Agreement.

## **Section 9. Miscellaneous.**

9.1. **Conflicts.** Subject to Section 9.18, in the event of any conflict between the provisions of this Agreement and the provisions of any ABL Loan Document, any Term Loan Document or the Junior Lien Intercreditor Agreement, the provisions of this Agreement shall govern. Solely as among the Term Loan Lenders, in the event of any conflict (x) between this Agreement and the Term Loan Pari Passu Intercreditor Agreement, such Term Loan Pari Passu Intercreditor Agreement shall govern and control and (y) solely as among Term Loan Lenders party to the same Term Loan Credit Agreement, in the event of any conflict between the provisions of such Term Loan Credit Agreement and this Agreement, such Term Loan Credit Agreement shall govern and control (including, without limitation, as to waterfalls, voting rights and intercreditor provisions contained therein as applicable among such Term Loan Lenders).

Solely as among ABL Lenders party to the same ABL Credit Agreement, in the event of any conflict between the provisions of such ABL Credit Agreement and this Agreement, such ABL Credit Agreement shall govern and control (including, without limitation, as to waterfalls, voting rights and intercreditor provisions contained therein as applicable among such ABL Lenders).

9.2. Term of this Agreement; Severability. (a) This is a continuing agreement of lien subordination and the First Priority Lenders may continue, at any time and without notice to the Second Priority Agent or any Second Priority Lender, to extend credit and other financial accommodations and lend monies to or for the benefit of the Company or any other Grantor constituting First Priority Claims in reliance hereon. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(b) This Agreement shall terminate and be of no further force and effect:

(i) with respect to the ABL Agent, the ABL Lenders and the ABL Claims, upon the Discharge of ABL Claims, subject to the rights of the ABL Lenders under Section 6.5; and

(ii) with respect to the Term Loan Agents, the Term Loan Lenders and the Term Loan Claims, upon the Discharge of Term Loan Claims, subject to the rights of the Term Loan Lenders under Section 6.5.

9.3. Amendments; Waivers. (a) No amendment, modification or waiver of any of the provisions of this Agreement by the ABL Agent or the Term Loan Agents shall be deemed to be made unless the same shall be in writing signed on behalf of the party making the same or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time. The Company and the other Grantors shall not have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent the Company or Grantor's rights, interests, liabilities or privileges are directly affected. The ABL Agent and the Term Loan Agent shall provide the Company with written notice of each proposed amendment, modification or waiver, with a true and correct copy thereof prior to effectiveness thereof

(b) Subject to compliance with Section 9.3(d) below, upon any Refinancing in full of the ABL Credit Agreement, the Term Loan Credit Agreement or any other Credit Agreement as then in effect, the Grantors will be permitted to designate the agreement which Refinances the ABL Credit Agreement, the Term Loan Credit Agreement or such other Credit Agreement as the replacement ABL Credit Agreement, Term Loan Credit Agreement or other Credit Agreement in which case such designated agreement shall thereafter constitute the ABL Credit Agreement, the Term Loan Credit Agreement or other Credit Agreement, as the case may be, for purposes hereof; provided that each predecessor ABL Credit Agreement, Term Loan Credit Agreement and/or other Credit Agreement shall continue to be bound by (and entitled to

the benefits of) the provisions hereof (including, without limitation, Section 6.5 hereof) as applied to such agreements, the related agreements and all obligations thereunder prior to the Refinancing thereof.

(c) Subject to compliance with the following clauses (d) through (g), notwithstanding anything in this Section 9.3 to the contrary, this Agreement may be amended from time to time at the request of the Company in accordance with clauses (d) through (g) below, at the Company's expense, and without the consent of the ABL Agent or Term Loan Agent to (i) add other parties holding Future Term Indebtedness to the extent such Indebtedness (and the Liens thereon) are not prohibited by the Term Loan Credit Agreement or the ABL Credit Agreement, (ii) establish that the Lien on the ABL Priority Collateral securing such Future Term Indebtedness shall be junior and subordinate in all respects to all Liens on the ABL Priority Collateral securing any ABL Claims and shall share in the benefits of the ABL Priority Collateral on a pari passu basis with all Liens on the ABL Priority Collateral securing any Term Loan Claims, and (iii) provide to the holders of such Future Term Indebtedness (or any agent or trustee thereof) the comparable rights and benefits (including any improved rights and benefits that have been consented to by the ABL Agent) as are provided to the holders of Term Loan Claims under this Agreement.

(d) Upon the execution and delivery of any ABL Credit Agreement or Term Loan Credit Agreement (as contemplated by preceding clause (b)) or any Credit Agreement with respect to any Future Term Indebtedness (as contemplated by preceding clause (c)):

(i) the Company shall deliver to the ABL Agent and each Term Loan Agent an officer's certificate stating that the applicable Grantors (x) in the case of preceding clause (b), intend to enter or have entered into a Refinancing in full of the ABL Credit Agreement, the Term Loan Credit Agreement or any other Credit Agreement, as the case may be, that such agreement shall thereafter (upon such Refinancing in full) constitute the ABL Credit Agreement, the Term Loan Credit Agreement or another Credit Agreement, as the case may be, and certifying that the issuance or incurrence of such Refinancing is permitted by the ABL Credit Agreement, the Term Loan Credit Agreement and each other Credit Agreement (exclusive of any such agreement which is then being Refinanced in full), or (y) in the case of preceding clause (c), intend to enter or have entered into a Credit Agreement with respect to such Future Term Indebtedness, and certifying that the issuance or incurrence of such Future Term Indebtedness and the Liens securing such Future Term Indebtedness are permitted by the ABL Credit Agreement, the Term Loan Credit Agreement and each other Credit Agreement. The ABL Agent or any Term Loan Agent shall be entitled to rely conclusively on the determination of the Company that such issuance and/or incurrence does not violate the provisions of the ABL Loan Documents or the Term Loan Documents; provided, however, that such determination will not affect whether or not the each applicable Grantor has complied with its undertakings in the ABL Loan Documents or the Term Loan Documents; and

(ii) (x) in the case of preceding clause (b), the Company shall provide written notice to the ABL Agent and each then existing Term Loan Agent of the new ABL Credit Agreement, Term Loan Credit Agreement or other Credit Agreement, as the case may be,

together with copies thereof, and identifying the new ABL Agent or Term Loan Agent (as applicable) thereunder (such new collateral agent, the “**New ABL Agent**” or “**New Term Loan Agent**,” as the case may be), and providing its notice information for purposes hereof, and the New ABL Agent or New Term Loan Agent, as the case may be, shall execute and deliver an Intercreditor Agreement Joinder or (y) in the case of an amendment to this Agreement with respect to Future Term Indebtedness as contemplated by preceding clause (c), the Term Loan Agent for such Future Term Indebtedness shall execute and deliver to the ABL Agent and each Term Loan Agent (1) an Intercreditor Agreement Joinder acknowledging that such holders shall be bound by the terms hereof to the extent applicable to Term Loan Lenders and (2) such intercreditor agreements (including a Term Loan Pari Passu Intercreditor Agreement) as are required under the terms of the Term Loan Documents or as may be required by the other Term Loan Agents.

(e) In each case above, each Term Loan Agent and the ABL Agent shall promptly enter into such documents and agreements (including amendments, restatements, amendments and restatements, supplements or other modifications to this Agreement) as the Company, any other Term Loan Agent or ABL Agent (but no other Lender) may reasonably request in order to provide to it the rights, remedies and powers and authorities contemplated hereby, in each case consistent in all respects with the terms of this Agreement.

(f) In the case of a designation of a new Term Loan Credit Agreement or other Credit Agreement with respect to Future Term Indebtedness pursuant to preceding clause (b) or (c), the ABL Agent and any other Term Loan Agent shall promptly (i) enter into such documents and agreements (including amendments or supplements to this Agreement) as the Company or such New Term Loan Agent shall reasonably request in order to provide to the New Term Loan Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement and (ii) in the case of clause (b) only, deliver to the New Term Loan Agent any Pledged Collateral (to the extent constituting Term Loan Priority Collateral) held by the ABL Agent or (subject to the terms of the Term Loan Pari Passu Intercreditor Agreement if then in effect) such other Term Loan Agent, together with any necessary endorsements (or otherwise allow the New Term Loan Agent to obtain control of such Pledged Collateral). The New Term Loan Agent shall agree to be bound by the terms of this Agreement. If the new Term Loan Claims under the new Term Loan Documents are secured by assets of the Grantors of the type constituting Term Loan Priority Collateral that do not also secure the ABL Claims, then the ABL Claims shall be secured at such time by a Lien on such assets to the same extent provided in the ABL Collateral Documents with respect to the other Term Loan Priority Collateral. If the new Term Loan Claims under the new Term Loan Documents are secured by assets of the Grantors of the type constituting ABL Priority Collateral that do not also secure the ABL Claims, then the ABL Claims shall be secured at such time by a Lien on such assets to the same extent provided in the ABL Collateral Documents with respect to the other ABL Priority Collateral.

(g) In the case of a designation of a new ABL Credit Agreement pursuant to preceding clause (b), each Term Loan Agent shall promptly (i) enter into such documents and agreements (including amendments or supplements to this Agreement) as the Company and/or

any Grantor or such New ABL Agent shall reasonably request in order to provide to the New ABL Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement and (ii) deliver to the New ABL Agent any Pledged Collateral (to the extent constituting ABL Priority Collateral) held by such Term Loan Agent, together with any necessary endorsements (or otherwise allow the New ABL Agent to obtain control of such Pledged Collateral). The New ABL Agent shall agree to be bound by the terms of this Agreement. If the new ABL Claims under the new ABL Loan Documents are secured by assets of the Grantors of the type constituting ABL Priority Collateral that do not also secure the Term Loan Claims, then each of the Term Loan Claims shall be secured at such time by a Lien on such assets to the same extent provided in the Term Loan Collateral Documents with respect to the other ABL Priority Collateral. If the new ABL Claims under the new ABL Loan Documents are secured by assets of the Grantors of the type constituting Term Loan Priority Collateral that do not also secure each of the Term Loan Claims, then each of the Term Loan Claims shall be secured at such time by a Lien on such assets to the same extent provided in the Term Loan Collateral Documents with respect to the other Term Loan Priority Collateral.

(h) Notwithstanding the provisions herein related to Future Term Indebtedness, this Agreement does not constitute (i) the intercreditor agreement required by Section 6.02(31) of the Initial Term Loan Credit Agreement (or by the definitions of the terms “Credit Agreement Refinancing Indebtedness”, “Incremental Equivalent Term Debt” and “Permitted Refinancing Indebtedness,” in each case as defined in the Initial Term Loan Credit Agreement) with respect to any Future Term Indebtedness that is to be secured on a pari passu basis with the Term Loan Claims contemplated by clause (i) of the definition of “Term Loan Claims,” or (ii) a Term Loan Pari Passu Intercreditor Agreement. In connection with the incurrence of any Future Term Loan Indebtedness, the Term Loan Pari Passu Intercreditor Agreement required in connection therewith by the terms of the applicable Term Loan Documents shall be executed and delivered by the applicable Term Loan Agents concurrently with the delivery of an Intercreditor Agreement Joinder for such Future Term Indebtedness pursuant to Section 9.3(d)(ii)(y).

(i) In connection with the incurrence of any Future Junior Lien Indebtedness, (i) the Company shall designate the agreement under which such Future Junior Lien Indebtedness is incurred to the ABL Agent and the Term Loan Agents and (ii) the Junior Lien Intercreditor Agreement (or a joinder thereto, if such agreement is already in effect) required in connection therewith by the terms of the ABL Loan Documents and Term Loan Documents shall be executed and delivered by the ABL Agent, the Term Loan Agents, and any representative or agent in respect of such Future Junior Lien Indebtedness (and agreed to and acknowledged by the Company) concurrently with the incurrence of such Future Junior Lien Indebtedness.

9.4. Information Concerning Financial Condition of the Company and the Subsidiaries. Neither the ABL Agent nor any ABL Lender shall have any obligation to any Term Loan Agent or any Term Loan Lender to keep any Term Loan Agent or any Term Loan Lender informed of, and each Term Loan Agent and the Term Loan Lenders shall not be entitled to rely on, the ABL Agent or the ABL Lenders with respect to, (a) the financial condition of the Company and the Subsidiaries and all endorsers and/or guarantors of the ABL Claims or the Term Loan Claims and (b) all other circumstances bearing upon the risk of nonpayment of the

ABL Claims or the Term Loan Claims. No Term Loan Agent or any Term Loan Lender shall have any obligation to the ABL Agent or any ABL Lender to keep the ABL Agent or any ABL Lender informed of, and the ABL Agent and the ABL Lenders shall not be entitled to rely on, any Term Loan Agent or the Term Loan Lenders with respect to, (a) the financial condition of the Company and the Subsidiaries and all endorsers and/or guarantors of the ABL Claims or the Term Loan Claims and (b) all other circumstances bearing upon the risk of nonpayment of the ABL Claims or the Term Loan Claims. The ABL Agent, the ABL Lenders, the Term Loan Agents and the Term Loan Lenders shall have no duty to advise any other party hereunder of information known to it or them regarding such condition or any such circumstances or otherwise. In the event that the ABL Agent, any ABL Lender, any Term Loan Agent or any Term Loan Lender, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to any other party (and the Company acknowledges that any such party may do so), it or they shall be under no obligation (w) to make, and the ABL Agent, the ABL Lenders, the Term Loan Agents and the Term Loan Lenders shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (x) to provide any additional information or to provide any such information on any subsequent occasion, (y) to undertake any investigation or (z) to disclose any information that, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential. The Grantors agree that any information provided to the ABL Agent, the Term Loan Agents, any other ABL Lender or any other Term Loan Lender may be shared by such person with any of the other Lenders notwithstanding a request or demand by such Grantor that such information be kept confidential; provided that such information shall otherwise be subject to the respective confidentiality provisions in the ABL Credit Agreement and the Term Loan Credit Agreement, as applicable.

9.5. Subrogation. Each Term Loan Agent, for and on behalf of itself and the applicable Term Loan Lenders, agrees that no payment to the ABL Agent or any ABL Lender pursuant to the provisions of this Agreement shall entitle such Term Loan Agent or any Term Loan Lender to exercise any rights of subrogation in respect thereof until the Discharge of ABL Claims shall have occurred. Following the Discharge of ABL Claims, the ABL Agent agrees to execute such documents, agreements, and instruments as any Term Loan Agent or any Term Loan Lender may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the ABL Claims resulting from payments to the ABL Agent by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by the ABL Agent are paid by such Person upon request for payment thereof. The ABL Agent, for and on behalf of itself and the applicable ABL Lenders, agrees that no payment to any Term Loan Agent or any Term Loan Lender pursuant to the provisions of this Agreement shall entitle the ABL Agent or any ABL Lender to exercise any rights of subrogation in respect thereof until the Discharge of Term Loan Claims shall have occurred. Following the Discharge of Term Loan Claims, each Term Loan Agent agrees to execute such documents, agreements, and instruments as the ABL Agent or any ABL Lender may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the Term Loan Claims resulting from payments to the applicable Term Loan Agent by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by such Term Loan Agent are paid by such Person upon request for payment thereof.

9.6. Application of Payments.

(a) Except as otherwise provided herein, all payments received by the ABL Lenders may be applied, reversed and reapplied, in whole or in part, to such part of the ABL Claims as the ABL Lenders, in their sole discretion, deem appropriate, consistent with the terms of the ABL Loan Documents. Except as otherwise provided herein, each Term Loan Agent, on behalf of itself and each applicable Term Loan Lender, assents to any such extension or postponement of the time of payment of the ABL Claims or any part thereof and to any other indulgence with respect thereto, to any substitution, exchange or release of any security that may at any time secure any part of the ABL Claims and to the addition or release of any other Person primarily or secondarily liable therefor.

(b) Except as otherwise provided herein, all payments received by the Term Loan Lenders may be applied, reversed and reapplied, in whole or in part, to such part of the Term Loan Claims as the Term Loan Lenders, in their sole discretion, deem appropriate, consistent with the terms of the Term Loan Documents. Except as otherwise provided herein, the ABL Agent, on behalf of itself and each applicable ABL Lender, assents to any such extension or postponement of the time of payment of the Term Loan Claims or any part thereof and to any other indulgence with respect thereto, to any substitution, exchange or release of any security that may at any time secure any part of the Term Loan Claims and to the addition or release of any other Person primarily or secondarily liable therefor.

9.7. Consent to Jurisdiction; Waivers. The parties hereto consent to the exclusive jurisdiction of any state or federal court located in New York, New York (the “**New York Courts**”), and consent that all service of process may be made by registered mail directed to such party as provided in Section 9.8 for such party. Service so made shall be deemed to be completed three days after the same shall be posted as aforesaid. The parties hereto waive any objection to any action instituted hereunder in any such court based on forum non conveniens, and any objection to the venue of any action instituted hereunder in any such court. Each of the parties hereto waives any right it may have to trial by jury in respect of any litigation based on, or arising out of, under or in connection with this Agreement, or any course of conduct, course of dealing, verbal or written statement or action of any party hereto in connection with the subject matter hereof.

9.8. Notices. All notices to the ABL Lenders and the Term Loan Lenders permitted or required under this Agreement may be sent to the ABL Agent or the applicable Term Loan Agent as provided in the ABL Credit Agreement or the Term Loan Credit Agreement. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied, electronically mailed or sent by courier service or U.S. mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a telecopy or electronic mail or upon receipt via U.S. mail (registered or certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party’s name on the signature pages hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties. Each First Priority Agent hereby agrees to promptly notify each Second Priority Agent upon payment in full in cash or immediately available funds of all Indebtedness under the applicable First

Priority Documents (except for contingent indemnities and cost and reimbursement obligations to the extent no claim therefor has been made).

9.9. Further Assurances. The ABL Agent, on behalf of itself and each applicable ABL Lender, and each Term Loan Agent, on behalf of itself and each applicable Term Loan Lender, agrees that each of them shall take such further action and shall execute and deliver to the ABL Agent, the ABL Lenders, each Term Loan Agent and the Term Loan Lenders such additional documents and instruments (in recordable form, if requested) as the ABL Agent, the ABL Lenders, each Term Loan Agent or the Term Loan Lenders may reasonably request, at the expense of the Company, to effectuate the terms of and the Lien priorities contemplated by this Agreement.

9.10. Governing Law. This Agreement has been delivered and accepted in and shall be deemed to have been made in New York, New York and shall be interpreted, and the rights and liabilities of the parties bound hereby determined, in accordance with the laws of the State of New York.

9.11. Specific Performance. Each First Priority Agent may demand specific performance of this Agreement. Each Second Priority Agent, on behalf of itself and each applicable Second Priority Lender, hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense that might be asserted to bar the remedy of specific performance in any action that may be brought by the First Priority Agent.

9.12. Section Titles. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of this Agreement.

9.13. Counterparts. This Agreement may be executed in one or more counterparts, including by means of facsimile or other electronic transmission, each of which shall be an original and all of which shall together constitute one and the same document.

9.14. Authorization. By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement. The ABL Agent represents and warrants that this Agreement is binding upon the applicable ABL Lenders. Each Term Loan Agent represents and warrants that this Agreement is binding upon the applicable Term Loan Lenders.

9.15. No Third Party Beneficiaries; Successors and Assigns. This Agreement and the rights and benefits hereof shall inure to the benefit of, and be binding upon, the ABL Agent, Term Loan Agents, ABL Lenders and Term Loan Lenders and their respective successors and assigns and shall inure to the benefit of each of, and be binding upon, the holders of ABL Claims and Term Loan Claims. Other than as set forth in Section 9.3, none of the Company, any other Grantor or any other creditor thereof shall have any rights hereunder and neither the Company nor any Grantor may rely on the terms hereof. No other Person shall have or be entitled to assert rights or benefits hereunder. Without limiting the generality of the foregoing, any person to whom a Lender assigns or otherwise transfers all or any portion of the ABL Claims or the Term Loan Claims, as applicable, in accordance with the applicable ABL Loan

Documents or Term Loan Documents, as the case may be, shall become vested with all the rights and obligations in respect thereof granted to such Lenders, without any further consent or action of the other Lenders.

9.16. Effectiveness. This Agreement shall become effective when executed and delivered by the parties hereto. This Agreement shall be effective both before and after the commencement of any Insolvency or Liquidation Proceeding. All references to the Company or any other Grantor shall include the Company or any other Grantor as debtor and debtor-in-possession and any receiver or trustee for the Company or any other Grantor (as the case may be) in any Insolvency or Liquidation Proceeding.

9.17. ABL Agent and Term Loan Agents. It is understood and agreed that (i) Citibank, N.A., is entering into this Agreement in its capacity as administrative agent under the ABL Credit Agreement and the provisions of Article IX of the ABL Credit Agreement applicable to Citibank, N.A., as administrative agent thereunder shall also apply to Citibank, N.A., as the ABL Agent hereunder and (ii) Citibank, N.A., is entering into this Agreement in its capacity as administrative agent under the Term Loan Credit Agreement and the provisions of Article IX of the Term Loan Credit Agreement applicable to Citibank, N.A., as administrative agent thereunder shall also apply to Citibank, N.A., as a Term Loan Agent hereunder.

9.18. Relationship with Other Intercreditor Agreements. (a) The purpose of this Agreement is to define the relative rights and priorities between the ABL Lenders as one class and the Term Loan Lenders as another class.

(b) Solely as among the Term Loan Lenders holding Term Loan Claims, the Term Loan Pari Passu Intercreditor Agreement shall define the relative rights and priorities of such Term Loan Lenders (as amongst each other) with respect to the Collateral; provided that as among any Term Loan Lenders party to the same Term Loan Credit Agreement, such Term Loan Credit Agreement shall define the relative rights and priorities of such Term Loan Lenders (as among each other) with respect to the Collateral. As among the Term Loan Lenders, nothing herein (including, without limitation, Section 6.8) is intended to alter their relative rights and obligations, which shall continue to be governed by the Term Loan Pari Passu Intercreditor Agreement (if then in effect), or to require that such rights and obligations be treated as a single class in any Insolvency or Liquidation Proceeding.

9.19. Relative Rights. Notwithstanding anything in this Agreement to the contrary (except to the extent contemplated by Section 5.3(d) or (e)), nothing in this Agreement is intended to or will (a) amend, waive or otherwise modify the provisions of the ABL Credit Agreement, the Term Loan Credit Agreement or any other ABL Loan Document or Term Loan Document or permit Holdings, the Company or any other Subsidiary to take any action, or fail to take any action, to the extent such action or failure would otherwise constitute a breach of, or default under, the ABL Credit Agreement or any other ABL Loan Documents, the Term Loan Credit Agreement or any other Term Loan Document, (b) change the relative priorities of the ABL Claims or the Liens granted under the ABL Loan Documents on the Common Collateral (or any other assets) as among the ABL Lenders or change the relative priorities of the Term Loan Claims or the Liens granted under the Term Loan Documents on the Common Collateral (or any other assets) as among the Term Loan Lenders, (c) otherwise change the relative rights of

the ABL Lenders in respect of the Common Collateral as among such ABL Lenders or the relative rights of the Term Loan Lenders in respect of the Common Collateral as among such Term Loan Lenders or (d) obligate Holdings, the Company or any Subsidiary to take any action, or fail to take any action, that would otherwise constitute a breach of, or default under, the ABL Credit Agreement or any other ABL Loan Document or the Term Loan Credit Agreement or any other Term Loan Document. None of Holdings, the Company or any Subsidiary shall have any rights hereunder except as expressly set forth herein (including as set forth in Section 9.3).

9.20. Supplements. Upon the execution by any Subsidiary of the Company of an Intercreditor Agreement Joinder, such Subsidiary shall be a party to this Agreement and shall be bound by the provisions hereof to the same extent as the Company and each other Grantor are so bound.

9.21. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. For the avoidance of doubt, this Agreement is a Loan Document under the Credit Agreements, and Section 10.25 of the ABL Credit Agreement and Section 10.24 of the Term Loan Credit Agreement apply to this Agreement and the provisions of such Sections are incorporated by reference and deemed part of this Agreement as if set forth herein.

[remainder of page intentionally left blank]

CITIBANK, N.A., as the Term Loan Agent

By: /s/ Caesar Wyszomirski

Name: Caesar Wyszomirski  
Title: Director

Address:

Citibank, N.A. as Administrative Agent  
Attention: Loan Administration  
1615 Brett Road, Building III,  
New Castle DE 19720,  
Phone: (302) 894-6010  
Fax: (212) 994-0961  
e-mail address: global.loans.support@citi.com

CITIBANK, N.A., as the ABL Agent

By: /s/ K. Kelly Gunness

Name: K. Kelly Gunness  
Title: Vice President and Director

Address:

Citibank, N.A. as Administrative Agent  
Attention: Loan Administration  
1615 Brett Road, Building III,  
New Castle DE 19720,  
Phone: (302) 894-6010  
Fax: (212) 994-0961  
e-mail address: global.loans.support@citi.com

*[Signature Page to Intercreditor Agreement]*

Acknowledged and agreed:

PET ACQUISITION MERGER SUB LLC (which on the Closing Date shall be merged with and into PETCO HOLDINGS, INC., with PETCO HOLDINGS, INC., surviving such merger as Holdings)

By: /s/ Cameron Breitner  
Name: Cameron Breitner  
Title: President

The undersigned hereby confirms that, pursuant to Section 10.22 of the Term Loan Credit Agreement and Section 10.23 of the ABL Credit Agreement, it hereby assumes all of the rights and obligations of PET ACQUISITION MERGER SUB LLC and hereby acknowledges and agrees to this Agreement.

PETCO ANIMAL SUPPLIES, INC.

By: \_\_\_\_\_  
Name: Michael Nuzzo  
Title: Chief Financial Officer

The undersigned hereby confirms that, as a result of its merger with PET ACQUISITION MERGER SUB LLC on the Closing Date, it hereby assumes all of the rights and obligations of PET ACQUISITION MERGER SUB LLC under this Agreement (in furtherance of, and not in lieu of, any assumption or deemed assumption as a matter of law) and hereby acknowledges and agrees to this Agreement.

PETCO HOLDINGS, INC.

By: /s/ Cameron Breitner  
Name: Cameron Breitner  
Title: President

*[Signature Page to Intercreditor Agreement]*

Acknowledged and agreed:

PET ACQUISITION MERGER SUB LLC (which on the Closing Date shall be merged with and into PETCO HOLDINGS, INC., with PETCO HOLDINGS, INC., surviving such merger as Holdings)

By: \_\_\_\_\_  
Name: Cameron Breitner  
Title: President

The undersigned hereby confirms that, pursuant to Section 10.22 of the Term Loan Credit Agreement and Section 10.23 of the ABL Credit Agreement, it hereby assumes all of the rights and obligations of PET ACQUISITION MERGER SUB LLC and hereby acknowledges and agrees to this Agreement.

PETCO ANIMAL SUPPLIES, INC.

By: /s/ Michael Nuzzo  
Name: Michael Nuzzo  
Title: Chief Financial Officer

The undersigned hereby confirms that, as a result of its merger with PET ACQUISITION MERGER SUB LLC on the Closing Date, it hereby assumes all of the rights and obligations of PET ACQUISITION MERGER SUB LLC under this Agreement (in furtherance of, and not in lieu of, any assumption or deemed assumption as a matter of law) and hereby acknowledges and agrees to this Agreement.

PETCO HOLDINGS, INC.

By: \_\_\_\_\_  
Name: Cameron Breitner  
Title: President

*[Signature Page to Intercreditor Agreement]*

PETCO WELLNESS, LLC

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

PETCO ANIMAL SUPPLIES STORES, INC.

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

INTERNATIONAL PET SUPPLIES AND DISTRIBUTION, INC.

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

STORES SHIPPING SERVICES, LLC

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

PETCO SUPPORT SERVICES, LLC

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

PETCO PUERTO RJCO, LLC

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

*[Signature Page to Intercreditor Agreement]*

E-PET SERVICES, LLC

by PETCO ANIMAL SUPPLIES STORES, INC., as its sole  
member

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: Authorized Signatory

PETCO ASIA, LLC

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

PETCO REAL ESTATE HOLDINGS I LLC

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

PETCO REAL ESTATE HOLDINGS II LLC

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

PETCO REAL ESTATE HOLDINGS III LLC

By: /s/ Patricia A. Ward  
Name: Patricia A. Ward  
Title: President

*[Signature Page to Intercreditor Agreement]*

**FIRST AMENDMENT AGREEMENT**

**FIRST AMENDMENT AGREEMENT** dated as of June 17, 2016 (this "First Amendment") to the Term Loan Credit Agreement dated as of January 26, 2016 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time and immediately prior to the First Amendment Effective Date (as defined below), the "Credit Agreement"), among, inter alios, Petco Holdings, Inc. LLC (f/k/a Petco Holdings, Inc.), a Delaware limited liability company, ("Holdings"), Petco Animal Supplies, Inc., a Delaware corporation (the "Borrower"), the Lenders from time to time party hereto and Citibank, N.A., as administrative agent (the "Administrative Agent") and as collateral agent.

A. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Amended Credit Agreement (as defined below). Citi (as defined below), Barclays Bank PLC ("Barclays"), Royal Bank of Canada and RBC Capital Markets<sup>1</sup> ("RBC"), Credit Suisse Securities (USA) LLC ("CS Securities"), Nomura Securities International, Inc. (together with any of its affiliates as may be appropriate to consummate the transactions contemplated hereby, "Nomura") and Macquarie Capital (USA) Inc. and ("Macquarie Capital") are acting as joint bookrunners and joint lead arrangers (in such capacities, the "Repricing Arrangers") in connection with this First Amendment. For purposes of this First Amendment, "Citi" shall mean Citigroup Global Markets Inc., Citibank, N.A., Citicorp USA, Inc., Citicorp North America, Inc. and/or any of their affiliates as Citi shall determine to be appropriate to provide the services contemplated herein.

B. The Borrower has requested that, in accordance with Section 2.19 of the Credit Agreement, the Credit Agreement be amended to, among other things: (a) refinance in full all Term Loans outstanding immediately prior to the effectiveness of this First Amendment, including the Tranche B-1 Term Loans and Tranche B-2 Term Loans (as such terms are defined in the Credit Agreement) (collectively, the "Existing Term Loans") with the Exchanged Term Loans (as defined below) and the Additional Term Loans (as defined below) (the Exchanged Term Loans and the Additional Term Loans, collectively, the "First Amendment Term Loans"), and which First Amendment Term Loans shall have the terms as set forth in the Amended Credit Agreement and (b) make certain other changes as more fully set forth in the Amended Credit Agreement.

C. Each Lender that executes and delivers a consent to this First Amendment in the form of the Lender Consent and New Commitment attached to the Election Notice Memorandum posted on or about June 7, 2016 (the "Lender New Commitment") will be deemed (i) to have irrevocably agreed and consented to the terms of this First Amendment and the Amended Credit Agreement and (ii) if so elected by such Lender (an "Exchanging Term Lender"), (A) to have irrevocably agreed to exchange (as defined below) the Allocated Amount (as defined in the Cashless Settlement of Existing Term Loans letter dated June 17, 2016 by and among the Borrower, Citigroup Global Markets, Inc. and the Administrative Agent) of its Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable (all Existing Term Loans so exchanged, the "Exchanged Term Loans") on the First Amendment Effective Date for First Amendment Terms Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement, in an equal principal amount specified therein and (B) upon the First Amendment Effective Date, to have exchanged (by cashless or assignment settlement, as further described in the Lender New Commitment) the Allocated Amount of its Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable with First Amendment Terms

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<sup>1</sup> RBC Capital Markets is a brand name for the capital markets activities of Royal Bank of Canada and its affiliates.

Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement, in an equal principal amount specified therein.

D. Each Person that executes and delivers a signature page to this First Amendment in the capacity of an “Additional Lender” (each, an “Additional Lender” and all Additional Lenders, together with all Exchanging Term Lenders, collectively, the “First Amendment Lenders”) will be deemed to have irrevocably (i) agreed to the terms of this First Amendment and the Amended Credit Agreement, (ii) committed to make the First Amendment Term Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement, to the Borrower on the First Amendment Effective Date (the “Additional Term Loans”) in the amount notified to such Additional Lender by the Administrative Agent (but in no event greater than the amount such Additional Lender committed to make as Additional Term Loans) and (iii) upon the First Amendment Effective Date, made such Additional Term Loans to the Borrower.

E. By executing and delivering a signature page to this First Amendment, the Administrative Agent will be deemed upon the First Amendment Effective Date to have irrevocably agreed to the terms of this First Amendment and the Amended Credit Agreement.

F. The aggregate proceeds of the Additional Term Loans will be used to refinance in full all Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable, other than Exchanged Term Loans, on the terms and subject to the conditions set forth herein, including via the assignment by the Lenders holding such Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable (other than Exchanged Term Loans) who do not remain Lenders under the Amended Credit Agreement on the First Amendment Effective Date to the Additional Lenders as of the First Amendment Effective Date of such Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable (other than Exchanged Term Loans), which shall thereafter be continued as and be deemed to be Term Loans under the Amended Credit Agreement.

G. To accomplish the foregoing (a) the Borrower, the Administrative Agent (on behalf of itself and on behalf of Lenders that have executed Lender New Commitments constituting the Exchanging Term Lenders) and the Additional Lenders whose signatures appear below, are willing to amend the Credit Agreement as set forth below (the Credit Agreement as amended by this First Amendment hereby, the “Amended Credit Agreement”), (b) the Exchanging Term Lenders are willing to exchange the Allocated Amount of their Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable with the First Amendment Term Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement and (c) the Additional Lenders are willing to refinance in full all Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable, other than Exchanged Term Loans, with Additional Term Loans on the First Amendment Effective Date, in each case, on the terms and subject to the conditions set forth herein and in the Amended Credit Agreement.

H. The amendments to the Credit Agreement set forth below are each subject to the satisfaction of the conditions precedent to effectiveness referred to herein and shall become effective as provided herein.

Accordingly, in consideration of the mutual agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Amendments to Credit Agreement. The Borrower, the Administrative Agent (on behalf of itself and on behalf of Lenders that have executed Lender New Commitments constituting the Exchanging Term Lenders) and the Additional Lenders whose signatures appear below agree that on the First Amendment Effective Date, the Credit Agreement shall be 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 Amended Credit Agreement attached hereto as Exhibit A.

SECTION 2. Lenders; First Amendment Term Loans; Administrative Agent Authorization.

(a) Lenders. Subject to the terms and conditions set forth herein and in the Credit Agreement, (i) each Exchanging Term Lender (by executing a Lender New Commitment) irrevocably (A) agrees to the terms of this First Amendment and the Amended Credit Agreement, (B) agrees to exchange (as set forth on its Lender New Commitment) the Allocated Amount of its Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable with the First Amendment Term Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement, in an equal principal amount specified therein and (C) upon the First Amendment Effective Date, shall exchange (as set forth on its Lender New Commitment) the Allocated Amount of its Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable with the First Amendment Terms Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement, in an equal principal amount as specified therein and (ii) each Additional Lender irrevocably (A) agrees to the terms of this First Amendment and the Amended Credit Agreement, (B) commits to make Additional Term Loans in the amount notified to such Additional Lender by the Administrative Agent (but in no event greater than the amount such Additional Lender committed to make as Additional Term Loans) and (C) upon the First Amendment Effective Date, shall refinance in full all Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable, other than Exchanged Term Loans, with such Additional Terms Loans. Each Additional Lender further acknowledges and agrees that, as of the First Amendment Effective Date, it shall be a “Lender”, if applicable, a “Tranche B-1 Lender” and, if applicable, a “Tranche B-2 Lender” under, and for all purposes of, the Amended Credit Agreement and the other Loan Documents, and shall be subject to and bound by the terms thereof, and shall perform all the obligations of and shall have all rights of a Lender, if applicable, a Tranche B-1 Lender and, if applicable, a “Tranche B-2 Lender” thereunder. For purposes of this First Amendment, “exchange” shall mean convert and continue. For the avoidance of doubt, notwithstanding anything herein to the contrary, it is acknowledged and agreed that the Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable, of the Exchanging Term Lenders will be converted into and continued as First Amendment Term Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement, and such Exchanged Term Loans shall be on the same terms (other than to the extent expressly provided in this First Amendment) under the Loan Documents as such Existing Term Loans.

(b) First Amendment Term Loans.

(i) On the First Amendment Effective Date, the proceeds of all Additional Term Loans, if any, shall be used to refinance in full all Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable, other than Exchanged Term Loans, on the terms and subject to the conditions set forth herein, including via the assignment by the Lenders holding such Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable (other than Exchanged Term Loans) who do not remain Lenders

under the Amended Credit Agreement on the First Amendment Effective Date to the Additional Lenders as of the First Amendment Effective Date of such Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable (other than Exchanged Term Loans), which shall thereafter be continued as and be deemed to be Term Loans under the Amended Credit Agreement. The commitments of the Additional Lenders and the undertakings of the Exchanging Term Lenders are several and no such First Amendment Term Lender will be responsible for any other First Amendment Term Lender's failure to make, acquire or exchange the First Amendment Term Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement. Notwithstanding anything herein or in the Amended Credit Agreement to the contrary, the aggregate principal amount of the First Amendment Term Loans consisting of Tranche B- 1 Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement, will not exceed the aggregate principal amount of the Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B- 2 Term Loans, as applicable. Each of the parties hereto acknowledges and agrees that the terms of this First Amendment do not constitute a novation but, rather, an amendment of the terms of a pre-existing Indebtedness and related agreement, as evidenced by this First Amendment and the Amended Credit Agreement.

(ii) Each Exchanging Term Lender hereby waives any break funding payments or expenses due and payable to it by the Borrower pursuant to Section 2.13 of the Credit Agreement with respect to the exchange of its Exchanged Term Loans with the First Amendment Term Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement, on a date other than the last day of the Interest Period relating to such Exchanged Term Loans.

(iii) The First Amendment Term Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement, shall initially be Eurocurrency Borrowing with an Interest Period commencing on the First Amendment Effective Date and ending on the date specified by the Borrower in the applicable Borrowing Request delivered by it pursuant to Section 2.02 of the Amended Credit Agreement. With respect to such Borrowing Request, each First Amendment Term Lender and the Administrative Agent hereby waives the provisions of Section 2.02 of the Credit Agreement and instead requires such Borrowing Request to be delivered not later than 11 a.m., New York City time, on the Business Day before the date of the Borrowing of the First Amendment Term Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement.

(iv) The Borrower and the Administrative Agent hereby consent to any assignments made by Citi or any affiliate thereof to the Persons included in the list of allocations separately provided to the Borrower and the Administrative Agent (or any Approved Funds or Affiliate of such Persons) in connection with the primary syndication of the First Amendment Term Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement.

(c) Administrative Agent Authorization. The Borrower, the Exchanging Term Lenders who executed and delivered a Lender New Commitment and the Additional Lenders whose signatures appear below authorize the Administrative Agent to (i) determine all amounts, percentages and other information with respect to the Commitments and Existing Term Loans of each Lender, which amounts, percentages and other information may be determined only upon receipt by the Administrative Agent of

the Lender New Commitments and the signature pages of all Lenders whose signatures appear below and (ii) enter and complete all such amounts, percentages and other information in the Amended Credit Agreement, as appropriate. The Administrative Agent's determination and entry and completion shall be conclusive and shall be conclusive evidence of the existence, amounts, percentages and other information with respect to the obligations of the Borrower under the Amended Credit Agreement, in each case, absent clearly demonstrable error.

SECTION 3. Representations and Warranties. To induce the other parties hereto to enter into this First Amendment, the Loan Parties represent and warrant to each of the Lenders, and the Administrative Agent that, as of the First Amendment Effective Date:

- (a) this First Amendment has been duly authorized by all corporate, stockholder, partnership, limited liability company or other applicable action required to be taken by the Loan Parties;
- (b) this First Amendment has been duly executed and delivered by the Loan Parties and constitutes a legal, valid and binding obligation of such Loan Party in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally; (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); (iii) implied covenants of good faith and fair dealing; and (iv) any foreign laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.
- (c) each of the Loan Parties has the power and authority to execute, deliver and perform its obligations under the First Amendment Agreement and the Amended Credit Agreement, as applicable, 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 4. Conditions to Effectiveness of this First Amendment.

- (a) This First Amendment shall become effective on the date (the "First Amendment Effective Date") on which:
  - (i) The Administrative Agent shall have received duly executed and delivered counterparts of this First Amendment that, when taken together, bear the signatures of the Borrower, the Additional Lenders and the Administrative Agent (on its behalf, as well as on behalf of the Exchanging Term Lenders) and all Guarantors, and the aggregate principal amount of the Exchanged Term Loans and the Additional Term Loans shall be equal to the aggregate principal amount of the Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable outstanding on the First Amendment Effective Date immediately prior to the effectiveness of this First Amendment.
  - (ii) On or prior to the First Amendment Effective Date, the Administrative Agent shall have received a Borrowing Request.
  - (iii) Payment of all fees required to be paid pursuant to the Engagement Letter dated as of June 6, 2016 and any related fee letters (the "Fee Letters") described therein and, to the extent invoiced, reimbursement or other payment of all out of pocket expenses required to be reimbursed or paid by the Borrower hereunder or under any other Loan Document or other agreement with the Borrower relating to the transaction contemplated hereby.

(iv) The Administrative Agent shall have received a certificate of a Responsible Officer of the Loan Parties dated the First Amendment Effective 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 First Amendment Effective 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 First Amendment Effective 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 the Borrower authorizing the execution and delivery of the First Amendment Agreement to which it is a party or any other document delivered in connection herewith on the First Amendment Effective 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 First Amendment Agreement (together with a certificate of another officer as to the incumbency and specimen signature of the Responsible Officer executing the certificate pursuant hereto).

(v) The Administrative Agent shall have received a customary legal opinion of Gibson, Dunn & Crutcher LLP, special New York and California counsel to the Loan Parties.

(vi) (A) Each of the representations and warranties set forth in Section 3 shall be true and correct in all material respects on and as of the First Amendment Effective Date, with the same effect as though made on and as of such date, except to the extent 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 and as of such earlier date, and (B) no Default or Event of Default has occurred and is continuing both before and immediately after giving effect to the transactions contemplated hereby.

(vii) The aggregate proceeds of the Additional Term Loans will be used to refinance in full all Existing Term Loans, consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable, other than Exchanged Term Loans, on the terms and subject to the conditions set forth herein, including via the assignment by the Lenders holding such Existing Term Loans (other than Exchanged Term Loans) who do not remain Lenders under the Amended Credit Agreement on the First Amendment Effective Date to the Additional Term Lenders as of the First Amendment Effective Date of such Existing Term Loans (other than Exchanged Term Loans), which shall thereafter be continued as and be deemed to be Term Loans under the Amended Credit Agreement.

(viii) The Borrower shall have, concurrently with the exchange of Exchanged Term Loans with the First Amendment Term Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement and the making of the Additional Term Loans, if any, (A) paid all accrued and unpaid interest and other amounts on the aggregate principal amount of the Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable and (B) paid to all Lenders holding Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable immediately prior to the First Amendment Effective Date that are not party to this First Amendment, if any, all indemnities, cost reimbursements and other Obligations (as defined below), if any, then due and owing to such Lenders under the Loan Documents (prior to the effectiveness of this First Amendment) and of which the Borrower has been notified.

(ix) In connection with the foregoing the Borrower will have concurrently paid for the ratable account of each of the Lenders under the Credit Agreement, a payment of 1.00% in the aggregate principal amount of the Existing Term Loans, which are hereby being refinanced, due under Section 2.21 under the Credit Agreement.

#### SECTION 5. Effect of Amended Credit Agreement.

(a) Except as expressly set forth herein or in the Amended Credit Agreement, this First Amendment and the Amended Credit Agreement shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders or the Administrative Agent under the Credit Agreement, the Amended Credit Agreement or any other Loan Document, and 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 the Amended Credit Agreement or any other provision of the Credit Agreement, the Amended Credit Agreement or of any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. Nothing herein shall be deemed to entitle Holdings, the Borrower, any Subsidiary Loan Party or any other Person to a consent to, or a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement, the Amended Credit Agreement or any other Loan Document in similar or different circumstances.

(b) On the First Amendment Effective Date, the Credit Agreement shall be amended as set forth in Section 1 above. The parties hereto acknowledge and agree that (i) this First Amendment, the Amended Credit Agreement, any other Loan Document or other document or instrument executed and delivered in connection herewith do not constitute a novation, or termination of the obligations of the Borrower, Holdings or the Subsidiary Loan Parties under the Loan Documents, including, without limitation, the Credit Agreement and the Collateral Agreement, as in effect prior to the First Amendment Effective Date (collectively, the "Obligations") and (ii) such Obligations are in all respects continuing (as amended by this First Amendment) with only the terms thereof being modified to the extent provided in this First Amendment, and the Borrower, Holdings and each of the Subsidiary Loan Parties reaffirm such Obligations, including in respect of any guaranties of, and any pledges of collateral securing, such Obligations, including, without limitation, the First Amendment Term Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement. Upon the satisfaction of the conditions precedent set forth in Section 4 of this First Amendment, the provisions of this First Amendment will become effective and binding upon, and enforceable against, the Borrower, Holdings, the Subsidiary Loan Parties, the Administrative Agent and the Lenders.

(c) This First Amendment shall constitute a Loan Document for all purposes under the Amended Credit Agreement and shall be administered and construed pursuant to the terms of the Amended Credit Agreement.

SECTION 6. Tax Treatment. The Borrower intends to treat this First Amendment as resulting in a significant modification of the Tranche B-1 Term Loans and Tranche B-2 Term Loans (as such terms are defined in the Credit Agreement) within the meaning of Section 1.1001-3 of the U.S. Treasury Regulations, and to determine their new issue price pursuant to Section 1.1273-2(a) or (b) of the U.S. Treasury Regulations with the expectation that their new issue price will be equal to their respective principal amounts for U.S. federal income tax purposes.

SECTION 7. Counterparts. This First Amendment may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute one contract, and shall become effective as provided in Section 4. Delivery of an executed counterpart to this First Amendment by facsimile or other electronic transmission (including “pdf”) shall be as effective as delivery of other electronic transmission (e.g., “PDF” or “TIFF”) and shall be as effective as delivery of a manually signed original.

SECTION 8. Applicable Law. THIS FIRST AMENDMENT 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 9. Headings. Headings used herein are for convenience of reference only, are not part of this First Amendment and are not to affect the construction of, or to be taken into consideration in interpreting, this First Amendment.

*[Signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed by their respective officers as of the day and year first above written.

**PETCO HOLDINGS, INC. LLC**  
as Holdings

/s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: Vice President, Secretary, and Treasurer

**PETCO ANIMAL SUPPLIES, INC.,**  
as Borrower

/s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

**PETCO WELLNESS, LLC**  
as Guarantor

/s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

**PETCO ANIMAL SUPPLIES STORES, INC.,**  
as Guarantor

/s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

First Amendment Agreement

**INTERNATIONAL PET SUPPLIES AND  
DISTRIBUTION, INC.**

as Guarantor

/s/ Patricia A. Ward

Name: Patricia A. Ward

Title: President

**STORES SHIPPING SERVICES, LLC**

as Guarantor

/s/ Patricia A. Ward

Name: Patricia A. Ward

Title: President

**PETCO SUPPORT SERVICES, LLC**

as Guarantor

/s/ Patricia A. Ward

Name: Patricia A. Ward

Title: President

**PETCO PUERTO RICO, LLC**

as Guarantor

/s/ Patricia A. Ward

Name: Patricia A. Ward

Title: President

First Amendment Agreement

**E-PET SERVICES, LLC**  
as Guarantor

/s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

**PETCO ASIA, LLC**  
as Guarantor

/s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

**PETCO REAL ESTATE HOLDINGS I LLC**  
as Guarantor

/s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

**PETCO REAL ESTATE HOLDINGS II LLC,**  
as Guarantor

/s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

First Amendment Agreement

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**PETCO REAL ESTATE HOLDINGS III LLC,**  
as Guarantor

/s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

First Amendment Agreement

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**ACKNOWLEDGED AND ACCEPTED BY:**

**CITIBANK, N.A.,**

as Administrative Agent and Collateral Agent (on behalf of  
itself and the Exchanging Term Lenders)

By: /s/ Michael V. Moore

Name: Michael V. Moore

Title: Vice President

First Amendment Agreement

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**EXHIBIT A**

Amended Credit Agreement

[See attached.]

First Amendment Agreement

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\$2,525,000,000

TERM LOAN CREDIT AGREEMENT,

dated as of January 26, 2016,

and the FIRST AMENDMENT TO TERM LOAN CREDIT AGREEMENT,

dated as of June [●], 2016

among

PET ACQUISITION MERGER SUB LLC,  
(to be merged with and into PETCO HOLDINGS, INC.)  
as the Initial Borrower, and immediately after giving effect to the Merger, as Holdings,

PETCO ANIMAL SUPPLIES, INC.,  
as the Successor Borrower,

THE LENDERS PARTY HERETO,

and

CITIBANK, N.A.,  
as Administrative Agent and Collateral Agent,

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CITIGROUP GLOBAL MARKETS INC.,  
BARCLAYS BANK PLC,  
RBC CAPITAL MARKETS<sup>1</sup>,  
CREDIT SUISSE SECURITIES (USA) LLC,  
NOMURA SECURITIES INTERNATIONAL, INC., and  
MACQUARIE CAPITAL (USA) INC.,  
as Bookrunners and Arrangers,

BARCLAYS BANK PLC,

as Syndication Agent,

and

RBC CAPITAL MARKETS,

as Documentation Agent

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<sup>1</sup> RBC Capital Markets is a brand name for the capital markets activities of Royal Bank of Canada and its affiliates.

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TERM LOAN CREDIT AGREEMENT, dated as of January 26, 2016 (as amended by the First Amendment Agreement dated as of June [●], 2016, and as further amended, amended and restated, supplemented or otherwise modified from time to time, this “*Agreement*”), among initially PET ACQUISITION MERGER SUB LLC, a Delaware limited liability company (“*Merger Sub*” and in its capacity as the initial borrower hereunder, the “*Initial Borrower*”, and after the assignment of the obligations of Initial Borrower on the Closing Date pursuant to Section 10.22 and the Merger and the LLC Conversion have been completed, in its capacity as Holdings hereunder, “*Holdings*”) and after the consummation of the Merger, and upon assumption of the Initial Borrower’s Obligations hereunder pursuant to Section 10.22, PETCO ANIMAL SUPPLIES, INC., a Delaware corporation (the “*Successor Borrower*”), the Lenders party hereto from time to time and CITIBANK, N.A., 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) CVC Capital Partners Advisory (U.S.), Inc. and Canada Pension Plan Investment Board or their respective Affiliates **have** formed PET Acquisition LLC, a Delaware limited liability company (“*Parent*”), owning all of the Capital Stock of Merger Sub, and pursuant to the Agreement and Plan of Merger, dated as of November 21, 2015 (the “*Merger Agreement*”), by and among Parent, Merger Sub, Petco Holdings, Inc., a Delaware corporation (the “*Company*”), and the equityholders’ representative named therein, Merger Sub ~~will merge~~merged (the “*Merger*”) with and into the Company, with the Company being the survivor of such Merger. After the consummation of the Merger, the Company ~~will be~~was converted into a limited liability company with the name Petco Holdings, Inc. LLC (the “*LLC Conversion*”). As used herein the “*Borrower*” means the Initial Borrower, prior to the consummation of the Merger and assumption of the Initial Borrower’s Obligations hereunder pursuant to Section 10.22, and the Successor Borrower, thereafter.
- (2) In connection with the consummation of the Merger, (a) the Lenders **have** agreed to extend credit to the Borrower in the form of Term Loans on the Closing Date in an aggregate principal amount of \$2,525.0 million, (b) certain financial institutions **have** agreed to extend credit to the Borrower in the form of revolving loans, swingline loans and letters of credit under the ABL Credit Agreement (as defined herein), (c) certain initial purchasers **have** agreed to purchase Senior Notes in an aggregate principal amount not to exceed \$750.0 million and (d) each of the Sponsors and certain other equity investors (including members of the Company’s management) arranged by or designated by the Sponsors ~~will~~, directly or indirectly, ~~contribute~~contributed to Parent or another Parent Entity (as defined herein) cash or rollover equity in exchange for common equity of Parent or such Parent Entity (and Parent or such Parent Entity will contribute such cash and rollover equity to the common equity capital of Merger Sub) and the aggregate amount of such contributed cash or rollover equity ~~will~~was to be no less than 25.0% of the sum of (i) the aggregate gross proceeds of the loans borrowed on the Closing Date under the ABL Credit Agreement (excluding letters of credit, amounts borrowed to cash collateralize letters of credit issued under the Existing ABL

Agreement (as defined in the ABL Credit Agreement), amounts borrowed to fund working capital needs of the Company and its subsidiaries on the Closing Date and amounts borrowed to fund the Transaction Tax Benefits (as defined in the Merger Agreement) in an amount not to exceed \$50.0 million), the Term Loans borrowed hereunder on the Closing Date and the aggregate gross cash proceeds from any sale of Senior Notes on or prior to the Closing Date and (ii) the amount of such cash and rollover equity contributed on the Closing Date after giving effect to the Transactions (such contribution, the “**Equity Contribution**”).

## 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 the “*ABL Claims*” as defined in the Intercreditor Agreement.

“**ABL Credit Agreement**” means the Revolving Credit Agreement, dated as of the Closing Date, among Holdings, Merger Sub, the Successor Borrower, the lenders party thereto and Citibank, N.A., as administrative agent and collateral agent, as such document may be amended, restated, supplemented or otherwise modified from time to time.

“**ABL Extended Revolving Commitments**” means “*Extended Loans*” as defined in the ABL Credit Agreement.

“**ABL Facility**” means the “*Revolving Facility*” and any “*Incremental Facility*,” each as defined in the ABL Credit Agreement.

“**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 that consists of or includes the disposition of ABL Priority Collateral outside the ordinary course of business.

“**ABL Security Documents**” means the “*Security Documents*” as defined in the ABL Credit Agreement.

“**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 commercial lending rate published as of such day by the Administrative Agent as the “prime rate;”
- (3) the LIBOR Quoted Rate *plus* 1.00%; and
- (4) solely in respect of Tranche B-1 Term Loans, 2.00%

Any change in the ABR due to a change in the Federal Funds Rate, the “prime rate” or the LIBOR Quoted Rate will be effective on the effective date of such change in the Federal Funds Rate, the “prime rate” or the LIBOR Quoted 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-1 Term Loans, 1.00%.

“**Administrative Agent**” means Citibank, N.A., 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 and each of its 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) prior to any redetermination pursuant to the below, with respect to any Tranche B-1 Term Loans made on the ~~Closing Date, (a) for ABR Loans, 3.75% and (b) for Eurocurrency Loans, 4.75%~~ Amendment Effective Date, the applicable percentage set forth in the row styled “Level I” in the table below;
- (2) prior to any redetermination pursuant to the below, with respect to any Tranche B-2 Term Loans made on the ~~Closing Date, (a) for ABR Loans, 4.00% and (b) for Eurocurrency Loans, 5.00%~~ Amendment Effective Date, the applicable percentage set forth in the row styled “Level I” in the table below;

<u>Level</u>	<u>Senior Secured First Lien Net Leverage Ratio</u>	<u>Applicable Margin for Tranche B-1 Term Loans (ABR Loans)</u>	<u>Applicable Margin for Tranche B-1 Term Loans (Eurocurrency Loans)</u>	<u>Applicable Margin for Tranche B-2 Term Loans (ABR Loans)</u>	<u>Applicable Margin for Tranche B-2 Term Loans (Eurocurrency Loans)</u>
<u>I</u>	<u>&gt;4.00 to 1.00</u>	<u>3.00%</u>	<u>4.00%</u>	<u>3.25%</u>	<u>4.25%</u>
<u>II</u>	<u>&lt;4.00 to 1.00</u>	<u>2.75%</u>	<u>3.75%</u>	<u>3.00%</u>	<u>4.00%</u>

The Applicable Margin for Tranche B-1 Term Loans and Tranche B-2 Term Loans shall be re-determined on the date of delivery of financial statements for each fiscal quarter required to be delivered pursuant to Section 5.04(2) and, in the case of the fourth quarter, 5.04(1) commencing with the first full fiscal quarter ending after the First Amendment Effective Date, based upon the Senior Secured First Lien Net Leverage Ratio achieved on such date and in accordance with the table above; provided, that if such financial statements are not provided when due, the Applicable Margin shall be set at the margin in the row styled “Level I” as of the first Business Day following the date on which such financial statements

were required to be delivered until the date on which such financial statements are delivered (on which date (but not retroactively), without constituting a waiver of any Default or Event of Default occasioned by the failure to timely deliver such financial statements, the Applicable Margin shall be then set at the Applicable Margin based upon the Senior Secured First Lien Net Leverage Ratio as of the date of delivery of such financial statements). In the event that any such financial statements are shown to be inaccurate, and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an "Applicable Period") than the Applicable Margin applied for such Applicable Period, then (i) the Borrower shall promptly upon becoming aware of any such inaccuracy deliver to the Administrative Agent, for the benefit of the applicable Lenders, correct financial statements required by Section 5.04(2) and/or Section 5.04(1) for such Applicable Period and (ii) the Borrower shall promptly pay to the Administrative Agent the accrued additional interest owing as a result of such increased Applicable Margin for such Applicable Period.

- (3) with respect to any Incremental Term Loans, the "Applicable Margin" set forth in the Incremental Facility Amendment establishing the terms thereof;
- (4) with respect to any Other Term Loans, the "Applicable Margin" set forth in the Refinancing Amendment establishing the terms thereof; and
- (5) 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 each of Citigroup Global Markets Inc., Barclays Bank PLC, RBC Capital Markets, Credit Suisse Securities (USA) LLC, Nomura Securities International, Inc., and Macquarie Capital (USA) 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 and reasonably satisfactory to the Borrower.

“**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) \$125.0 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, Cure Amounts, 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, Cure Amounts, 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, as determined by a Responsible Officer of the Borrower in good faith; *plus*
- (8) any mandatory prepayment declined by a Lender; *minus*
- (9) the use of such Available Amount since the Closing 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 \$10.0 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 Base**” means as of any date, the sum of:

- (1) 90% of all accounts receivable held by the Borrower and the Restricted Subsidiaries as of such date; *plus*
- (2) 90% of the net ordinary liquidation value of inventory held by the Borrower and the Restricted Subsidiaries as of such date; *plus*
- (3) 100% of all cash and Cash Equivalents held by the Borrower and the Restricted Subsidiaries as of such date; *provided* that the aggregate amount of cash and Cash Equivalents included in the Borrowing Base shall not exceed \$50.0 million;

in each case, 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.

“**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) the Merger;
- (9) the purchase of property, plant or equipment to the extent purchased with the proceeds of Asset Sales that are not applied to prepay Term Loans pursuant to Section 2.08; or
- (10) expenditures used for acquisitions of fee-owned Real Property, up to \$25.0 million during any fiscal year, so long as (A) the Borrower demonstrates to the satisfaction of the Administrative Agent a viable plan that provides for a Sale and Lease-Back Transaction within one year of acquisition and (B) the Administrative Agent approves of the exclusion of such expenditures in their reasonable discretion, *provided* if the Borrower and its Subsidiaries fail to complete such Sale and Lease-Back Transaction within such one-year period, expenditures used for such acquisition shall be included as Capital Expenditures in the fiscal year in which such one-year period expires.

“**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.

“*Certain Funds Provisions*” has the meaning given to such term in the Commitment Letter.

A “*Change in 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 or the 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; or
- (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).

“*Change in Law*” means:

- (1) the adoption of any law, rule or regulation after the Closing Date;
- (2) any change in 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.

"**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 are two Classes of Term Facilities and Term Loans, the Tranche B-1 Term Loans and the Tranche B-2 Term Loans, and the Term Loans and the Lenders under each such Term Facility will be considered a separate Class hereunder.

"**Closing Date**" means January 26, 2016.

"**Closing Date Refinancing**" means the repayment of debt contemplated by Section 3.03 of the Merger Agreement, which for the avoidance of doubt shall include the repayment in full of the (i) Existing Term Loan Credit Agreement, (ii) Existing ABL Credit Agreement, (iii) the Existing Construction Loan Agreement, (iv) the outstanding Existing Senior Notes and (v) the outstanding Existing Senior PIK Toggle Notes and the termination of all obligations and liens related thereto.

"**Closing Date Senior Secured First Lien Net Leverage Ratio**" means 4.80 to 1.00.

"**Closing Date Total Net Leverage Ratio**" means 6.20 to 1.00.

"**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 Access Agreement**" means a landlord waiver or other agreement, in a form as shall be reasonably satisfactory to the Collateral Agent, between the Collateral Agent and any third party (including any bailee, consignee, customs broker, or other similar Person) in possession of any Collateral or any landlord of any premises where any Collateral is located, as such landlord waiver or other agreement may be amended, restated, or otherwise modified from time to time.

“**Collateral Agent**” means Citibank, N.A., 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**” mean, the Tranche B-1 Term Loan Commitment and the Tranche B-2 Term Loan Commitment. On the ~~Closing~~First Amendment Effective Date, the aggregate amount of Commitments of all Term Loans is ~~\$2,525.0~~2,518,687,499.96 million.

“**Commitment Letter**” means that certain Amended and Restated Commitment Letter, dated as of November 30, 2015, by and among Merger Sub, Citigroup Global Markets Inc., Barclays Bank PLC, Royal Bank of Canada, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Cayman Islands Branch, Nomura Securities International, Inc., Macquarie Capital (USA) Inc., MIHI LLC, GSMP VI Offshore US Holdings, Ltd., GSMP VI Onshore US Holdings, Ltd. and Broad Street Credit Holdings LLC and including any joinders thereto.

“**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 sum (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, Disqualified Stock and Indebtedness in respect of the deferred purchase price of property or services 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
  - (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; plus
  - (l) without duplication, “management adjustment” addbacks expressly set forth in the Sponsor Model; 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).

Notwithstanding the foregoing, the Consolidated EBITDA of the Borrower for the fiscal quarters ended:

- (i) October 31, 2015 will be deemed to be \$118.460 million;
- (ii) August 1, 2015 will be deemed to be \$119.512 million; and
- (iii) May 2, 2015 will be deemed to be \$121.040 million.

it being understood that the amounts listed in the foregoing clauses (i), (ii) and (iii) do not give effect to the adjustments provided for in the definition of Pro Forma Basis for any transactions or events other than the Transactions.

“**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;

*provided* that when determining Consolidated Interest Expense in respect of any four-quarter period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Closing Date by 365 and then dividing such product by the number of days from and including the Closing Date to and including the last day of 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 the Transactions or otherwise, expenses associated with strategic initiatives, facilities shutdown and opening costs, and any fees, expenses, charges or change in control payments related to the Transactions 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 are or are permitted to be 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 the Transactions 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 the Transactions within 18 months after the Closing 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 in an aggregate amount not to exceed \$20.0 million 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 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 voluntary or mandatory prepayments hereunder provided that in no event shall such Indebtedness be permitted to be voluntarily or 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 (subject to customary exceptions for cash collateral in favor of an agent, letter of credit issuer or similar “fronting” lender);
- (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.

“**Cure Amount**” means the amount of cash contributions to the capital of the Borrower made pursuant to Section 8.02 of the ABL Credit Agreement.

“**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 CVC Capital Partners Limited or any of its Affiliates or direct or indirect Subsidiaries or any investors in such funds or limited partnerships (but excluding, in each case, any portfolio companies in which such funds or limited partnerships hold an investment and excluding, in each case, any funds or entities managed or advised by CVC Credit Partners Holdings Limited or any of its direct or indirect Subsidiaries engaged in the same or a similar business to CVC Credit Partners Holdings Limited) who are investors in such funds or limited partnerships as at 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 a *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 Arrangers and the Administrative Agent on or prior to the date of the Commitment Letter;
- (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 date of the Commitment Letter; provided that such Person will not be a Disqualified Institution if the Administrative Agent reasonably determines in good faith that such Person is not a competitor of the Borrower and notifies the Borrower of such determination promptly following the date on which the Borrower identifies such Person to the Administrative Agent; 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 (i) make investment decisions or (ii) have access to non-public information relating to the Borrower or any Person that forms part of the Borrower’s business (including its Subsidiaries)); or

- (2) certain banks, financial institutions, other institutional lenders and investors and other entities that are identified by the Borrower in writing to the Arrangers and the Administrative Agent on or prior to the date of the Commitment Letter.

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:
  - (a) the Latest Maturity Date; and
  - (b) 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."

**"Documentation Agent"** means RBC Capital Markets.

**"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 or any political subdivision thereof, 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 a *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 a *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 is either (a) not permitted by the terms of any Loan Document immediately prior to the consummation of such transaction or (b) if permitted by the terms of the Loan Documents (prior to giving effect to any amendments) immediately prior to the consummation of such transaction, would not provide Holdings, the Borrower and its Restricted Subsidiaries with adequate flexibility under the Loan Documents for the continuation and/or expansion of their combined operations following such consummation, as reasonably determined by the Borrower acting in good faith.

“**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 Contribution**” has the meaning assigned to such term in the recitals to this Agreement.

“**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(28) in each case prior to such date; provided that the proceeds of Disqualified Stock, Cure Amounts 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:

- (1) Immaterial Subsidiary;
- (2) Subsidiary that is not a Wholly Owned Subsidiary of Holdings or 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 a Subsidiary that is not a Wholly Owned Subsidiary of Holdings or 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 ABL Credit Agreement”** means that certain ABL credit agreement, dated as of April 19, 2013, among Petco Animal Supplies, Inc., the lenders party thereto, Bank of America, N.A., (as successor to Credit Suisse AG) as administrative agent, Wells Fargo Bank, National Association, as collateral agent, and the subsidiaries of Petco Animal Supplies, Inc. from time to time party thereto, as amended by that certain First Amendment to the ABL Credit Agreement, dated as of November 21, 2014.

“**Existing Construction Loan Agreement**” means that certain Construction Loan Agreement, dated March 20, 2015, by and between Petco Real Estate Holdings III, LLC and MUFG Union Bank, N.A.

“**Existing Senior Notes**” means the Senior Notes due 2017 issued pursuant to that certain Indenture, dated as of November 24, 2010, among Petco Animal Supplies, Inc., the guarantors named on the signature pages thereto, and Wells Fargo Bank, National Association, as trustee.

“**Existing Senior PIK Toggle Notes**” means the Senior PIK Toggle Notes due 2018 issued pursuant to that certain Indenture, dated as of October 10, 2012, between Petco Holdings, Inc., and Wells Fargo Bank, National Association, as Trustee.

“**Existing Term Loan Credit Agreement**” means that certain term loan credit agreement, dated as of November 24, 2010, among Petco Animal Supplies, Inc., as borrower, the lenders party thereto, JPMorgan Chase Bank, N.A., (as successor to Credit Suisse AG) as administrative agent and collateral agent, and the subsidiaries of Petco Animal Supplies, Inc. from time to time party thereto, as amended by that certain Amendment No. 1 to Term Loan Agreement, dated as of February 25, 2011, as further amended by that certain Amendment No. 2 to Term Loan Agreement, dated October 9, 2012, as further amended by that certain Amendment No. 3 to Term Loan Agreement, dated February 4, 2013.

“**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, 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 per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided that*:

- (1) if such day is not a Business Day, the Federal Funds Rate for such day will be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and
- (2) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day will be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1.00%) charged to the Administrative Agent on such day on such transactions as determined in good faith by the Administrative Agent.

“**Fee Letter**” means the Amended and Restated Fee Letter, dated November 30, 2015, by and among Merger Sub, Citigroup Global Markets Inc., Barclays Bank PLC, Royal Bank of Canada, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Cayman Islands Branch, Nomura Securities International, Inc., Macquarie Capital (USA) Inc., MIHI LLC, GSMP VI Offshore US Holdings, Ltd., GSMP VI Onshore US Holdings, Ltd. and Broad Street Credit Holdings LLC, as amended and in effect from time to time and including any joinders thereto.

“**Fees**” means the Administrative Agent Fees and all other fees set forth in the Fee Letter payable to a Lender, the Administrative Agent, or any Arranger, in each case, with respect to Term Loans.

“**Financial Covenant Default**” has the meaning assigned to such term in Section 8.01(6).

“**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 Amendment**” means the First Amendment Agreement, dated as of June [ \_\_\_\_\_ ], 2016 among the Borrower, Holdings, the Guarantors and the Administrative Agent.

“**First Amendment Effective Date**” has the meaning assigned to such term in the First Amendment.

“**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).

“**Fixed Charge Coverage Ratio**” means, as of any date, the ratio of:

- (1) (a) Consolidated EBITDA of the Borrower for the most recent period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis, *minus* (b) non-financed Maintenance Capital Expenditures of the Borrower for such period that were paid in cash during such four-quarter period (it being understood that Capital Expenditures funded with proceeds of revolving loans will not be deemed to be “financed” for the purpose of this clause (b)) *minus* (c) Taxes based on income of the Borrower and the Restricted Subsidiaries that were paid or required to be paid in cash during such period (including tax distributions paid in cash during such period) to
- (2) Fixed Charges of the Borrower for such four-quarter period, calculated on a Pro Forma Basis.

“**Fixed Charges**” means, for any period, the sum without duplication, of the following for such period:

- (1) the Consolidated Interest Expense of the Borrower that was paid or required to be paid in cash during such period; *plus*
- (2) all scheduled principal amortization payments that were paid or required to be paid in cash during such period with respect to Indebtedness for borrowed money of the Borrower and the Restricted Subsidiaries, including payments in respect of Capital Lease Obligations, but excluding payments with respect to intercompany Indebtedness; *plus*

all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock of the Borrower or preferred stock of any Restricted Subsidiary made during such period.

“**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.

“**Headquarters**” means the headquarters of the Borrower, located at 10850 Via Frontera, San Diego, CA 92127.

**“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 2.5% of the Consolidated Total Assets or revenues representing in excess of 2.5% 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 5.0% of Consolidated Total Assets or revenues representing in excess of 5.0% 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) the aggregate outstanding principal amount of such Indebtedness on any date that such Indebtedness is incurred pursuant to Section 6.01(1) shall be subject to the limitations set forth in Section 2.18(3);
- (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 (a) consist of notes, (b) 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 (c) the pricing of such Indebtedness complies with Section 2.18(8); 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"** shall have the meaning set forth in the Guaranty and Collateral Agreement.

**"Intercreditor Agreement"** means the Intercreditor Agreement, dated as of the Closing Date, by and among the Administrative Agent, the Collateral Agent and Citibank, N.A., as administrative agent and collateral agent under the ABL Credit Agreement, and acknowledged by Holdings and the Borrower, 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 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 (or, if agreed by all Lenders, 12 months or a shorter period), 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 April 29, 2016.

**“Interpolated Screen Rate”** means, 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 the Quotation 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 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-1 Term Loan Lender listed on Schedule 2.01(1) and Tranche B-2 Term Loan Lender listed on Schedule 2.01(2) (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.

“*Letter of Credit*” has the meaning assigned to such term in the ABL Credit Agreement.

“*LIBO Rate*” means with respect to any Eurocurrency Borrowing for any Interest Period, the rate per annum equal to the arithmetic mean of the offered rates for deposits in Dollars with a term equivalent to such Interest Period by reference to 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 Quoted Rate*” means, for any day (or if such day is not a Business Day, the immediately preceding Business Day), a fluctuating rate per annum equal to the greater of (1) the Adjusted LIBO Rate for an interest period of one month as determined as of 11:00 a.m. (London, England time) on such day by reference to 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). for deposits in dollars (as set forth by 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, “LIBOR Quoted Rate” shall be the interest rate per annum equal to the Interpolated Screen Rate; and (2) solely in respect of Tranche B-1 Term Loans, 1.00%; *provided, however*, if the LIBOR Quoted Rate is less than zero, the LIBOR Quoted 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.

“**LLC Conversion**” has the meaning specified in the recitals hereto.

“**Loan Documents**” means this Agreement, the Security Documents, the Intercreditor Agreement, any First Lien Intercreditor Agreement, any Junior Lien Intercreditor Agreement, any Note and, solely for the purposes of Sections 3.01, 3.02, and 8.01(3) hereof, the Fee Letter.

“**Loan Parties**” means Holdings, the Borrower and the Subsidiary Loan Parties.

“**Maintenance Capital Expenditures**” means, for any period, the portion of the aggregate amount of all Capital Expenditures of the Borrower for such period attributable to maintenance of property, plant or equipment of the Borrower and the Restricted Subsidiaries, as determined in good faith by a Responsible Officer of the Borrower.

“**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 Sponsor in an aggregate amount equal to or less than \$10.0 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 Parent, 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 \$50.0 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 Term Loans and Tranche B-2 Term Loans) existing on the ~~Closing~~First Amendment Effective Date, January 26, 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.

“**Merger**” has the meaning assigned to such term in the recitals hereto.

“**Merger Agreement**” has the meaning assigned to such term in the recitals hereto.

“**Merger Sub**” has the meaning assigned to such term in the introductory paragraph hereof.

“**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 \$10.0 million.

“**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).

“**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 shall not, in any event, include any Excluded Swap Obligation. “**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.

“**Pari Passu Liens Indebtedness**” has the meaning assigned to such term in Section 2.18(8).

“**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 Citibank, N.A., 1615 Brett Road, Building III, New Castle, DE 19720, Attention: Loan Administration (Email [global.loans.support@citi.com](mailto:global.loans.support@citi.com); Telephone No. (302) 894-6010) 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) \$75.0 million and (b) 1.50% 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 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 Arrangers 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 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(j)(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 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);
- (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.

“**Pro Forma Basis**” or “**Pro Forma**” means, with respect to the calculation of the Senior Secured First Lien Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge 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.

"**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).

"**Purchase Date**" means the date that the Merger is required to be consummated pursuant to the Merger Agreement.

"**Purchase Documents**" means the collective reference to the Merger Agreement, all material exhibits and schedules thereto and all agreements expressly contemplated thereby.

"**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) 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"** and **"Refinancing"** will have correlative meanings.

**"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 3.50 to 1.00	50.00%
Less than or equal to 3.50 to 1.00 but greater than 3.00 to 1.00	25.00%
Less than or equal to 3.00 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 Notes”** means the floating rate senior notes due January 26, 2024, issued on or prior to the ~~date hereof~~ Closing Date pursuant to the Senior Notes Indenture.

“**Senior Notes Documents**” means, collectively, the 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 Senior Notes.

“**Senior Notes Indenture**” means that certain indenture, dated as of January 26, 2016, among the Senior Notes Trustee, the Borrower and the guarantors party thereto.

“**Senior Notes Trustee**” means Wells Fargo Bank, National Association, together with its permitted successors and assigns.

“**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 Merger Agreement Representations**” means such of the representations and warranties made with respect to the Company and its Subsidiaries by the Company in the Merger Agreement to the extent a breach of such representations and warranties is material to the interests of the Lenders.

“**Specified Representations**” means the representations and warranties of each of Merger Sub, the Company 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 and subject to the Certain Funds Provisions);
- (8) Section 3.16; and
- (9) Section 3.19.

“**Specified Transaction**” means any Investment (including any Limited Condition Acquisition), 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.”

“**Sponsor Model**” means the model provided by the Sponsors to the Arrangers on November 17, 2015.

“**Sponsors**” means, any of CVC and Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised 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.

“**Syndication Agent**” means Barclays Bank PLC.

“**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~~First Amendment Effective Date, there are two Term Facilities, the Tranche B-1 Term Loan Facility and the Tranche B-2 Term Loan Facility, and each such Term Facility will be considered a separate Term Facility hereunder. 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 Agent**” means “*Term Loan Agent*” as defined in the Intercreditor Agreement.

“**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 First Amendment Term Loans (as defined in the First Amendment, which consist of Tranche B-1 Term Loans and the Tranche B-2 Term Loans made to the Borrower ~~on the Closing~~pursuant to and in accordance with the First

Amendment on the First Amendment Effective 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 Loan 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.

“*Tranche B-1 Term Loan Commitments*” means with respect to each Lender, the commitment of such Lender to make Tranche B-1 Term Loans as set forth on Schedule 2.01(1). On the ~~Closing~~First Amendment Effective Date, the aggregate amount of Tranche B-1 Term Loan Commitments is \$~~1,825.0 million~~1,820,437,499.95.

“*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 each financial institution listed on Schedule 2.01(1) (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-1 Term Loans.

“*Tranche B-1 Term Loans*” means the term loans made to the Borrower on the ~~Closing~~First Amendment Effective Date pursuant to Section 2.01(1)(a).

“*Tranche B-2 Term Loan Commitments*” means with respect to each Lender, the commitment of such Lender to make Tranche B-~~1~~2 Term Loans as set forth on Schedule 2.01(2). On the ~~Closing~~First Amendment Effective Date, the aggregate amount of Tranche B-2 Term Loan Commitments is \$~~700.0 million~~698,250,000.01.

“*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 each financial institution listed on Schedule 2.01(2) (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-~~1~~2 Term Loans.

“**Tranche B-2 Term Loans**” means the term loans made to the Borrower on the ~~Closing~~First Amendment Effective Date pursuant to Section 2.01(1)(b).

“**Transaction Documents**” means the Purchase Documents, the ABL Loan Documents, the Senior Notes Documents and the Loan Documents.

“**Transactions**” means, collectively, the transactions to occur pursuant to the Transaction Documents, including:

- (1) the consummation of the Merger;
- (2) the execution and delivery of the Loan Documents, the creation of the Liens pursuant to the Security Documents and the initial borrowings hereunder;
- (3) the Equity Contribution;
- (4) the execution and delivery of the ABL Loan Documents, the creation of the Liens pursuant to the ABL Security Documents and the initial borrowings under the ABL Credit Agreement;
- (5) the execution and delivery of the Senior Notes Documents and the issuance of the Senior Notes under the Senior Notes Indentures;
- (6) the Closing Date Refinancing;
- (7) the LLC Conversion; and
- (8) the payment of all fees, costs and expenses in connection with the foregoing.

“**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 Fixed Charge Coverage Ratio of 1.0 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~~ Closing Date 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 covenants, 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 Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge 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 Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge 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 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; *provided*, that (other than solely with respect to the incurrence test under which such Limited Condition Acquisition is being made) Consolidated EBITDA, Consolidated Total Assets or assets and Consolidated Net Income of any target of such Limited Condition Acquisition can only be used in the determination of the relevant ratio and baskets if and when such Limited Condition Acquisition has closed.

(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 Net Leverage Ratio test and/or any Fixed Charge Coverage Ratio test) (any such amounts, 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 Revolving Facility (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 Revolving Facility 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.

*The Credits*SECTION 2.01. Term Loans and Borrowings.

- (1) Subject to the terms and conditions set forth herein:
- (a) each Tranche B-1 Term Loan Lender severally agrees to make to the Borrower Tranche B-1 Term Loans denominated in Dollars equal to such Tranche B-1 Term Loan Lender's Tranche B-1 Term Loan Commitment on the ~~Closing~~First Amendment Effective Date; and
  - (b) each Tranche B-2 Term Loan Lender severally agrees to make to the Borrower Tranche B-2 Term Loans denominated in Dollars equal to such Tranche B-2 Term Loan Lender's Tranche B-2 Term Loan Commitment on the ~~Closing~~First Amendment 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. For the avoidance of doubt, the Tranche B-1 Term Loans and the Tranche B-2 Term Loans will be secured on a pari passu basis as of the ~~Closing~~First Amendment Effective Date.

- (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~~First Amendment 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, three Business Days prior to the anticipated

~~Closing~~First Amendment 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 ~~Closing~~First Amendment Effective Date. The Borrowing Request must specify:

- (1) the principal amount of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans to be borrowed;
- (2) the requested date of the Borrowing (which will be a Business Day);
- (3) the Type of Tranche B-1 Term Loans and/or Tranche B-2 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-1 Term Loan and/or Tranche B-2 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. 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 by telephone (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, on the date of 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). Each such telephonic Interest Election Request will be confirmed promptly by hand delivery, facsimile transmission or e-mail to the Administrative Agent of a written Interest Election Request substantially in the form of Exhibit D and signed by the Borrower.
- (3) Each telephonic and written Interest Election Request will be irrevocable 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.
- (5) Any Lender may request that Term Loans made by it be evidenced by a promissory note (a "**Note**"). 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 under each Term Facility 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 April 30, 2016, an aggregate principal amount equal to 0.25% of the aggregate principal amount of each Class of Term Loans outstanding on the Closing Date, which payments for each Class of Term Loans will be reduced as a result of the application of prepayments of Term Loans of such Class 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-1 Term Loans, the Tranche B-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 by telephone (confirmed by hand delivery, facsimile transmission or e-mail) 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. 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 Term Loans, Tranche B-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 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 January 30, 2017, not later than 90 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 90th 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);
    - (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 90th 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 notice to the Administrative Agent by telephone (confirmed by hand delivery, facsimile transmission or e-mail) 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 and the principal amount of each Term Loan (or portion thereof) to be prepaid. 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 “Term Administrative Fee” set forth in the Fee Letter at the times and on the terms specified therein (the “*Administrative Agent Fees*”).
- (2) All 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 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 or similar requirement against assets of, deposits with or for the account of, or credit extended 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) 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) on 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 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 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) such Loan Party will make such deductions; (b) such Loan Party 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) 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(7) (*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(7) 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.

- (8) 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.
- (9) 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 Class of Term Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Class of Term Loans than the proportion received by any other Lender in such Class, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the Term Loans of such Class of other Lenders in such Class to the extent necessary so that the benefit of all such payments will be shared by the Lenders in such Class ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Term Loans of such Class; *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 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 may, at the discretion of the Borrower, be secured or unsecured. If Incremental Term Loans are secured on a junior basis to the Term Loans, a Debt Representative, acting on behalf of the holders of such Incremental Term Loans, will become party or otherwise subject to the provisions of a Junior Lien Intercreditor Agreement. Any Incremental Facility that is unsecured or secured on a junior basis to the Term Loans shall be documented pursuant to a separate facility agreement subject to the terms of this Section 2.18.
- (3) **Size.** The principal amount of Incremental Facilities incurred pursuant to this Section 2.18 and Incremental Equivalent Term Debt incurred pursuant to Section 6.01(1) will not exceed, in the aggregate, an amount equal to \$300.0 million (the “**Non-Ratio Based Incremental Facility Cap**”); *provided* that the Borrower may incur additional Incremental Facilities and Incremental Equivalent Term Debt without regard to the Non-Ratio Based Incremental Facility Cap so long as (a) with respect to any such Incremental Facility or Incremental Equivalent Term Debt to be 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 applicable Incremental Facilities or 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 Facility or Incremental Equivalent Term Debt) is equal to or less than 4.50 to 1.00; and (b) with respect to any such Incremental Facility or Incremental Equivalent Term Debt to be secured on a junior basis to the Term Loans, subordinated in right of payment to the Term Loans or unsecured and *pari passu* in right of payment with the Term Loans, the Total Net Leverage Ratio (determined on the date on which the applicable Incremental Facilities or 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 Facility or Incremental Equivalent Term Debt) is equal to or less than the lesser of (i) Closing Date Total Net Leverage Ratio and (ii) 6.00 to 1.00 (collectively, the “**Available Incremental Term Loan Facility Amount**”).

If the Borrower incurs indebtedness under the Non-Ratio Based Incremental Facility Cap on the same date that it incurs indebtedness under the Available Incremental Term Loan Facility Amount, then the Senior Secured First Lien Net Leverage Ratio or the Total Net Leverage Ratio, as applicable, with respect to the amounts incurred under the Available Incremental Term Loan Facility Amount will be calculated without including any incurrence under the Non-Ratio Based Incremental Facility Cap. Unless the Borrower elects otherwise, each Incremental Facility shall be deemed incurred first under the Available Incremental Term Loan Facility Amount to the extent permitted, with the balance incurred under the Non-Ratio Based Incremental Facility Cap.

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.

- (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 that is secured on a pari passu basis with the Obligations hereunder 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. Each Incremental Facility that is unsecured or secured on a junior lien basis shall be documented outside of this Credit Agreement and, if secured on a junior lien basis, shall be subject to the Intercreditor Agreement. 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 a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any voluntary or 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 and (ii) the coupon, fees and original issue discount for (x) any Incremental Equivalent Term Debt that is secured on a *pari passu* basis with the Term Loans or (y) any other Indebtedness that is secured by a Lien on a *pari passu* basis with the Term Loans pursuant to Section 6.02(31) (“***Pari Passu Liens Indebtedness***”) will be as determined by a Responsible Officer of the Borrower and the providers of such *pari passu* Incremental Equivalent Term Debt or other *Pari Passu Liens Indebtedness*;
  - (b) If the yield (as determined below) on any such Incremental Term Loans, Incremental Equivalent Term Debt or *Pari Passu Liens Indebtedness*, in each case, incurred on a *pari passu* basis with the Term Loans (such yield, the

“Incremental Yield”) exceeds the yield (as determined below) on any Class of Term Loans incurred on the Closing First Amendment Effective Date by more than 50 basis points, then the interest margins for the applicable Class of Term Loans incurred on the Closing First Amendment Effective Date will automatically be increased to a level such that the yield on such Class of Term Loans incurred on the Closing First Amendment Effective Date will be 50 basis points below the Incremental Yield on such Incremental Term Loans, Incremental Equivalent Term Debt or Pari Passu Liens Indebtedness, in each case, incurred on a *pari passu* basis with the Term Loans. Any increase in yield on any Class of Term Loans incurred on the Closing First Amendment Effective Date 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, Incremental Equivalent Term Debt or Pari Passu Lien Indebtedness will be effected solely through an increase in such “floor” (or an implementation thereof, as applicable) in respect of any Class of Term Loans incurred on the Closing First Amendment Effective Date. In determining whether the Incremental Yield on Incremental Term Loans, Incremental Equivalent Term Debt or Pari Passu Liens Indebtedness, in each case, incurred on a *pari passu* basis with the Term Loans exceeds the yield on any Term Loans incurred on the Closing First Amendment Effective Date 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 or such other Indebtedness, 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) (x) with respect to the any Tranche B-1 Term Loans incurred on the Closing First Amendment Effective Date, to the extent the LIBO Rate on the closing date of the Incremental Facility is less than any LIBO Rate floor then applicable to the Tranche B-1 Term Loans, the amount of such difference shall be deemed added to the applicable rate for such Tranche B-1 Term Loans solely for the purposes of determining whether an increase in the interest margins for such Tranche B-1 Term Loans shall be required and (y) with respect to any Incremental Term Loans, Incremental Equivalent Term Debt or Pari Passu Lien Indebtedness (in each case if such Incremental Equivalent Term Debt or Pari Passu Lien Indebtedness is determined on a floating rate basis by reference to the LIBO Rate or any equivalent definition thereof), to the extent that the LIBO Rate or any equivalent definition thereof on the closing date of the Incremental Facility is less than any interest rate floor, if any, applicable to the Incremental Term Loans, the amount of such difference shall be deemed added to the applicable rate for such Incremental Term Loans solely for the purposes of determining the Incremental Yield; provided, that for purposes of calculating the LIBO Rate or any such equivalent definition for this clause (B), such rate shall be for the same interest period, which shall be

determined by the Borrower from the interest periods available to it under this Agreement and such Indebtedness respectively. In addition to the foregoing, for purposes of calculating the Incremental Yield for any Incremental Equivalent Term Debt or Pari Passu Lien Indebtedness that constitutes fixed-rate Indebtedness, the fixed rate coupon of such Indebtedness shall be swapped to a floating rate on a customary matched-maturity basis, and the Incremental Yield of such fixed-rate Indebtedness on a floating rate basis shall be reasonably determined in a customary manner by the Administrative Agent based on customary financial methodology in consultation with the Borrower (or, if the Administrative Agent declines (or is unable) to determine such Incremental Yield or the appropriate floating rate swap on a matched maturity basis, as reasonably determined in a customary manner based on customary financial methodology by a financial institution reasonably acceptable to the Administrative Agent and the Borrower).

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 extend 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**,” and each group of Term Loans so extended, as well as the original Term Loans not so extended, being a “**tranche**”). 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 \$125.0 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 with a like Maturity Date. 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. There is no requirement that any Extension Offer or Extension Amendment (defined as follows) 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 tranches 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 Extended 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 a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any voluntary or mandatory repayments or prepayments of Term Loans;
- (d) such Extended Term Loans are not secured by any assets or property that does 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 tranche 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 twelve 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.

*Representations and Warranties*

Each of Merger Sub, the Company and the Restricted Subsidiaries represents and warrants to each Agent and to each of the Lenders, with respect to Borrowings made on the Closing Date, that on the Closing Date immediately prior to consummation of the Merger, the Specified Merger Agreement Representations and the Specified Representations are true and correct in all material respects.

With respect to any Borrowing made 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(2), 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(1) 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 proceeds of all Additional Term Loans (as defined in the First Amendment), if any, on the First Amendment Effective Date will be used to re-evidence in full all Existing Term Loans (as defined in the First Amendment), other than Exchanged Term Loans (as defined in the First Amendment), on the terms and subject to the conditions set forth in the First Amendment, including via the assignment by the Lenders holding such Existing Term Loans (as defined in the First Amendment), other than Exchanged Term Loans (as defined in the First Amendment), who do not remain Lenders hereunder on the First Amendment Effective Date to the Additional Lenders (as defined in the First Amendment) as of the First Amendment Effective Date of such Existing Term Loans (as defined in the First Amendment), other than Exchanged Term Loans (as defined in the First Amendment), which shall thereafter be continued as and be deemed to be Term Loans hereunder.

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, 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 January 31, 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 the Restricted 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 Restricted Subsidiary 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) Acquisition Transactions. Merger Sub shall have confirmed to the Administrative Agent that the following transactions have been consummated or will be consummated substantially concurrently with the making of the Term Loans on the Closing Date:
  - (a) the Merger;
  - (b) the Equity Contribution; and
  - (c) the Closing Date Refinancing and evidence that arrangements satisfactory to the Administrative Agent shall have been made for the termination and release of guarantees, Liens and security interests granted in connection therewith in a form reasonably satisfactory to the Administrative Agent.

- (4) Pro Forma Balance Sheet; Financial Statements. The Administrative Agent shall have received (a) unaudited consolidated balance sheets and related statements of income and cash flows of the Company for each fiscal quarter, if any, ended after August 1, 2015 (other than the fourth fiscal quarter of the Company) and at least 45 days prior to the Closing Date and setting forth, with respect to statements of income and cash flows, comparative figures for the related period in the prior fiscal year, (b) audited consolidated balance sheets and related statements of income and cash flows of the Company, in each case, for the three fiscal years most recently ended at least 90 days before the Closing Date, and (c) a *pro forma* consolidated balance sheet and income statement of the Borrower as of October 31, 2015 and for the four-quarter period then ended, in each case, prepared on a pro forma basis giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such income statement).
- (5) Fees. Payment of all fees (a) required to be paid pursuant to the Fee Letter and (b) reasonable (and reasonably documented) out-of-pocket expenses required to be paid on the Closing Date pursuant to the Commitment Letter, in each case to the extent invoiced in reasonable detail at least five Business Days prior to the Closing Date.
- (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;
  - (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)); and
  - (e) that on the Closing Date following consummation of the Equity Contribution the Sponsors will control Merger Sub.
- (8) Legal Opinions. The Administrative Agent shall have received a customary legal opinion of Gibson, Dunn & Crutcher LLP, special New York and California counsel to the Loan Parties.
- (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, to the extent obtained by Merger Sub from the Company on or prior to the Closing Date, 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) No Material Adverse Effect. Since the date of the Merger Agreement, there shall not have occurred any facts, events, changes, developments or effects which, individually or in the aggregate, has had, or is reasonably expected to have, a Material Adverse Effect (as defined in the Merger Agreement).
- (12) 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 Purchase Date, will be provided not later than the date that is three Business Days prior to the Purchase Date.

- (13) Representations and Warranties. Subject to the Certain Funds Provisions, the Specified Merger Agreement Representations and Specified Representations will be true and correct in all material respects; *provided* that the failure of a Specified Merger Agreement Representation to be true and correct will not result in a failure of a condition precedent under this Article IV unless such failure gives Merger Sub the right to terminate the Merger Agreement pursuant to its terms (after giving effect to any applicable notice and cure provisions).

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 (13) and upon satisfaction or waiver by the Administrative Agent of such conditions the 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 120 days following the end of the fiscal year ending on the earlier of (a) on or about January 30, 2016 or (b) the fiscal year ended after the Closing Date, and within 90 days following the end of each fiscal year thereafter, 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**");
- (2) within 60 days following the end of the fiscal quarters ending on or about April 30, 2016 and on or about July 31, 2016, and, thereafter, within 45 days following the end of each of the first three fiscal quarters of each fiscal year, 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 (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 120 days following the end of the fiscal year ending on or about January 30, 2017, and within 90 days following the end of each full fiscal year ended thereafter, 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 Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, within five Business Days after the date such Restricted Subsidiary is formed or acquired or such Unrestricted Subsidiary is redesignated as a Restricted 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 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 \$7.5 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;

- (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) The Collateral Agent shall have received from each applicable Loan Party: (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;
  - (e) except, in the case of each of the foregoing clauses (a) through (c), in connection with the LLC Conversion.

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. Lender Calls. Participate in annual and quarterly conference calls with the Administrative Agent and the Lenders, such calls to be held at such time as may be agreed to by the Borrower and the Administrative Agent, but in any event not later than on or prior to the date that is 10 Business Days following the date after which the applicable Required Financial Statements are to be delivered pursuant to Section 5.04(1) and 5.04(2), with a Financial Officer of the Borrower, such other members of senior management of the Borrower as the Borrower deems appropriate, the Lenders and the Lenders' respective representatives and advisors to discuss the state of the Borrower's business, including, but not limited to, recent performance, cash and liquidity management, operational activities, current business and market conditions and material performance changes; *provided* that in no event shall more than one such call be requested in any fiscal quarter (in total with respect to this Agreement and the ABL Credit Agreement); *provided, further*, that the requirements set forth in this Section 5.12 may be satisfied with a public earnings calls for the applicable period.

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 may not exceed \$75.0 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 (including Indebtedness created under ABL Extended Revolving Commitments) 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), the greater of (i) \$600.0 million and (ii) the Borrowing Base as of the date any such Indebtedness is incurred;

- (3) the Senior Notes issued on the Closing Date, any notes issued in exchange for the Senior Notes pursuant to a registration rights agreement, 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);
- (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) \$125.0 million and (b) 2.25% 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);

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- (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 (other than 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; and
  - (iii) the aggregate principal amount of any such Indebtedness incurred pursuant to this clause (12) 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 this clause (12) (and any successive Permitted Refinancing Indebtedness), may not exceed \$75.0 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, 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) Cure Amounts 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) \$50.0 million and (b) 1.00% 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) \$75.0 million and (b) 1.50% 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 the Transactions or any Permitted Investment;
- (25) any Permitted Refinancing Indebtedness incurred to Refinance Incremental Equivalent Term Debt, Credit Agreement Refinancing Indebtedness or Indebtedness incurred under clauses (3), (4), (5), (12), (16), (21), (22), this clause (25) or clauses (28) or (29) 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) \$100.0 million and (b) 1.85% of Consolidated Total Assets as of the date any such Indebtedness is incurred; and
- (29) Indebtedness incurred in respect of any mortgage financing or similar financing in respect of the Headquarters.

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 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; *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;
- (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 property or assets 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 the lesser of (i) Closing Date Senior Secured First Lien Net Leverage Ratio and (ii) 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) the pricing of such Indebtedness complies with Section 2.18(8);
- (32) Liens that rank junior to the Liens securing both the Obligations and the ABL Obligations, if the Total Net Leverage Ratio as of the date on which such Liens are first created is less than or equal to the lesser of (i) Closing Date Total Net Leverage Ratio and (ii) 6.00 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) \$100.0 million and (b) 1.85% 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 Hedge Agreement (as defined in the ABL Credit Agreement) and Cash Management Obligations (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; and
- (36) Liens securing Indebtedness incurred in accordance with Section 6.01(29), solely encumbering the Headquarters.

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, (a) in respect of any Sale and Lease-Back Transaction in respect of the Headquarters and (b) in respect of any other property of the Borrower, 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 \$150.0 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 (including payment of the purchase consideration under the Merger Agreement);
- (2) loans and advances to officers, directors, employees or consultants of any Parent Entity, the Borrower or any Restricted Subsidiary not to exceed \$15.0 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;
- (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) \$25.0 million and (ii) 0.50% 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) \$75.0 million and (ii) 1.50% 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 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) \$100.0 million and (b) 1.85% 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 \$50.0 million plus an additional \$10.0 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) \$25.0 million and (ii) 0.50% 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; or

- (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;
- (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) \$125.0 million and (B) 2.25% 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) (a) 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 of 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; or
- (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 \$10.0 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) Cure Amounts 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) \$20.0 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) Cure Amounts 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 or to pay any amounts pursuant to the Merger Agreement;
- (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 (including Holdings) that files, or to any Parent Entity for the purpose of paying to any other Parent Entity that files, a consolidated U.S. federal consolidated or combined or unitary state 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, 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 federal or state or local income or franchise taxes (including franchise taxes and similar taxes) in an amount not to exceed the liability of Borrower and its relevant subsidiaries for such 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 to 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;

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- (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) [Reserved.];
- (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 \$50.0 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 \$15.0 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) the Transactions and transactions pursuant to the Transaction Documents 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 the Transactions;
- (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) \$50.0 million and (ii) 1.00% 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 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), (28) or (29), 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 Facility, the Term Facility, other Indebtedness permitted by this Agreement, the Merger Agreement and the other agreements contemplated by the Merger 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 LLC Conversion or any other Transactions on the Closing Date; and
- (14) activities incidental to the businesses or activities described above.

*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 financial maintenance covenant under the ABL Credit Agreement (a

“**Financial Covenant Default**”) shall not in and of itself constitute an Event of Default hereunder until the later of (1) 90 days following the date of such Financial Covenant Default and (2) the date on which the lenders under the ABL Credit Agreement shall have accelerated payment of the ABL Obligations and terminated the commitments with respect thereto or foreclosed upon the collateral securing the ABL Obligations; and, *provided, further*, that prior to the time it becomes an Event of Default hereunder, any Financial Covenant Default may be waived, amended, terminated or otherwise modified from time to time in accordance with the ABL Credit Agreement;

- (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 \$50.0 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 or take any other action 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 may and, 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 neither the Agents, Arrangers, Syndication Agent or Syndication Agent, nor 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, Arrangers, Syndication Agent and Syndication Agent, that it has, independently and without reliance upon the Administrative Agent, Arrangers, Syndication Agent or Syndication Agent, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the 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,

Arrangers, Syndication Agent or Syndication Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the 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), 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. Arrangers; Syndication Agent; Syndication Agent. None of the Arrangers, Syndication Agent or Syndication Agent will have any duties, responsibilities or liabilities hereunder in their respective capacities 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, Merger Sub 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), except to the Company pursuant to the Merger on the Closing Date pursuant to the Transactions, 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 any Lead 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); *provided* that such processing and recordation fee shall not be payable in the case of assignments by any Lead Arranger or any Affiliate of the Lead Arrangers;

- (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 may 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, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant shall not be entitled to the benefits of Section 2.14 to the extent such Participant fails to comply with Section 2.14(5) as though it were a Lender.
- (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, or if any Person becomes a Disqualified Institution after the applicable Trade Date, 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 a *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;
  - (e) no proceeds from revolving loans under the ABL Credit Agreement shall be used to fund any such purchases; and

- (f) 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 Term Loan 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 Term Loan 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, the Arrangers, Syndication Agent and Syndication Agent 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, the Arrangers, Syndication Agent and Syndication Agent, 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, the Arrangers, Syndication Agent and Syndication Agent and, in the case of enforcement of this Agreement, the Lenders.
- (2) The Borrower agrees to indemnify the Administrative Agent, each Arranger, each Syndication Agent, each Documentation Agent, 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, Arrangers, Syndication Agent or Syndication Agent 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 Restricted Subsidiaries.

- (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 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 Loan 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. Notwithstanding the foregoing, the Fee Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. 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, 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 Merger or 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 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 Arrangers 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 Arrangers 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 Arrangers 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 Term Loan Agent and 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 Arrangers are arm's-length commercial transactions between Holdings and the Borrower, on the one hand, and the Agents and the Arrangers, 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 Arrangers 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 Arrangers 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 Arrangers 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. Assumption and Release.

- (1) The Administrative Agent, the Collateral Agent, each Lender, Merger Sub as Initial Borrower, Successor Borrower, Petco Holdings, Inc., as Holdings, agree that, immediately upon consummation of the Merger, pursuant to this Section 10.22, (A) Merger Sub hereby assigns to Petco Animal Supplies, Inc., in its capacity as Successor Borrower, and Successor Borrower hereby expressly, unconditionally and irrevocably assumes all obligations of Merger Sub as “Initial Borrower” and “Borrower” hereunder and of all other obligations and liabilities of Merger Sub under this Agreement and each other Loan Document, in each case as if Merger Sub were never a party hereto or thereto as “Borrower” and (B) Successor Borrower agrees to perform and observe all of the obligations (including, without limitation, all obligations in respect of the Term Loans and other indebtedness), covenants, agreements, terms, conditions, duties and liabilities of the Initial Borrower as the “Initial Borrower” and “Borrower” under or with respect to this Agreement, any Notes and any of the other Loan Documents to which the Initial Borrower is a party in its capacity as the “Initial Borrower” and “Borrower” as fully as if the Successor Borrower was originally the obligor in respect thereof and the signatory in the capacity of “Borrower” thereto.
- (2) The Administrative Agent, the Collateral Agent and each Lender, agree that, immediately after the assignment of the obligations of the Company as the Initial Borrower on the Closing Date pursuant to this Section 10.22 and the Merger and the LLC Conversion have been completed, the Company, as survivor of the Merger, ceases to be a party to this Agreement and each other Loan Document as a “Borrower,” and Company shall be released from the payment and performance of any and all obligations of a Borrower and from all other obligations and liabilities of a “Borrower” under this Agreement and each other Loan Document, in each case as if it were never a party hereto or thereto in such capacity. For the avoidance of doubt, after giving effect to the assignment of the obligations of the Company as the Initial Borrower on the Closing Date pursuant to this Section 10.22, the Merger and the LLC Conversion, Company’s sole obligations under this Agreement and each other Loan Document shall be as “Holdings” hereunder and thereunder (including any definition or covenant applicable thereto that applies to Holdings in such capacity).
- (3) The Successor Borrower hereby represents and warrants to the Administrative Agent, the Collateral Agent and the Lenders that all of the representations and warranties of the Successor Borrower set forth in this Agreement and each of the other Loan Documents are true and correct in all material respects as of the Closing Date, except to the extent such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.
- (4) The Successor Borrower hereby acknowledges that it has reviewed the terms and provisions of this Agreement and consents hereto. The Successor Borrower acknowledges and agrees that each of the Loan Documents to which it is a party or otherwise bound shall continue in full force and effect and that all of its obligations thereunder shall be valid and enforceable and shall not be impaired or limited by the execution or effectiveness of this Agreement.

SECTION 10.23. 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 10.24. 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.

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~~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.~~

~~MERGER SUB: PET ACQUISITION MERGER SUB LLC (which on the Closing Date shall be merged with and into PETCO HOLDINGS, INC., with PETCO HOLDINGS, INC., surviving such merger as Holdings) by PET ACQUISITION LLC, as its sole Member~~

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

*/Signature Page to Term Loan Credit Agreement/*

~~The undersigned hereby confirms that, as a result of its merger with PET ACQUISITION MERGER SUB LLC on the Closing Date, it hereby assumes all of the rights and obligations of PET ACQUISITION MERGER SUB LLC under this Agreement (in furtherance of, and not in lieu of, any assumption or deemed assumption as a matter of law) and hereby agrees to be joined to this Agreement as the Holdings hereunder. Holdings:~~

~~PETCO HOLDINGS, INC.~~

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

*[Signature Page to Term Loan Credit Agreement]*

~~The undersigned hereby confirms that, pursuant to Section 10.22 hereto, it hereby assumes all of the rights and obligations of PET ACQUISITION MERGER SUB LLC as "Initial Borrower" and "Borrower" under this Agreement and hereby agrees to be joined to this Agreement as the Successor Borrower and Borrower hereunder. Successor Borrower: PETCO ANIMAL SUPPLIES, INC.~~

By \_\_\_\_\_

Name:

Title:

*/Signature Page to Term Loan Credit Agreement/*

**CITIBANK, N.A., as Administrative Agent, Collateral Agent and a Lender**

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

*{Signature Page to Term Loan Credit Agreement}*

**SECOND AMENDMENT AGREEMENT**

**SECOND AMENDMENT AGREEMENT** dated as of January 27, 2017 (this "Second Amendment") to the Term Loan Credit Agreement dated as of January 26, 2016 (as amended by the First Amendment Agreement dated as of June 17, 2016, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time and immediately prior to the Second Amendment Effective Date (as defined below), the "Credit Agreement"), among, inter alios, Petco Holdings, Inc. LLC (f/k/a Petco Holdings, Inc.), a Delaware limited liability company, ("Holdings"), Petco Animal Supplies, Inc., a Delaware corporation (the "Borrower"), the Lenders from time to time party hereto and Citibank, N.A., as administrative agent (the "Administrative Agent") and as collateral agent.

A. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Amended Credit Agreement (as defined below). Citi (as defined below), Barclays Bank PLC ("Barclays"), Royal Bank of Canada and RBC Capital Markets<sup>1</sup> ("RBC"), Credit Suisse Securities (USA) LLC ("CS Securities"), Nomura Securities International, Inc. (together with any of its affiliates as may be appropriate to consummate the transactions contemplated hereby, "Nomura") and Macquarie Capital (USA) Inc. and ("Macquarie Capital") are acting as joint bookrunners and joint lead arrangers (in such capacities, the "Repricing Arrangers") in connection with this Second Amendment. For purposes of this Second Amendment, "Citi" shall mean Citigroup Global Markets Inc., Citibank, N.A., Citicorp USA, Inc., Citicorp North America, Inc. and/or any of their affiliates as Citi shall determine to be appropriate to provide the services contemplated herein.

B. The Borrower has requested that, in accordance with Section 2.19 of the Credit Agreement, the Credit Agreement be amended to, among other things: (a) refinance in full all Term Loans outstanding immediately prior to the effectiveness of this Second Amendment, including the Tranche B-1 Term Loans and Tranche B-2 Term Loans (as such terms are defined in the Credit Agreement) (collectively, the "Existing Term Loans") with the Exchanged Term Loans (as defined below) and the Additional Term Loans (as defined below) (the Exchanged Term Loans and the Additional Term Loans, collectively, a single Class of Term Loans under and as defined in the Amended Credit Agreement, the "Second Amendment Term Loans"), and which Second Amendment Term Loans shall have the terms as set forth in the Amended Credit Agreement and (b) make certain other changes as more fully set forth in the Amended Credit Agreement.

C. Each Lender that executes and delivers a consent to this Second Amendment in the form of the Lender Consent and New Commitment attached to the Election Notice Memorandum posted on or about January 6, 2017 (the "Lender New Commitment") will be deemed (i) to have irrevocably agreed and consented to the terms of this Second Amendment and the Amended Credit Agreement and (ii) if so elected by such Lender (an "Exchanging Term Lender"), (A) to have irrevocably agreed to exchange (as defined below) the Allocated Amount (as defined in the Cashless Settlement of Existing Term Loans letter posted on or about January 6, 2017 and to be dated as of the date hereof by and among the Borrower, Citigroup Global Markets, Inc. and the Administrative Agent) of its Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B- 2 Term Loans, as applicable (all Existing Term Loans so exchanged, the "Exchanged Term Loans") on the Second Amendment Effective Date for Second Amendment Term Loans consisting of Term Loans under and as defined in the Amended Credit Agreement, in an equal principal amount specified therein and (B) upon the Second Amendment Effective Date, to have exchanged (by cashless or assignment settlement, as further described in the

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<sup>1</sup> RBC Capital Markets is a brand name for the capital markets activities of Royal Bank of Canada and its affiliates.

Lender New Commitment) the Allocated Amount of its Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable with Second Amendment Term Loans, in an equal principal amount specified therein.

D. Each Person that executes and delivers a signature page to this Second Amendment in the capacity of an “Additional Lender” (each, an “Additional Lender” and all Additional Lenders, together with all Exchanging Term Lenders, collectively, the “Second Amendment Lenders”) will be deemed to have irrevocably (i) agreed to the terms of this Second Amendment and the Amended Credit Agreement, (ii) committed to make the Second Amendment Term Loans, to the Borrower on the Second Amendment Effective Date (the “Additional Term Loans”) in the amount notified to such Additional Lender by the Administrative Agent (but in no event greater than the amount such Additional Lender committed to make as Additional Term Loans) and (iii) upon the Second Amendment Effective Date, made such Additional Term Loans to the Borrower.

E. By executing and delivering a signature page to this Second Amendment, the Administrative Agent will be deemed upon the Second Amendment Effective Date to have irrevocably agreed to the terms of this Second Amendment and the Amended Credit Agreement.

F. The aggregate proceeds of the Additional Term Loans will be used to refinance in full all Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans (other than Exchanged Term Loans), on the terms and subject to the conditions set forth herein, including via the assignment by the Lenders holding such Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable (other than Exchanged Term Loans), who do not remain Lenders under the Amended Credit Agreement on the Second Amendment Effective Date to the Additional Lenders as of the Second Amendment Effective Date of such Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable (other than Exchanged Term Loans), which shall thereafter be continued as and be deemed to be Term Loans under the Amended Credit Agreement.

G. To accomplish the foregoing (a) the Borrower, the Administrative Agent (on behalf of itself and on behalf of Lenders that have executed Lender New Commitments constituting the Exchanging Term Lenders) and the Additional Lenders whose signatures appear below, are willing to amend the Credit Agreement as set forth below (the Credit Agreement as amended by this Second Amendment hereby, the “Amended Credit Agreement”), (b) the Exchanging Term Lenders are willing to exchange the Allocated Amount of their Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable with the Second Amendment Term Loans and (c) the Additional Lenders are willing to refinance in full all Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable (other than Exchanged Term Loans), with Additional Term Loans on the Second Amendment Effective Date, in each case, on the terms and subject to the conditions set forth herein and in the Amended Credit Agreement.

H. The amendments to the Credit Agreement set forth below are each subject to the satisfaction of the conditions precedent to effectiveness referred to herein and shall become effective as provided herein.

Accordingly, in consideration of the mutual agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Amendments to Credit Agreement. The Borrower, the Administrative Agent (on behalf of itself and on behalf of Lenders that have executed Lender New Commitments constituting the Exchanging Term Lenders) and the Additional Lenders whose signatures appear below

agree that on the Second Amendment Effective Date, the Credit Agreement shall be 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 Amended Credit Agreement attached hereto as Exhibit A.

SECTION 2. Lenders; Second Amendment Term Loans; Administrative Agent Authorization.

(a) Lenders. Subject to the terms and conditions set forth herein and in the Credit Agreement, (i) each Exchanging Term Lender (by executing a Lender New Commitment) irrevocably (A) agrees to the terms of this Second Amendment and the Amended Credit Agreement, (B) agrees to exchange (as set forth on its Lender New Commitment) the Allocated Amount of its Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable with the Second Amendment Term Loans, in an equal principal amount specified therein and (C) upon the Second Amendment Effective Date, shall exchange (as set forth on its Lender New Commitment) the Allocated Amount of its Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable with the Second Amendment Terms Loans, in an equal principal amount as specified therein and (ii) each Additional Lender irrevocably (A) agrees to the terms of this Second Amendment and the Amended Credit Agreement, (B) commits to make Additional Term Loans in the amount notified to such Additional Lender by the Administrative Agent (but in no event greater than the amount such Additional Lender committed to make as Additional Term Loans) and (C) upon the Second Amendment Effective Date, shall refinance in full all Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable (other than Exchanged Term Loans) with such Additional Terms Loans. Each Additional Lender further acknowledges and agrees that, as of the Second Amendment Effective Date, it shall be a “Lender” under, and for all purposes of, the Amended Credit Agreement and the other Loan Documents, and shall be subject to and bound by the terms thereof, and shall perform all the obligations of and shall have all rights of a Lender thereunder. For purposes of this Second Amendment, “exchange” shall mean convert and continue. For the avoidance of doubt, notwithstanding anything herein to the contrary, it is acknowledged and agreed that the Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable, of the Exchanging Term Lenders will be converted into and continued as Second Amendment Term Loans consisting a single Class of Term Loans under and as defined in the Amended Credit Agreement, and such Exchanged Term Loans shall be on the same terms (other than to the extent expressly provided in this Second Amendment) under the Loan Documents as such Existing Term Loans.

(b) Second Amendment Term Loans.

(i) On the Second Amendment Effective Date, the proceeds of all Additional Term Loans, if any, shall be used to refinance in full all Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable (other than Exchanged Term Loans), on the terms and subject to the conditions set forth herein, including via the assignment by the Lenders holding such Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable (other than Exchanged Term Loans), who do not remain Lenders under the Amended Credit Agreement on the Second Amendment Effective Date to the Additional Lenders as of the Second Amendment Effective Date of such Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable (other than Exchanged Term Loans), which shall thereafter be continued as and be deemed to be Second Amendment Term Loans. The commitments of the Additional Lenders and the undertakings of the Exchanging Term Lenders are several and no such Second Amendment Term Lender will be responsible for any other Second Amendment Term Lender’s failure to make, acquire or exchange the Second Amendment Term Loans consisting of Tranche B-1

Term Loans and/or Tranche B-2 Term Loans, as applicable and in each case under and as defined in the Amended Credit Agreement. Notwithstanding anything herein or in the Amended Credit Agreement to the contrary, the aggregate principal amount of the Second Amendment Term Loans will not exceed the aggregate principal amount of the Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable. Each of the parties hereto acknowledges and agrees that the terms of this Second Amendment do not constitute a novation but, rather, an amendment of the terms of a pre-existing Indebtedness and related agreement, as evidenced by this Second Amendment and the Amended Credit Agreement.

(ii) Each Exchanging Term Lender hereby waives any break funding payments or expenses due and payable to it by the Borrower pursuant to Section 2.13 of the Credit Agreement with respect to the exchange of its Exchanged Term Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans with the Second Amendment Term Loans, on a date other than the last day of the Interest Period relating to such Exchanged Term Loans.

(iii) The Second Amendment Term Loans, shall initially be Eurocurrency Borrowing with an Interest Period commencing on the Second Amendment Effective Date and ending on April 28, 2017. With respect to such Borrowing Request, each Second Amendment Term Lender and the Administrative Agent hereby waives the provisions of Section 2.02 of the Credit Agreement and instead requires such Borrowing Request to be delivered not later than 11 a.m., New York City time, on the Business Day before the date of the Borrowing of the Second Amendment Term Loans.

(iv) The Borrower and the Administrative Agent hereby consent to any assignments made by Citi or any affiliate thereof to the Persons included in the list of allocations separately provided to the Borrower and the Administrative Agent (or any Approved Funds or Affiliate of such Persons) in connection with the primary syndication of the Second Amendment Term Loans.

(c) Administrative Agent Authorization. The Borrower, the Exchanging Term Lenders who executed and delivered a Lender New Commitment and the Additional Lenders whose signatures appear below authorize the Administrative Agent to (i) determine all amounts, percentages and other information with respect to the Commitments and Existing Term Loans of each Lender, which amounts, percentages and other information may be determined only upon receipt by the Administrative Agent of the Lender New Commitments and the signature pages of all Lenders whose signatures appear below and (ii) enter and complete all such amounts, percentages and other information in the Amended Credit Agreement, as appropriate. The Administrative Agent's determination and entry and completion shall be conclusive and shall be conclusive evidence of the existence, amounts, percentages and other information with respect to the obligations of the Borrower under the Amended Credit Agreement, in each case, absent clearly demonstrable error.

SECTION 3. Representations and Warranties. To induce the other parties hereto to enter into this Second Amendment, the Loan Parties represent and warrant to each of the Lenders, and the Administrative Agent that, as of the Second Amendment Effective Date:

(a) this Second Amendment has been duly authorized by all corporate, stockholder, partnership, limited liability company or other applicable action required to be taken by the Loan Parties;

(b) this Second Amendment has been duly executed and delivered by the Loan Parties and constitutes a legal, valid and binding obligation of such Loan Party in accordance with its

terms, subject to (i) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally; (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); (iii) implied covenants of good faith and fair dealing; and (iv) any foreign laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

(c) each of the Loan Parties has the power and authority to execute, deliver and perform its obligations under the Second Amendment Agreement and the Amended Credit Agreement, as applicable, 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 4. Conditions to Effectiveness of this Second Amendment.

(a) This Second Amendment shall become effective on the date (the "Second Amendment Effective Date") on which:

(i) The Administrative Agent shall have received duly executed and delivered counterparts of this Second Amendment that, when taken together, bear the signatures of the Borrower, the Additional Lenders and the Administrative Agent (on its behalf, as well as on behalf of the Exchanging Term Lenders) and all Guarantors, and the aggregate principal amount of the Exchanged Term Loans and the Additional Term Loans shall be equal to the aggregate principal amount of the Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable outstanding on the Second Amendment Effective Date immediately prior to the effectiveness of this Second Amendment.

(ii) Not later than 11 a.m., New York City time, on the Business Day before the Second Amendment Effective Date, the Administrative Agent shall have received a Borrowing Request.

(iii) Payment of all fees required to be paid pursuant to the Engagement Letter dated as of January 5, 2016 and any related fee letters (the "Fee Letters") described therein and, to the extent invoiced, reimbursement or other payment of all out of pocket expenses required to be reimbursed or paid by the Borrower hereunder or under any other Loan Document or other agreement with the Borrower relating to the transaction contemplated hereby.

(iv) The Administrative Agent shall have received a certificate of a Responsible Officer of the Loan Parties dated the Second Amendment Effective 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 Second Amendment Effective 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 Second Amendment Effective 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 the Borrower authorizing the execution and delivery of the Second Amendment Agreement to which it is a party or any other document delivered in connection herewith on the Second Amendment Effective 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 Second Amendment Agreement (together with a certificate of another officer as to the incumbency and specimen signature of the Responsible Officer executing the certificate pursuant hereto).

(v) The Administrative Agent shall have received a customary legal opinion of Gibson, Dunn & Crutcher LLP, special New York and California counsel to the Loan Parties.

(vi) (A) Each of the representations and warranties set forth in Section 3 shall be true and correct in all material respects on and as of the Second Amendment Effective Date, with the same effect as though made on and as of such date, except to the extent 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 and as of such earlier date, and (B) no Default or Event of Default has occurred and is continuing both before and immediately after giving effect to the transactions contemplated hereby.

(vii) The aggregate proceeds of the Additional Term Loans will be used to refinance in full all Existing Term Loans, consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable (other than Exchanged Term Loans), on the terms and subject to the conditions set forth herein, including via the assignment by the Lenders holding such Existing Term Loans (other than Exchanged Term Loans) who do not remain Lenders under the Amended Credit Agreement on the Second Amendment Effective Date to the Additional Lenders as of the Second Amendment Effective Date of such Existing Term Loans (other than Exchanged Term Loans), which shall thereafter be continued as and be deemed to be Term Loans under the Amended Credit Agreement.

(viii) The Borrower shall have, concurrently with the exchange of Exchanged Term Loans consisting of Tranche B-1 Term Loans and/or Tranche B-2 Term Loans with the Second Amendment Term Loans and the making of the Additional Term Loans, if any, (A) paid all accrued and unpaid interest and other amounts on the aggregate principal amount of the Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable and (B) paid to all Lenders holding Existing Term Loans consisting of Tranche B-1 Term Loans or Tranche B-2 Term Loans, as applicable immediately prior to the Second Amendment Effective Date that are not party to this Second Amendment, if any, all indemnities, cost reimbursements and other Obligations (as defined below), if any, then due and owing to such Lenders under the Loan Documents (prior to the effectiveness of this Second Amendment) and of which the Borrower has been notified.

SECTION 5. Effect of Amended Credit Agreement.

(a) Except as expressly set forth herein or in the Amended Credit Agreement, this Second Amendment and the Amended Credit Agreement shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders or the Administrative Agent under the Credit Agreement, the Amended Credit Agreement or any other Loan Document, and 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 the Amended Credit Agreement or any other provision of the Credit Agreement, the Amended Credit Agreement or of any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. Nothing herein shall be deemed to entitle Holdings, the Borrower, any Subsidiary Loan Party or any other Person to a consent to, or a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement, the Amended Credit Agreement or any other Loan Document in similar or different circumstances.

(b) On the Second Amendment Effective Date, the Credit Agreement shall be amended as set forth in Section 1 above. The parties hereto acknowledge and agree that (i) this Second Amendment, the Amended Credit Agreement, any other Loan Document or other document or instrument executed and delivered in connection herewith do not constitute a novation, or termination of the obligations of the Borrower, Holdings or the Subsidiary Loan Parties under the Loan Documents, including, without limitation, the Credit Agreement and the Collateral Agreement, as in effect prior to the Second Amendment Effective Date (collectively, the “Obligations”) and (ii) such Obligations are in all respects continuing (as amended by this Second Amendment) with only the terms thereof being modified to the extent provided in this Second Amendment, and the Borrower, Holdings and each of the Subsidiary Loan Parties reaffirm such Obligations, including in respect of any guaranties of, and any pledges of collateral securing, such Obligations, including, without limitation, the Second Amendment Term Loans. Upon the satisfaction of the conditions precedent set forth in Section 4 of this Second Amendment, the provisions of this Second Amendment will become effective and binding upon, and enforceable against, the Borrower, Holdings, the Subsidiary Loan Parties, the Administrative Agent and the Lenders.

(c) This Second Amendment shall constitute a Loan Document for all purposes under the Amended Credit Agreement and shall be administered and construed pursuant to the terms of the Amended Credit Agreement.

SECTION 6. Tax Treatment. The Borrower intends to treat this Second Amendment as resulting in a significant modification of the Tranche B-1 Term Loans and Tranche B-2 Term Loans (as such terms are defined in the Credit Agreement) within the meaning of Section 1.1001-3 of the U.S. Treasury Regulations, and to determine their new issue price pursuant to Section 1.1273-2(a) or (b) of the U.S. Treasury Regulations with the expectation that their new issue price will be equal to their respective principal amounts for U.S. federal income tax purposes.

SECTION 7. Counterparts. This Second Amendment may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute one contract, and shall become effective as provided in Section 4. Delivery of an executed counterpart to this Second Amendment by facsimile or other electronic transmission (including “pdf”) shall be as effective as delivery of other electronic transmission (e.g., “PDF” or “TIFF”) and shall be as effective as delivery of a manually signed original.

SECTION 8. Applicable Law. THIS SECOND AMENDMENT 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).

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SECTION 9. Headings. Headings used herein are for convenience of reference only, are not part of this Second Amendment and are not to affect the construction of, or to be taken into consideration in interpreting, this Second Amendment.

*[Signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be duly executed by their respective officers as of the day and year first above written.

**PETCO HOLDINGS, INC. LLC,**  
as Holdings

By: /s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: Vice President, Controller, and Treasurer

**PETCO ANIMAL SUPPLIES, INC.,**  
as Borrower

By: /s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

**PETCO WELLNESS, LLC**  
as Guarantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

**PETCO ANIMAL SUPPLIES STORES, INC.,** as  
Guarantor)

By: /s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

Second Amendment Agreement

**INTERNATIONAL PET SUPPLIES AND  
DISTRIBUTION, INC.**

as Guarantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

**STORES SHIPPING SERVICES, LLC**

as Guarantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

**PETCO SUPPORT SERVICES, LLC**

as Guarantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

**PETCO PUERTO RICO, LLC**

as Guarantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

Second Amendment Agreement

**E-PET SERVICES, LLC**  
as Guarantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

**PETCO ASIA, LLC**  
as Guarantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

**PETCO REAL ESTATE HOLDINGS I LLC**  
as Guarantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

**PETCO REAL ESTATE HOLDINGS II LLC, as**  
Guarantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

**PETCO REAL ESTATE HOLDINGS III LLC, as**  
Guarantor

By: /s/ Patricia A. Ward

Name: Patricia A. Ward  
Title: President

Second Amendment Agreement

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**ACKNOWLEDGED AND ACCEPTED BY:**

**CITIBANK, N.A.,**

as Administrative Agent and Collateral Agent (on behalf of  
itself and the Exchanging Term Lenders)

By: /s/ Michael V. Moore

Name: Michael V. Moore

Title: Vice President

Second Amendment Agreement

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**EXHIBIT A**

Amended Credit Agreement

[See attached.]

Second Amendment Agreement

\$2,525,000,000

TERM LOAN CREDIT AGREEMENT,

dated as of January 26, 2016,

and the FIRST AMENDMENT TO TERM LOAN CREDIT AGREEMENT,

dated as of June 17, 2016

and the SECOND AMENDMENT TO TERM LOAN CREDIT AGREEMENT,

dated as of January 27, 2017

among

PET ACQUISITION MERGER SUB LLC,  
(to be merged with and into PETCO HOLDINGS, INC.)  
as the Initial Borrower, and immediately after giving effect to the Merger, as Holdings,

PETCO ANIMAL SUPPLIES, INC.,  
as the Successor Borrower,

THE LENDERS PARTY HERETO,

and

CITIBANK, N.A.,  
as Administrative Agent and Collateral Agent,

---

CITIGROUP GLOBAL MARKETS INC.,  
BARCLAYS BANK PLC,  
RBC CAPITAL MARKETS<sup>1</sup>,  
CREDIT SUISSE SECURITIES (USA) LLC,  
NOMURA SECURITIES INTERNATIONAL, INC., and  
MACQUARIE CAPITAL (USA) INC.,  
as Bookrunners and Arrangers,

BARCLAYS BANK PLC,

as Syndication Agent,

and

RBC CAPITAL MARKETS,

as Documentation Agent

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<sup>1</sup> RBC Capital Markets is a brand name for the capital markets activities of Royal Bank of Canada and its affiliates.

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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
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### ~~Schedule 2.01(1)~~ ~~Tranche B-1 Commitments~~

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Schedule 6.04	Investments
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Schedule 10.01	Notice Information

TERM LOAN CREDIT AGREEMENT, dated as of January 26, 2016 (as amended by the First Amendment Agreement dated as of June 17, 2016 [and the Second Amendment Agreement dated as of January 27, 2017](#), and as further amended, amended and restated, supplemented or otherwise modified from time to time, this “*Agreement*”), among initially PET ACQUISITION MERGER SUB LLC, a Delaware limited liability company (“*Merger Sub*” and in its capacity as the initial borrower hereunder, the “*Initial Borrower*”, and after the assignment of the obligations of Initial Borrower on the Closing Date pursuant to Section 10.22 and the Merger and the LLC Conversion have been completed, in its capacity as Holdings hereunder, “*Holdings*”) and after the consummation of the Merger, and upon assumption of the Initial Borrower’s Obligations hereunder pursuant to Section 10.22, PETCO ANIMAL SUPPLIES, INC., a Delaware corporation (the “*Successor Borrower*”), the Lenders party hereto from time to time and CITIBANK, N.A., 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) CVC Capital Partners Advisory (U.S.), Inc. and Canada Pension Plan Investment Board or their respective Affiliates formed PET Acquisition LLC, a Delaware limited liability company (“*Parent*”), owning all of the Capital Stock of Merger Sub, and pursuant to the Agreement and Plan of Merger, dated as of November 21, 2015 (the “*Merger Agreement*”), by and among Parent, Merger Sub, Petco Holdings, Inc., a Delaware corporation (the “*Company*”), and the equityholders’ representative named therein, Merger Sub merged (the “*Merger*”) with and into the Company, with the Company being the survivor of such Merger. After the consummation of the Merger, the Company was converted into a limited liability company with the name Petco Holdings, Inc. LLC (the “*LLC Conversion*”). As used herein the “*Borrower*” means the Initial Borrower, prior to the consummation of the Merger and assumption of the Initial Borrower’s Obligations hereunder pursuant to Section 10.22, and the Successor Borrower, thereafter.
- (2) In connection with the consummation of the Merger, (a) the Lenders agreed to extend credit to the Borrower in the form of Term Loans on the Closing Date in an aggregate principal amount of \$2,525.0 million, (b) certain financial institutions agreed to extend credit to the Borrower in the form of revolving loans, swingline loans and letters of credit under the ABL Credit Agreement (as defined herein), (c) certain initial purchasers agreed to purchase Senior Notes in an aggregate principal amount not to exceed \$750.0 million and (d) each of the Sponsors and certain other equity investors (including members of the Company’s management) arranged by or designated by the Sponsors, directly or indirectly, contributed to Parent or another Parent Entity (as defined herein) cash or rollover equity in exchange for common equity of Parent or such Parent Entity (and Parent or such Parent Entity will contribute such cash and rollover equity to the common equity capital of Merger Sub) and the aggregate amount of such contributed cash or rollover equity was to be no less than 25.0% of the sum of (i) the aggregate gross proceeds of the loans borrowed on the Closing Date under the ABL Credit Agreement (excluding letters of credit, amounts borrowed to cash collateralize letters of credit issued under the Existing ABL Agreement (as defined in the ABL Credit

Agreement), amounts borrowed to fund working capital needs of the Company and its subsidiaries on the Closing Date and amounts borrowed to fund the Transaction Tax Benefits (as defined in the Merger Agreement) in an amount not to exceed \$50.0 million), the Term Loans borrowed hereunder on the Closing Date and the aggregate gross cash proceeds from any sale of Senior Notes on or prior to the Closing Date and (ii) the amount of such cash and rollover equity contributed on the Closing Date after giving effect to the Transactions (such contribution, the “**Equity Contribution**”).

## 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 the “*ABL Claims*” as defined in the Intercreditor Agreement.

“**ABL Credit Agreement**” means the Revolving Credit Agreement, dated as of the Closing Date, among Holdings, Merger Sub, the Successor Borrower, the lenders party thereto and Citibank, N.A., as administrative agent and collateral agent, as such document may be amended, restated, supplemented or otherwise modified from time to time.

“**ABL Extended Revolving Commitments**” means “*Extended Loans*” as defined in the ABL Credit Agreement.

“**ABL Facility**” means the “*Revolving Facility*” and any “*Incremental Facility*,” each as defined in the ABL Credit Agreement.

“**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 that consists of or includes the disposition of ABL Priority Collateral outside the ordinary course of business.

“**ABL Security Documents**” means the “*Security Documents*” as defined in the ABL Credit Agreement.

“**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 commercial lending rate published as of such day by the Administrative Agent as the “prime rate;”
- (3) the LIBOR Quoted Rate *plus* 1.00%; and
- (4) ~~solely in respect of Tranche B-1 Term Loans~~, 2.00%.

Any change in the ABR due to a change in the Federal Funds Rate, the “prime rate” or the LIBOR Quoted Rate will be effective on the effective date of such change in the Federal Funds Rate, the “prime rate” or the LIBOR Quoted 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-1 Term Loans~~, 1.00%.

“**Administrative Agent**” means Citibank, N.A., 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 and each of its 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) prior to any redetermination pursuant to the below, with respect to any ~~Tranche B-1~~ Term Loans made on the Second Amendment Effective Date, the applicable percentage set forth in the row styled “Level I” in the table below;

~~(2) prior to any redetermination pursuant to the below, with respect to any Tranche B-2 Term Loans made on the Amendment Effective Date, the applicable percentage set forth in the row styled “Level I” in the table below;~~

Level	Senior Secured First Lien Net Leverage Ratio	Applicable Margin for <del>Tranche B-1</del> Term Loans (ABR Loans)	Applicable Margin for <del>Tranche B-1</del> Term Loans (Eurocurrency Loans)	Applicable Margin for <del>Tranche B-2</del> Term Loans (ABR Eurocurrency Loans)	Applicable Margin for <del>Tranche B-2</del> Term Loans (Eurocurrency Loans)
I	>4.00 to 1.00	<del>3.00</del> <u>2.25</u> %	4.00%	3.25%	<del>4.25</del> %
II	£4.00 to 1.00	<del>2.75</del> <u>2.00</u> %	3.75%	3.00%	4.00%

The Applicable Margin for ~~Tranche B-1 Term Loans and Tranche B-2~~ the Term Loans shall be re-determined on the date of delivery of financial statements for each fiscal quarter required to be delivered pursuant to Section 5.04(2) and, in the case of the fourth quarter, 5.04(1) commencing with the first full fiscal quarter ending after the ~~First~~ Second Amendment Effective Date, based upon the Senior Secured First Lien Net Leverage Ratio achieved on such date and in accordance with the table above; *provided*, that if such financial statements are not provided when due, the Applicable Margin shall be set at the margin in the row styled “Level I” as of the first Business Day following the date on which such financial statements were required to be delivered until the date on which such financial statements are delivered (on which date (but not

retroactively), without constituting a waiver of any Default or Event of Default occasioned by the failure to timely deliver such financial statements, the Applicable Margin shall be then set at the Applicable Margin based upon the Senior Secured First Lien Net Leverage Ratio as of the date of delivery of such financial statements). In the event that any such financial statements are shown to be inaccurate, and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an “**Applicable Period**”) than the Applicable Margin applied for such Applicable Period, then (i) the Borrower shall promptly upon becoming aware of any such inaccuracy deliver to the Administrative Agent, for the benefit of the applicable Lenders, correct financial statements required by Section 5.04(2) and/or Section 5.04(1) for such Applicable Period and (ii) the Borrower shall promptly pay to the Administrative Agent the accrued additional interest owing as a result of such increased Applicable Margin for such Applicable Period.

- (2) ~~(3)~~ with respect to any Incremental Term Loans, the “Applicable Margin” set forth in the Incremental Facility Amendment establishing the terms thereof;
- (3) ~~(4)~~ with respect to any Other Term Loans, the “Applicable Margin” set forth in the Refinancing Amendment establishing the terms thereof; and
- (4) ~~(5)~~ 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 each of Citigroup Global Markets Inc., Barclays Bank PLC, RBC Capital Markets, Credit Suisse Securities (USA) LLC, Nomura Securities International, Inc., and Macquarie Capital (USA) 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 and reasonably satisfactory to the Borrower.

“**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) \$125.0 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, Cure Amounts, 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, Cure Amounts, 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, as determined by a Responsible Officer of the Borrower in good faith; plus
- (8) any mandatory prepayment declined by a Lender; minus
- (9) the use of such Available Amount since the Closing 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 \$10.0 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 Base**” means as of any date, the sum of:

- (1) 90% of all accounts receivable held by the Borrower and the Restricted Subsidiaries as of such date; *plus*
- (2) 90% of the net ordinary liquidation value of inventory held by the Borrower and the Restricted Subsidiaries as of such date; *plus*
- (3) 100% of all cash and Cash Equivalents held by the Borrower and the Restricted Subsidiaries as of such date; *provided* that the aggregate amount of cash and Cash Equivalents included

in the Borrowing Base shall not exceed \$50.0 million; in each case, 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.

“**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) the Merger;
- (9) the purchase of property, plant or equipment to the extent purchased with the proceeds of Asset Sales that are not applied to prepay Term Loans pursuant to Section 2.08; or
- (10) expenditures used for acquisitions of fee-owned Real Property, up to \$25.0 million during any fiscal year, so long as (A) the Borrower demonstrates to the satisfaction of the Administrative Agent a viable plan that provides for a Sale and Lease-Back Transaction within one year of acquisition and (B) the Administrative Agent approves of the exclusion of such expenditures in their reasonable discretion, *provided* if the Borrower and its Subsidiaries fail to complete such Sale and Lease-Back Transaction within such one-year period, expenditures used for such acquisition shall be included as Capital Expenditures in the fiscal year in which such one-year period expires.

“**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.

**"Certain Funds Provisions"** has the meaning given to such term in the Commitment Letter.

A “*Change in 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 or the 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; or
- (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).

“*Change in Law*” means:

- (1) the adoption of any law, rule or regulation after the Closing Date;
- (2) any change in 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.

"**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~~Second Amendment Effective Date, there ~~are two Classes~~is one Class of Term Facilities and Term Loans, the ~~Tranche B-1 Term Loans and the Tranche B-2 Term Loans, and the Term Loans and the Lenders under each such Term Facility will be considered a separate Class hereunder.~~

"**Closing Date**" means January 26, 2016.

"**Closing Date Refinancing**" means the repayment of debt contemplated by Section 3.03 of the Merger Agreement, which for the avoidance of doubt shall include the repayment in full of the (i) Existing Term Loan Credit Agreement, (ii) Existing ABL Credit Agreement, (iii) the Existing Construction Loan Agreement, (iv) the outstanding Existing Senior Notes and (v) the outstanding Existing Senior PIK Toggle Notes and the termination of all obligations and liens related thereto.

"**Closing Date Senior Secured First Lien Net Leverage Ratio**" means 4.80 to 1.00.

"**Closing Date Total Net Leverage Ratio**" means 6.20 to 1.00.

"**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 Access Agreement**" means a landlord waiver or other agreement, in a form as shall be reasonably satisfactory to the Collateral Agent, between the Collateral Agent and any third party (including any bailee, consignee, customs broker, or other similar Person) in possession of any Collateral or any landlord of any premises where any Collateral is located, as such landlord waiver or other agreement may be amended, restated, or otherwise modified from time to time.

“**Collateral Agent**” means Citibank, N.A., 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**” mean, ~~the Tranche B-1 Term Loan Commitment and the Tranche B-2 Term Loan Commitment. On the First~~with respect to each Lender, the commitments of such Lender to make Term Loans as set forth on Schedule 2.01. On the Second Amendment Effective Date, the aggregate amount of Commitments of all Term Loans is ~~\$2,518,687,499.96 million~~2,492,750,000.

“**Commitment Letter**” means that certain Amended and Restated Commitment Letter, dated as of November 30, 2015, by and among Merger Sub, Citigroup Global Markets Inc., Barclays Bank PLC, Royal Bank of Canada, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Cayman Islands Branch, Nomura Securities International, Inc., Macquarie Capital (USA) Inc., MIHI LLC, GSMP VI Offshore US Holdings, Ltd., GSMP VI Onshore US Holdings, Ltd. and Broad Street Credit Holdings LLC and including any joinders thereto.

“**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 sum (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, Disqualified Stock and Indebtedness in respect of the deferred purchase price of property or services 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
  - (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; *plus*
  - (l) without duplication, “management adjustment” addbacks expressly set forth in the Sponsor Model; 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).

Notwithstanding the foregoing, the Consolidated EBITDA of the Borrower for the fiscal quarters ended:

- (i) October 31, 2015 will be deemed to be \$118.460 million;
- (ii) August 1, 2015 will be deemed to be \$119.512 million; and
- (iii) May 2, 2015 will be deemed to be \$121.040 million.

it being understood that the amounts listed in the foregoing clauses (i), (ii) and (iii) do not give effect to the adjustments provided for in the definition of Pro Forma Basis for any transactions or events other than the Transactions.

“**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;

*provided* that when determining Consolidated Interest Expense in respect of any four-quarter period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Closing Date by 365 and then dividing such product by the number of days from and including the Closing Date to and including the last day of 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 the Transactions or otherwise, expenses associated with strategic initiatives, facilities shutdown and opening costs, and any fees, expenses, charges or change in control payments related to the Transactions 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 are or are permitted to be 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 the Transactions 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 the Transactions within 18 months after the Closing 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 in an aggregate amount not to exceed \$20.0 million 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 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 voluntary or mandatory prepayments hereunder provided that in no event shall such Indebtedness be permitted to be voluntarily or 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 (subject to customary exceptions for cash collateral in favor of an agent, letter of credit issuer or similar “fronting” lender);

- (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.

“**Cure Amount**” means the amount of cash contributions to the capital of the Borrower made pursuant to Section 8.02 of the ABL Credit Agreement.

“**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 CVC Capital Partners Limited or any of its Affiliates or direct or indirect Subsidiaries or any investors in such funds or limited partnerships (but excluding, in each case, any portfolio companies in which such funds or limited partnerships hold an investment and excluding, in each case, any funds or entities managed or advised by CVC Credit Partners Holdings Limited or any of its direct or indirect Subsidiaries engaged in the same or a similar business to CVC Credit Partners Holdings Limited) who are investors in such funds or limited partnerships as at 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 a *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 Arrangers and the Administrative Agent on or prior to the date of the Commitment Letter;
- (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 date of the Commitment Letter; provided that such Person will not be a Disqualified Institution if the Administrative Agent reasonably determines in good faith that such Person is not a competitor of the Borrower and notifies the Borrower of such determination promptly following the date on which the Borrower identifies such Person to the Administrative Agent; 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 (i) make investment decisions or (ii) have access to non-public information relating to the Borrower or any Person that forms part of the Borrower’s business (including its Subsidiaries)); or

- (2) certain banks, financial institutions, other institutional lenders and investors and other entities that are identified by the Borrower in writing to the Arrangers and the Administrative Agent on or prior to the date of the Commitment Letter.

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:
  - (a) the Latest Maturity Date; and
  - (b) 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."

**"Documentation Agent"** means RBC Capital Markets.

**"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 or any political subdivision thereof, 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 a *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 a *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 is either (a) not permitted by the terms of any Loan Document immediately prior to the consummation of such transaction or (b) if permitted by the terms of the Loan Documents (prior to giving effect to any amendments) immediately prior to the consummation of such transaction, would not provide Holdings, the Borrower and its Restricted Subsidiaries with adequate flexibility under the Loan Documents for the continuation and/or expansion of their combined operations following such consummation, as reasonably determined by the Borrower acting in good faith.

“**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 Contribution**” has the meaning assigned to such term in the recitals to this Agreement.

“**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(28) in each case prior to such date; provided that the proceeds of Disqualified Stock, Cure Amounts 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:

- (1) Immaterial Subsidiary;
- (2) Subsidiary that is not a Wholly Owned Subsidiary of Holdings or 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 a Subsidiary that is not a Wholly Owned Subsidiary of Holdings or 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 ABL Credit Agreement”** means that certain ABL credit agreement, dated as of April 19, 2013, among Petco Animal Supplies, Inc., the lenders party thereto, Bank of America, N.A., (as successor to Credit Suisse AG) as administrative agent, Wells Fargo Bank, National Association, as collateral agent, and the subsidiaries of Petco Animal Supplies, Inc. from time to time party thereto, as amended by that certain First Amendment to the ABL Credit Agreement, dated as of November 21, 2014.

**“Existing Construction Loan Agreement”** means that certain Construction Loan Agreement, dated March 20, 2015, by and between Petco Real Estate Holdings III, LLC and MUFG Union Bank, N.A.

**“Existing Senior Notes”** means the Senior Notes due 2017 issued pursuant to that certain Indenture, dated as of November 24, 2010, among Petco Animal Supplies, Inc., the guarantors named on the signature pages thereto, and Wells Fargo Bank, National Association, as trustee.

**“Existing Senior PIK Toggle Notes”** means the Senior PIK Toggle Notes due 2018 issued pursuant to that certain Indenture, dated as of October 10, 2012, between Petco Holdings, Inc., and Wells Fargo Bank, National Association, as Trustee.

**“Existing Term Loan Credit Agreement”** means that certain term loan credit agreement, dated as of November 24, 2010, among Petco Animal Supplies, Inc., as borrower, the lenders party thereto, JPMorgan Chase Bank, N.A., (as successor to Credit Suisse AG) as administrative agent and collateral agent, and the subsidiaries of Petco Animal Supplies, Inc. from time to time party thereto, as amended by that certain Amendment No. 1 to Term Loan Agreement, dated as of February 25, 2011, as further amended by that certain Amendment No. 2 to Term Loan Agreement, dated October 9, 2012, as further amended by that certain Amendment No. 3 to Term Loan Agreement, dated February 4, 2013.

**“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, 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 per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System ~~arranged by federal funds brokers~~ on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided that*:

- (1) if such day is not a Business Day, the Federal Funds Rate for such day will be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and
- (2) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day will be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1.00%) charged to the Administrative Agent on such day on such transactions as determined in good faith by the Administrative Agent.

“*Fee Letter*” means the Amended and Restated Fee Letter, dated November 30, 2015, by and among Merger Sub, Citigroup Global Markets Inc., Barclays Bank PLC, Royal Bank of Canada, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Cayman Islands Branch, Nomura Securities International, Inc., Macquarie Capital (USA) Inc., MIHI LLC, GSMP VI Offshore US Holdings, Ltd., GSMP VI Onshore US Holdings, Ltd. and Broad Street Credit Holdings LLC, as amended and in effect from time to time and including any joinders thereto.

“*Fees*” means the Administrative Agent Fees and all other fees set forth in the Fee Letter payable to a Lender, the Administrative Agent, or any Arranger, in each case, with respect to Term Loans.

“*Financial Covenant Default*” has the meaning assigned to such term in Section 8.01(6).

“*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 Amendment” means the First Amendment Agreement, dated as of June 17, 2016 among the Borrower, Holdings, the Guarantors and the Administrative Agent.~~

~~“First Amendment Effective Date” has the meaning assigned to such term in the First Amendment.~~

“**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).

“**Fixed Charge Coverage Ratio**” means, as of any date, the ratio of:

- (1) (a) Consolidated EBITDA of the Borrower for the most recent period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis, *minus* (b) non-financed Maintenance Capital Expenditures of the Borrower for such period that were paid in cash during such four-quarter period (it being understood that Capital Expenditures funded with proceeds of revolving loans will not be deemed to be “financed” for the purpose of this clause (b)) *minus* (c) Taxes based on income of the Borrower and the Restricted Subsidiaries that were paid or required to be paid in cash during such period (including tax distributions paid in cash during such period) to
- (2) Fixed Charges of the Borrower for such four-quarter period, calculated on a Pro Forma Basis.

“**Fixed Charges**” means, for any period, the sum without duplication, of the following for such period:

- (1) the Consolidated Interest Expense of the Borrower that was paid or required to be paid in cash during such period; plus
- (2) all scheduled principal amortization payments that were paid or required to be paid in cash during such period with respect to Indebtedness for borrowed money of the Borrower and the Restricted Subsidiaries, including payments in respect of Capital Lease Obligations, but excluding payments with respect to intercompany Indebtedness; *plus*

all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock of the Borrower or preferred stock of any Restricted Subsidiary made during such period.

“**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.

“**Headquarters**” means the headquarters of the Borrower, located at 10850 Via Frontera, San Diego, CA 92127.

“**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 2.5% of the Consolidated Total Assets or revenues representing in excess of 2.5% 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 5.0% of Consolidated Total Assets or revenues representing in excess of 5.0% 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) the aggregate outstanding principal amount of such Indebtedness on any date that such Indebtedness is incurred pursuant to Section 6.01(1) shall be subject to the limitations set forth in Section 2.18(3);

- (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 (a) consist of notes, (b) 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 (c) the pricing of such Indebtedness complies with Section 2.18(8); 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**” shall have the meaning set forth in the Guaranty and Collateral Agreement.

“**Intercreditor Agreement**” means the Intercreditor Agreement, dated as of the Closing Date, by and among the Administrative Agent, the Collateral Agent and Citibank, N.A., as administrative agent and collateral agent under the ABL Credit Agreement, and acknowledged by Holdings and the Borrower, 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 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 (or, if agreed by all Lenders, 12 months or a shorter period), 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 applicable to the Second Amendment Term Loans, commencing on the ~~Closing~~ Second Amendment Effective Date, will end on April ~~29~~28, ~~2016~~2017; ~~and~~
- (5) if any Interest Period would end on a day that would require a break funding payment pursuant to Section 2.13 by reason of an amortization payment required pursuant to Section 2.06(1), such Interest Period will end on such date as the applicable amortization payment date required pursuant to Section 2.06(1).

“*Interpolated Screen Rate*” means, 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 the Quotation 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 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-1 Term Loan Lender~~ financial institution listed on Schedule 2.01 (~~1) and Tranche B-2 Term Loan Lender listed on Schedule 2.01(2)~~) (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.

**“Letter of Credit”** has the meaning assigned to such term in the ABL Credit Agreement.

**“LIBO Rate”** means with respect to any Eurocurrency Borrowing for any Interest Period, the rate per annum equal to the arithmetic mean of the offered rates for deposits in Dollars with a term equivalent to such Interest Period by reference to 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 Quoted Rate”** means, for any day (or if such day is not a Business Day, the immediately preceding Business Day), a fluctuating rate per annum equal to the greater of (1) the Adjusted LIBO Rate for an interest period of one month as determined as of 11:00 a.m. (London, England time) on such day by reference to by reference to 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). for deposits in dollars (as set forth by 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, “LIBOR Quoted Rate” shall be the interest rate per annum equal to the Interpolated Screen Rate; and (2) ~~solely in respect of Tranche B-1 Term Loans~~, 1.00%; *provided, however*, if the LIBOR Quoted Rate is less than zero, the LIBOR Quoted 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.

“**LLC Conversion**” has the meaning specified in the recitals hereto.

“**Loan Documents**” means this Agreement, the Security Documents, the Intercreditor Agreement, any First Lien Intercreditor Agreement, any Junior Lien Intercreditor Agreement, any Note and, solely for the purposes of Sections 3.01, 3.02, and 8.01(3) hereof, the Fee Letter.

“**Loan Parties**” means Holdings, the Borrower and the Subsidiary Loan Parties.

“**Maintenance Capital Expenditures**” means, for any period, the portion of the aggregate amount of all Capital Expenditures of the Borrower for such period attributable to maintenance of property, plant or equipment of the Borrower and the Restricted Subsidiaries, as determined in good faith by a Responsible Officer of the Borrower.

“**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 Sponsor in an aggregate amount equal to or less than \$10.0 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 Parent, 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 \$50.0 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 Term Loans and Tranche B-2 Term Loans~~) existing on the ~~First~~Second Amendment Effective Date, January 26, 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.

“*Merger*” has the meaning assigned to such term in the recitals hereto.

“*Merger Agreement*” has the meaning assigned to such term in the recitals hereto.

“*Merger Sub*” has the meaning assigned to such term in the introductory paragraph hereof.

“**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 \$10.0 million.

“*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).

“*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 shall not, in any event, include any Excluded Swap Obligation.

“*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.

“*Pari Passu Liens Indebtedness*” has the meaning assigned to such term in Section 2.18(8).

“*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 Citibank, N.A., 1615 Brett Road, Building III, New Castle, DE 19720, Attention: Loan Administration (Email [global.loans.support@citi.com](mailto:global.loans.support@citi.com); Telephone No. (302) 894-6010) 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) \$75.0 million and (b) 1.50% 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 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 Arrangers 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 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 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);
- (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.

“**Pro Forma Basis**” or “**Pro Forma**” means, with respect to the calculation of the Senior Secured First Lien Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge 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.

“**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).

“**Purchase Date**” means the date that the Merger is required to be consummated pursuant to the Merger Agreement.

“**Purchase Documents**” means the collective reference to the Merger Agreement, all material exhibits and schedules thereto and all agreements expressly contemplated thereby.

“**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) 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”** and **“Refinancing”** will have correlative meanings.

**“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 3.50 to 1.00	50.00%
Less than or equal to 3.50 to 1.00 but greater than 3.00 to 1.00	25.00%
Less than or equal to 3.00 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.

“*Second Amendment*” means the Second Amendment Agreement, dated as of January 27, 2017 among the Borrower, Holdings, the Guarantors and the Administrative Agent.

“*Second Amendment Effective Date*” means January 27, 2017.

“*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 Notes*” means the floating rate senior notes due January 26, 2024, issued on or prior to the Closing Date pursuant to the Senior Notes Indenture.

“*Senior Notes Documents*” means, collectively, the 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 Senior Notes.

“*Senior Notes Indenture*” means that certain indenture, dated as of January 26, 2016, among the Senior Notes Trustee, the Borrower and the guarantors party thereto.

“*Senior Notes Trustee*” means Wells Fargo Bank, National Association, together with its permitted successors and assigns.

“*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 Merger Agreement Representations**” means such of the representations and warranties made with respect to the Company and its Subsidiaries by the Company in the Merger Agreement to the extent a breach of such representations and warranties is material to the interests of the Lenders.

“**Specified Representations**” means the representations and warranties of each of Merger Sub, the Company 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 and subject to the Certain Funds Provisions);
- (8) Section 3.16; and
- (9) Section 3.19.

“**Specified Transaction**” means any Investment (including any Limited Condition Acquisition), 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.”

“**Sponsor Model**” means the model provided by the Sponsors to the Arrangers on November 17, 2015.

“**Sponsors**” means, any of CVC and Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised 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.

“**Syndication Agent**” means Barclays Bank PLC.

“**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 ~~First~~Second Amendment Effective Date, there ~~are two Term Facilities, the Tranche B-1 Term Loan Facility and the Tranche B-2 Term Loan Facility, and each such~~ is one Term Facility ~~will be considered a separate Term Facility hereunder~~. 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 Agent**” means “*Term Loan Agent*” as defined in the Intercreditor Agreement.

“**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 ~~First~~Second Amendment Term Loans (as defined in the ~~First~~Second Amendment, ~~which consist of Tranche B-1 Term Loans and the Tranche B-2 Term Loans~~ made to the Borrower pursuant to and in accordance with the ~~First~~Second Amendment on the ~~First~~Second Amendment Effective 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 Loan 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.

~~“**Tranche B-1 Term Loan Commitments**” means with respect to each Lender, the commitment of such Lender to make Tranche B-1 Term Loans as set forth on Schedule 2.01(1). On the First Amendment Effective Date, the aggregate amount of Tranche B-1 Term Loan Commitments is \$1,820,437,499.95.~~

~~“**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 each financial institution listed on Schedule 2.01(1) (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-1 Term Loans.~~

~~“Tranche B-1 Term Loans” means the term loans made to the Borrower on the First Amendment Effective Date pursuant to Section 2.01(1)(a).~~

~~“Tranche B-2 Term Loan Commitments” means with respect to each Lender, the commitment of such Lender to make Tranche B-2 Term Loans as set forth on Schedule 2.01(2). On the First Amendment Effective Date, the aggregate amount of Tranche B-2 Term Loan Commitments is \$698,250,000.01.~~

~~“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 each financial institution listed on Schedule 2.01(2) (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-2 Term Loans.~~

~~“Tranche B-2 Term Loans” means the term loans made to the Borrower on the First Amendment Effective Date pursuant to Section 2.01(1)(b).~~

**“Transaction Documents”** means the Purchase Documents, the ABL Loan Documents, the Senior Notes Documents and the Loan Documents.

**“Transactions”** means, collectively, the transactions to occur pursuant to the Transaction Documents, including:

- (1) the consummation of the Merger;
- (2) the execution and delivery of the Loan Documents, the creation of the Liens pursuant to the Security Documents and the initial borrowings hereunder;
- (3) the Equity Contribution;
- (4) the execution and delivery of the ABL Loan Documents, the creation of the Liens pursuant to the ABL Security Documents and the initial borrowings under the ABL Credit Agreement;
- (5) the execution and delivery of the Senior Notes Documents and the issuance of the Senior Notes under the Senior Notes Indentures;
- (6) the Closing Date Refinancing;

- (7) the LLC Conversion; and
- (8) the payment of all fees, costs and expenses in connection with the foregoing.

“**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 Fixed Charge Coverage Ratio of 1.0 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 Closing Date 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 covenants, 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 Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge 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 Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge 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 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; *provided*, that (other than solely with respect to the incurrence test under which such Limited Condition Acquisition is being made) Consolidated EBITDA, Consolidated Total Assets or assets and Consolidated Net Income of any target of such Limited Condition Acquisition can only be used in the determination of the relevant ratio and baskets if and when such Limited Condition Acquisition has closed.

(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 Net Leverage Ratio test and/or any Fixed Charge Coverage Ratio test) (any such amounts, 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 Revolving Facility (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 Revolving Facility 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:

- (a) ~~each Tranche B-1 Term Loan Lender severally agrees to make to the Borrower Tranche B-1, Term Loans denominated in Dollars equal to such Tranche B-1 Term Loan Lender’s Tranche B-1 Term Loan Commitment on the First~~ Second ~~Amendment Effective Date; and~~
- (b) ~~each Tranche B-2 Term Loan Lender severally agrees to make to the Borrower Tranche B-2 Term Loans denominated in Dollars equal to such Tranche B-2 Term Loan Lender’s Tranche B-2 Term Loan Commitment on the First Amendment 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. ~~For the avoidance of doubt, the Tranche B-1 Term Loans and the Tranche B-2 Term Loans will be secured on a pari passu basis as of the First Amendment Effective Date.~~

- (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 ~~First~~Second Amendment 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, three Business Days prior to the anticipated ~~First~~Second Amendment 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 ~~First~~Second Amendment Effective Date. The Borrowing Request must specify:

- (1) the principal amount of ~~Tranche B-1 Term Loans and/or Tranche B-2~~ Term Loans to be borrowed;
- (2) the requested date of the Borrowing (which will be a Business Day);
- (3) the Type of ~~Tranche B-1 Term Loans and/or Tranche B-2~~ 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-1 Term Loan and/or Tranche B-2~~ 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. 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 by telephone (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, on the date of 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). Each such telephonic Interest Election Request will be confirmed promptly by hand delivery, facsimile transmission or e-mail to the Administrative Agent of a written Interest Election Request substantially in the form of Exhibit D and signed by the Borrower.
- (3) Each telephonic and written Interest Election Request will be irrevocable 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.
- (5) Any Lender may request that Term Loans made by it be evidenced by a promissory note (a "*Note*"). 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 ~~under on~~ each ~~Term Facility 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 April 30, 2016, an aggregate principal amount equal to 0.25% of the aggregate principal amount of each Class of Term Loans outstanding on the Closing Date, which payments for each Class of Term Loans will be reduced as a result of the application of prepayments of Term Loans of such Class in accordance with the order of priority set forth in Section 2.07 or 2.08, as applicable~~ date specified in the table set forth below (each such date being referred to as an “*Original Term Loan Installment Date*”); an aggregate principal amount equal to 0.25% of the aggregate principal amount of Loans outstanding on the Closing Date, which payments will be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.07 or 2.08, as applicable;

*Original Term Loan Installment Dates*

July 29, 2016  
October 28, 2016  
January 27, 2017  
April 28, 2017  
July 31, 2017  
October 31, 2017  
January 31, 2018  
April 30, 2018  
July 31, 2018  
October 31, 2018  
January 31, 2019  
April 30, 2019  
July 31, 2019  
October 31, 2019

January 31, 2020  
April 30, 2020  
July 31, 2020  
October 30, 2020  
January 29, 2021  
April 30, 2021  
July 30, 2021  
October 29, 2021  
January 31, 2022  
April 29, 2022  
July 29, 2022  
October 31, 2022  
January 26, 2023

- (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~~ Term Loans, ~~the Tranche B-2 Term Loans and/or any other Term Loans of any Class, in~~ 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 by telephone (confirmed by hand delivery, facsimile transmission or e-mail) 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. 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~~ Term Loans, ~~Tranche B-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 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 January 30, 2017, not later than the Original Term Loan Installment Date that is closest to 90 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 Original Term Loan Installment Date that is closest to the 90th 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);

- (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 Original Term Loan Installment Date that is closest to the 90th 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 notice to the Administrative Agent by telephone (confirmed by hand delivery, facsimile transmission or e-mail) 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 and the principal amount of each Term Loan (or portion thereof) to be prepaid. 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 “Term Administrative Fee” set forth in the Fee Letter at the times and on the terms specified therein (the “*Administrative Agent Fees*”).

- (2) All 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 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 or similar requirement against assets of, deposits with or for the account of, or credit extended 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) 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) on 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 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 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) such Loan Party will make such deductions; (b) such Loan Party 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.

- (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) 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(7) (*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(7) 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.
- (8) 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.
- (9) 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 Class of Term Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Class of Term Loans than the proportion received by any other Lender in such Class, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the Term Loans of such Class of other Lenders in such Class to the extent necessary so that the benefit of all such payments will be shared by the Lenders in such Class ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Term Loans of such Class; *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 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 may, at the discretion of the Borrower, be secured or unsecured. If Incremental Term Loans are secured on a junior basis to the Term Loans, a Debt Representative, acting on behalf of the holders of such Incremental Term Loans, will become party or otherwise subject to the provisions of a Junior Lien Intercreditor Agreement. Any Incremental Facility that is unsecured or secured on a junior basis to the Term Loans shall be documented pursuant to a separate facility agreement subject to the terms of this Section 2.18.
- (3) Size. The principal amount of Incremental Facilities incurred pursuant to this Section 2.18 and Incremental Equivalent Term Debt incurred pursuant to Section 6.01(1) will not exceed, in the aggregate, an amount equal to \$300.0 million (the “**Non-Ratio Based Incremental Facility Cap**”); *provided* that the Borrower may incur additional Incremental Facilities and Incremental Equivalent Term Debt without regard to the Non-Ratio Based Incremental Facility Cap so long as (a) with respect to any such Incremental Facility or Incremental Equivalent Term Debt to be 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 applicable Incremental Facilities or 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 Facility or Incremental Equivalent Term Debt) is equal to or less than 4.50 to 1.00; and (b) with respect to any such Incremental Facility or Incremental Equivalent Term Debt to be secured on a junior basis to the Term Loans, subordinated in right of payment to the Term Loans or unsecured and *pari passu* in right of payment with the Term Loans, the Total Net Leverage Ratio (determined on the date on which the applicable Incremental Facilities or 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 Facility or Incremental Equivalent Term Debt) is equal to or less than the lesser of (i) Closing Date Total Net Leverage Ratio and (ii) 6.00 to 1.00 (collectively, the “**Available Incremental Term Loan Facility Amount**”).

If the Borrower incurs indebtedness under the Non-Ratio Based Incremental Facility Cap on the same date that it incurs indebtedness under the Available Incremental Term Loan Facility Amount, then the Senior Secured First Lien Net Leverage Ratio or the Total Net Leverage Ratio, as applicable, with respect to the amounts incurred under the Available Incremental Term Loan Facility Amount will be calculated without including any incurrence under the Non-Ratio Based Incremental Facility Cap. Unless the Borrower elects otherwise, each Incremental Facility shall be deemed incurred first under the Available Incremental Term Loan Facility Amount to the extent permitted, with the balance incurred under the Non-Ratio Based Incremental Facility Cap.

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.

- (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 that is secured on a pari passu basis with the Obligations hereunder 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. Each Incremental Facility that is unsecured or secured on a junior lien basis shall be documented outside of this Credit Agreement and, if secured on a junior lien basis, shall be subject to the Intercreditor Agreement. 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 a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any voluntary or 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 and (ii) the coupon, fees and original issue discount for (x) any Incremental Equivalent Term Debt that is secured on a *pari passu* basis with the Term Loans or (y) any other Indebtedness that is secured by a Lien on a *pari*

passu basis with the Term Loans pursuant to Section 6.02(31) (“*Pari Passu Liens Indebtedness*”) will be as determined by a Responsible Officer of the Borrower and the providers of such *pari passu* Incremental Equivalent Term Debt or other *Pari Passu Liens Indebtedness*;

- (b) If the yield (as determined below) on any such Incremental Term Loans, Incremental Equivalent Term Debt or *Pari Passu Liens Indebtedness*, in each case, incurred on a *pari passu* basis with the Term Loans (such yield, the “*Incremental Yield*”) exceeds the yield (as determined below) on any Class of Term Loans incurred on the ~~First~~Second Amendment Effective Date by more than 50 basis points, then the interest margins for the applicable Class of Term Loans incurred on the ~~First~~Second Amendment Effective Date will automatically be increased to a level such that the yield on such Class of Term Loans incurred on the ~~First~~Second Amendment Effective Date will be 50 basis points below the *Incremental Yield* on such Incremental Term Loans, Incremental Equivalent Term Debt or *Pari Passu Liens Indebtedness*, in each case, incurred on a *pari passu* basis with the Term Loans. Any increase in yield on any Class of Term Loans incurred on the ~~First~~Second Amendment Effective Date 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, Incremental Equivalent Term Debt or *Pari Passu Lien Indebtedness* will be effected solely through an increase in such “floor” (or an implementation thereof, as applicable) in respect of any Class of Term Loans incurred on the ~~First~~Second Amendment Effective Date. In determining whether the *Incremental Yield* on Incremental Term Loans, Incremental Equivalent Term Debt or *Pari Passu Liens Indebtedness*, in each case, incurred on a *pari passu* basis with the Term Loans exceeds the yield on any Term Loans incurred on the ~~First~~Second Amendment Effective Date 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 or such other *Indebtedness*, 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) (x) with respect to the any ~~Tranche B-1~~ Term Loans incurred on the ~~First~~Second Amendment Effective Date, to the extent the LIBO Rate on the closing date of the Incremental Facility is less than any LIBO Rate floor then applicable to the ~~Tranche B-1~~ Term Loans, the amount of such difference shall be deemed added to the applicable rate for such ~~Tranche B-1~~ Term Loans solely for the purposes of determining whether an increase in the interest margins for ~~such Tranche B-1~~ the Term Loans shall be required and (y) with respect to any Incremental Term Loans, Incremental Equivalent Term Debt or *Pari Passu Lien Indebtedness* (in each case if such Incremental Equivalent Term Debt or *Pari Passu Lien Indebtedness* is determined on a floating rate basis by

reference to the LIBO Rate or any equivalent definition thereof), to the extent that the LIBO Rate or any equivalent definition thereof on the closing date of the Incremental Facility is less than any interest rate floor, if any, applicable to the Incremental Term Loans, the amount of such difference shall be deemed added to the applicable rate for such Incremental Term Loans solely for the purposes of determining the Incremental Yield; provided, that for purposes of calculating the LIBO Rate or any such equivalent definition for this clause (B), such rate shall be for the same interest period, which shall be determined by the Borrower from the interest periods available to it under this Agreement and such Indebtedness respectively. In addition to the foregoing, for purposes of calculating the Incremental Yield for any Incremental Equivalent Term Debt or Pari Passu Lien Indebtedness that constitutes fixed-rate Indebtedness, the fixed rate coupon of such Indebtedness shall be swapped to a floating rate on a customary matched-maturity basis, and the Incremental Yield of such fixed-rate Indebtedness on a floating rate basis shall be reasonably determined in a customary manner by the Administrative Agent based on customary financial methodology in consultation with the Borrower (or, if the Administrative Agent declines (or is unable) to determine such Incremental Yield or the appropriate floating rate swap on a matched maturity basis, as reasonably determined in a customary manner based on customary financial methodology by a financial institution reasonably acceptable to the Administrative Agent and the Borrower).

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 extend 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**,” and each group of Term Loans so extended, as well as the original Term Loans not so extended, being a “**tranche**”). 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 \$125.0 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 with a like Maturity Date. 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. There is no requirement that any Extension Offer or Extension Amendment (defined as follows) 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 tranches 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 Extended 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 a *pro rata* basis or a less than *pro rata* basis (but not greater than a *pro rata* basis) in any voluntary or mandatory repayments or prepayments of Term Loans;
  - (d) such Extended Term Loans are not secured by any assets or property that does 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 tranche 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, on or prior to the ~~twelve~~six month anniversary of the ~~Closing~~Second Amendment 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*

Each of Merger Sub, the Company and the Restricted Subsidiaries represents and warrants to each Agent and to each of the Lenders, with respect to Borrowings made on the Closing Date, that on the Closing Date immediately prior to consummation of the Merger, the Specified Merger Agreement Representations and the Specified Representations are true and correct in all material respects.

With respect to any Borrowing made 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(2), 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(1) 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 proceeds of all Additional Term Loans (as defined in the FirstSecond Amendment), if any, on the FirstSecond Amendment Effective Date will be used to re-evidence in full all Existing Term Loans (as defined in the FirstSecond Amendment), other than Exchanged Term Loans (as defined in the FirstSecond Amendment), on the terms and subject to the conditions set forth in the FirstSecond Amendment, including via the assignment by the Lenders holding such Existing Term Loans (as defined in the FirstSecond Amendment), other than Exchanged Term Loans (as defined in the FirstSecond Amendment), who do not remain Lenders hereunder on the FirstSecond Amendment Effective Date to the Additional Lenders (as defined in the FirstSecond Amendment) as of the FirstSecond Amendment Effective Date of such Existing Term Loans (as defined in the FirstSecond Amendment), other than Exchanged Term Loans (as defined in the FirstSecond Amendment), which shall thereafter be continued as and be deemed to be Term Loans hereunder.

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, 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 January 31, 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 the Restricted 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 Restricted Subsidiary 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) Acquisition Transactions. Merger Sub shall have confirmed to the Administrative Agent that the following transactions have been consummated or will be consummated substantially concurrently with the making of the Term Loans on the Closing Date:
- (a) the Merger;
  - (b) the Equity Contribution; and
  - (c) the Closing Date Refinancing and evidence that arrangements satisfactory to the Administrative Agent shall have been made for the termination and release of guarantees, Liens and security interests granted in connection therewith in a form reasonably satisfactory to the Administrative Agent.
- (4) Pro Forma Balance Sheet; Financial Statements. The Administrative Agent shall have received (a) unaudited consolidated balance sheets and related statements of income and cash flows of the Company for each fiscal quarter, if any, ended after August 1, 2015 (other than the fourth fiscal quarter of the Company) and at least 45 days prior to the Closing Date and setting forth, with respect to statements of income and cash flows, comparative figures for the related period in the prior fiscal year, (b) audited consolidated balance sheets and related statements of income and cash flows of the Company, in each case, for the three fiscal years most recently ended at least 90 days before the Closing Date, and (c) a *pro forma* consolidated balance sheet and income statement of the Borrower as of October 31, 2015 and for the four-quarter period then ended, in each case, prepared on a pro forma basis giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such income statement).
- (5) Fees. Payment of all fees (a) required to be paid pursuant to the Fee Letter and (b) reasonable (and reasonably documented) out-of-pocket expenses required to be paid on the Closing Date pursuant to the Commitment Letter, in each case to the extent invoiced in reasonable detail at least five Business Days prior to the Closing Date.
- (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;
  - (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)); and
  - (e) that on the Closing Date following consummation of the Equity Contribution the Sponsors will control Merger Sub.
- (8) Legal Opinions. The Administrative Agent shall have received a customary legal opinion of Gibson, Dunn & Crutcher LLP, special New York and California counsel to the Loan Parties.
- (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, to the extent obtained by Merger Sub from the Company on or prior to the Closing Date, 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) No Material Adverse Effect. Since the date of the Merger Agreement, there shall not have occurred any facts, events, changes, developments or effects which, individually or in the aggregate, has had, or is reasonably expected to have, a Material Adverse Effect (as defined in the Merger Agreement).

- (12) **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 Purchase Date, will be provided not later than the date that is three Business Days prior to the Purchase Date.
- (13) **Representations and Warranties.** Subject to the Certain Funds Provisions, the Specified Merger Agreement Representations and Specified Representations will be true and correct in all material respects; *provided* that the failure of a Specified Merger Agreement Representation to be true and correct will not result in a failure of a condition precedent under this Article IV unless such failure gives Merger Sub the right to terminate the Merger Agreement pursuant to its terms (after giving effect to any applicable notice and cure provisions).

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 (13) and upon satisfaction or waiver by the Administrative Agent of such conditions the 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 120 days following the end of the fiscal year ending on the earlier of (a) on or about January 30, 2016 or (b) the fiscal year ended after the Closing Date, and within 90 days following the end of each fiscal year thereafter, 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**");
- (2) within 60 days following the end of the fiscal quarters ending on or about April 30, 2016 and on or about July 31, 2016, and, thereafter, within 45 days following the end of each of the first three fiscal quarters of each fiscal year, 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 (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 120 days following the end of the fiscal year ending on or about January 30, 2017, and within 90 days following the end of each full fiscal year ended thereafter, 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 Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, within five Business Days after the date such

Restricted Subsidiary is formed or acquired or such Unrestricted Subsidiary is redesignated as a Restricted 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 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 \$7.5 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;

- (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) The Collateral Agent shall have received from each applicable Loan Party: (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;
  - (e) except, in the case of each of the foregoing clauses (a) through (c), in connection with the LLC Conversion.

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. Lender Calls. Participate in annual and quarterly conference calls with the Administrative Agent and the Lenders, such calls to be held at such time as may be agreed to by the Borrower and the Administrative Agent, but in any event not later than on or prior to the date that is 10 Business Days following the date after which the applicable Required Financial Statements are to be delivered pursuant to Section 5.04(1) and 5.04(2), with a Financial Officer of the Borrower, such other members of senior management of the Borrower as the Borrower deems appropriate, the Lenders and the Lenders' respective representatives and advisors to discuss the state of the Borrower's business, including, but not

limited to, recent performance, cash and liquidity management, operational activities, current business and market conditions and material performance changes; *provided* that in no event shall more than one such call be requested in any fiscal quarter (in total with respect to this Agreement and the ABL Credit Agreement); *provided, further*, that the requirements set forth in this Section 5.12 may be satisfied with a public earnings calls for the applicable period.

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 may not exceed \$75.0 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 (including Indebtedness created under ABL Extended Revolving Commitments) 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), the greater of (i) \$600.0 million and (ii) the Borrowing Base as of the date any such Indebtedness is incurred;
- (3) the Senior Notes issued on the Closing Date, any notes issued in exchange for the Senior Notes pursuant to a registration rights agreement, 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);
  - (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) \$125.0 million and (b) 2.25% 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 (other than 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; and
  - (iii) the aggregate principal amount of any such Indebtedness incurred pursuant to this clause (12) 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 this clause (12) (and any successive Permitted Refinancing Indebtedness), may not exceed \$75.0 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, 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) Cure Amounts 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) \$50.0 million and (b) 1.00% 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) \$75.0 million and (b) 1.50% 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 the Transactions or any Permitted Investment;
- (25) any Permitted Refinancing Indebtedness incurred to Refinance Incremental Equivalent Term Debt, Credit Agreement Refinancing Indebtedness or Indebtedness incurred under clauses (3), (4), (5), (12), (16), (21), (22), this clause (25) or clauses (28) or (29) 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) \$100.0 million and (b) 1.85% of Consolidated Total Assets as of the date any such Indebtedness is incurred; and
- (29) Indebtedness incurred in respect of any mortgage financing or similar financing in respect of the Headquarters.

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 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; *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;
- (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 property or assets 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 the lesser of (i) Closing Date Senior Secured First Lien Net Leverage Ratio and (ii) 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) the pricing of such Indebtedness complies with Section 2.18(8);
- (32) Liens that rank junior to the Liens securing both the Obligations and the ABL Obligations, if the Total Net Leverage Ratio as of the date on which such Liens are first created is less than or equal to the lesser of (i) Closing Date Total Net Leverage Ratio and (ii) 6.00 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) \$100.0 million and (b) 1.85% 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 Hedge Agreement (as defined in the ABL Credit Agreement) and Cash Management Obligations (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; and
- (36) Liens securing Indebtedness incurred in accordance with Section 6.01(29), solely encumbering the Headquarters.

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, (a) in respect of any Sale and Lease-Back Transaction in respect of the Headquarters and (b) in respect of any other property of the Borrower, 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 \$150.0 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 (including payment of the purchase consideration under the Merger Agreement);
- (2) loans and advances to officers, directors, employees or consultants of any Parent Entity, the Borrower or any Restricted Subsidiary not to exceed \$15.0 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;

- (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) \$25.0 million and (ii) 0.50% 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) \$75.0 million and (ii) 1.50% 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 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) \$100.0 million and (b) 1.85% 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 \$50.0 million plus an additional \$10.0 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) \$25.0 million and (ii) 0.50% 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; or
  - (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;
- (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) \$125.0 million and (B) 2.25% 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) (a) 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 of 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; or

- (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 \$10.0 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) Cure Amounts 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) \$20.0 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) Cure Amounts 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 or to pay any amounts pursuant to the Merger Agreement;
- (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 (including Holdings) that files, or to any Parent Entity for the purpose of paying to any other

Parent Entity that files, a consolidated U.S. federal consolidated or combined or unitary state 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, 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 federal or state or local income or franchise taxes (including franchise taxes and similar taxes) in an amount not to exceed the liability of Borrower and its relevant subsidiaries for such 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 to 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) [Reserved.];
- (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 \$50.0 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 \$15.0 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) the Transactions and transactions pursuant to the Transaction Documents 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 the Transactions;
- (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) \$50.0 million and (ii) 1.00% 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 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), (28) or (29), 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.

***Holdings Covenant***

SECTION 7.01. Holdings Covenant 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 Facility, the Term Facility, other Indebtedness permitted by this Agreement, the Merger Agreement and the other agreements contemplated by the Merger 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 LLC Conversion or any other Transactions on the Closing Date; 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 financial maintenance covenant under the ABL Credit Agreement (a “**Financial Covenant Default**”) shall not in and of itself constitute an Event of Default hereunder until the later of (1) 90 days following the date of such Financial Covenant Default and (2) the date on which the lenders under the ABL Credit Agreement shall have accelerated payment of the ABL Obligations and terminated the commitments with respect thereto or foreclosed upon the collateral securing the ABL Obligations; and, *provided, further*, that prior to the time it becomes an Event of Default hereunder, any Financial Covenant Default may be waived, amended, terminated or otherwise modified from time to time in accordance with the ABL Credit Agreement;

- (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 \$50.0 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 or take any other action 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 may and, 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 neither the Agents, Arrangers, Syndication Agent or Syndication Agent, nor 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, Arrangers, Syndication Agent and Syndication Agent, that it has, independently and without reliance upon the Administrative Agent, Arrangers, Syndication Agent or Syndication Agent, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, property, financial and other condition and creditworthiness of the 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, Arrangers, Syndication Agent or Syndication Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of the 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), 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. Arrangers; Syndication Agent; Syndication Agent. None of the Arrangers, Syndication Agent or Syndication Agent will have any duties, responsibilities or liabilities hereunder in their respective capacities as such.

*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, Merger Sub 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), except to the Company pursuant to the Merger on the Closing Date pursuant to the Transactions, 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 any Lead 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); provided that such processing and recordation fee shall not be payable in the case of assignments by any Lead Arranger or any Affiliate of the Lead Arrangers;
- (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 may 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, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant shall not be entitled to the benefits of Section 2.14 to the extent such Participant fails to comply with Section 2.14(5) as though it were a Lender.
- (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, or if any Person becomes a Disqualified Institution after the applicable Trade Date, 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 a *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;

- (e) no proceeds from revolving loans under the ABL Credit Agreement shall be used to fund any such purchases; and
  - (f) 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 investor 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 Term Loan 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 Term Loan 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, the Arrangers, Syndication Agent and Syndication Agent 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, the Arrangers, Syndication Agent and Syndication Agent, 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, the Arrangers, Syndication Agent and Syndication Agent and, in the case of enforcement of this Agreement, the Lenders.

- (2) The Borrower agrees to indemnify the Administrative Agent, each Arranger, each Syndication Agent, each Documentation Agent, 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, Arrangers, Syndication Agent or Syndication Agent 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 Restricted Subsidiaries.

- (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 Indemnatee 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 Indemnatee, 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 Indemnatee 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 Indemnatee, 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 Indemnatee 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 Loan 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. Notwithstanding the foregoing, the Fee Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. 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, 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 Merger or 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 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 Arrangers 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 Arrangers 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 Arrangers 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 Term Loan Agent and 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 Arrangers are arm’s-length commercial transactions between Holdings and the Borrower, on the one hand, and the Agents and the Arrangers, 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 Arrangers 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 Arrangers 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 Arrangers 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. Assumption and Release.

- (1) The Administrative Agent, the Collateral Agent, each Lender, Merger Sub as Initial Borrower, Successor Borrower, Petco Holdings, Inc., as Holdings, agree that, immediately upon consummation of the Merger, pursuant to this Section 10.22, (A) Merger Sub hereby assigns to Petco Animal Supplies, Inc., in its capacity as Successor Borrower, and Successor Borrower hereby expressly, unconditionally and irrevocably assumes all obligations of Merger Sub as “Initial Borrower” and “Borrower” hereunder and of all other obligations and liabilities of Merger Sub under this Agreement and each other Loan Document, in each case as if Merger Sub were never a party hereto or thereto as “Borrower” and (B) Successor Borrower agrees to perform and observe all of the obligations (including, without limitation, all obligations in respect of the Term Loans and other indebtedness), covenants, agreements, terms, conditions, duties and liabilities of the Initial Borrower as the “Initial Borrower” and “Borrower” under or with respect to this Agreement, any Notes and any of the other Loan Documents to which the Initial Borrower is a party in its capacity as the “Initial Borrower” and “Borrower” as fully as if the Successor Borrower was originally the obligor in respect thereof and the signatory in the capacity of “Borrower” thereto.
- (2) The Administrative Agent, the Collateral Agent and each Lender, agree that, immediately after the assignment of the obligations of the Company as the Initial Borrower on the Closing Date pursuant to this Section 10.22 and the Merger and the LLC Conversion have been completed, the Company, as survivor of the Merger, ceases to be a party to this Agreement and each other Loan Document as a “Borrower,” and Company shall be released from the payment and performance of any and all obligations of a Borrower and from all other obligations and liabilities of a “Borrower” under this Agreement and each other Loan Document, in each case as if it were never a party hereto or thereto in such capacity. For the avoidance of doubt, after giving effect to the assignment of the obligations of the Company as the Initial Borrower on the Closing Date pursuant to this Section 10.22, the Merger and the LLC Conversion, Company’s sole obligations under this Agreement and each other Loan Document shall be as “Holdings” hereunder and thereunder (including any definition or covenant applicable thereto that applies to Holdings in such capacity).
- (3) The Successor Borrower hereby represents and warrants to the Administrative Agent, the Collateral Agent and the Lenders that all of the representations and warranties of the Successor Borrower set forth in this Agreement and each of the other Loan Documents are true and correct in all material respects as of the Closing Date, except to the extent such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

- (4) The Successor Borrower hereby acknowledges that it has reviewed the terms and provisions of this Agreement and consents hereto. The Successor Borrower acknowledges and agrees that each of the Loan Documents to which it is a party or otherwise bound shall continue in full force and effect and that all of its obligations thereunder shall be valid and enforceable and shall not be impaired or limited by the execution or effectiveness of this Agreement.

SECTION 10.23. 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 10.24. 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.

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## FIRST AMENDMENT AGREEMENT

**FIRST AMENDMENT AGREEMENT** dated as of August 23, 2018 (this "Amendment") to the Revolving Credit Agreement dated as of January 26, 2016 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time and immediately prior to the First Amendment Effective Date (as defined below), the "Credit Agreement"), among, inter alios, Petco Holdings, Inc. LLC (f/k/a Petco Holdings, Inc.), a Delaware limited liability company, ("Holdings"), Petco Animal Supplies, Inc., a Delaware corporation (the "Borrower"), the Guarantor signatories hereto, the Lenders from time to time party hereto and Citibank, N.A., as administrative agent (the "Administrative Agent") and as collateral agent.

A. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Amended Credit Agreement (as defined below). In connection with this Amendment, (i) Citi (as defined below), Barclays Bank PLC ("Barclays") and RBC Capital Markets<sup>1</sup> ("RBC") are acting as joint lead arrangers and joint bookrunners, (ii) Wells Fargo Bank, National Association ("Wells Fargo") and Bank of America, N.A., ("Bank of America") are acting as joint senior managing agents, (iii) Barclays, Wells Fargo and Bank of America are acting as joint syndication agents and (iv) RBC and MUFG Union Bank, N.A., are acting as joint documentation agents. For purposes of this Amendment, "Citi" shall mean Citigroup Global Markets Inc., Citibank, N.A., Citicorp USA, Inc., Citicorp North America, Inc. and/or any of their affiliates as Citi shall determine to be appropriate to provide the services contemplated herein.

B. The Borrower has requested that, in accordance with Sections 2.21 and 2.23 of the Credit Agreement, the Credit Agreement be amended to, among other things: (i) extend the Maturity Date of the Revolving Facility Commitments; (ii) add Revolving Facility Commitments from Additional Lenders or increase the Revolving Facility Commitments of existing Lenders (such additional commitments and increased commitments, collectively the "Incremental Commitments") in the amounts set forth on Schedule 2.01 attached hereto as Exhibit B; and (iii) make certain other changes as more fully set forth in the Amended Credit Agreement.

C. Each existing Lender that executes and delivers a signature page to this Amendment (the "Extending Revolving Lenders") will be deemed upon the First Amendment Effective Date: (i) to have irrevocably agreed to extend the Maturity Date of their respective Revolving Facility Commitments as set forth in the Amended Credit Agreement; (ii) if so elected by such Lender, to increase its Revolving Facility Commitment as set forth on Schedule 2.01, and (iii) have irrevocably agreed and consented to the terms of this Amendment and the Amended Credit Agreement.

D. Each Additional Lender that executes and delivers a signature page to this Amendment will be deemed upon the First Amendment Effective Date: (i) to have irrevocably agreed to provide Incremental Commitments as set forth on Schedule 2.01 and (ii) to have irrevocably agreed and consented to the terms of this Amendment and the Amended Credit Agreement.

E. By executing and delivering a signature page to this Amendment, the Administrative Agent will be deemed upon the First Amendment Effective Date to have irrevocably agreed to the terms of this Amendment and the Amended Credit Agreement.

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<sup>1</sup> RBC Capital Markets is a brand name for the capital markets activities of Royal Bank of Canada and its affiliates

F. To accomplish the foregoing, the Borrower, the Administrative Agent, the Extending Revolving Lenders and the Additional Lenders whose signatures appear below, are willing to amend the Credit Agreement as set forth below (the Credit Agreement as amended by this Amendment hereby, the "Amended Credit Agreement") on the terms and subject to the conditions set forth herein and in the Amended Credit Agreement.

G. The amendments to the Credit Agreement set forth below are each subject to the satisfaction of the conditions precedent to effectiveness referred to herein and shall become effective as provided herein.

H. The posting of this Amendment on August 15, 2018 (the "Extension Offer Date") on debtdomain constituted an Extension Offer to the existing Lenders. This Amendment shall constitute an Extension Amendment and Incremental Facility Amendment.

Accordingly, in consideration of the mutual agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Amendments to Credit Agreement. The Borrower, the Administrative Agent, the Extending Revolving Lenders and the Additional Lenders whose signatures appear below agree that on the First Amendment Effective Date:

(a) the Credit Agreement shall be 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 Amended Credit Agreement attached hereto as Exhibit A;

(b) Schedule 2.01 of the Credit Agreement is hereby amended and restated in its entirety as set forth on Exhibit B hereto;

(c) Exhibit D-1 of the Credit Agreement is hereby amended and restated in its entirety as set forth on Exhibit C-1 hereto;

(d) Exhibit D-2 of the Credit Agreement is hereby amended and restated in its entirety as set forth on Exhibit C-2 hereto; and

(e) Exhibit D-3 of the Credit Agreement is hereby amended and restated in its entirety as set forth on Exhibit C-3 hereto.

SECTION 2. Extension of Maturity Date; Additional Lenders; Incremental Commitments; Administrative Agent Authorization.

(a) Extension of Maturity Date. Effective upon the occurrence of the First Amendment Effective Date, each Extending Revolving Lender, by its execution of this Amendment, (i) irrevocably agrees and consents to extend the Maturity Date of its Revolving Facility Commitments as set forth in the Amended Credit Agreement and the terms of this Amendment and the Amended Credit Agreement; (ii) if so elected by such Lender, such Lender agrees to increase its Revolving Facility Commitment as set forth on Schedule 2.01, and (iii) hereby acknowledges and confirms its Revolving Facility Commitment in an aggregate principal amount set forth on Schedule 2.01 attached hereto and its obligation, from and after the First Amendment Effective Date, to (a) make the Revolving Loans to the Borrowers pursuant to Section 2.01 of the Amended Credit Agreement, (b)

purchase participations in Letter of Credits and (c) purchase participations in Swingline Loans, in each case in an amount equal to such principal amount.

(b) Additional Lenders.

(i) Each Additional Lender that is not already party to the Credit Agreement hereby acknowledges, agrees and confirms that, by its execution of this Amendment, that such Additional Lender will, as of the First Amendment Effective Date, be a party to the Amended Credit Agreement and be bound by the provisions of the Amended Credit Agreement and, to the extent of its Revolving Facility Percentage, have the rights and obligations of a Lender thereunder.

(ii) Each Additional Lender party hereto (A) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Amendment and to consummate the transactions contemplated hereby and in the Amended Credit Agreement, and to become a Lender under the Amended Credit Agreement, (ii) it is not a Disqualified Institution, (iii) it has received a copy of the Credit Agreement and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this First Amendment and to commit to provide its respective Incremental Commitment, and (iv) it has, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this First Amendment and to commit to provide the Incremental Commitment; and (B) agrees that (i) it will, independently and without reliance on the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

(c) Incremental Commitments. Subject to the terms and conditions set forth herein, each Additional Lender or existing Lender holding an Incremental Commitment agrees, severally and not jointly, to make Revolving Loans in an amount equal to their Incremental Commitments pursuant to the terms of Section 2.21 of the Amended Credit Agreement. The Incremental Commitments and the First Amendment Extended Revolving Commitment (as defined in the Amended Credit Agreement) shall collectively constitute one and the same “tranche” of Revolving Facility Commitments and the 2021 Revolving Commitments shall constitute a separate “tranche” of Revolving Facility Commitments.

(d) Administrative Agent Authorization.

(i) The Borrower, the Extending Revolving Lenders and Additional Lenders authorize the Administrative Agent to (i) determine all amounts, percentages and other information with respect to the Commitments of each Lender, which amounts, percentages and other information may be determined only upon receipt by the Administrative Agent of the signature pages of all Lenders whose signatures appear below and (ii) enter and complete all such amounts, percentages and other information in the Amended Credit Agreement, as appropriate. The Administrative Agent’s determination and entry and completion shall be conclusive and shall be conclusive evidence of the existence, amounts, percentages and other information with respect to the

obligations of the Borrower under the Amended Credit Agreement, in each case, absent clearly demonstrable error.

(ii) The Administrative Agent will take those steps which it deems, in its sole discretion and in consultation with the Borrower, necessary and appropriate to cause each Lender (including the Additional Lenders) to hold outstanding Revolving Loans pro rata on the basis of their respective Revolving Facility Commitments to provide Loans or Commitments of the same class or on the basis of their respective outstanding Revolving Loans, as the case may be from time to time in accordance with the Amended Credit Agreement, and to hold participation interests in outstanding Letters of Credit and Swingline Loans in accordance with the Amended Credit Agreement, in each case, immediately after giving effect to the Maturity Date extension contemplated hereby and Incremental Commitments and the Extending Revolving Lenders and Additional Lenders hereby agree and acknowledge that it will automatically and without further act be deemed to have assumed a portion of each of the Revolving Facility Lender's participations in outstanding Letters of Credit, Swingline Loans and outstanding Revolving Loans, if any, such that as of the First Amendment Effective Date, each Lender (including the Extending Revolving Lenders and Additional Lenders) hold outstanding Revolving Loans and participation interests in outstanding Letters of Credit and Swingline Loans pro rata on the basis of their respective Revolving Credit Commitments (including the Incremental Commitments).

SECTION 3. Representations and Warranties. To induce the other parties hereto to enter into this Amendment, the Loan Parties represent and warrant to each of the Lenders, and the Administrative Agent that, as of the First Amendment Effective Date:

(a) this Amendment has been duly authorized by all corporate, stockholder, partnership, limited liability company or other applicable action required to be taken by the Loan Parties;

(b) this Amendment has been duly executed and delivered by the Loan Parties and constitutes a legal, valid and binding obligation of such Loan Party in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally; (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law); (iii) implied covenants of good faith and fair dealing; and (iv) any foreign laws, rules and regulations as they relate to pledges of Equity Interests in Foreign Subsidiaries.

(c) each of the Loan Parties has the power and authority to execute, deliver and perform its obligations under the Amendment Agreement and the Amended Credit Agreement, as applicable, 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.

(d) As of the First Amendment Effective Date, the information included in the Beneficial Ownership Certification (as defined in the Amended Credit Agreement) is true and correct in all respects.

(e) On the First Amendment Effective Date, after giving effect to the consummation of the transactions, including the Borrowing of any Loans hereunder, and after giving effect to the application of the proceeds of such Indebtedness:

(i) 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);

(ii) 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;

(iii) 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

(iv) 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(e), 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 4. Conditions to Effectiveness of this Amendment.

(a) This Amendment shall become effective on the date (the "First Amendment Effective Date") on which:

(i) The Administrative Agent shall have received duly executed and delivered counterparts of this Amendment that, when taken together, bear the signatures of the Borrower, the Additional Lenders, Extending Revolving Lenders and the Administrative Agent and all Guarantors.

(ii) Payment of (a) all fees required to be paid pursuant to the Engagement Letter dated as of August 6, 2018 and any related fee letter described therein and, to the extent invoiced, reimbursement or other payment of all out of pocket expenses required to be reimbursed or paid by the Borrower hereunder or under any other Loan Document or other agreement with the Borrower relating to the transaction contemplated hereby and (b) an upfront fee ("Upfront Fee") to the Administrative Agent for the account of all Extending Revolving Lenders and Additional Lenders in an amount equal to 0.25% of the aggregate principal amount of commitments of such Extending Revolving Lenders and Additional Lenders. For the avoidance of doubt, only Extending Revolving Lenders and Additional Lenders will be entitled to an Upfront Fee.

(iii) The Administrative Agent shall have received a certificate of a Responsible Officer of the Loan Parties dated the First Amendment Effective Date and certifying:

a) that attached thereto is a true and complete copy of the charter and/or other similar organizational document of such Loan Party, and each amendment thereto, certified (as of a date reasonably near the First Amendment Effective 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 the bylaws and/or operating agreement and/or other similar organizational document of such Loan Party, and each amendment thereto and certifying that such bylaws and/or operating agreement and/or other similar organizational document have not been modified, rescinded or amended and are in full force and effect;

c) 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 First Amendment Effective 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;

d) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of the Borrower authorizing the execution and delivery of the Amendment Agreement to which it is a party or any other document delivered in connection herewith on the First Amendment Effective Date and certifying that such resolutions have not been modified, rescinded or amended and are in full force and effect;

e) as to the incumbency and specimen signature of each Responsible Officer executing the Amendment Agreement (together with a certificate of another officer as to the incumbency and specimen signature of the Responsible Officer executing the certificate pursuant hereto); and

f) compliance with the requirements set forth in clause (a)(v) of this Section 4.

(iv) The Administrative Agent shall have received a customary legal opinion of Gibson, Dunn & Crutcher LLP, special counsel to the Loan Parties.

(v) (A) Each of the representations and warranties set forth Section 3 of this Amendment, Article III of the Credit Agreement and all other Loan Documents shall be true and correct in all material respects on and as of the First Amendment Effective Date both before and immediately after giving effect to the transactions contemplated hereby, with the same effect as though made on and as of such date, except to the extent 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 and as of such earlier date, and (B) no Default or Event of Default had occurred or was continuing as of the Extension Offer Date and no Default or Event of Default has occurred and is continuing as of the First Amendment Effective Date both before and immediately after giving effect to the transactions contemplated hereby.

(vi) KYC Information. (A) 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 and Lenders; and (B) At least five days prior to the Closing Date, any Borrower that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation (as defined in the Amended

Credit Agreement) shall deliver to the Administrative Agent and each Lender that has so requested a Beneficial Ownership Certification (substantially in the form of the Loan Syndications and Trading Association form certificate) in relation to such Borrower.

(vii) Flood Hazard. Borrower shall deliver to the Administrative Agent a completed standard “life of loan” flood hazard determination form for each property encumbered by a Mortgage, and if the property is located in an area designated by the U.S. Federal Emergency Management Agency (or any successor agency) as having special flood or mud slide hazards, (i) a notification to the Borrower (“Borrower Notice”) and (if applicable) notification to the Borrower that flood insurance coverage under the National Flood Insurance Program (“NFIP”) 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 is not available because the applicable community does not participate in the NFIP, (ii) documentation evidencing the Borrower’s receipt of the Borrower Notice (e.g., countersigned Borrower Notice, return receipt of certified U.S. Mail, or overnight delivery), and (iii) if Borrower Notice is required to be given and flood insurance is available in the community in which the property is located, a copy of one of the following: the flood insurance policy, the Borrower’s application for a flood insurance policy plus proof of premium payment, a declaration page confirming that flood insurance has been issued, or such other evidence of flood insurance reasonably satisfactory to the Administrative Agent

#### SECTION 5. Mortgages.

The Borrower shall and shall cause each Loan Party, if applicable, to within 90 days after the First Amendment Effective Date (or such longer period as the Administrative Agent may determine in its sole discretion):

(i) execute, deliver and file amendments to each of the Mortgages existing prior to the First Amendment Effective Date in a form acceptable to the Administrative Agent, together with such title endorsements as are reasonably required to give effect thereto in a form acceptable to the Administrative Agent, together with (x) such owner’s title affidavits as may be reasonably required by the title insurer in substantially the form previously accepted by the title insurer with respect to such Mortgages, including therein any so-called “no-change” survey affidavit and (y) any documents required in connection with the recording of such mortgage amendments and issuance of such endorsements; and

(ii) deliver to the Administrative Agent legal opinions relating to the amendments to the Mortgages described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent.

#### SECTION 6. Effect of Amended Credit Agreement.

(a) Except as expressly set forth herein or in the Amended Credit Agreement, this Amendment and the Amended Credit Agreement shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders or the Administrative Agent under the Credit Agreement, the Amended Credit Agreement or any other Loan Document, and 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 the Amended Credit Agreement or any other provision of the Credit Agreement, the Amended Credit Agreement or of any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. Nothing herein shall be deemed to entitle Holdings, the Borrower, any Loan Party or any other Person to a consent to, or a

waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement, the Amended Credit Agreement or any other Loan Document in similar or different circumstances.

(b) On the First Amendment Effective Date, the Credit Agreement shall be amended as set forth in Section 1 above. The parties hereto acknowledge and agree that (i) this Amendment, the Amended Credit Agreement, any other Loan Document or other document or instrument executed and delivered in connection herewith do not constitute a novation, or termination of the obligations of the Borrower, Holdings or the Loan Parties under the Loan Documents, including, without limitation, the Credit Agreement and the Collateral Agreement, as in effect prior to the First Amendment Effective Date (collectively, the “Obligations”) and (ii) such Obligations are in all respects continuing (as amended by this Amendment) with only the terms thereof being modified to the extent provided in this Amendment, and the Borrower, Holdings and each of the Loan Parties reaffirm such Obligations, including in respect of any guaranties of, and any pledges of collateral securing, such Obligations, including, without limitation, the Incremental Revolving Facility Increase. Upon the satisfaction of the conditions precedent set forth in Section 4 of this Amendment, the provisions of this Amendment will become effective and binding upon, and enforceable against, the Borrower, Holdings, the Loan Parties, the Administrative Agent and the Lenders. Except as specifically amended by this Amendment, the Credit Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed.

(c) On and after the Amendment Effective Date, each reference in the Credit Agreement to “this Agreement,” “hereunder,” “hereof,” “herein” or words of like import referring to the Credit Agreement, and each reference in 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 Amended Credit Agreement

(d) This Amendment shall constitute a Loan Document for all purposes under the Amended Credit Agreement and shall be administered and construed pursuant to the terms of the Amended Credit Agreement.

SECTION 7. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute one contract, and shall become effective as provided in Section 4. Delivery of an executed counterpart to this Amendment by facsimile or other electronic transmission (including “pdf”) shall be as effective as delivery of other electronic transmission (e.g., “PDF” or “TIFF”) and shall be as effective as delivery of a manually signed original.

SECTION 8. Applicable Law. THIS AMENDMENT 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). The provisions of Sections 10.11, 10.12 and 10.15 of the Amended Credit Agreement are incorporated by reference herein and made a part hereof.

SECTION 9. Headings. 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.

*[Signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective officers as of the day and year first above written.

**PETCO HOLDINGS, INC. LLC**  
as Holdings

By: **PET ACQUISITION LLC**

Its sole member

By: \_\_\_\_\_

Name: Michael Nuzzo

Title: Executive Vice President and Chief  
Financial Officer

**PETCO ANIMAL SUPPLIES, INC.**  
as Borrower

By: \_\_\_\_\_

Name: Michael Nuzzo

Title: Chief Financial Officer

**PETCO WELLNESS, LLC**  
as Guarantor

By: /s/ Patricia A. Ward \_\_\_\_\_

Name: Patricia A. Ward

Title: Manager

**PETCO ANIMAL SUPPLIES STORES, INC.**  
as Guarantor

By: \_\_\_\_\_

Name: Michael Nuzzo

Title: Chief Financial Officer

**INTERNATIONAL PET SUPPLIES AND  
DISTRIBUTION, INC.**  
as Guarantor

By: \_\_\_\_\_

Name: Michael Nuzzo

Title: Chief Financial Officer

[Signature Page to Amendment Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective officers as of the day and year first above written.

**PETCO HOLDINGS, INC. LLC**  
as Holdings

By: **PET ACQUISITION LLC**

Its sole member

By: /s/ Michael Nuzzo  
Name: Michael Nuzzo  
Title: Executive Vice President and Chief  
Financial Officer

**PETCO ANIMAL SUPPLIES, INC.**  
as Borrower

By: /s/ Michael Nuzzo  
Name: Michael Nuzzo  
Title: Chief Financial Officer

**PETCO WELLNESS, LLC**  
as Guarantor

By: \_\_\_\_\_  
Name: Patricia A. Ward  
Title: Manager

**PETCO ANIMAL SUPPLIES STORES, INC.**  
as Guarantor

By: /s/ Michael Nuzzo  
Name: Michael Nuzzo  
Title: Chief Financial Officer

**INTERNATIONAL PET SUPPLIES AND  
DISTRIBUTION, INC.**  
as Guarantor

By: /s/ Michael Nuzzo  
Name: Michael Nuzzo  
Title: Chief Financial Officer

[Signature Page to Amendment Agreement]

**STORES SHIPPING SERVICES, LLC**  
as Guarantor

By: /s/ Michael Nuzzo  
Name: Michael Nuzzo  
Title: Chief Financial Officer

**PETCO SUPPORT SERVICES, LLC**  
as Guarantor

By: /s/ Michael Nuzzo  
Name: Michael Nuzzo  
Title: Chief Financial Officer

**PETCO PUERTO RICO, LLC**  
as Guarantor

By: /s/ Michael Nuzzo  
Name: Michael Nuzzo  
Title: Chief Financial Officer

**E-PET SERVICES, LLC**  
as Guarantor

By: **PETCO ANIMAL SUPPLIES STORES, INC.**

Its sole member

By: /s/ Michael Nuzzo  
Name: Michael Nuzzo  
Title: Chief Financial Officer

**PETCO ASIA, LLC**  
as Guarantor

By: /s/ Michael Nuzzo  
Name: Michael Nuzzo  
Title: Chief Financial Officer

**PETCO REAL ESTATE HOLDINGS I LLC**  
as Guarantor

By: /s/ Michael Nuzzo  
Name: Michael Nuzzo  
Title: Chief Financial Officer

[Signature Page to Amendment Agreement]

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**PETCO REAL ESTATE HOLDINGS II LLC**  
as Guarantor

By: /s/ Michael Nuzzo  
Name: Michael Nuzzo  
Title: Chief Financial Officer

[Signature Page to Amendment Agreement]

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**CITIBANK, N.A.,**  
as Administrative Agent, Collateral Agent, Issuing Bank, Swingline Lender and a Lender

By: /s/ Thomas M. Halsch  
Name: Thomas M. Halsch  
Title Vice President

[Signature Page to Amendment Agreement]

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**BARCLAYS BANK PLC,**  
as a Lender

By: /s/ Ritam Bhalla  
Name: Ritam Bhalla  
Title: Director

[Signature Page to Amendment Agreement]

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ROYAL BANK OF CANADA,  
as a Lender and as an Issuing Bank

/s/ Gordon MacArthur  
Name: Gordon MacArthur  
Title: Authorized Signatory

[Signature Page to Amendment Agreement]

**BANK OF AMERICA, N.A.,**  
as a Lender

By: /s/ Andrew Cerussi  
Name: Andrew Cerussi  
Title: Senior Vice President

[Signature Page to Amendment Agreement]

NOMURA CORPORATE FUNDING AMERICAS, LLC.

as a Lender

By: /s/ Andrew Keith

Name: Andrew Keith

Title: Executive Director

[Signature Page to Amendment Agreement]

---

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
as a Lender and as an Issuing Bank

By: /s/ Michael Stavrakos  
Name: Michael Stavrakos  
Title: Vice President

[Signature Page to Petco First Amendment Agreement]

---

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,  
as a Lender

By: /s/ Judith E. Smith

Name: Judith E. Smith

Title: Authorized Signatory

By: /s/ Joan Park

Name: Joan Park

Title: Authorized Signatory

[Signature Page to Amendment Agreement]

MUFG Union Bank, N.A.,  
as a Lender

By: /s/ Peter Ehlinger  
Name: Peter Ehlinger  
Title: Vice President

[Signature Page to Amendment Agreement]

**REGIONS BANK,**  
as a Lender

By: /s/ Kevin R. Rogers  
Name: Kevin R. Rogers  
Title: Managing Director

[Signature Page to Amendment Agreement]

Capital One, National Association,  
as a Lender

By: /s/ Julianne Low  
Name: Julianne Low  
Title: Senior Director

[Signature Page to Amendment Agreement]

Fifth Third Bank  
as a Lender

/s/ Mark Pienkos  
Name: Mark Pienkos  
Title: Managing Director

[Signature Page to Amendment Agreement]

**SIEMENS FINANCIAL SERVICES, INC.,**  
as a Lender

By: /s/ Richard Holston  
Name: Richard Holston  
Title: Vice President

By: /s/ Sonia Vargas  
Name: Sonia Vargas  
Title: Senior Loan Closer

[Signature Page to Amendment Agreement]

**MIHI LLC,**

as a Lender

By: /s/ Ayesha Farooqi

Name: Ayesha Farooqi

Title: Authorized Signatory

By: /s/ Lisa Grushkin

Name: Lisa Grushkin

Title: Authorized Signatory

[Signature Page to Amendment Agreement]

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**EXHIBIT A**

Amended Credit Agreement

[See attached.]

[Signature Page to Amendment Agreement]

\$500,000,000

REVOLVING CREDIT AGREEMENT,

dated as of January 26, 2016,

among

PET ACQUISITION MERGER SUB LLC,  
(to be merged with and into PETCO HOLDINGS, INC.)  
as the Initial Borrower, and immediately after giving effect to the Merger, as Holdings,

PETCO ANIMAL SUPPLIES, INC.,  
as the Successor Borrower,

THE LENDERS PARTY HERETO,

and

CITIBANK, N.A.,  
as Administrative Agent and Collateral Agent,

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CITIGROUP GLOBAL MARKETS INC.,  
BARCLAYS BANK PLC,  
RBC CAPITAL MARKETS<sup>1</sup>,  
CREDIT SUISSE SECURITIES (USA) LLC,  
NOMURA SECURITIES INTERNATIONAL, INC., and  
MACQUARIE CAPITAL (USA) INC.,  
as Bookrunners and Arrangers

WELLS FARGO BANK, NATIONAL ASSOCIATION, and  
BANK OF AMERICA, N.A.,  
as Senior Managing Agents,

BARCLAYS BANK PLC,  
WELLS FARGO BANK, NATIONAL ASSOCIATION, and  
BANK OF AMERICA, N.A.,  
as Syndication Agents,

and

RBC CAPITAL MARKETS, and  
MUFU UNION BANK, N.A.,  
as Documentation Agents

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<sup>1</sup> RBC Capital Markets is a brand name for the capital markets activities of Royal Bank of Canada and its affiliates



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## Exhibits and Schedules

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Exhibit B	Form of Borrowing Base Certificate
Exhibit C	Form of Solvency Certificate
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Schedule 6.04	Investments
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Schedule 10.01	Notice Information

REVOLVING CREDIT AGREEMENT, dated as of January 26, 2016 (as amended, amended and restated, supplemented or otherwise modified from time to time, this "**Agreement**"), among initially PET ACQUISITION MERGER SUB LLC, a Delaware limited liability company ("**Merger Sub**") and in its capacity as the initial borrower hereunder, the "**Initial Borrower**", and after the assignment of the obligations of Initial Borrower on the Closing Date pursuant to Section 10.23 and the Merger and the LLC Conversion have been completed, in its capacity as Holdings hereunder, "**Holdings**") and after the consummation of the Merger, and upon assumption of the Initial Borrower's Obligations hereunder pursuant to Section 10.23, PETCO ANIMAL SUPPLIES, INC., a Delaware corporation (the "**Successor Borrower**"), the Lenders and other Issuing Banks party hereto from time to time and CITIBANK, N.A., 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**"), as Swingline Lender (in such capacity, and as further defined in Section 1.01, the "**Swingline Lender**"), and as an Issuing Bank.

#### RECITALS

- (1) CVC Capital Partners Advisory (U.S.), Inc. and Canada Pension Plan Investment Board or their respective Affiliates have formed PET Acquisition LLC, a Delaware limited liability company ("**Parent**"), owning all of the Capital Stock of Merger Sub and pursuant to the Agreement and Plan of Merger, dated as of November 21, 2015 (the "**Merger Agreement**"), by and among Parent, Merger Sub, Petco Holdings, Inc., a Delaware corporation (the "**Company**"), and the equityholders' representative named therein, Merger Sub will merge (the "**Merger**") with and into the Company, with the Company being the survivor of such Merger. After the consummation of the Merger, the Company will be converted into a limited liability company with the name Petco Holdings, Inc. LLC (the "**LLC Conversion**"). As used herein, the "**Borrower**" means the Initial Borrower, prior to the consummation of the Merger and assumption of the Initial Borrower's Obligations hereunder pursuant to Section 10.23, and the Successor Borrower, thereafter.
- (2) In connection with the consummation of the Merger, (a) the Lenders have agreed to extend credit to the Borrower in the form of Revolving Loans, Swingline Loans and Letters of Credit in an aggregate principal amount not to exceed \$500.0 million, (b) certain financial institutions have agreed to extend credit to the Borrower in the form of term loans under the Term Loan Credit Agreement (as defined herein) in an aggregate principal amount not to exceed \$2,525.0 million, (c) certain initial purchasers have agreed to purchase Senior Notes in an aggregate principal amount not to exceed \$750.0 million and (d) the Sponsors and certain other equity investors (including members of the Company's management) arranged by or designated by the Sponsors will, directly or indirectly, contribute to Parent or another Parent Entity (as defined herein) cash or rollover equity in exchange for common equity of Parent or such Parent Entity (and Parent or such Parent Entity will contribute such cash and rollover equity to the common equity capital of Merger Sub) and the aggregate amount of such contributed cash or rollover equity will be no less than 25% of the sum of (i) the aggregate gross proceeds of the Loans borrowed on the Closing Date under this Agreement (excluding Letters of

Credit, amounts borrowed to cash collateralize letters of credit issued under the Existing ABL Credit Agreement, amounts borrowed to fund working capital needs of the Company and its subsidiaries on the Closing Date and amounts borrowed to fund the Transaction Tax Benefits (as defined in the Merger Agreement) in an amount not to exceed \$50.0 million), the aggregate gross proceeds of the term loans borrowed by the Borrower under the Term Loan Credit Agreement on the Closing Date and the aggregate gross cash proceeds from any sale of Senior Notes on or prior to the Closing Date and (ii) the amount of such cash and rollover equity contributed on the Closing Date after giving effect to the Transactions (such contribution, the “*Equity Contribution*”).

## 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:

“2021 Revolving Commitments” means, with respect to a 2021 Revolving Lender, the commitment of such Lender to make Revolving Loans pursuant to Section 2.01, expressed as an amount representing the maximum aggregate permitted amount of such Lender’s Revolving Facility Credit Exposure hereunder, as such commitment may be (1) reduced from time to time pursuant to Section 2.08, (2) reduced or increased from time to time pursuant to assignments by or to such Lender under Section 10.04 or (3) increased from time to time under Section 2.21. The initial amount of each 2021 Revolving Lender’s Revolving Facility Commitment is set forth on Schedule 2.01 as amended by the First Amendment or in the Assignment and Acceptance pursuant to which such Lender has assumed its Revolving Facility Commitment, as applicable. The aggregate amount of the Lenders’ 2021 Revolving Commitments on the First Amendment Effective Date is \$55.0 million.

“2021 Revolving Lender” means each Revolving Lender with a 2021 Revolving Commitment. As of the First Amendment Effective Date, the 2021 Revolving Lenders are set forth on Schedule 2.01 as amended by the First Amendment.

“*ABL Priority Collateral*” means “*ABL Priority Collateral*” as defined in the Intercreditor Agreement.

“*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 commercial lending rate published as of such day by the Wall Street Journal as the “prime rate;” and

(3) the LIBOR Quoted Rate *plus* 1.00%.

Any change in the ABR due to a change in the Federal Funds Rate, the “prime rate” or the LIBOR Quoted Rate will be effective on the effective date of such change in the Federal Funds Rate, the “prime rate” or the LIBOR Quoted Rate, as the case may be.

“**ABR Borrowing**” means a Borrowing comprised of ABR Loans.

“**ABR Loan**” means any Loan bearing interest at a rate determined by reference to the ABR. For the avoidance of doubt, all Swingline Loans will be ABR Loans.

“**ABR Revolving Facility Borrowing**” means a Borrowing comprised of ABR Revolving Loans.

“**ABR Revolving Loan**” means any Revolving Loan bearing interest at a rate determined by reference to the ABR.

“**Acceptable Appraiser**” means (a) Great American Appraisal & Valuation Services, LLC or (b) any other experienced and reputable appraiser reasonably acceptable to the Borrower and the Administrative Agent.

“**Account**” means, with respect to a Person, any of such Person’s now owned and hereafter acquired or arising accounts (as defined in the UCC), including, whether or not constituting “accounts” (as defined in the UCC), any rights to payment for the sale or lease of goods or rendition of services, whether or not they have been earned by performance or arising out of the use of a credit or charge card or information contained on or used with such card (and whether same is an “Account” or “General Intangible” as defined in the UCC). For the avoidance of doubt, “Accounts” will include all Credit Card Processor Accounts.

“**Additional Lender**” means the banks, financial institutions and other institutional lenders and investors (other than natural persons) that become Lenders in connection with Incremental Commitments; *provided* that no Disqualified Institution may be an Additional Lender.

“**Adjusted LIBO Rate**” means, with respect to any Eurocurrency Revolving Facility Borrowing for any Interest Period, an interest rate per annum equal to the LIBO Rate in effect for such Interest Period *divided by one minus* the Statutory Reserves applicable to such Eurocurrency Revolving Facility Borrowing, if any.

“**Adjustment Date**” means the last calendar day of each month of January, April, July and October.

“**Administrative Agent**” means Citibank, N.A., 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 2.12(3).

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Ad Valorem Tax Reserve**” means an amount equal to any unpaid ad valorem taxes payable on any Inventory under the laws of the State of Texas or any such other state(s) in which such ad valorem taxes has priority by operation of law over the Lien of the Collateral Agent in any of the Collateral consisting of Eligible Inventory, as notified by the Administrative Agent to the Borrower in writing.

“**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.

“**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 Commitment Fee Percentage**” means (i) if the average daily Revolving Facility Credit Exposure is greater than 50% of the Line Cap as of the most recent Adjustment Date for the prior fiscal quarter, a percentage per annum equal to 0.25% and (ii) if otherwise, 0.375%.

“**Applicable Margin**” means, as of the Closing Date, (1) for ABR Loans, 0.50%, and (2) for Eurocurrency Revolving Loans, 1.50% and, after delivery of financial statements for the first full fiscal quarter after the Closing Date, the percentages per annum determined in accordance with the pricing grid set forth below, based on Average Historical Excess Availability as of the most recent Adjustment Date:

<u>Pricing Level</u>	<u>Average Historical Excess Availability</u>	<u>Applicable Margin for Eurocurrency Revolving Loans</u>	<u>Applicable Margin for ABR Loans</u>
I	Greater than or equal to 66.7% of the Line Cap	1.25%	0.25%
II	Less than 66.7% of the Line Cap but greater than or equal to 33.3% of the Line Cap	1.50%	0.50%
III	Less than 33.3% of the Line Cap	1.75%	0.75%

The Applicable Margin shall be adjusted quarterly on a prospective basis on each Adjustment Date based upon the Average Historical Excess Availability in accordance with the table above; provided that if any Borrowing Base Certificate delivered pursuant to this Agreement is at any time restated or otherwise revised, or if the information set forth in any such Borrowing Base Certificate 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 recalculated by the Administrative Agent at such higher rate for any applicable periods and shall be due and payable within 5 Business Days of receipt of such calculation by the Borrower from the Administrative Agent and shall be payable only to the Lenders whose Commitments were outstanding during such period when the Applicable Margin should have been higher (regardless of whether such Lenders remain parties to this Agreement at the time such payment is made).

**“Approved Fund”** has the meaning assigned to such term in Section 10.04(2).

**“Arranger”** means each of Citigroup Global Markets Inc., Barclays Bank PLC, RBC Capital Markets, Credit Suisse Securities (USA) LLC, Nomura Securities International, Inc., and Macquarie Capital (USA) Inc.

**“Asset Sale”** means any loss, damage, destruction or condemnation of, or any sale, transfer or other disposition (including by merger, allocation of assets (including allocation of assets to any series of a limited liability company), division, consolidation or amalgamation and any Sale and Lease-Back Transaction) to any Person of any asset or assets of any Loan Party or any Restricted Subsidiary.

**“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 and reasonably satisfactory to the Borrower.

**“Availability Period”** means, (i) with respect to the 2021 Revolving Commitments, the period from and including the Closing Date to but excluding the earlier of the applicable Maturity Date and the date of termination of the ~~Revolving Facility~~ 2021 Revolving Commitments and (ii) with respect to the First Amendment Extended Revolving Commitments, the period from and including the First Amendment Effective Date to but excluding the earlier of the applicable Maturity Date and the date of termination of the First Amendment Extended Revolving Commitments.

**“Available Unused Commitment”** means, with respect to a Lender at any time, an amount equal to the amount by which (1) the Revolving Facility Commitment of such Lender at such time exceeds (2) the aggregate Revolving Facility Credit Exposure (other than Revolving Facility Credit Exposure attributable to Swingline Loans) of such Lender at such time.

**“Average Historical Excess Availability”** means, at any Adjustment Date, the average daily Excess Availability for the prior fiscal quarter.

**“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.

**“Blocked Account”** has the meaning assigned to such term in Section 5.11.

**“Blocked Account Agreement”** has the meaning assigned to such term in Section 5.11.

**“Below Threshold Asset Sale Proceeds”** has the meaning assigned to such term in the Term Loan Credit Agreement.

**“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.

**“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.**

**“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.**

**“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 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 Base Parties**” means, as of any date, the Borrower and each Guarantor that is a Restricted Subsidiary.

“**Borrowing**” means a group of Loans of a single Type made on a single date and, in the case of Eurocurrency Revolving Loans, as to which a single Interest Period is in effect.

“**Borrowing Base**” means, at any time, the sum of:

- (1) 90% of the Eligible Accounts held by the Borrowing Base Parties; plus
- (2) 90% of the Net Orderly Liquidation Value of Eligible Inventory held by the Borrowing Base Parties; plus
- (3) 100% of Qualified Cash of the Borrowing Base Parties as to which the Borrowing Base Parties have no access; provided that, at any time, the aggregate amount of Qualified Cash included in the Borrowing Base shall not exceed \$50.0 million; less
- (4) Reserves;

*provided*, that, if a Report is not complete prior to the Closing Date, then on the Closing Date and until the earlier of (i) the completion of such Report and (ii) the 90<sup>th</sup> day following the Closing Date, the term “**Borrowing Base**” means the Existing ABL Borrowing Base;

*provided, further*; that if a Report has not been completed on or before the 90<sup>th</sup> day following the Closing Date, then the Borrowing Base shall be deemed to be zero from the 91<sup>st</sup> day following the Closing Date until such Report has been completed, on which date this proviso shall cease to be of any effect.

“**Borrowing Base Certificate**” means a certificate by a Responsible Officer of the Borrower, substantially in the form of Exhibit B (or another form acceptable to the Administrative Agent and the Borrower) setting forth the calculation of the Borrowing Base, including a calculation of each component thereof (including, to the extent the Borrower has received notice of any such Reserve from the Administrative Agent, any of the Reserves included in such calculation), all in such detail as is reasonably satisfactory to the Administrative Agent. All calculations of the Borrowing Base in connection with the preparation of any Borrowing Base Certificate will be made by the Borrower and certified to the Administrative Agent.

“**Borrowing Minimum**” means \$1,000,000 in the case of ABR Borrowings and \$5,000,000 in the case of Eurocurrency Revolving Facility Borrowings.

“**Borrowing Multiple**” means \$1,000,000 in the case of ABR Borrowings and Eurocurrency Revolving Facility Borrowings.

“**Borrowing Request**” means a request by the Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit D-1.

“**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 Revolving 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) the Merger;
- (9) the purchase of property, plant or equipment made within 24 months of any Asset Sale to the extent purchased with the proceeds of such Asset Sale; or
- (10) expenditures used for acquisitions of fee-owned Real Property, up to \$25.0 million during any fiscal year, so long as (A) the Borrower demonstrates to the satisfaction of the Administrative Agent a viable plan that provides for a Sale and Lease-Back Transaction within one year of acquisition and (B) the Administrative Agent approves of the exclusion of such expenditures in their reasonable discretion, provided if the Borrower and its Subsidiaries fail to complete such Sale and Lease-Back Transaction within such one-year period, expenditures used for such acquisition shall be included as Capital Expenditures in the fiscal year in which such one-year period expires.

**“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 Dominion Period”** means the period commencing upon the occurrence of, and continuing during the continuation of, a Liquidity Condition or any Designated Event of Default. Once commenced, a Cash Dominion Period will continue until such Liquidity Condition or Designated Event of Default has been cured or waived or is no longer continuing, as applicable.

**“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 Term Loan 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.

**“Certain Funds Provisions”** has the meaning given to such term in the Commitment Letter.

A **“Change in 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 Term Loan Credit Agreement or the 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; or

- (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).

**“Change in Law”** means:

- (1) the adoption of any law, rule or regulation after the Closing Date;
- (2) any change in 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 2.15(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.

**“Charges”** has the meaning assigned to such term in Section 10.09.

**“Charitable Foundation”** means The Petco Foundation, a California Exempt Organization and all related charitable entities.

**“Charitable Foundation Liabilities”** means, at any time, the aggregate remaining balance at such time of amounts and pledges owed by the Borrowing Base Parties to the Charitable Foundations, net of any accounts receivables or payment intangibles owed by the Charitable Foundations to the Borrowing Base Parties.

**“Charitable Reserve”** means, as of any date, an amount equal to 100% of the Charitable Foundation Liabilities as reflected in the Borrowing Base Parties’ books and records.

**“Closing Date”** means January 26, 2016.

**“Closing Date Refinancing”** means the repayment of debt contemplated by Section 3.03 of the Merger Agreement, which for the avoidance of doubt shall include the repayment in full of the (i) Existing Term Loan Credit Agreement, (ii) Existing ABL Credit Agreement, (iii) the Existing Construction Loan Agreement, (iv) the outstanding Existing Senior Notes and (v) the outstanding Existing Senior PIK Toggle Notes and the termination of all obligations and liens related thereto.

**“Closing Date Senior Secured First Lien Net Leverage Ratio”** means 4.80 to 1.00.

**“Closing Date Total Net Leverage Ratio”** means 6.20 to 1.00.

**“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 Access Agreement”** means a landlord waiver or other agreement, in a form as shall be reasonably satisfactory to the Collateral Agent, between the Collateral Agent and any third party (including any bailee, consignee, customs broker, or other similar Person) in possession of any Collateral or any landlord of any premises where any Collateral is located, as such landlord waiver or other agreement may be amended, restated, or otherwise modified from time to time.

**“Collateral Agent”** means Citibank, N.A., 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 ABL 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.

**“Commitment Fee”** has the meaning assigned to such term in Section 2.12(1). “Commitment” means (1) with respect to each Lender, such Lender’s Revolving Facility Commitment, (2) with respect to the Swingline Lender, its Swingline Commitment and (3) with respect to any Issuing Bank, its Letter of Credit Commitment. On the ~~Closing~~First Amendment Effective Date, the aggregate amount of Commitments is ~~\$500.0~~\$555.0 million.

**“Commitment Letter”** means that certain Amended and Restated Commitment Letter, dated as of November 30, 2015, by and among Merger Sub, Citigroup Global Markets Inc., Barclays Bank PLC, Royal Bank of Canada, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Cayman Islands Branch, Nomura Securities International, Inc., Macquarie Capital (USA) Inc., MIHI LLC, GSMP VI Offshore US Holdings, Ltd., GSMP VI Onshore US Holdings, Ltd. and Broad Street Credit Holdings LLC and including any joinders thereto.

**“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 sum (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, Disqualified Stock and Indebtedness in respect of the deferred purchase price of property or services 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
  - (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; plus
  - (l) without duplication, “management adjustment” addbacks expressly set forth in the Sponsor Model; 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).

Notwithstanding the foregoing, the Consolidated EBITDA of the Borrower for the fiscal quarters ended:

- (i) October 31, 2015 will be deemed to be \$118.460 million;
- (ii) August 1, 2015 will be deemed to be \$119.512 million; and
- (iii) May 2, 2015 will be deemed to be \$121.040 million.

it being understood that the amounts listed in the foregoing clauses (i), (ii) and (iii) do not give effect to the adjustments provided for in the definition of Pro Forma Basis for any transactions or events other than the Transactions.

“**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 ABL Priority Collateral that is *pari passu* with the Lien securing the Obligations or that is secured by a Lien on the Term 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 Term Loan 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;

*provided* that when determining Consolidated Interest Expense in respect of any four-quarter period ending prior to the first anniversary of the Closing Date, Consolidated Interest Expense will be calculated by multiplying the aggregate Consolidated Interest Expense accrued since the Closing Date by 365 and then dividing such product by the number of days from and including the Closing Date to and including the last day of 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 the Transactions or otherwise, expenses associated with strategic initiatives, facilities shutdown and opening costs, and any fees, expenses, charges or change in control payments related to the Transactions 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 are or are permitted to be 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 the Transactions 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 the Transactions within 18 months after the Closing 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 in an aggregate amount not to exceed \$20.0 million 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; and
- (19) non-cash charges for deferred tax asset valuation allowances will be excluded.

**“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.

**“Cost”** means the calculated cost of purchases, based upon the Borrower’s accounting practices as reflected in the most recent Annual Financial Statements, which practices are consistent with the methodology used in the most recent appraisal delivered in connection with this Agreement prior to the Closing Date.

**“Covenant Trigger Event”** means that Excess Availability is less than the greater of (a) \$30.0 million and (b) 10.0% of the Line Cap then in effect. Once commenced, a Covenant Trigger Event will be deemed to be continuing until such time as Excess Availability equals or exceeds the greater of (i) \$30.0 million and (ii) 10.0% of the Line Cap then in effect for 20 consecutive days.

**“Credit Card Notification”** has the meaning assigned to such term in Section 5.11.

**“Credit Card Processor”** means any Person (other than a Loan Party or any Affiliate of any Loan Party) who issues or whose members or Affiliates issue credit or debit cards, including MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club and Carte Blanche.

**“Credit Card Processor Accounts”** means Accounts owing to a Loan Party from a Credit Card Processor.

**“Credit Event”** has the meaning assigned to such term in Article IV.

**“Cure Amount”** has the meaning assigned to such term in Section 8.02.

**“Cure Right”** has the meaning assigned to such term in Section 8.02.

**“Customer Credit Liabilities”** means, at any time, the aggregate remaining balance at such time of (a) outstanding gift certificates and gift cards of the Borrowing Base Parties 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 of the Borrowing Base Parties, net of any dormancy reserves maintained by the Borrowing Base Parties on their books and records in the ordinary course of business consistent with past practices.

**“Customer Credit Liability Reserves”** means, as of any date, an amount equal to 50% of the Customer Credit Liabilities as reflected in the Borrowing Base Parties’ books and records.

**“Customer Deposits”** means, at any time, the aggregate balance at such time of outstanding customer deposits of the Borrowing Base Parties, net of any dormancy reserves maintained by the Borrowing Base Parties on their books and records in the ordinary course of business consistent with past practices.

**“Customer Deposits Reserve”** means, as of any date, an amount equal to 100% of the Customer Deposits as reflected in the Borrowing Base Parties’ books and records.

**“Customs Broker Agreement”** means an agreement, in form reasonably satisfactory to the Collateral 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 Collateral Agent and agrees, upon notice from the Collateral Agent, to hold and dispose of such Inventory solely as directed by the Collateral Agent.

**“CVC”** means any funds or limited partnerships managed or advised by CVC Capital Partners Limited or any of its Affiliates or direct or indirect Subsidiaries or any investors in such funds or limited partnerships (but excluding, in each case, any portfolio companies in which such funds or limited partnerships hold an investment and excluding, in each case, any funds or entities managed or advised by CVC Credit Partners Holdings Limited or any of its direct or indirect Subsidiaries engaged in the same or a similar business to CVC Credit Partners Holdings Limited) who are investors in such funds or limited partnerships as at the Closing Date, investing directly or indirectly in Holdings.

**“DDA”** means any checking or other demand deposit account maintained by the Loan Parties.

**“DDA Notification”** has the meaning assigned to such term in Section 5.11.

**“Debt Representative”** means, with respect to any Indebtedness that is secured on a junior basis to the Revolving Facility Claims, 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 (a) whose acts or failure to act, whether directly or indirectly, constitutes a Lender Default or (b) who has, or has a direct or indirect parent company that has, become the subject of a Bail-in Action.

**“Designated Cash Management Reserve”** means, as of any date, such reserves as the Administrative Agent determines in its Reasonable Credit Judgment to reflect (and in no event to exceed) the then aggregate outstanding cash management exposure of all Cash Management Banks to the relevant Loan Parties under all Cash Management Obligations.

**“Designated Hedging Agreement”** means Specified Hedge Agreements that are designated by the Qualified Counterparty and the Borrower in writing to the Administrative Agent as a “Designated Hedging Agreement” and the Qualified Counterparty shall have provided the MTM value on the date of such designation.

**“Designated Hedging Reserve”** means, as of any date, such reserves as the Administrative Agent determines in its Reasonable Credit Judgment to reflect (and in no event to exceed) the then aggregate outstanding mark-to-market (“*MTM*”) exposure owed by the relevant Loan Parties to all Qualified Counterparties under all Designated Hedging Agreements. Such exposure shall be the sum of the positive aggregate MTM values to each Qualified Counterparty of all Designated Hedging Agreements with such Qualified Counterparty outstanding at the time of the relevant calculation. The aggregate MTM value to a Qualified Counterparty of all Designated Hedging Agreements with such Qualified Counterparty shall be calculated (i) on a net basis by taking into account the netting provision contained in the ISDA Master Agreement (or other similar agreement with netting provisions substantially similar to an ISDA Master Agreement) with such Qualified Counterparty and (ii) if applicable, by taking into account any master netting agreement or arrangement in place among such Qualified Counterparty, any Subsidiary or Affiliate thereof that is also party to a Designated Hedging Agreement and the relevant Loan Party, in which case the positive aggregate MTM value of all relevant Designated Hedging Agreements to such Qualified Counterparty and such Subsidiaries or Affiliates who are parties to such master netting agreements shall be calculated in respect of all of the relevant Designated Hedging Agreements on a net basis across all such Designated Hedging Agreements, provided that the Borrower (i) certifies to the Administrative Agent that such master netting agreement shall apply to all such Designated Hedging Agreements in all cases including upon

the occurrence of an event of default by the relevant Loan Party in respect of any such Designated Hedging Agreement and (ii) upon request, provides to the Administrative Agent a copy of the master netting agreement. In calculating the positive aggregate MTM value to a Qualified Counterparty, the value of collateral posted to such Qualified Counterparty in respect of such Designated Hedging Agreements shall be taken into account, such that the value of such collateral shall reduce the MTM value of such Designated Hedging Agreements that is out-of-the-money to the relevant Loan Party by an amount equal to (x) the amount of cash collateral or (y) the value of non-cash collateral with such value as determined by the relevant Qualified Counterparty or the relevant valuation agent in accordance with the relevant credit support annex or other collateral agreement (for the avoidance of doubt, taking into account any haircut provision applicable to such non-cash collateral), provided that the Borrower shall provide any supporting documentation for such value as may be reasonably requested by the Administrative Agent. For the avoidance of doubt, if the MTM value of all Designated Hedging Agreements with a Qualified Counterparty is a negative amount to such Qualified Counterparty (i.e., if all such Designated Hedging Agreements with such Qualified Counterparty are in-the-money to the relevant Loan Party on a net basis), such MTM value shall be treated as zero in calculating the amount of the Designated Hedging Reserves. The MTM value of a Designated Hedging Agreement for this purpose shall be calculated and provided to the Administrative Agent, the relevant Loan Party and the Borrower together with the supporting calculations therefor promptly (but in any case not later than three Business Days) following (x) the last calendar day of each calendar month and (y) such other date on which a request was made by the Administrative Agent, the relevant Loan party or the Borrower, as applicable, for such MTM value, which shall be used by the Administrative Agent in calculating the relevant portion of the Designated Hedging Reserves. If a Qualified Counterparty fails to provide the MTM value of a Designated Hedging Agreement within the relevant timeframe specified above, then the Administrative Agent (x) shall give the Borrower notice thereof within three Business Days from the date such Qualified Counterparty was required to provide such MTM value and (y) may (but is not obligated to) provide, upon receiving from the Borrower or the relevant Loan Party all of the information reasonably determined by the Administrative Agent as being necessary to determine the MTM value of the relevant Designated Hedging Agreement, a proposed MTM value of the relevant Designated Hedging Agreement within such three Business Day period. If the Administrative Agent agrees to provide such a proposed MTM value and the Borrower does not notify the Administrative Agent within three Business Days from receipt thereof that it does not agree with such MTM value, then the Administrative Agent shall use such MTM value in calculating the relevant portion of the Designated Hedging Reserves.

**“Designated Event of Default”** means any Event of Default under Section 8.01(1) (solely with respect to a default under Section 3.05), Section 8.01(2), Section 8.01(3) (solely with respect to interest and Fees), Section 8.01(4) (solely with respect to a default under Section 5.04(9), Section 5.11 or Section 6.10), Section 8.01(8) or Section 8.01(9).

**“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.

“*Designated Disbursement Account*” has the meaning assigned to such term in Section 5.11.

“*Discharge of ABL Revolving Claims*” has the meaning assigned to the term “Discharge of ABL Revolving Claims” in the Intercreditor Agreement.

“*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 Arrangers and the Administrative Agent on or prior to the date of the Commitment Letter;
  - (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 date of the Commitment Letter; provided that such Person will not be a Disqualified Institution if the Administrative Agent reasonably determines in good faith that such Person is not a competitor of the Borrower and notifies the Borrower of such determination promptly following the date on which the Borrower identifies such Person to the Administrative Agent; 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 (i) make investment decisions or (ii) have access to non-public information relating to the Borrower or any Person that forms part of the Borrower’s business (including its Subsidiaries)); or
- (2) certain banks, financial institutions, other institutional lenders and investors and other entities that are identified by the Borrower in writing to the Arrangers and the Administrative Agent on or prior to the date of the Commitment Letter.

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 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 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:
  - (a) the Latest Maturity Date; and
  - (b) the date on which the 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 and any outstanding Letters of Credit are expired, terminated or cash-collateralized on terms satisfactory to the Issuing Bank;

*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.”

**“Documentation Agents”** means each of RBC Capital Markets and MUFG Union Bank, N.A.

**“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 or any political subdivision thereof, 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.

**“Dominion Account”** has the meaning assigned to such term in Section 5.11.

**“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 Accounts”** means all Credit Card Processor Accounts that constitute proceeds from the sale or disposition of Inventory in the ordinary course of business and that are reflected in the most recent Borrowing Base Certificate, except any Credit Card Processor Account with respect to which any of the exclusionary criteria set forth below applies. No Credit Card Processor Account will be an Eligible Account if:

- (1) such Credit Card Processor Account has been outstanding for more than five Business Days from the date of sale;
- (2) such Credit Card Processor Account is (a) not subject to the first priority, valid and perfected Lien of the Collateral Agent as to such Credit Card Processor Account or (b) is subject to any other Lien, other than (i) a Lien permitted under Section 6.02(10), 6.02(13) or 6.02(19) or other Permitted Lien arising by operation of law or (ii) a Lien securing Indebtedness permitted under Section 6.01(1) (it being understood that customary offsets to fees and chargebacks in the ordinary course by the credit card or debit card processors will not be deemed violative of this clause (2));
- (3) a Borrowing Base Party does not have good, valid and marketable title thereto, free and clear of any Lien (other than (i) Liens granted to the Collateral Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Security Documents, (ii) a junior priority Lien permitted under Section 6.02(10), 6.02(13) or 6.02(19) or other Permitted Lien arising by operation of law or (iii) a lien securing Indebtedness permitted under 6.01(1) or(2));

- (4) such Credit Card Processor Account does not constitute the legal, valid and binding obligation of the applicable Credit Card Processor enforceable in accordance with its terms;
- (5) such Credit Card Processor Account is disputed, or a claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback has been asserted with respect thereto by the applicable Credit Card Processor (but only to the extent of such dispute, claim, counterclaim, discount, deduction, reserve, allowance, recoupment, offset or chargeback);
- (6) such Credit Card Processor Account is owed by a Credit Card Processor that is subject to a bankruptcy proceeding of the type specified in Section 8.01(8) or (9) or that is liquidating, dissolving or winding up its affairs or otherwise deemed not creditworthy by the Administrative Agent in its Reasonable Credit Judgment;
- (7) such Credit Card Processor Account does not conform with a covenant or representation contained herein as to such Credit Card Processor Account;
- (8) unless otherwise agreed by the Administrative Agent, the Credit Card Processor is organized or has its principal offices or assets outside the United States;
- (9) such Credit Card Processor Account is evidenced by Chattel Paper or an Instrument (each as defined in the Collateral Agreement) of any kind, or has been reduced to judgment; or
- (10) such Credit Card Processor Account includes a billing for interest, fees or late charges, but ineligibility will be limited to the extent thereof.

Anything contained herein to the contrary notwithstanding, for purposes of determining the amount of Eligible Accounts in the Borrowing Base at any time, any Credit Card Processor Account that otherwise meets the requirements for Eligible Accounts may be included in such calculation even though the same does not constitute proceeds from the sale or disposition of Inventory; provided that such amount will be subject to adjustment as may be required by the Administrative Agent at any time and from time to time to reflect such fact.

If any Credit Card Processor Account at any time ceases to be an Eligible Account, then such Credit Card Processor Account will promptly be excluded from the calculation of the Borrowing Base; provided that if any Credit Card Processor Account ceases to be an Eligible Account because of the adjustment of or imposition of new exclusionary criteria pursuant to the succeeding paragraph, the Administrative Agent will not require exclusion of such Credit Card Processor Account from the Borrowing Base until 5 Business Days following the date on which the Administrative Agent gives notice to the Borrower of such ineligibility; *provided* that upon such notice, the Borrower shall not be permitted to borrow any Loans or have any Letters of Credit issued so as to exceed the Borrowing Base after giving effect to such adjustment or imposition of new exclusionary criteria.

The Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the exclusionary criteria set forth above and to establish new criteria, in each case, in its Reasonable Credit Judgment (based on an analysis of material facts or events first occurring, or first discovered by the Administrative Agent, after the Closing Date), subject to the necessary approvals set forth in Section 10.08 in the case of adjustments or new criteria which have the effect of making more credit available than would have been available based upon the criteria in effect on the Closing Date.

“*Eligible Inventory*” means all Inventory reflected in the most recent Borrowing Base Certificate, except any Inventory with respect to which any of the exclusionary criteria set forth below applies. No item of Inventory will be Eligible Inventory if such item:

- (1) is not subject to a first priority (subject to a Lien permitted under Section 6.02(10) or 6.02(13)) perfected Lien in favor of the Administrative Agent;
- (2) is subject to any Lien other than (a) a Lien in favor of the Collateral Agent, (b) a Lien permitted under Section 6.02(10) or 6.02(13) or other Permitted Lien arising by operation of law or (c) a (in each case under Section 6.01(2), on a junior priority basis) Lien securing Indebtedness permitted under Section 6.01(1) or (2) (in each case under Section 6.01(2), on a junior priority basis);
- (3) is slow moving (other than Inventory located at a clearance center that has been appropriately priced consistent with the Borrowing Base Parties customary practices), obsolete, unmerchantable, defective, used or unfit for sale;
- (4) does not conform in all material respects to the representations and warranties contained in this Agreement or the Collateral Agreement;
- (5) is not owned only by one or more Borrowing Base Parties;
- (6) is not finished goods or which constitutes work-in-process, raw materials, packaging and shipping material, supplies, samples, prototypes, displays or display items, bill-and-hold goods, goods that are returned or marked for return (but not held for resale) or repossessed, or which constitutes goods held on consignment or goods which are not of a type held for sale in the ordinary course of business;
- (7) is not located in the United States;
- (8) (a) is located at any location (other than a retail store or clearance center) leased by a Borrowing Base Party, unless (x) the lessor has delivered to the Collateral Agent a Collateral Access Agreement as to such location or (y) a Reserve for rent, charges, and other amounts due or to become due with respect to such location has been established by the Administrative Agent in its Reasonable Credit Judgment or (b) is located at retail store or clearance center leased by a Borrowing Base Party and such location is in a Landlord Lien State, unless a Reserve for rent, charges, and other amounts due or to become due with respect to such location has been established by the Administrative Agent in its Reasonable Credit Judgment;

- (9) is located in any third-party warehouse or is in the possession of a bailee (other than a third-party processor) and is not evidenced by a Document (as defined in Article 9 of the UCC), unless (x) the warehouseman or bailee has delivered to the Collateral Agent a Collateral Access Agreement as to such location or (y) an appropriate Reserve (including for rent, charges and other amounts due or to become due with respect to such location) has been established by the Administrative Agent in its Reasonable Credit Judgment;
- (10) is being processed offsite at a third party location or outside processor, or is in-transit to or from said third party location or outside processor;
- (11) is the subject of a consignment by any Borrower as consignor;
- (12) contains or bears any intellectual property rights licensed to any Loan Party by any Person other than a Loan Party unless the Collateral Agent is reasonably satisfied that it may sell or otherwise dispose of such Inventory without (a) infringing the rights of such licensor, (b) violating any contract with such licensor, or (c) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement relating thereto;
- (13) is not reflected in a current retail stock ledger report of the Company or the respective Borrowing Base Party (except as to goods received but not recorded in the retail stock ledger);
- (14) is acquired in connection with a Permitted Acquisition to the extent the Administrative Agent has not received a Report in respect of such Inventory showing results reasonably satisfactory to the Administrative Agent;
- (15) is in transit, except that Inventory in transit will not be deemed ineligible if:
  - (a) it has been shipped (i) from a foreign location for receipt by any Borrowing Base Party within forty-five (45) days of the date of shipment (and such shipment has not been delayed beyond such forty-five (45) day delivery time), or (ii) from a domestic location for receipt by any Borrowing Base Party within fifteen (15) days of the date of shipment (and such shipment has not been delayed beyond such fifteen (15) day delivery time), but, in either case, which has not yet been delivered to such Borrowing Base Party,
  - (b) it has been paid for in advance of shipment, is not being shipped by a carrier owned by or affiliated with the vendor;
  - (c) legal ownership thereof has passed to the applicable Borrowing Base Party (or is retained by the applicable Borrowing Base Party) as evidenced by customary documents of title and such Inventory is not sold by a vendor that has a right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against the Inventory, or with respect to whom any Borrowing Base Party is in default of any obligations;

- (d) the Collateral Agent has control over the documents of title which evidence ownership of the subject Inventory (including, if requested by the Collateral Agent, by the delivery of a Customs Broker Agreement); and
  - (e) it is insured to the reasonable satisfaction of the Administrative Agent;
- (16) constitutes operating supplies, packaging or shipping materials, cartons, repair parts, labels or miscellaneous spare parts or other such materials not considered for sale in the ordinary course of business;
- (17) is perishable (it being understood and agreed that (i) perishable Inventory shall include all Inventory consisting of live animals, live food or aquatic plants to the extent the aggregate book value thereof exceeds \$10,000,000 and (ii) pet food (other than live food) shall not be considered perishable Inventory);
- (18) is not located in a Permitted Inventory Location; or
- (19) is not reflected in a current perpetual inventory report (other than in transit Inventory that is otherwise Eligible Inventory) of the Borrowing Base Parties.

If any Inventory at any time ceases to be Eligible Inventory, such Inventory will promptly be excluded from the calculation of the Borrowing Base; *provided, however*, that if any Inventory ceases to be Eligible Inventory because of the adjustment of or imposition of new exclusionary criteria pursuant to the succeeding paragraph, the Administrative Agent will not require exclusion of such Inventory from the Borrowing Base until 5 Business Days following the date on which the Administrative Agent gives notice to the Borrower of such ineligibility; *provided* that upon such notice, the Borrower shall not be permitted to borrow any Loans or have any Letters of Credit issued so as to exceed the Line Cap after giving effect to such adjustment or imposition of new exclusionary criteria.

The Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the exclusionary criteria set forth above and to establish new criteria, in each case, its Reasonable Credit Judgment (based on an analysis of material facts or events first occurring, or first discovered by the Administrative Agent, after the Closing Date), subject to the necessary approvals set forth in Section 10.08 in the case of adjustments or new criteria which have the effect of making more credit available than would be available based upon the criteria in effect on the Closing Date.

**“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 Contribution*” has the meaning assigned to such term in the recitals to this Agreement.

“*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 Revolving Facility Borrowing**” means a Borrowing comprised of Eurocurrency Revolving Loans.

“**Eurocurrency Revolving Loan**” means any Revolving 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 Availability**” means, at any time, (a) the Line Cap at such time *minus* (b) the Revolving Facility Credit Exposure at such time.

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

“**Excluded Accounts**” means any DDA, securities account, commodity account or any other deposit account of any Borrowing Base Party or Restricted Subsidiary (and all cash, Cash Equivalents and other securities or investments credited thereto or deposited therein): (1) that does not have an individual ending balance in excess of \$500,000, or in the aggregate with each other account described in this clause (1), in excess of \$5,000,000; (2) the balance of which is swept at the end of each Business Day into a deposit account, securities account or commodity account subject to a control agreement, so long as such daily sweep is not terminated or modified (other than to provide that the balance in such deposit account, securities account or commodity account is swept into another deposit account, securities account or commodity account subject to a control agreement) without the consent of the Collateral Agent; (3) that is a Trust Account, Specified Segregated Account, or Designated Disbursement Account; (4) any DDA of the Borrower or any Restricted Subsidiary the balance of which consists solely of proceeds of any sale or other disposition of any Term Priority Collateral including the Asset Sale Proceeds Account (as defined in the Term Loan Credit Agreement) so long as all amounts on deposit therein constitute Term Priority Collateral; or (5) to the extent that it is cash collateral for letters of credit (other than Letters of Credit) to the extent permitted hereunder.

“**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(27), in each case prior to such date; *provided* that the proceeds of Disqualified Stock, Cure Amounts 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) or (B) for Contribution Indebtedness, will not be treated as Excluded Contributions.

**“Excluded Equity Interests”** means **“Excluded Equity Interests”** as defined in the Collateral Agreement.

**“Excluded Subsidiary”** means any:

- (1) Immaterial Subsidiary;
- (2) Subsidiary that is not a Wholly Owned Subsidiary of Holdings or 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 a Subsidiary that is not a Wholly Owned Subsidiary of Holdings or 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 2.17(1) or Section 2.17(3);
- (3) Taxes that are attributable to such Lender’s or Administrative Agent’s failure to comply with Section 2.17(5) or Section 2.17(6); and
- (4) any U.S. federal withholding Taxes imposed under FATCA.

**“Executive Order”** has the meaning assigned to such term in Section 3.20(3)(a).

**“Existing ABL Credit Agreement”** means that certain ABL credit agreement, dated as of April 19, 2013 among Petco Animal Supplies, Inc., the lenders party thereto, Bank of America, N.A. (as successor to Credit Suisse AG), as administrative agent, Wells Fargo Bank, National Association, as collateral agent, and the subsidiaries of Petco Animal Supplies, Inc., from time to time party thereto, as amended by that certain First Amendment to the ABL Credit Agreement, dated as of November 21, 2014.

**“Existing ABL Borrowing Base”** means the “Borrowing Base” as determined under the Existing ABL Credit Agreement and reflected in the most recently delivered “borrowing base certificate” delivered under such Existing ABL Credit Agreement as of the Closing Date.

**“Existing Letters of Credit”** means those Letters of Credit described on Schedule 1.01(1) hereto.

**“Existing Construction Loan Agreement”** means that certain Construction Loan Agreement, dated March 20, 2015, by and between Petco Real Estate Holdings III, LLC and MUFG Union Bank, N.A.

**“Existing Senior Notes”** means the Senior Notes due 2017 issued pursuant to that certain Indenture, dated as of November 24, 2010, among Petco Animal Supplies, Inc., the guarantors named on the signature pages thereto, and Wells Fargo Bank, National Association, as trustee.

**“Existing Senior PIK Toggle Notes”** means the Senior PIK Toggle Notes due 2018 issued pursuant to that certain Indenture, dated as of October 10, 2012, between Petco Holdings, Inc., and Wells Fargo Bank, National Association, as Trustee.

**“Existing Term Loan Credit Agreement”** means that certain term loan credit agreement, dated as of November 24, 2010, among Petco Animal Supplies, Inc., as borrower, the lenders party thereto, JPMorgan Chase Bank, N.A. (as successor to Credit Suisse AG), as administrative agent and collateral agent, and the subsidiaries of Petco Animal Supplies, Inc. from time to time party thereto, as amended by that certain Amendment No. 1 to Term Loan Agreement, dated as of February 25, 2011, as further amended by that certain Amendment No. 2 to Term Loan Agreement, dated October 9, 2012, as further amended by that certain Amendment No. 3 to Term Loan Agreement, dated February 4, 2013.

**“Extended Commitments”** has the meaning assigned to such term in Section 2.23(1).

**“Extended Loans”** has the meaning assigned to such term in Section 2.23(1).

**“Extension”** has the meaning assigned to such term in Section 2.23(1).

**“Extension Amendment”** has the meaning assigned to such term in Section 2.23(2).

**“Extension Offer”** has the meaning assigned to such term in Section 2.23(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, 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 3.20(2)

“**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 arranged by federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided that*:

- (1) if such day is not a Business Day, the Federal Funds Rate for such day will be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and
- (2) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day will be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1.00%) charged to the Administrative Agent on such day on such transactions as determined in good faith by the Administrative Agent.

“**Fee Letter**” means the Amended and Restated Fee Letter, dated November 30, 2015, by and among Merger Sub, Citigroup Global Markets Inc., Barclays Bank PLC, Royal Bank of Canada, Credit Suisse Securities (USA) LLC, Credit Suisse AG, Cayman Islands Branch, Nomura Securities International, Inc., Macquarie Capital (USA) Inc., MIHI LLC, GSMP VI Offshore US Holdings, Ltd., GSMP VI Onshore US Holdings, Ltd. and Broad Street Credit Holdings LLC, as amended and in effect from time to time and including any joinders thereto.

“**Fees**” means the Commitment Fees, the L/C Participation Fees, the Issuing Bank Fees, Administrative Agent Fees and all other fees set forth in the Fee Letter and relating hereto.

“**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.

“**Financial Performance Covenant**” means the covenant set forth in Section 6.10.

“**First Amendment**” means that certain First Amendment Agreement, dated as of August 23, 2018, by and among Holdings, the Borrower, the Administrative Agent, the Guarantors and the Lenders party thereto.

“**First Amendment Effective Date**” has the meaning set forth in the First Amendment.

**“First Amendment Extended Revolving Commitments”** means, with respect to a Lender, the commitment of such Lender to make Revolving Loans pursuant to Section 2.01, expressed as an amount representing the maximum aggregate permitted amount of such Lender’s Revolving Facility Credit Exposure hereunder, as such commitment may be (1) reduced from time to time pursuant to Section 2.08, (2) reduced or increased from time to time pursuant to assignments by or to such Lender under Section 10.04 or (3) increased from time to time under Section 2.21. The aggregate principal amount of each First Amendment Extended Revolving Commitment Lender’s Revolving Facility Commitment is set forth on Schedule 2.01 as amended by the First Amendment or in the Assignment and Acceptance pursuant to which such Lender has assumed its Revolving Facility Commitment, as applicable. The aggregate amount of the Lenders’ First Amendment Extended Revolving Commitments on the First Amendment Effective Date is \$500.0 million.

**“First Amendment Extended Revolving Commitment Lender”** means each Revolving Lender with a First Amendment Extended Revolving Commitment. As of the First Amendment Effective Date, the First Amendment Extended Revolving Commitment Lenders are set forth on Schedule 2.01 as amended by the First Amendment.

**“Fixed Amounts”** has the meaning assigned to such term in Section 1.07(b).

**“Fixed Charge Coverage Ratio”** means, as of any date, the ratio of:

- (1) (a) Consolidated EBITDA of the Borrower for the most recent period of four consecutive fiscal quarters for which Required Financial Statements have been delivered, calculated on a Pro Forma Basis, *minus* (b) non-financed Maintenance Capital Expenditures of the Borrower for such period that were paid in cash during such four-quarter period (it being understood that Capital Expenditures funded with proceeds of revolving loans will not be deemed to be “financed” for the purpose of this clause (b)) *minus* (c) Taxes based on income of the Borrower and the Restricted Subsidiaries that were paid or required to be paid in cash during such period (including tax distributions paid in cash during such period) to
- (2) Fixed Charges of the Borrower for such four-quarter period, calculated on a Pro Forma Basis.

**“Fixed Charges”** means, for any period, the sum without duplication, of the following for such period:

- (1) the Consolidated Interest Expense of the Borrower that was paid or required to be paid in cash during such period; *plus*
- (2) all scheduled principal amortization payments that were paid or required to be paid in cash during such period with respect to Indebtedness for borrowed money of the Borrower and the Restricted Subsidiaries, including payments in respect of Capital Lease Obligations, but excluding payments with respect to intercompany Indebtedness; *plus*

- (3) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Stock of the Borrower or preferred stock of any Restricted Subsidiary made during such period.

**“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 Insurance Laws”** means collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Reform Act of 2004 as now or hereafter in effect or any successor statute thereto, and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

**“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 or Issuing Bank 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.

**“Fronting Exposure”** means, at any time there is a Defaulting Lender, (1) with respect to the Issuing Bank, such Defaulting Lender’s Revolving Facility Percentage of the outstanding Revolving L/C Exposure, other than Revolving L/C Exposure as to which such Defaulting Lender’s participation obligation has been reallocated to non-Defaulting Lenders or cash collateralized in accordance with the terms hereof, and (2) with respect to the Swingline Lender, such Defaulting Lender’s Revolving Facility Percentage of Swingline Loans other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

**“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, (3) each Borrowing Base Party; and (4) 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 (4), 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.

“**Headquarters**” means the headquarters of the Borrower, located at 10850 Via Frontera, San Diego, CA 92127.

“**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 2.5% of the Consolidated Total Assets or revenues representing in excess of 2.5% 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 5.0% of Consolidated Total Assets or revenues representing in excess of 5.0% of total revenues of the Borrower and the Restricted Subsidiaries on a consolidated basis for such four-quarter period.

“**Incremental Commitment**” has the meaning assigned to such term in Section 2.21(1).

“**Incremental Equivalent Term Debt**” has the meaning assigned to such term in the Term Loan Credit Agreement.

“**Incremental Revolving Facility Increase**” has the meaning assigned to such term in Section 2.21(1).

“**Incremental Facility Amendment**” has the meaning assigned to such term in Section 2.21(5)(a).

“**Incremental Lender**” has the meaning assigned to such term in Section 2.21(4).

“**Incremental Revolving Facility Capacity**” has the meaning assigned to such term in Section 2.21(3).

“**Incurrence Based Amounts**” has the meaning assigned to such term in Section 1.07(b).

“**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 3.21(1).

**“Intellectual Property Security Agreements”** shall have the meaning set forth in the Guaranty and Collateral Agreement.

**“Intercreditor Agreement”** means the Intercreditor Agreement, dated as of the Closing Date, by and among the Administrative Agent, the Collateral Agent, and Citibank, N.A., as administrative agent and collateral agent under the Term Loan Credit Agreement, and acknowledged by Holdings and the Borrower, 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 request by the Borrower to convert or continue a Borrowing in accordance with Section 2.07.

**“Interest Payment Date”** means (1) with respect to any Eurocurrency Revolving Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurocurrency Revolving Facility 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, in addition, the date of any refinancing or conversion of such Borrowing with or to a Borrowing of a different Type 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 Revolving Facility 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 (or, if agreed by all Lenders, 12 months or a period of less than one month), as the Borrower may elect, or the date any Eurocurrency Revolving Facility Borrowing is converted to an ABR Borrowing in accordance with Section 2.07 or repaid or prepaid in accordance with Section 2.09, 2.10 or 2.11; *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; and
- (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.

**“Inventory”** means, with respect to a Person, all of such Person’s now owned and hereafter acquired inventory (as defined in the UCC), goods and merchandise, wherever located, in each case, to be furnished under any contract of service or held for sale or lease, all returned goods, raw materials, work-in-process, finished goods (including embedded software), other materials, and supplies of any kind, nature or description which are used or consumed in such Person’s business or used in connection with the packing, shipping, advertising, selling, or finishing of such goods, merchandise and other property, and all documents of title or other documents representing the foregoing.

**“Interpolated Screen Rate”** means, 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 the Quotation 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.

**“Issuing Bank”** means each Lender designated as an Issuing Bank pursuant to Section 2.05(12), in each case, in its capacity as an issuer of Letters of Credit hereunder, and its successors in such capacity as provided in Section 2.05(10). The Issuing Banks on the ~~Closing~~First Amendment Effective Date shall be those Lenders listed on Schedule 2.01 ~~hereto~~as amended by the First Amendment. An Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” will include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

**“Issuing Bank Fees”** has the meaning assigned to such term in Section 2.12(2)(b).

**“Junior Financing”** means (1) any Indebtedness permitted to be incurred hereunder that is subordinated in right of payment to the Obligations or secured by Liens that are in all respects subordinated to the Liens securing the Obligations (other than the Term Loan Obligations), (2) the Senior Notes or (3) any Permitted Refinancing Indebtedness in respect of the foregoing.

**“Junior Lien Intercreditor Agreement”** means a “junior lien” intercreditor agreement substantially in the form attached hereto as Exhibit G, or, if requested by the providers of Indebtedness to be secured on a junior basis to the Revolving 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 Revolving Loans.

**“Landlord Lien Reserve”** means any reserve established by the Collateral Agent pursuant to clause (8) of the definition of “Eligible Inventory.”

**“Landlord Lien State”** means any state in which a landlord’s claim for rent has priority by law over the Lien of the Collateral Agent in any of the Collateral.

**“Latest Maturity Date”** means, as of any date of determination, the latest Maturity Date of the applicable Revolving Facility Commitments or any Extended Commitments in effect on such date.

**“L/C Disbursement”** means a payment or disbursement made by an Issuing Bank pursuant to a Letter of Credit.

**“L/C Participation Fee”** has the meaning assigned such term in Section 2.12(2)(a).

**“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 3.16(2).

**“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 and any Additional Lender; including, for the avoidance of doubt, the 2021 Revolving Lenders and First Amendment Extended Revolving Commitment Lenders. Unless the context otherwise requires, the terms “Lender” and “Lenders” shall include the Swingline Lender.

**“Lender Default”** means:

- (1) the refusal (which may be given verbally or in writing and has not been retracted) or failure of any Lender to make available its portion of any Borrowing or reimbursement obligations, which refusal or failure is not cured within two Business Days after the date of such refusal or failure, unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default, shall be specifically identified in such writing) has not been satisfied;

- (2) the failure of any Lender to pay over to the Administrative Agent, the Issuing Bank or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due;
- (3) the failure of any Lender within three Business Days after request by the Administrative Agent, to confirm that it will comply with its funding obligations under the Revolving Facility; *provided* that such Lender will cease to be a Defaulting Lender pursuant to this clause (3) upon receipt of such written confirmation by the Administrative Agent and the Borrower;
- (4) 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 Revolving Facility or under other similar agreements in which it commits to extend credit; or
- (5) 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 Loans.

“**Letter of Credit**” has the meaning assigned to such term pursuant to Section 2.05.

“**Letter of Credit Commitment**” means, with respect to each Issuing Bank, the commitment of such Issuing Bank to issue Letters of Credit pursuant to Section 2.05. The Letter of Credit Commitments of each of the Issuing Banks on the ~~Closing~~First Amendment Effective Date shall be those Commitments listed on Schedule 2.01 ~~hereto~~as amended by the First Amendment. Any Issuing Bank shall be permitted at any time to increase its Letter of Credit Commitment with the written consent of the Borrower and notice to the Administrative Agent of such increase, so long as such Issuing Bank’s Letter of Credit Commitment does not exceed the Letter of Credit Sublimit.

“**Letter of Credit Request**” ~~shall mean~~means a request by the Borrower substantially in the form of Exhibit D-3 (or such other form as may be agreed between the Borrower and the Administrative Agent).

“**Letter of Credit Sublimit**” means the aggregate Letter of Credit Commitments of the Issuing Banks, in an amount not to exceed \$150.0 million.

“**LIBO Rate**” means, with respect to any Eurocurrency Borrowing for any Interest Period, the rate per annum equal to the arithmetic mean of the offered rates for deposits in Dollars with a term equivalent to such Interest Period by reference to 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 Quoted Rate**” means, for any day (or if such day is not a Business Day, the immediately preceding Business Day), a fluctuating rate per annum equal to the greater of (1) the Adjusted LIBO Rate for an interest period of one month as determined as of 11:00 a.m. (London, England time) on such day by reference to by reference to 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). for deposits in dollars (as set forth by 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, “LIBOR Quoted Rate” shall be the interest rate per annum equal to the Interpolated Screen Rate; and (2) 1.00%; *provided, however*, if the LIBOR Quoted Rate is less than zero, the LIBOR Quoted 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.

“**Line Cap**” means, at any time, the lesser of (1) the aggregate Revolving Facility Commitments at such time and (2) the Borrowing Base then in effect.

“**Liquidity Condition**” means and will exist during the period from (1) the date on which Excess Availability has been less than the greater of (a) \$30.0 million and (b) 10.0% of the Line Cap then in effect, in either case, for five consecutive Business Days, to (2) the date on which Excess Availability has been at least equal to the greater of (a) \$30.0 million and (b) 10.0% of the Line Cap then in effect, in either case, for 20 consecutive calendar days.

“**LLC Conversion**” has the meaning specified in the recitals hereto.

“**Loan Accounts**” means the loan accounts established on the books of the Administrative Agent.

“**Loan Documents**” means this Agreement, the Security Documents, the Intercreditor Agreement, any Junior Lien Intercreditor Agreement, any Note ~~and~~, solely for the purposes of Sections 3.01, 3.02, and 8.01(3) hereof, the Fee Letter, and the First Amendment.

“**Loan Parties**” means Holdings, the Borrower, each Borrowing Base Party and the Subsidiary Loan Parties.

“**Loans**” means the Revolving Loans and the Swingline Loans and any other loans and advances of any kind made by the Administrative Agent, any Lender or any Affiliate of the Administrative Agent or any Lender pursuant to this Agreement.

“**Maintenance Capital Expenditures**” means, for any period, the portion of the aggregate amount of all Capital Expenditures of the Borrower for such period attributable to maintenance of property, plant or equipment of the Borrower and the Restricted Subsidiaries, as determined in good faith by a Responsible Officer of the Borrower.

“**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 Sponsor in an aggregate amount equal to or less than \$10.0 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 Parent, 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 Loan Parties and the Restricted Subsidiaries (taken as a whole);
- (2) the ability of the Loan Parties (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 of the Borrower or any Subsidiary Loan Party in an aggregate outstanding principal amount exceeding (1) if Excess Availability is less than or equal to \$62.5 million, \$25.0 million, or (2) if Excess Availability is greater than \$62.5 million, \$50.0 million.

“**Material Subsidiary**” means any Subsidiary other than an Immaterial Subsidiary.

“**Maturity Date**” means, as the context may require:

- (1) with respect to the 2021 Revolving Facility Commitments existing on the ~~Closing~~ First Amendment Effective Date and Loans and Letters of Credit in respect thereof, January 26, 2021; ~~and~~
- (2) with respect to the First Amendment Extended Revolving Commitments existing on the First Amendment Effective Date and Loans and Letters of Credit in respect thereof, the date that is the earlier of: (i) the date that is 91 days prior to the Maturity Date of any Term Loans under the Term Loan Credit Agreement (as such term is defined in the Term Loan Credit Agreement and as such date may be extended with regard to all Term Loans pursuant to the terms thereof) or 91 days prior to the maturity date of any partial or complete Permitted Refinancing thereof; and (ii) the date that is five years after the First Amendment Effective Date; and

(3) ~~(2)~~ with respect to any Extended Commitments and Loans and Letters of Credit in respect thereof, the final maturity date specified therefor in the applicable Extension Amendment.

“**Maximum Rate**” has the meaning assigned to such term in Section 10.09.

“**Merger**” has the meaning assigned to such term in the recitals hereto.

“**Merger Agreement**” has the meaning assigned to such term in the recitals hereto.

“**Merger Sub**” has the meaning assigned to such term in the introductory paragraph hereof.

“**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.

“**MTM**”: has the meaning assigned such term in the definition of “Designated Hedging Reserves.”

“**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 Orderly Liquidation Value**” means, with respect to Eligible Inventory, the net appraised liquidation value thereof (expressed as a percentage of the Cost of such Inventory) as determined from time to time by an Acceptable Appraiser in accordance with Section 5.07.

“**New York Courts**” has the meaning assigned to such term in Section 10.15(1).

“**Non-Consenting Lender**” has the meaning assigned to such term in Section 2.19(3).

“**Non-Ratio Based Incremental Facility Basket**” has the meaning assigned such term in Section 6.01(2)

“**Note**” has the meaning assigned to such term in Section 2.09(2).

“**Obligations**” means:

- (1) all amounts owing to any Agent, any Issuing Bank 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) all amounts owing to any Qualified Counterparty under any Specified Hedge Agreement; 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 shall not, in any event, include any Excluded Swap Obligation.

“**OFAC**” has the meaning assigned to such term in Section 3.20(3)(e).

“**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 Loan or Loan Document).

“**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 2.19(2)).

“**Overadvance**” has the meaning assigned to such term in Section 2.01(2).

“**Owned Material Real Property**” has the meaning assigned to such term in Section 3.16(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).

“**Payment Conditions**” means, and will be deemed to be satisfied with respect to any particular action as to which the satisfaction of the Payment Conditions is being determined if, after giving effect to the taking of such action, (1) no Default or Event of Default has occurred and is continuing, (2) Excess Availability for each day in the 30-day period prior to such action and on the date of such proposed action would exceed the greater of (a) 15% of the Line Cap then in effect and (b) \$55.0 million, in any such case, on a Pro Forma Basis, (3) the Fixed Charge Coverage Ratio would be at least 1.0 to 1.0 on a Pro Forma Basis giving effect to the subject action; *provided* that compliance with the Fixed Charge Coverage Ratio will not be required if after giving effect to the taking of such action, Excess Availability for each day in the 30-day period prior to such action and on the date of such proposed action would exceed the greater of 20% of the Line Cap then in effect and \$75.0 million, on a Pro Forma Basis, and (4) the Administrative Agent has received an Officer’s Certificate certifying as to the calculations and satisfaction of the conditions set forth in foregoing clauses (1) through and including (3) above, which calculations shall be true and correct in all material respects.

“**Participant Register**” has the meaning assigned to such term in Section 10.04(4).

“**Payment Office**” means the office of the Administrative Agent located at Citibank, N.A., 1615 Brett Road, Building III, New Castle DE 19720, Attention: Loan Administration (Email [global.loans.support@citi.com](mailto:global.loans.support@citi.com); Telephone No. (302) 894-6010) 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).

“**Permitted Cure Securities**” means any equity securities of Holdings other than Disqualified Stock.

“*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 Arrangers 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 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 Inventory Locations**” means each location listed on Schedule 1.01(2), and from time to time each other location within the United States which the Borrower has notified the Administrative Agent is a location at which Inventory of a Borrowing Base Party is maintained.

“**Permitted Investment**” has the meaning assigned to such term in Section 6.04.

“**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);
- (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 Term Loan 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 Term Loan 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, or on a junior basis to, the Revolving Facility Claims with Indebtedness that is secured on a junior basis, to the Revolving Facility Claims, 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
- (6) in the case of a Refinancing of the Term Loan 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 Revolving Loans with Indebtedness that is secured on a *pari passu* basis with the Revolving 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 (or series thereof), 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.

“**Pro Forma Basis**” or “**Pro Forma**” means, with respect to the calculation of the Senior Secured First Lien Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge 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.

“**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.

“**Protective Advances**” has the meaning assigned to such term in Section 2.01(3).

[“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).

“**Purchase Date**” means the date that the Merger is required to be consummated pursuant to the Merger Agreement.

“**Purchase Documents**” means the collective reference to the Merger Agreement, all material exhibits and schedules thereto and all agreements expressly contemplated thereby.

“**Qualified Cash**” means the amount of unrestricted cash and cash equivalents of the Loan Parties at such time (to the extent held in investment accounts and other accounts agreed between the Borrower and the Administrative Agent) either (1) in a segregated restricted deposit account maintained with the Administrative Agent subject to a Blocked Account Agreement or (2) in a segregated restricted deposit account subject to a Blocked Account Agreement; *provided* that the applicable account bank (if not the Administrative Agent) shall provide daily reports to the Administrative Agent setting forth the balances in such accounts and such information as the Administrative Agent may reasonably request.

“**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) 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.

“**Reasonable Credit Judgment**” means reasonable credit judgment in accordance with customary business practices for comparable asset-based lending transactions; *provided* that, as it relates to the establishment of new Reserves (other than any defined Reserves that are expressly included in the definition thereof) or the adjustment or imposition of exclusionary criteria (other than those expressly set forth in the definitions of “Qualified Cash”, “Eligible Inventory” or “Eligible Credit Card Receivables”), Reasonable Credit Judgment will require that:

- (1) such establishment, adjustment or imposition be based on the analysis of facts or events first occurring or first discovered by the Administrative Agent after the Closing Date that are materially different from facts or events known to the Administrative Agent on the Closing Date; *provided* that, this clause (1) shall not apply to the Administrative Agent’s establishment of a Royalty Reserve in respect of any Royalties in existence on the Closing Date;
- (2) the contributing factors to the imposition of any Reserve will not duplicate (a) the exclusionary criteria set forth in definitions of “Eligible Accounts,” “Eligible Inventory” or “Qualified Cash,” as applicable (and vice versa), or (b) any reserves deducted in computing book value; and
- (3) the amount of any such Reserve so established or the effect of any adjustment or imposition of exclusionary criteria be a reasonable quantification of the incremental dilution of the Borrowing Base attributable to such contributing factors.

“**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"** and **"Refinancing"** will have correlative meanings.

**"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.

**"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.

**“Report”** means reports prepared by the Administrative Agent, the Collateral Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the Loan Parties’ assets from information furnished by or on behalf of the Loan Parties, after the Administrative Agent or Collateral Agent has exercised its rights of inspection pursuant to this Agreement, which Report may be distributed to the Lenders by the Administrative Agent, subject to the provisions of Section 10.16.

**“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).

**“Required Financial Statements”** has the meaning assigned to such term in Section 5.04(2).

**“Required Lenders”** means, at any time, Lenders having (1) Revolving Facility Credit Exposure and (2) Available Unused Commitments that, taken together, represent more than 50.0% of the sum of (a) all Revolving Facility Credit Exposure and (b) the total Available Unused Commitments at such time. The Revolving Facility Credit Exposure and Available Unused 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 Loan Parties to make payment of the Loans or Commitments of such Defaulting Lender as compared to other Lenders holding the same class of 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 Loans or Commitments of such Defaulting Lender;
  - (c) extensions of final maturity or the due date of any amortization, interest, fee or premium payment applicable to the Loans or Commitments of such Defaulting Lender; and

- (3) matters requiring the approval of each Lender under Sections 10.08(2)(vi) and (vii).

“**Reserves**” means, without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves (including Ad Valorem Tax Reserves, Charitable Reserves, Customer Credit Liability Reserves, Customer Deposits Reserves, Designated Cash Management Reserves, Designated Hedging Reserves, Shrink Reserves, Landlord Lien Reserves, and reserves against Eligible Accounts, Eligible Inventory and Qualified Cash) that the Administrative Agent from time to time determines in its Reasonable Credit Judgment as being appropriate to reflect:

- (1) the impediments to the Administrative Agent’s ability to realize upon the Collateral included in the Borrowing Base in accordance with the Loan Documents;
- (2) claims and liabilities that will need to be satisfied, or will dilute the amounts received by holders of Loans, in connection with the realization upon such Collateral; or
- (3) criteria, events, conditions, contingencies or risks that adversely affect any component of the Borrowing Base, the Collateral included therein or the validity or enforceability of the Loan Documents or any material remedies of the Administrative Agent, the Collateral Agent, each Issuing Bank and each Lender under the Loan Documents with respect to such Collateral.

The establishment or increase of any Reserve will be limited to the exercise by the Administrative Agent of Reasonable Credit Judgment, upon at least five Business Days’ prior written notice to the Borrower (which notice will include a reasonably detailed description of the Reserve being established); *provided* that upon such notice, the Borrower will not be permitted to borrow so as to exceed the Borrowing Base after giving effect to such new or modified Reserves; *provided, further*, that any Designated Hedging Reserve or Designated Cash Management Reserve shall not require such five Business Day prior notice and shall be effectively immediately upon written notice to the Borrower. During such five Business Day period, the Administrative Agent will, if requested, discuss any such new or modified Reserve with the Borrower, and the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such new or modified Reserve no longer exists or exists in a manner that would result in the establishment of a lower Reserve, in each case, in a manner and to the extent reasonably satisfactory to the Administrative Agent. Notwithstanding anything to the contrary herein, (a) the amount of any such Reserve will have a reasonable relationship to the event, condition or other matter that is the basis for such Reserve and (b) no Reserves will be duplicative of other reserves or items that are otherwise addressed, excluded or already accounted for through eligibility criteria (including collection/advance rates).

“**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.

“**Revolving Facility**” means the Revolving Facility Commitments (including any Incremental Commitments) and the extensions of credit made hereunder by the Revolving Lenders.

“**Revolving Facility Borrowing**” means a Borrowing comprised of Revolving Loans.

“**Revolving Facility Claims**” has the meaning assigned to the term “ABL Claims” in the Intercreditor Agreement.

“**Revolving Facility Commitment**” means, ~~with respect to a Lender, the commitment of such Lender to make Revolving Loans pursuant to Section 2.01, expressed as an amount representing the maximum aggregate permitted amount of such Lender’s Revolving Facility Credit Exposure hereunder, as such commitment may be (1) reduced from time to time pursuant to Section 2.08, (2) reduced or increased from time to time pursuant to assignments by or to such Lender under Section 10.04 or (3) increased from time to time under Section 2.21. The initial amount of each Lender’s Revolving Facility Commitment is set forth on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Lender has assumed its Revolving Facility Commitment, as applicable. The initial~~ collectively or individually as the context may require, the 2021 Revolving Commitments and the First Amendment Extended Revolving Commitments. The aggregate amount of the ~~Lenders’~~ Revolving Facility Commitments ~~is \$500.0~~ on the First Amendment Effective Date is \$555.0 million.

“**Revolving Facility Credit Exposure**” means, at any time, the sum of:

- (1) the aggregate principal amount of the Revolving Loans outstanding at such time;
- (2) the Swingline Exposure at such time; and
- (3) the Revolving L/C Exposure at such time. The Revolving Facility Credit Exposure of any Revolving Lender at any time will be, subject to adjustment as expressly provided in Section 2.26, the product of (a) such Revolving Lender’s Revolving Facility Percentage and (b) the aggregate Revolving Facility Credit Exposure of all Revolving Lenders, collectively, at such time.

**“Revolving Facility Percentage”** means, with respect to any Revolving Lender, the percentage of the total Revolving Facility Commitments represented by such Lender’s Revolving Facility Commitment. If the Revolving Facility Commitments have terminated or expired, the Revolving Facility Percentages will be determined based upon the Revolving Facility Commitments most recently in effect, giving effect to any assignments pursuant to Section 10.04.

**“Revolving L/C Exposure”** means at any time the sum of (1) the aggregate undrawn face amount of all Letters of Credit outstanding at such time and (2) the aggregate principal amount of all L/C Disbursements that have not yet been reimbursed at such time. The Revolving L/C Exposure of any Revolving Lender at any time will mean its Revolving Facility Percentage of the aggregate Revolving L/C Exposure at such time. 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 International Standard Practices, International Chamber of Commerce No. 590, such Letter of Credit will be deemed to be “outstanding” in the amount so remaining available to be drawn. Unless otherwise specified herein, the amount of a Letter of Credit at any time will be deemed to be the stated amount of such Letter of Credit in effect at such time; *provided* that, with respect to any Letter of Credit that by its terms or the terms of any document related thereto provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit will 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.

**“Revolving Lender”** means each Lender with a Revolving Facility Commitment or outstanding Revolving Facility Credit Exposure.

**“Revolving Loans”** has the meaning assigned to such term in Section 2.01(1) and will include any Overadvances and Protective Advances.

**“Royalties”** means all royalties, fees, expense reimbursement and other amounts payable by any Borrowing Base Party under a license of Intellectual Property.

**“Royalty Reserve”** means an amount equal to all accrued Royalties that are then unpaid, whether or not then due and payable by any Borrowing Base Party.

**“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 Managing Agents**” means each of Wells Fargo Bank, National Association and Bank of America, N.A.

“**Senior Notes**” means the floating rate senior notes due January 26, 2024, issued on or prior to the date hereof pursuant to the Senior Notes Indenture.

“**Senior Notes Documents**” means, collectively, the 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 Senior Notes.

“**Senior Notes Indenture**” means that certain indenture, dated as of January 26, 2016, among the Senior Notes Trustee, the Borrower and the guarantors party thereto.

“**Senior Notes Trustee**” means Wells Fargo Bank, National Association, together with its permitted successors and assigns.

“**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.

“**Settlement Date**” has the meaning assigned to such term in Section 2.18(2).

“**Shrink**” means Inventory that is lost, misplaced, or stolen.

“**Shrink Reserve**” means an amount reasonably estimated by the Administrative Agent to be equal to that amount which is required in order that the Shrink reflected in current stock ledger of the Borrowing Base Parties would be reasonably equivalent to the Shrink calculated as part of the Borrower’s most recent physical inventory (it being understood and agreed that no Shrink Reserve established by the Administrative Agent shall be duplicative of any Shrink as so reflected in the current stock ledger of the Borrowing Base Parties or estimated by the Borrower for purposes of computing the Borrowing Base other than at month’s end).

“**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, any Borrowing Base Party 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 Term Loan Credit Agreement).

“**Specified Merger Agreement Representations**” means such of the representations and warranties made with respect to the Company and its Subsidiaries by the Company in the Merger Agreement to the extent a breach of such representations and warranties is material to the interests of the Lenders.

“**Specified Representations**” means the representations and warranties of each of Merger Sub, the Company 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 3.09(2);
- (6) Section 3.10;
- (7) Section 3.15(1) (subject to Permitted Liens and subject to the Certain Funds Provisions);
- (8) Section 3.17; and
- (9) Section 3.20.

“**Specified Segregated Accounts**” means those segregated DDAs that the Borrower designates to the Administrative Agent from time to time in writing, into which funds from the sale of Inventory (a) held by the Borrower or any Restricted Subsidiary on a consignment basis or (b) relating to a leased department within retail stores of the Borrower or any Restricted Subsidiary, in each case, which Inventory is not owned by a Loan Party (and would not be reflected on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP).

“**Specified Transaction**” means any Investment (including any Limited Condition Acquisition), disposition, incurrence or repayment of Indebtedness, Restricted Payment, Subsidiary designation, Incremental Revolving Facility Increase 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 Incremental Commitment or Extended Commitment) 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.”

“**Sponsor Model**” means the model provided by the Sponsors to the Arrangers on November 17, 2015.

“**Sponsors**” means, any of CVC and Canada Pension Plan Investment Board and any of their respective Affiliates and funds or partnerships managed or advised 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.

“**Standby Letter of Credit**” has the meaning assigned to such term in Section 2.05(1).

“**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 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 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 Holdings that becomes, or is required to become, a party to the Collateral Agreement after the Closing Date. For the avoidance of doubt, “Subsidiary Loan Parties” includes all Borrowing Base Parties.

“**Supermajority Lenders**” has the meaning assigned to such term in clause (v) of the proviso to Section 10.08(2).

“**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.

“**Swingline Borrowing**” means a Borrowing comprised of Swingline Loans.

“**Swingline Borrowing Request**” means a request by the Borrower substantially in the form of Exhibit D-2.

“**Swingline Commitment**” means, with respect to any Swingline Lender, the commitment of such Swingline Lender to make Swingline Loans pursuant to Section 2.04. The aggregate amount of the Swingline Commitments on the ~~Closing~~First Amendment Effective Date is \$45.0 million.

“**Swingline Exposure**” means, at any time, the aggregate principal amount of all outstanding Swingline Borrowings at such time. The Swingline Exposure of any Revolving Lender at any time will mean its Revolving Facility Percentage of the aggregate Swingline Exposure at such time.

“**Swingline Lender**” means Citibank, N.A., in its capacity as a lender of Swingline Loans to the Borrower.

“**Swingline Loans**” means the swingline loans made to the Borrower pursuant to Section 2.04.

“**Syndication Agents**” means each of Barclays Bank PLC, Wells Fargo Bank, National Association and Bank of America, N.A.

“**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 Loan Credit Agreement**” means the Term Loan Credit Agreement, dated as of the Closing Date, among Holdings, Merger Sub, Successor Borrower, the lenders party thereto and Citibank, N.A., as administrative agent and collateral agent, initially in respect of \$2,525.0 million of term loans made available on the Closing Date, as such document may be amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

“**Term Loan Documents**” means the Term Loan Credit Agreement and the other “Loan Documents” under and as defined in the Term Loan Credit Agreement, as each such document may be amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

“**Term Loan Security Documents**” means the “*Security Documents*” as defined in the Term Loan Credit Agreement.

“**Term Loan Obligations**” means the “*Obligations*” as defined in the Term Loan Credit Agreement.

“**Term Priority Collateral**” means “*Term Loan 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.

“**Trade Letter of Credit**” has the meaning assigned to such term in Section 2.05(1).

“**Transaction Documents**” means the Purchase Documents, the Loan Documents, the Senior Notes Documents and the Term Loan Documents.

“**Transactions**” means, collectively, the transactions to occur pursuant to the Transaction Documents, including:

- (1) the consummation of the Merger;
- (2) the execution and delivery of the Loan Documents, the creation of the Liens pursuant to the Security Documents and the initial borrowings hereunder;
- (3) the Equity Contribution;
- (4) the execution and delivery of the Term Loan Documents, the creation of the Liens pursuant to the Term Loan Security Documents and the initial borrowings under the Term Loan Credit Agreement;
- (5) the execution and delivery of the Senior Notes Documents and the issuance of the Senior Notes under the Senior Notes Indenture;
- (6) the Closing Date Refinancing;
- (7) the LLC Conversion; and
- (8) the payment of all fees, costs and expenses in connection with the foregoing.

“**Trust Account**” means any accounts or trusts used solely to hold Trust Funds.

“**Trust Funds**” means, to the extent segregated from other assets of the Loan Parties in a segregated account that contains amounts comprised solely and exclusively of such Trust Funds, cash, Cash Equivalents or other assets comprised solely of:

- (1) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Loan Party’s employees;
- (2) all taxes required to be collected, remitted or withheld (including federal and state withholding taxes (including the employer’s share thereof)); and
- (3) any other funds which the Borrower or any of the Restricted Subsidiaries holds in trust or as an escrow or fiduciary for another person which is not a Restricted Subsidiary of the Borrower.

“**Type**” means, when used in respect of any Loan or Borrowing, the Rate by reference to which interest on such Loan or on the 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 any Loan Party) 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 the Payment Conditions.

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.

**“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.;
- (7) any reference to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale or transfer, or analogous term, will be construed to mean also a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company, as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale or transfer, or similar term, as applicable; and
- (8) any series of a limited liability company shall be considered a separate Person.

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 covenants, 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 Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge 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 Net Leverage Ratio, the Interest Coverage Ratio, the Fixed Charge 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 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; *provided*, that (other than solely with respect to the

incurrence test under which such Limited Condition Acquisition is being made) Consolidated EBITDA, Consolidated Total Assets or assets and Consolidated Net Income of any target of such Limited Condition Acquisition can only be used in the determination of the relevant ratio and baskets if and when such Limited Condition Acquisition has closed.

(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 Net Leverage Ratio test, and/or any Fixed Charge Coverage Ratio test) (any such amounts, 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 Revolving Facility (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 Revolving Facility 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 Commitments. Subject to the terms and conditions set forth herein:

(1) Revolving Loans.

- (a) Each Lender agrees to make loans (“**Revolving Loans**”) to the Borrower from time to time during the applicable Availability Period in amounts not to exceed (except for the Swingline Lender with respect to Swingline Loans) such Lender’s Revolving Facility Percentage of the Borrowing Base, and in an aggregate principal amount that will not result in (i) such Lender’s Revolving Facility Credit Exposure exceeding such Lender’s Revolving Facility Commitment or (ii) the total Revolving Facility Credit Exposure exceeding the Total Revolving Facility Commitments; provided that for the avoidance of doubt such Revolving Loans shall not exceed the Line Cap. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

- (b) Notwithstanding the foregoing, on the Closing Date only the following Revolving Loans will be made available:
- (i) Revolving Loans in such amount required in respect of the Transaction Tax Benefits (as defined in the Merger Agreement) in an amount not exceed \$50.0 million; plus
  - (ii) Revolving Loans in such amount required for working capital related purposes (including repayment of loans under the Existing ABL Credit Agreement); plus
  - (iii) such amounts necessary to cash collateralize letters of credit issued under the Existing ABL Credit Agreement to the extent not backstopped with a Letter of Credit issued hereunder,
- (2) Overadvances. Insofar as the Borrower may request and the Administrative Agent or Required Lenders may be willing in their sole discretion to make Revolving Loans to the Borrower at a time when the Revolving Facility Credit Exposure exceeds, or would exceed with the making of any such Revolving Loan, the Borrowing Base (any such Loan being herein referred to individually as an “*Overadvance*”), the Administrative Agent will enter such Overadvances as debits in the applicable Loan Account. All Overadvances will be repaid on demand, will be secured by the Collateral and will bear interest as provided in this Agreement for Revolving Loans generally. Any Overadvance made pursuant to the terms hereof will be made to the Borrower by all Lenders ratably in accordance with their respective Revolving Facility Percentages. Overadvances in the aggregate amount of \$10.0 million or less may, unless a Default or Event of Default has occurred and is continuing, be made in the sole, reasonable discretion of the Administrative Agent; *provided* that the Required Lenders may at any time revoke the Administrative Agent’s authorization to make future Overadvances; *provided* that no existing Overadvances will be subject to such revocation and any such revocation must be in writing and will become effective prospectively upon the Administrative Agent’s receipt thereof. Overadvances in an aggregate amount of more than \$10.0 million but less than \$25.0 million may, unless a Default or Event of Default has occurred and is continuing, be made with the consent of the Required Lenders. Overadvances in an aggregate amount of \$25.0 million or more and Overadvances to be made after the occurrence and during the continuation of a Default or Event of Default will require the consent of all Revolving Lenders. The foregoing notwithstanding, in no event, unless otherwise consented to by all Revolving Lenders will:
- (a) any Overadvances be outstanding for more than 90 consecutive days;
  - (b) the Administrative Agent or Lenders make any additional Overadvances unless 30 days or more have expired since the last date on which any Overadvances were outstanding; or

- (c) the Administrative Agent make Revolving Loans on behalf of Lenders under this Section 2.01(2) to the extent such Revolving Loans would cause a Lender's share of the Revolving Facility Credit Exposure to exceed such Lender's Revolving Facility Commitment or cause the aggregate Revolving Facility Commitments to be exceeded.
- (3) Protective Advances. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent, in its sole, reasonable discretion, may make Revolving Loans to the Borrower on behalf of the Lenders, so long as the aggregate amount of such Revolving Loans will not exceed 5.0% of the Borrowing Base, if the Administrative Agent, in its Reasonable Credit Judgment, deems that such Revolving Loans are necessary or desirable to:
- (a) protect all or any portion of the Collateral;
  - (b) enhance the likelihood or maximize the amount of repayment of the Loans and the other Obligations; or
  - (c) pay any other amount chargeable to the Borrower pursuant to this Agreement (such Revolving Loans, "**Protective Advances**");

*provided* that (i) in no event will the Revolving Facility Credit Exposure exceed the aggregate Revolving Facility Commitments and (ii) the Required Lenders under the Revolving Facility may at any time revoke the Administrative Agent's authorization to make future Protective Advances; *provided*, further, that any such revocation must be in writing and will become effective prospectively upon the Administrative Agent's receipt thereof and existing Protective Advances will not be subject to thereto.

Each applicable Lender will be obligated to advance to the Borrower its Revolving Facility Percentage of each Protective Advance made in accordance with this Section 2.01(3). If Protective Advances are made in accordance with the preceding sentence, then all Revolving Lenders will be bound to make, or permit to remain outstanding, such Protective Advances based upon their Revolving Facility Percentages in accordance with the terms of this Agreement. All Protective Advances will be repaid by the Borrower on demand, will be secured by the Collateral and will bear interest as provided in this Agreement for Revolving Loans generally. No Protective Advance may remain outstanding for more than forty-five (45) days without the consent of the Required Lenders.

- (4) Reserves. The Administrative Agent may at any time and from time to time in the exercise of its Reasonable Credit Judgment establish and increase or decrease Reserves in accordance with the terms of the definition thereof.

#### SECTION 2.02 Loans and Borrowings.

- (1) Each Loan will be made as part of a Borrowing consisting of Loans of the same Type made by the Lenders ratably in accordance with their respective Commitments (or, in the case of Swingline Loans, in accordance with their respective Swingline Commitments). The failure of any Lender to make any 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 Loans as required.

- (2) Subject to Section 2.14, each Borrowing (other than a Swingline Borrowing) will be comprised entirely of ABR Loans or Eurocurrency Revolving Loans as the Borrower may request in accordance herewith. Each Swingline Borrowing will be an ABR Borrowing. Each Lender at its option may make any ABR Loan or Eurocurrency Revolving Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; *provided* that any exercise of such option will not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement and such Lender will not be entitled to any amounts payable under Section 2.15 or 2.17 solely in respect of increased costs resulting from such exercise and existing at the time of such exercise.
- (3) At the commencement of each Interest Period for any Eurocurrency Revolving Facility Borrowing, such Borrowing will be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum. At the time that each ABR Revolving Facility Borrowing is made, such Borrowing will be in an aggregate amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum; *provided* that an ABR Revolving Facility Borrowing may be in an aggregate amount that is equal to the entire unused available balance of the Revolving Facility Commitments or that is required to finance the reimbursement of an L/C Disbursement as contemplated by Section 2.05(5). Each Swingline Borrowing will be in an amount that is an integral multiple of the Borrowing Multiple and not less than the Borrowing Minimum. Borrowings of more than one Type may be outstanding at the same time; *provided* that there will not at any time be more than ten Eurocurrency Revolving Facility Borrowings outstanding.
- (4) Notwithstanding any other provision of this Agreement, no Borrowing Base Party will be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the applicable Maturity Date.

For the avoidance of doubt, each Loan will be made ratably among the 2021 Revolving Commitments and the First Amendment Extended Revolving Commitments.

#### SECTION 2.03 Requests for Borrowings.

- (1) To request a Revolving Facility Borrowing, (a) with respect to any initial ABR Borrowing on the Closing Date, the Borrower will deliver to the Administrative Agent a Borrowing Request not later than 2:00 p.m., New York City time, one Business Day before the anticipated Closing Date (or such later time as the Administrative Agent may agree in its sole discretion), requesting that the Lenders make the Loans on the Closing Date; *provided* that such Borrowing Request may be conditioned upon occurrence of the Closing Date and (b) with respect to any other Borrowing, the Borrower will notify the Administrative Agent of such request by telephone (i) in the case of a Eurocurrency Revolving Facility Borrowing, not later than 1:30 p.m., New York City time, three Business Days before the date of the proposed Borrowing (or such later time as the

Administrative Agent may agree in its sole discretion) or (ii) in the case of an ABR Borrowing, not later than 1:00 p.m., New York City time, on the date of the proposed Borrowing; provided that any such notice of an ABR Borrowing to finance the reimbursement of an L/C Disbursement as contemplated by Section 2.05(5) may be given not later than 12:00 noon, New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request will be irrevocable and will be confirmed promptly by hand delivery, facsimile or e mail to the Administrative Agent of a written Borrowing Request substantially in the form of Exhibit D-1 and signed by the Borrower.

- (2) Each such telephonic and written Borrowing Request will specify the following information in compliance with Section 2.02:
  - (a) the aggregate amount of the requested Borrowing, (and the ratable aggregate amount of the 2021 Revolving Commitments and First Amendment Extended Revolving Commitments), which amount will not exceed Excess Availability;
  - (b) the date of such Borrowing, which will be a Business Day;
  - (c) whether such Borrowing is to be an ABR Borrowing or a Eurocurrency Revolving Facility Borrowing;
  - (d) in the case of a Eurocurrency Revolving Facility Borrowing, the initial Interest Period to be applicable thereto, which will be a period contemplated by the definition of the term "Interest Period;" and
  - (e) the location and number of the Borrower's account to which funds are to be disbursed.
- (3) Disbursement. The Borrower irrevocably authorizes the Administrative Agent to disburse the proceeds of each Loan requested pursuant to this Section 2.03. The proceeds of each Revolving Loan requested under this Section 2.03 will be disbursed by the Administrative Agent in immediately available funds and in the same form as received from the Lenders, in the case of a borrowing on the Closing Date permitted under Section 2.01(1), in accordance with the terms of the written disbursement letter from the Borrower and, in the case of each Borrowing after the Closing Date, by wire transfer to such bank account as may be agreed upon by the Borrower and the Administrative Agent, from time to time or elsewhere if pursuant to a written direction from the Borrower. If at any time any Loan is funded in excess of the amount requested by the Borrower, the Borrower agrees to repay the excess to the Administrative Agent immediately upon notice thereof to the Borrower from the Administrative Agent or any Lender.
- (4) If no election as to the Type of Revolving Facility Borrowing is specified, then the requested Revolving Facility Borrowing will be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurocurrency Revolving Facility Borrowing, then the Borrower will be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent will advise the Lenders of the details thereof and of the amount of each such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.04 Swingline Loans.

- (1) Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount at any time outstanding that will not result in (a) the aggregate principal amount of outstanding Swingline Loans exceeding the Swingline Commitment; (b) the Revolving Facility Credit Exposure exceeding the total Revolving Facility Commitments; or (c) the Revolving Facility Credit Exposure of all Lenders exceeding the Borrowing Base; *provided* that the Swingline Lender will not be required to make a Swingline Loan to refinance an outstanding Swingline Borrowing. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.
- (2) To request a Swingline Borrowing, the Borrower will notify the Administrative Agent and the Swingline Lender of such request by telephone (confirmed by a Swingline Borrowing Request by email or facsimile), not later than 2:00 p.m., New York City time, on the day of a proposed Swingline Borrowing. Each such notice and Swingline Borrowing Request will be irrevocable and will specify the requested (a) date (which will be a Business Day) and (b) amount of the Swingline Borrowing. The Swingline Lender will consult with the Administrative Agent as to whether the making of the Swingline Loan is in accordance with the terms of this Agreement prior to the Swingline Lender funding such Swingline Loan. The Swingline Lender will make each Swingline Loan in accordance with Section 2.02(2) on the proposed date thereof by wire transfer of immediately available funds by 5:00 p.m., New York City time, to the account of the Borrower (or, in the case of a Swingline Borrowing made to finance the reimbursement of an L/C Disbursement as provided in Section 2.05(5), by remittance to the applicable Issuing Bank); *provided* that the Swingline Lender will not be obligated to make any Swingline Loan at any time when any Lender is at such time a Defaulting Lender, unless the Swingline Lender (i) is satisfied in its reasonable discretion that the related exposure will be 100% covered by the Commitments of the non-Defaulting Lenders pursuant to clause (3) below or (ii) has otherwise entered into satisfactory arrangements with the Borrower or such Lender to eliminate the Swingline Lender's risk with respect to such Lender.
- (3)
  - (a) The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., New York City time, on any Business Day require the Revolving Lenders to acquire participations by 2:00 p.m. on such Business Day in all or a portion of the outstanding Swingline Loans made by it. Such notice will specify the aggregate amount of such Swingline Loans in which the Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each such Lender, specifying in

such notice such Revolving Lender's Revolving Facility Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent for the account of the Swingline Lender, such Revolving Lender's Revolving Facility Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its respective obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and will not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or an Event of Default or reduction or termination of the Commitments, and that each such payment will be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender will comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.06 with respect to Loans made by such Revolving Lender (and Section 2.06 will apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent will promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders.

- (b) The Administrative Agent will notify the Borrower of any participations in any Swingline Loan acquired pursuant to paragraph (3)(a), and thereafter payments in respect of such Swingline Loan will be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein will be promptly remitted to the Administrative Agent and any such amounts received by the Administrative Agent will be promptly remitted by the Administrative Agent to the Revolving Lenders that made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; *provided* that any such payment so remitted will be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to paragraph (3)(a) will not relieve the Borrower of any default in the payment thereof.
- (4) If the Maturity Date in respect of any tranche of Revolving Facility Commitments occurs at a time when Extended Commitments with multiple Maturity Dates are in effect, then ~~(i)~~ on each such Maturity Date all then outstanding Swingline Loans shall be (i) repaid in full on such date (and there shall be no adjustment to the participations in such Swingline Loans as a result of the occurrence of such Maturity Date) or (ii) refinanced with a borrowing of an Extension pursuant to Section 2.23; provided that, if on the occurrence of the such Maturity Date (after giving effect to any repayments of Revolving Loans and any reallocation of Letter of Credit participations as contemplated in Section 2.05), there shall exist sufficient unutilized Extended Commitments so that the respective outstanding Swingline Loans could be incurred pursuant to the Extended Commitments which will remain in effect after the occurrence of such Maturity Date, then there shall be an automatic adjustment on such date of the participations in such Swingline Loans and same shall be deemed to have been incurred solely pursuant to the Extended Commitments and such Swingline Loans shall not be so required to be repaid in full on such Maturity Date.

SECTION 2.05 Letters of Credit

- (1) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of (a) trade letters of credit in support of trade obligations of the Borrower or any Subsidiary Loan Party incurred in the ordinary course of business (such letters of credit issued for such purposes, “*Trade Letters of Credit*”) and (b) standby letters of credit issued for any other lawful purposes of the Borrower or any Subsidiary Loan Party (such letters of credit issued for such purposes, “*Standby Letters of Credit*”) for their own account or for the account of any Subsidiary in a form reasonably acceptable to the applicable Issuing Bank, at any time and from time to time during the applicable Availability Period and prior to the date that is five Business Days prior to the applicable Maturity Date; *provided*, that in no event shall Barclays, Credit Suisse, or Royal Bank of Canada, in each case, to the extent they are Issuing Banks hereunder, be required to issue any Trade Letters of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, an Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement will control. “*Letters of Credit*” will include Trade Letters of Credit and Standby Letters of Credit and the Existing Letters of Credit. Each Existing Letter of Credit will be deemed to have been issued under this Section 2.05 on the Closing Date.
- (2) Notice of Issuance, Amendment, Renewal, Extension.
  - (a) To request the issuance of a Letter of Credit (or the amendment, renewal (other than an automatic extension in accordance with paragraph (3) of this Section 2.05) or extension of an outstanding Letter of Credit), the Borrower will deliver by hand or facsimile (or transmit by e-mail, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent three Business Days in advance of the requested date of issuance, amendment or extension (or such shorter period as the Administrative Agent and the Issuing Bank in their sole discretion may agree) a Letter of Credit Request requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment or extension (which will be a Business Day), the date on which such Letter of Credit is to expire (which will comply with paragraph (3) of this Section 2.05), the amount of such Letter of Credit, the name and address of the beneficiary thereof, whether such Letter of Credit constitutes a Standby Letter of Credit or a Trade Letter of Credit, and such other information as is necessary to issue, amend or extend such Letter of Credit. If requested by the applicable Issuing Bank, the Borrower will also submit a letter of credit application on such Issuing Bank’s standard form in connection with any request for a Letter of Credit. A Letter of Credit will be issued, amended or extended only if (and upon issuance, amendment or extension of each Letter of Credit, the Borrower will be deemed to represent and warrant that), after giving effect to such issuance, amendment or extension:

- (i) the Revolving L/C Exposure will not exceed the Letter of Credit Sublimit; and
  - (ii) the Revolving Facility Credit Exposure will not exceed the Line Cap.
- (b) Notwithstanding anything to the contrary contained herein, the Issuing Bank will not issue (or be obligated to issue) any Letter of Credit if:
- (i) any order, judgment or decree of any Governmental Authority or arbitrator by its terms purports to enjoin or restrain the Issuing Bank from issuing such Letter of Credit;
  - (ii) any applicable law or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank prohibits the issuance of letters of credit generally;
  - (iii) such Letter of Credit imposes upon the Issuing Bank any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date;
  - (iv) such Letter of Credit imposes upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Issuing Bank in good faith deems material to it;
  - (v) any Lender is at such time a Defaulting Lender, unless the Issuing Bank (A) is satisfied in its reasonable discretion that the related exposure will be 100% covered by the Commitments of the non-Defaulting Lenders pursuant to Section 2.26(1) or (B) has otherwise entered into satisfactory arrangements with the Borrower or such Lender to eliminate the Issuing Bank's risk with respect to such Lender; or
  - (vi) such Letter of Credit issuance would cause such Lender's Revolving L/C Exposure to exceed such Lender's Letter of Credit Commitment.
- (3) Expiration Date.
- (a) Each Standby Letter of Credit will expire at or prior to the close of business on the earlier of (i) the date one year (unless otherwise agreed upon by the Administrative Agent and the Issuing Bank in their sole discretion) after the date of issuance of such Standby Letter of Credit (or, in the case of any extension thereof, one year (unless otherwise agreed upon by the Administrative Agent and the Issuing Bank in their sole discretion) after such renewal or extension) and (ii) the date that is five Business Days prior to the applicable Maturity Date; *provided* that any Standby Letter of Credit with a one-year tenor may provide for the automatic extension thereof for additional one-year periods (which will in no

event extend beyond the date referred to in the preceding clause (ii) so long as such Standby Letter of Credit permits the Issuing Bank to prevent any such extension at least once in each 12-month period (commencing with the date of issuance of such Standby Letter of Credit) by giving prior notice to the beneficiary thereof within a time period during such 12-month period to be agreed upon at the time such Standby Letter of Credit is issued; *provided, further*, that if the Issuing Bank and the Administrative Agent each consent in their sole discretion, the expiration date of any Standby Letter of Credit may extend beyond the date referred to in clause (ii) above; and, *provided, further*, that (A) if any such Standby Letter of Credit is outstanding or is issued after the date that is 30 days prior to the applicable Maturity Date, the Borrower will provide cash collateral pursuant to documentation reasonably satisfactory to the Administrative Agent and the relevant Issuing Bank in an amount equal to 103% of the face amount of each such Standby Letter of Credit on or prior to the date that is 30 days prior to the applicable Maturity Date or, if later, such date of issuance, and (B) each Revolving Lender's participation in any undrawn Letter of Credit that is outstanding on the applicable Maturity Date will terminate on the applicable Maturity Date.

- (b) Each Trade Letter of Credit will expire on the earlier of (A) 180 days after such Trade Letter of Credit's date of issuance or (B) the date that is five Business Days prior to the applicable Maturity Date.
- (4) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Revolving Lenders, such Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Revolving Lender's Revolving Facility Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, its Revolving Facility Percentage of each L/C Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (5) of this Section 2.05, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and will not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or Event of Default or reduction or termination of the Commitments, and that each such payment will be made without any offset, abatement, withholding or reduction whatsoever.
- (5) Reimbursement.

- (a) If the applicable Issuing Bank makes any L/C Disbursement in respect of a Letter of Credit, the Borrower will reimburse such L/C Disbursement by paying to the Administrative Agent an amount equal to such L/C Disbursement not later than 2:00 p.m., New York City time, on the first Business Day after the Borrower receives notice under paragraph (8) of this Section 2.05 of such L/C Disbursement (or the second Business Day, if such notice is received after 12:00 noon, New York City time), together with accrued interest thereon from the date of such L/C Disbursement at the rate applicable to ABR Loans; provided that the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.04 that such payment be financed with an ABR Revolving Facility Borrowing or a Swingline Borrowing, as applicable, in an equivalent amount and, to the extent so financed, the Borrower's obligations to make such payment will be discharged and replaced by the resulting ABR Revolving Facility Borrowing or Swingline Borrowing. If such Letter of Credit is denominated in a currency other than Dollars, all reimbursements by the Borrower of the honoring of any drawing under such Letter of Credit will be paid in the currency in which such Letter of Credit was denominated.
  - (b) If the Borrower fails to reimburse any L/C Disbursement when due, then the Administrative Agent will promptly notify the applicable Issuing Bank and each other Revolving Lender of the applicable L/C Disbursement, the payment then due from the Borrower in respect thereof and, in the case of a Revolving Lender, such Lender's Revolving Facility Percentage thereof. Promptly following receipt of such notice, each Revolving Lender will pay to the Administrative Agent its Revolving Facility Percentage of the payment then due from the Borrower in the same manner as provided in Section 2.06 with respect to Loans made by such Lender (and Section 2.06 will apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders), and the Administrative Agent will promptly pay to the applicable Issuing Bank the amounts so received by it from the Revolving Lenders. Any payment made by a Revolving Lender pursuant to this paragraph (5) to reimburse an Issuing Bank for any L/C Disbursement (other than the funding of an ABR Revolving Loan or a Swingline Borrowing as contemplated above) will not constitute a Loan and will not relieve the Borrower of its obligations to reimburse such L/C Disbursement.
  - (c) Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to paragraph (5)(a), the Administrative Agent will distribute such payment to the applicable Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to paragraph (5)(b) to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear.
- (6) Obligations Absolute. The obligations of the Borrower to reimburse L/C Disbursements as provided in paragraph (5) of this Section 2.05 will be absolute, unconditional and irrevocable, and will be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of:
- (a) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein;

- (b) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect;
  - (c) payment by the applicable Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit; or
  - (d) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.05, constitute a legal or equitable discharge of, or provide a right of setoff against the Borrower's obligations hereunder.
- (7) Limited Liability. None of the Administrative Agent, the Lenders, any Issuing Bank, or any of their Related Parties, will have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of such Issuing Bank, or any of the circumstances referred to in clauses (a), (b) or (c) of Section 2.05(6); provided that the foregoing will not be construed to excuse the applicable Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are determined by a final and binding decision of a court of competent jurisdiction to have been caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the applicable Issuing Bank, such Issuing Bank will be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the applicable Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.
- (8) Disbursement Procedures. The applicable Issuing Bank will, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank will promptly notify the Administrative Agent and the Borrower by telephone (confirmed by facsimile or e-mail) of any such demand for payment under a Letter of Credit and whether such Issuing Bank has made or will make an L/C Disbursement thereunder; *provided* that any failure to give or delay in giving such notice will not relieve the Borrower of its obligations to reimburse such Issuing Bank and/or the Revolving Lenders with respect to any such L/C Disbursement.

- (9) Interim Interest. If an Issuing Bank makes any L/C Disbursement, then, unless the Borrower reimburses such L/C Disbursement in full on the date such L/C Disbursement is made, the unpaid amount thereof will bear interest, for each day from and including the date such L/C Disbursement is made to but excluding the date that the Borrower reimburses such L/C Disbursement, at the rate per annum then applicable to ABR Revolving Loans; *provided* that, if such L/C Disbursement is not reimbursed by the Borrower when due pursuant to paragraph (5) of this Section 2.05, then Section 2.13(3) will apply. Interest accrued pursuant to this paragraph will be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (5) of this Section 2.05 to reimburse such Issuing Bank will be for the account of such Revolving Lender to the extent of such payment.
- (10) Replacement of an Issuing Bank. An Issuing Bank may be replaced at any time by written agreement between the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent will notify the Lenders of any such replacement of an Issuing Bank. At the time any such replacement becomes effective, the Borrower will pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12. From and after the effective date of any such replacement, (a) the successor Issuing Bank will have all the rights and obligations of the replaced Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (b) references herein to the term "Issuing Bank" will be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context will require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank will remain a party hereto and will continue to have all the rights and obligations of such Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement but will not be required to issue additional Letters of Credit.
- (11) Cash Collateralization. If any Event of Default occurs and is continuing, (a) in the case of an Event of Default described in Section 8.01(8) or (9), on the Business Day, or (b) in the case of any other Event of Default, on the third Business Day, in each case, following the date on which the Borrower receives notice from the Administrative Agent demanding the deposit of cash collateral pursuant to this paragraph (11), the Borrower will deposit in an account with or at the direction of the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders, an amount in cash equal to the Revolving L/C Exposure as of such date *plus* any accrued and unpaid interest thereon; *provided* that upon the occurrence of any Event of Default with respect to the Borrower described in Section 8.01(8) or (9), the obligation to deposit such cash collateral will become effective immediately, and such deposit will become immediately due and payable, without demand or other notice of any kind. Each such deposit pursuant to this paragraph will be held by the Collateral Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. The Administrative Agent will have exclusive dominion and control, including the

exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments will be made at the option and sole discretion of (i) for so long as an Event of Default is continuing, the Administrative Agent and (ii) at any other time, the Borrower, in each case, in Cash Equivalents and at the risk and expense of the Borrower, such deposits will not bear interest. Interest or profits, if any, on such investments will accumulate in such account. Moneys in such account will be applied by the Administrative Agent to reimburse each Issuing Bank for L/C Disbursements for which such Issuing Bank has not been reimbursed and, to the extent not so applied, will be held for the satisfaction of the reimbursement obligations of the Borrower for the Revolving L/C Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of the Required Lenders), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) will be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

- (12) Additional Issuing Banks. From time to time, the Borrower may, by notice to the Administrative Agent, designate any Lender (in addition to Citibank, N.A.) to act as an Issuing Bank; *provided* that such Lender agrees in its sole discretion to act as such and such Lender is reasonably satisfactory to the Administrative Agent as an Issuing Bank. Each such additional Issuing Bank will execute a counterpart of this Agreement upon the approval of the Administrative Agent (which approval will not be unreasonably withheld) and will thereafter be an Issuing Bank hereunder for all purposes. The Borrower may, in its sole discretion, request a Letter of Credit issuance from any Issuing Bank.
- (13) Reporting. Unless otherwise requested by the Administrative Agent, each Issuing Bank will (a) provide to the Administrative Agent copies of any notice received from the Borrower pursuant to Section 2.05(2) no later than the next Business Day after receipt thereof and (b) report in writing to the Administrative Agent as follows:
- (i) on or prior to each Business Day on which such Issuing Bank expects to issue, amend or extend any Letter of Credit, the date of such issuance, amendment or extension, and the aggregate face amount of the Letters of Credit to be issued, amended or extended by it and outstanding after giving effect to such issuance, amendment or extension occurred (and whether the amount thereof changed), and the Issuing Bank will be permitted to issue, amend or extend such Letter of Credit if the Administrative Agent will not have advised the Issuing Bank that such issuance, amendment or extension would not be in conformity with the requirements of this Agreement;
  - (ii) on each Business Day on which such Issuing Bank makes any L/C Disbursement, the date of such L/C Disbursement and the amount of such L/C Disbursement; and

- (iii) on any other Business Day, such other information with respect to the outstanding Letters of Credit issued by such Issuing Bank as the Administrative Agent reasonably requests, including but not limited to prompt verification of such information as may be requested by the Administrative Agent.

The failure of any Issuing Bank (other than the Administrative Agent or any affiliate thereof acting as an Issuing Bank) to comply with the provisions of sub-clauses (i) and (ii) of this clause (13) with respect to any letter of credit will result in such letter of credit not being deemed a "Letter of Credit" hereunder and under the other Loan Documents.

- (14) Reallocation. If the Maturity Date in respect of any tranche of Revolving Facility Commitments occurs prior to the expiration of any Letter of Credit, then (i) if one or more other tranches of Revolving Facility Commitments in respect of which the applicable Maturity Date shall not have occurred are then in effect, such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Lenders to purchase participations therein and to make Revolving Loans and payments in respect thereof pursuant to Section 2.05(5)) under (and ratably participated in by Lenders pursuant to) the Revolving Facility Commitments in respect of such non-terminating tranches up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Revolving Facility Commitments thereunder at such time (it being understood that no partial face amount of any Letter of Credit may be reallocated); *provided*, in no event shall such reallocation cause a Lender's share of the Revolving Facility Commitment to exceed such Lender's Commitment, and (ii) to the extent not reallocated pursuant to the immediately preceding clause (i), the Borrower shall cash collateralize any such Letter of Credit in accordance with Section 2.05(11). If, for any reason, such cash collateral is not provided or reallocation does not occur, the Revolving Lenders under the maturing tranche shall continue to be responsible for their participating interests in the Letters of Credit. Except to the extent of reallocations of participations pursuant to clause (i) of the second preceding sentence, the occurrence of a Maturity Date with respect to a given tranche of Revolving Facility Commitments shall have no effect upon (and shall not diminish) the percentage participations of the Revolving Lenders in any Letter of Credit issued before such Maturity Date. Commencing with the Maturity Date of any tranche of Revolving Facility Commitments, the sublimit for Letters of Credit shall be agreed with the Lenders under the extended tranches.

#### SECTION 2.06 Funding of Borrowings.

- (1) Each Lender will make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 10:00 a.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders; *provided* that same-day ABR Loans will be made by each Lender on the proposed date thereof by wire transfer of immediately available funds by 2:00 p.m., New York City time; *provided, further* that Swingline Loans will be made as provided in Section 2.04. The Administrative Agent will make such 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 applicable Borrowing Request; provided that ABR Revolving Loans and Swingline Borrowings made to finance the reimbursement of an L/C Disbursement and reimbursements as provided in Section 2.05(5) will be remitted by the Administrative Agent to the applicable Issuing Bank.

- (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 2.06 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 Loan included in such Borrowing.
- (3) The foregoing notwithstanding, the Administrative Agent, in its sole discretion, may from its own funds make a Revolving Loan on behalf of any such Lender, (including by means of Swingline Loans to the Borrower). In such event, the Lender, on behalf of whom Administrative Agent made the Revolving Loan, will reimburse the Administrative Agent for all or any portion of such Revolving Loan made on its behalf upon written notice given to such Lender not later than 12:00 noon, New York City time, on the Business Day such reimbursement is requested. On each such settlement date, the Administrative Agent will pay to each Lender the net amount owing to such Lender in connection with such settlement, including amounts relating to Loans, fees, interest and other amounts payable hereunder. The entire amount of interest attributable to such Revolving Loan for the period from and including the date on which such Revolving Loan is made on such Lender's behalf, to but excluding the date the Administrative Agent is reimbursed in respect of such Revolving Loan by such Lender, will be paid to the Administrative Agent for its own account.

#### SECTION 2.07 Interest Elections.

- (1) Each Borrowing initially will be of the Type specified in the applicable Borrowing Request and, in the case of a Eurocurrency Revolving Facility 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 Revolving Facility Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.07. 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 Loans comprising such Borrowing, and the Loans comprising each such portion will be considered a separate Borrowing. This Section 2.07 will not apply to Swingline Borrowings, which may not be converted or continued.

- (2) To make an election pursuant to this Section 2.07 following the Closing Date, the Borrower will notify the Administrative Agent of such election by telephone (a) in the case of an election to convert to or continue a Eurocurrency Revolving Facility Borrowing, not later than 2:00 p.m., New York City time, three Business Days before the 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, on the date of 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). Each such telephonic Interest Election Request will be confirmed promptly by hand delivery, facsimile transmission or e-mail to the Administrative Agent of a written Interest Election Request substantially in the form of Exhibit E and signed by the Borrower.
- (3) (a) Each telephonic and written Interest Election Request will be irrevocable and will specify the following information:
  - (i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below will be specified for each resulting Borrowing);
  - (ii) the effective date of the election made pursuant to such Interest Election Request, which will be a Business Day;
  - (iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurocurrency Revolving Facility Borrowing; and
  - (iv) if the resulting Borrowing is a Eurocurrency Revolving Facility 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."
- (b) If any such Interest Election Request requests a Eurocurrency Revolving Facility Borrowing but does not specify an Interest Period, then the Borrower will be deemed to have selected a Eurocurrency Revolving Facility Borrowing having an Interest Period of one month's duration.
- (4) 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.

- (5) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurocurrency Revolving Facility Borrowing two Business Days 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 continued as a Eurocurrency Revolving Facility Borrowing having an Interest Period of one month's duration.
- (6) 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 an Event of Default is continuing, (a) no outstanding Borrowing may be converted to or continued as a Eurocurrency Revolving Facility Borrowing and (b) unless repaid, each Eurocurrency Revolving Facility Borrowing will be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.08 Termination and Reduction of Commitments.

- (1) Unless previously terminated, the Commitments will terminate on the applicable Maturity Date.
- (2) The Borrower may at any time terminate, or from time to time reduce, the Revolving Facility Commitments; *provided* that (i) each reduction of the Revolving Facility Commitments will be in an amount that is an integral multiple of \$1.0 million and not less than \$5.0 million (or, if less, the remaining amount of the applicable Revolving Facility Commitments) and (ii) the Borrower will not terminate or reduce the Revolving Facility Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the Revolving Facility Credit Exposure would exceed the lesser of the total Revolving Facility Commitments and the Borrowing Base.
- (3) The Borrower will notify the Administrative Agent of any election to terminate or reduce the Revolving Facility Commitments under paragraph (2) of this Section 2.08 at least three Business Days prior to the date of such termination or reduction, specifying such election and the date thereof. Promptly following receipt of any notice, the Administrative Agent will advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section 2.08 will be irrevocable; *provided* that a notice of termination of the Revolving Facility Commitments delivered by the Borrower may state that such notice is revocable or conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked or extended by the Borrower (by notice to the Administrative Agent on or prior to the specified Closing Date). Any termination or reduction of the Commitments will be permanent. Each permanent termination or reduction of the Commitments will be made ratably among the Lenders under each tranche in accordance with their respective Commitments. under such tranche being terminated or reduced; provided that, for the avoidance of doubt, the permanent termination or reduction in Commitments among the 2021 Revolving Commitments and the First Amendment Extended Revolving Commitments need not be on a ratable basis as between them.

SECTION 2.09 Promise to Pay; Evidence of Debt.

- (1) The Borrower hereby unconditionally promises to pay (a) to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan, Protective Advance and Overadvance to the Borrower on the applicable Maturity Date and (b) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the applicable Maturity Date.
- (2) Any Lender may request that Loans made by it be evidenced by a promissory note (a “*Note*”). 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 Loans evidenced by such Note and interest thereon at all times (including after assignment pursuant to Section 10.04) will 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).
- (3) The Administrative Agent will maintain accounts in which it will record (a) the amount of each Loan to the Borrower 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. The entries made in the accounts maintained pursuant to this paragraph (3) will be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of the Administrative Agent to maintain such accounts or any error therein will not in any manner affect the obligations of the Borrower to repay the Obligations in accordance with the terms of this Agreement.

SECTION 2.10 Optional Repayment of Loans.

- (1) The Borrower will have the right at any time and from time to time to repay any Loan in whole or in part, without premium or penalty (but subject to Section 2.16), in an aggregate principal amount, (a) in the case of Eurocurrency Revolving Loans, that is an integral multiple of \$500,000 and not less than \$2.5 million, and (b) in the case of ABR Loans, that is an integral multiple of \$100,000 and not less than \$1.0 million, or, in each case, if less, the amount outstanding.
- (2) Prior to any repayment of any Revolving Loans, the Borrower will select the Borrowing or Borrowings to be repaid and will notify the Administrative Agent by telephone (confirmed by hand delivery, facsimile transmission or e-mail) of such selection not later than 2:00 p.m., New York City time, (a) in the case of an ABR Borrowing, one Business Day before the anticipated date of such repayment and (b) in the case of a Eurocurrency Revolving Facility Borrowing, three Business Days before the anticipated date of such repayment. Each repayment of a Borrowing will be applied to the Revolving Loans

included in the repaid Borrowing such that each Revolving Lender receives its ratable share of such repayment (based upon the respective Revolving Facility Credit Exposures of the Revolving Lenders at the time of such repayment). Notwithstanding anything to the contrary in the immediately preceding sentence, prior to any repayment of a Swingline Loan hereunder, the Borrower will select the Borrowing or Borrowings to be repaid and will notify the Administrative Agent by telephone (confirmed by hand delivery, facsimile transmission or e-mail) of such selection not later than 2:00 p.m., New York City time, on the scheduled date of such repayment. Repayments of Eurocurrency Revolving Facility Borrowings will be accompanied by accrued interest on the amount repaid, together with any amounts due under Section 2.16.

**For the avoidance of doubt, all voluntary repayments under this Section 2.10 will be made ratably among the Revolving Loans outstanding in respect of 2021 Revolving Commitments and the First Amendment Extended Revolving Commitments; provided that the termination or reduction of commitments shall be permitted as set forth in Section 2.08.**

SECTION 2.11 Mandatory Repayment of Loans.

- (1) In the event the aggregate amount of the Revolving Facility Credit Exposure exceeds the Line Cap at such time, then the Borrower will on such Business Day repay outstanding Revolving Loans and Swingline Loans, and, if there remains an excess after paying all Revolving Loans and Swingline Loans, cash collateralize Letters of Credit (in accordance with Section 2.05(11)) in an aggregate amount equal to such excess.
- (2) [Reserved.]
- (3) In the event and on such occasion as the Revolving L/C Exposure exceeds the Letter of Credit Sublimit, the Borrower will deposit cash collateral (in accordance with Section 2.05(11)) in an amount equal to such excess.
- (4) Upon the occurrence and during the continuance of a Cash Dominion Period, all amounts in the Dominion Account shall be applied by the Administrative Agent pursuant to clause (b) of the proviso to Section 5.11.
- (5) Upon the occurrence and during the continuance of a Cash Dominion Period, the Borrower will prepay Revolving Loans (with no reduction in commitments) or cash collateralize Letters of Credit with 100% of all net cash proceeds from sales of Collateral included in the Borrowing Base. Any amounts prepaid pursuant to this clause (5) will be applied pursuant to the waterfall set forth in Section 2.18(3), *provided* that amounts applied pursuant to subclauses (iv) and (v) thereof will be applied:
  - (a) *first*, to ABR Loans;
  - (b) *second*, to Eurocurrency Revolving Loans; and

(c) *third*, to the cash collateralization of Letters of Credit at 103% of the face amount of such Letters of Credit.

**For the avoidance of doubt, all mandatory repayments under this Section 2.11 will be made ratably among the Revolving Loans outstanding in respect of 2021 Revolving Commitments and the First Amendment Extended Revolving Commitments.**

SECTION 2.12 Fees.

- (1) The Borrower agrees, to pay to each Lender (other than any Defaulting Lender), through the Administrative Agent, on the fifth Business Day after the end of each fiscal quarter of the Borrower, commencing with the first full fiscal quarter of the Borrower ending after the Closing Date, and on each Maturity Date and any date on which the Commitments of all the Lenders are terminated as provided herein, a commitment fee (a "***Commitment Fee***") on the daily amount of the Available Unused Commitment of such Lender during the preceding fiscal quarter (or other period commencing with the Closing Date, or in the case of the first full fiscal quarter, the period commencing on the Closing Date and ending with the end of the first fiscal quarter, or ending with the date on which the last of the Commitments of such Lender will be terminated, as applicable) at a rate equal to the Applicable Commitment Fee Percentage (which shall be adjusted quarterly on each Adjustment Date). All Commitment Fees will be computed on the basis of the actual number of days elapsed in a year of 360 days. For the purpose of calculating any Lender's Commitment Fee, the outstanding Swingline Loans during the period for which such Lender's Commitment Fee is calculated will be deemed to be zero. The Commitment Fee due to each Lender will commence to accrue on the Closing Date and will cease to accrue on the date on which the last of the Commitments of such Lender will be terminated as provided herein.
- (2) The Borrower agrees, to pay to:
  - (a) the Administrative Agent for the account of each Revolving Lender (other than any Defaulting Lender, it being understood that at any time the Issuing Bank has Fronting Exposure to such Defaulting Lender, the L/C Participation Fee with respect to such Fronting Exposure will be payable to the Issuing Bank for its own account), on the fifth Business Day after the end of each fiscal quarter of the Borrower in each year, commencing with the first full fiscal quarter of the Borrower ending after the Closing Date, and on each Maturity Date and any date on which the Commitments of all the Lenders are terminated as provided herein, a fee (an "***L/C Participation Fee***") on such Lender's Revolving Facility Percentage of the daily aggregate Revolving L/C Exposure (excluding the portion thereof attributable to unreimbursed L/C Disbursements), during the preceding fiscal quarter (or other period commencing with the Closing Date, or in the case of the first full fiscal quarter, the period commencing on the Closing Date and ending with the end of the first fiscal quarter, or ending with the applicable Maturity Date or the date on which the Revolving Facility Commitments are terminated, as applicable) at the rate per annum equal to the Applicable Margin for Eurocurrency Revolving Facility Borrowings effective for each day in such period; and

- (b) each Issuing Bank, for its own account (i) on the fifth Business Day after the end of each fiscal quarter of the Borrower, commencing with the first full fiscal quarter of the Borrower ending after the Closing Date, and on each Maturity Date and any date on which the Commitments of all the Lenders are terminated as provided herein, a fronting fee in respect of each Letter of Credit issued by, or the term of which is extended by, such Issuing Bank for the period from and including the date of issuance or extension of such Letter of Credit to and including the termination of such Letter of Credit, computed at a rate equal to 0.125% per annum of the daily stated amount of such Letter of Credit *plus* (ii) such Issuing Bank's customary issuance fees and customary documentary and processing fees and charges (collectively, "**Issuing Bank Fees**"). All L/C Participation Fees and Issuing Bank Fees that are payable in Dollars on a per annum basis will be computed on the basis of the actual number of days elapsed in a year of 360 days.
- (3) The Borrower agrees, to pay to the Administrative Agent, for its own account, the agency fees set forth in the Fee Letter at the times specified therein or in such other amounts and at such other times as may be separately agreed in writing by the Administrative Agent and the Borrower from time to time (the "**Administrative Agent Fees**").
- (4) All Fees will be paid on the dates due, in immediately available funds, to the Administrative Agent at the Payment Office for distribution, if and as appropriate, among the Lenders, except that Issuing Bank Fees will be paid directly to the applicable Issuing Banks. Once paid, none of the Fees will be refundable under any circumstances.

SECTION 2.13 Interest.

- (1) The Loans comprising each ABR Borrowing (including each Swingline Loan) will bear interest at the ABR *plus* the Applicable Margin.
- (2) The Loans comprising each Eurocurrency Revolving Facility 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 (a) in the case of overdue principal of any Loan, 2.00% *plus* the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.13 or (b) in the case of overdue interest or any other overdue amount, 2.00% *plus* the rate applicable to ABR Loans as provided in clause (1) of this Section 2.13.
- (4) Accrued interest on each Loan will be payable by the Borrower, jointly and severally, in arrears (a) on each Interest Payment Date for such Loan; (b) on the applicable Maturity Date; and (c) upon termination of the Revolving Facility Commitments; *provided that*:

- (i) interest accrued pursuant to paragraph (3) of this Section 2.13 will be payable on demand;
  - (ii) in the event of any repayment of any Loan (other than a repayment of an ABR Revolving Loan or Swingline Loan prior to the end of the applicable Availability Period), accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment; and
  - (iii) in the event of any conversion of any Eurocurrency Revolving Loan prior to the end of the current Interest Period therefor, accrued interest on such 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 2.14 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurocurrency Revolving Facility 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 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 Revolving Facility 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 Revolving Facility Borrowing, such Borrowing will be made as an ABR Borrowing.

SECTION 2.15 Increased Costs.

- (1) If any Change in Law:

- (a) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or Issuing Bank;
- (b) imposes on any Lender or Issuing Bank or the London interbank market any other condition (other than Taxes) affecting this Agreement or Eurocurrency Revolving Loans made by such Lender or any Letter of Credit or participation therein; 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) on 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 Revolving Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or Issuing Bank, as applicable, for such additional costs incurred or reduction suffered.

- (2) If any Lender or Issuing Bank 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 or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender or such Issuing Bank, as applicable, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.
- (3) A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company, as applicable, as specified in paragraph (1) or (2) of this Section 2.15 will be delivered to the Borrower and will be conclusive absent manifest error. The Borrower will pay such Lender or Issuing Bank, as applicable, the amount shown as due on any such certificate within ten days after receipt thereof.

- (4) Promptly after any Lender or any Issuing Bank has determined that it will make a request for increased compensation pursuant to this Section 2.15, such Lender or Issuing Bank will notify the Borrower thereof. Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section 2.15 will not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; *provided* that the Borrower will not be required to compensate a Lender or an Issuing Bank pursuant to this Section 2.15 for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or Issuing Bank, as applicable, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank'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 2.16 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 Revolving 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 Revolving Loan other than on the last day of the Interest Period applicable thereto;
- (3) the failure to borrow, convert, continue or prepay any Eurocurrency Revolving Loan on the date specified in any notice delivered pursuant hereto; or
- (4) the assignment of any Eurocurrency Revolving 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 2.19.

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 (a) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such 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 Revolving Loan, for the period that would have been the Interest Period for such Loan), over (b) 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 Eurocurrency 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 2.16 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 2.17 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 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) such Loan Party will make such deductions; (b) such Loan Party 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 2.17) 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 2.17) 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 2.17, 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 2.17(5)(b), 2.17(5)(c) and 2.17(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 2.17(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 2.17(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 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 (1) a "bank" within the meaning of Section 881(c)(3)(A) of the Code; (2) a "10 percent shareholder" of the Borrower within the meaning of Section 871(h)(3) or Section 881(c)(3)(B) of the Code; or (3) 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) 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 2.17, 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 2.17 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 2.17(7) (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 2.17(7) 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.

- (8) Each party's obligations under this Section 2.17 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.
- (9) For purposes of this Section 2.17, the term "applicable law" includes FATCA and the term "Recipient" includes any Issuing Bank.

SECTION 2.18 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 them hereunder (whether of principal, interest, fees, reimbursement of L/C Disbursements or otherwise) prior to 2:00 p.m., New York City time, at the Payment Office, except payments to be made directly to the applicable Issuing Bank or the Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 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) The amount of each Lender's Revolving Facility Percentage of outstanding Revolving Loans (including outstanding Swingline Loans) will be computed weekly (or more frequently in the Administrative Agent's discretion) and will be adjusted upward or downward based on all Revolving Loans (including Swingline Loans) and repayments of

Revolving Loans (including Swingline Loans) received by the Administrative Agent as of 4:00 p.m. on the first Business Day (such date, the "Settlement Date") following the end of the period specified by the Administrative Agent. The Administrative Agent will deliver to each of the Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (a) the Administrative Agent will transfer to each Lender its Revolving Facility Percentage of repayments and (b) each Lender will transfer to the Administrative Agent (as provided below) or the Administrative Agent will transfer to each Lender such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Revolving Loans made by each Lender will be equal to such Lender's Revolving Facility Percentage of all Revolving Loans outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent by the Lenders and is received prior to 2:00 p.m. on a Business Day, such transfers will be made in immediately available funds no later than 5:00 p.m. that day and, if received after 2:00 p.m., then no later than 4:00 p.m. on the next Business Day. The obligation of each Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent. If and to the extent any Lender has not so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, equal to 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.

- (3) 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, unreimbursed L/C Disbursements, interest and fees and other Obligations then due from the Borrower hereunder or (b) at any time during a Cash Dominion Period (including in connection with any termination of the Revolving Facility Commitments pursuant to Section 8.01) and the Administrative Agent or the Collateral Agent receives proceeds of Collateral, such funds will be applied,
- (i) *first*, toward payment of any expenses, fees and indemnities due to the Agents hereunder;
  - (ii) *second*, toward payment of interest and fees then due from the Borrower hereunder with respect to any Revolving Facility Credit Exposure, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties;
  - (iii) *third*, toward payment of principal of Swingline Loans, unreimbursed L/C Disbursements, Protective Advances and Overadvances then due from the Borrower hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal, unreimbursed L/C Disbursements, Protective Advances and Overadvances then due to such parties;

- (iv) *fourth*, on a pro rata basis, (x) toward payment of other principal then due from the Borrower hereunder with respect to any Revolving Facility Credit Exposure, ratably among the parties entitled thereto in accordance with the amounts of such principal then due to such parties, (y) toward the payment of any outstanding obligations owed to the Qualified Counterparties under any Designated Hedging Agreements in an aggregate amount not to exceed the Designated Hedging Reserve ratably among the parties entitled thereto in accordance with the amounts of obligations under such Designated Hedging Agreements then due to such parties and (z) toward payment of any outstanding obligations owed to Cash Management Banks under any Cash Management Obligations in an aggregate amount not to exceed the Designated Cash Management Reserve ratably among the parties entitled thereto in accordance with the amounts of such Cash Management Obligations then due to such parties;
- (v) *fifth*, if an Event of Default has occurred and is continuing, to cash collateralize Letters of Credit issued for the account of the Borrower, any Borrowing Base Party or any other Subsidiary in accordance with Section 2.05(11);
- (vi) *sixth*, to pay any other Obligations (excluding Obligations as described in items (2) and (3) of the definition of “Obligations” contained herein) ratably among the parties thereto in accordance with such amounts so owed them;
- (vii) *seventh*, to payment of obligations pursuant to Specified Hedge Agreements then due from the Borrower, any Borrowing Base Party or any other Subsidiary party to such Specified Hedge Agreements, ratably among the parties entitled thereto in accordance with the amounts of obligations under such Specified Hedge Agreements then due to such parties;
- (viii) *eighth*, to payment of Cash Management Obligations of the Borrower and the other Loan Parties then due from the Borrower, ratably among the parties entitled thereto in accordance with the amounts of such Cash Management Obligations then due to such parties; and
- (ix) *ninth*, to payment of all other Obligations of the Borrower and the Loan Parties then due and payable, ratably among the parties entitled thereto in accordance with the amounts of such Obligations then due to such parties;

provided that the application of such proceeds at all times will be subject to the application of proceeds provisions contained in the Intercreditor Agreement.

- (4) Subject to express priorities set forth in Section 2.18(3) above, 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 Revolving Loans or participations in L/C Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in L/C Disbursements and Swingline Loans and accrued interest thereon 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 Revolving Loans and participations in L/C Disbursements and Swingline 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 Revolving Loans and participations in L/C Disbursements and Swingline 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 (4) 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 Disqualified Institution) or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans or participations in L/C Disbursements to any assignee or participant, other than to the Borrower or any other Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (4) apply). The Borrower consents to the foregoing and agree, 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 any 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.
- (5) 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 or the applicable Issuing Bank 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 or the applicable Issuing Bank, as applicable, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the applicable Issuing Bank, as applicable, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank 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.
- (6) If any Lender fails to make any payment required to be made by it pursuant to Section 2.04(3), 2.05(4) or (5), 2.06(2) or 2.18(6), 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 such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.19 Mitigation Obligations; Replacement of Lenders.

- (1) If any Lender requests compensation under Section 2.15, 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 2.17, then such Lender will use reasonable efforts to designate a different Lending Office for funding or booking its 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 2.15 or 2.17, 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 2.15 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 2.17, then the Borrower may, at its 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 Section 10.04), all its interests, rights and obligations under this Agreement to an assignee that assumes such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (a) the Borrower shall have received the prior written consent of the Administrative Agent, the Swingline Lender and the Issuing Bank), which consent shall not unreasonably be withheld, (b) such Lender has received payment of an amount equal to the outstanding principal of its Loans and funded participations in L/C Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (c) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments thereafter. Nothing in this Section 2.19 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 which, pursuant to the terms of Section 10.08, requires the consent of such Lender 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 replace such Non-Consenting Lender by deeming such Non-Consenting Lender to have assigned its Loans and its Commitments hereunder to one or more assignees reasonably acceptable to the Administrative Agent, the Swingline Lender and the Issuing Bank to the extent the

consent of such Person would be required under Section 10.04; provided that (a) all Obligations of the Borrower owing to such Non-Consenting Lender (including accrued Fees and any amounts due under Section 2.15, 2.16 or 2.17) being removed or replaced will be paid in full to such Non-Consenting Lender concurrently with such assignment and (b) 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, which will 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 therefor, compliance with Section 10.04 will not be required to effect such assignment.

SECTION 2.20 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 Revolving 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 Revolving Loans or to convert ABR Borrowings to Eurocurrency Revolving Facility 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 Revolving Facility 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 Revolving Facility Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrower will also pay accrued interest on the amount so prepaid or converted.

SECTION 2.21 Incremental Revolving Facility Increases.

- (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 notice to the Administrative Agent, increase the Revolving Facility Commitments (each such increase, an "***Incremental Revolving Facility Increase***" and such additional Revolving Facility Commitments, the "***Incremental Commitments***").
- (2) Ranking. Any Incremental Commitments will (a) rank *pari passu* in right of payment with the Revolving Facility Claims and (b) be secured by the Collateral on a *pari passu* basis with the Revolving Facility Claims.
- (3) Size. The principal amount of all commitments in respect of Incremental Revolving Facility Increases received pursuant to this Section 2.21, in the aggregate, shall not exceed \$100.0 million, (less, until the Maturity Date with respect of the 2021 Revolving Commitments, \$55.0 million).

Each Incremental Revolving Facility Increase received pursuant to this Section 2.21 will be in an integral multiple of \$1.0 million and in a minimum aggregate principal amount of \$25.0 million (or such lesser minimum amount approved by the Administrative Agent).

- (4) Incremental Lenders. Incremental Revolving Facility Increases may be provided by any existing Lender (it being understood that no existing Lender will have an obligation to provide any Incremental Revolving Facility Increase), or any Additional Lender (collectively, the “**Incremental Lenders**”); *provided* that the Administrative Agent, each Swingline Lender and each Issuing Bank shall have consented (such consent not to be unreasonably withheld, delayed or conditioned) to any Additional Lender’s provision of such Incremental Revolving Facility Increase if such consent by the Administrative Agent or such Swingline Lender would be required under Section 10.04 for an assignment of Commitments or Loans to such Additional Lender.
- (5) Incremental Facility Amendments.
- (a) Each Incremental Revolving Facility Increase 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, the applicable 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 Revolving Facility Increase evidenced thereby.
- (b) Upon each Incremental Revolving Facility Increase in accordance with this Section 2.21:
- (i) each Incremental Lender in respect of such increase will automatically and without further act be deemed to have assumed a portion of each Revolving Lender’s participations hereunder in outstanding Letters of Credit and Swingline Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (A) participations hereunder in Letters of Credit and (B) participations hereunder in Swingline Loans held by each Lender (including each such Incremental Lender) will equal the percentage of the aggregate Revolving Facility Commitments of all Lenders represented by such Lender’s Revolving Facility Commitment; and
- (ii) the Administrative Agent may, in consultation with the Borrower, take any and all actions as may be reasonably necessary to ensure that, after giving effect to such Lender’s Incremental Commitments, the percentage of the aggregate Revolving Facility Commitments held by each Lender (including each such Incremental Lender) will equal the percentage of the

aggregate Revolving Facility Commitments of all Lenders represented by such Lender's Revolving Facility Commitment, which may be accomplished, at the discretion of the Administrative Agent following consultation with the Borrower, by:

- (A) requiring the outstanding Loans to be prepaid with the proceeds of a new Borrowing;
- (B) causing non-increasing Lenders to assign portions of their outstanding Loans to Incremental Lenders; or
- (C) a combination of the foregoing.

(6) Conditions. The initial availability of any Incremental Revolving Facility Increase 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 Revolving Facility Increase is incurred (or commitments in respect thereof are provided) or would exist immediately after giving effect thereto; *provided*, that if the Incremental Revolving Facility Increase 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 Revolving Facility Increase 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 Revolving Facility Increase (or the date on which commitments in respect thereof are provided); *provided*, that if the Incremental Revolving Facility Increase 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 Revolving Facility Increase (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 Revolving Facility Increase, unless such other conditions are waived by such Incremental Lenders.
- (7) Terms. Any Incremental Revolving Facility Increase will be on terms identical to (and shall form part of) the Revolving Facility, except with respect to any arrangement, upfront, structuring or similar fees that may be agreed to by and among the Borrower and the Incremental Lenders.

SECTION 2.22 [Reserved].

SECTION 2.23 Extensions of Revolving Commitments.

- (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 Loans with a like Maturity Date, the Borrower may extend the Maturity Date of each such Lender’s Revolving Facility Commitments and otherwise modify the terms of such Revolving Facility Commitments pursuant to the terms of the relevant Extension Offer, including by increasing the interest rate or fees payable in respect to such Revolving Facility Commitments (each, an “**Extension**,” and each group of Revolving Facility Commitments so extended, as well as the original Revolving Facility Commitments not so extended, being a “**tranche**”). Each Extension Offer will specify the minimum amount of Revolving Facility Commitments 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 \$25.0 million (or (a) if less, the aggregate principal amount of such Revolving Facility Commitments or (b) such lesser minimum amount as is approved by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed), and shall be made on a *pro rata* basis to all Lenders having Revolving Facility Commitments with a like Maturity Date. If the aggregate outstanding principal amount of Loans and Revolving Facility Commitments (calculated on the face amount thereof) in respect of which Lenders have accepted an Extension Offer exceeds the maximum aggregate principal amount of Loans and Revolving Facility Commitments offered to be extended pursuant to an Extension Offer, then the Loans and Revolving Facility Commitments of such Lenders will be extended ratably up to such maximum amount based on the Revolving Facility Commitments of the Lenders that have accepted such Extension Offer. There is no requirement that any Extension Offer or Extension Amendment (defined as follows) be subject to any “most favored nation” pricing provisions. Each Lender accepting an Extension Offer is referred to herein as an “**Extending Lender**,” and the Loans and Revolving Facility Commitment held by such Lender (and so extended) accepting an Extension Offer are referred to herein as “**Extended Loans**” and “**Extended Commitments**”.
- (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 tranches in respect of Extended Commitments (and related Extended Loans) 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, in each case, on terms consistent with this Section 2.23. This Section 2.23 supersedes any provisions in Section 10.08 to the contrary.
- (3) Terms of Extension Offers and Extension Amendments. The terms of any Extended Commitments (and related Extended Loans) will be set forth in an Extension Offer and as agreed between the Borrower and the Extending Lenders accepting such Extension Offer; *provided that*:

- (a) no Event of Default has occurred and is continuing at the time the offering document in respect of an Extension Offer is delivered to the Lenders;
  - (b) except as to pricing terms (interest rate and fees) and maturity, the terms and conditions of such Revolving Facility Credit Exposure 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 Revolving Facility Commitments (and related Extended Loans) subject to such Extension Offer, as determined in good faith by a Responsible Officer of the Borrower.
- (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 conditioned), the Borrower and each Lender agreeing to such Extension with respect to one or more of its Revolving Facility Commitments. The transactions contemplated by this Section 2.23 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Commitments 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 2.09 and 2.16) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.23 will not apply to any of the transactions effected pursuant to this Section 2.23.

~~SECTION 2.24 [Reserved.]~~

**SECTION 2.24 MIRE Events. Each of the parties hereto acknowledges and agrees that, at any time after the First Amendment Effective Date, if there are any Mortgaged Properties, any increase, extension or renewal of any of the Commitments or Loans (including the provision of Incremental Commitments and Extended Commitments) or any other incremental or additional credit facilities hereunder, but excluding (i) any continuation or conversion of borrowings, (ii) the making of any Revolving Loans, or (iii) the issuance, renewal or extension of Letters of Credit shall be subject to and conditioned upon: (1) the prior delivery of all flood hazard determination certifications, acknowledgements and evidence of flood insurance and other flood-related documentation with respect to such Mortgaged Properties as required by the Flood Insurance Laws and (2) the Administrative Agent shall have received written confirmation from the Lenders that flood insurance due diligence and flood insurance compliance have been completed by the Lenders (such written confirmation not to be unreasonably conditioned, withheld or delayed).**

SECTION 2.25 [Reserved].

SECTION 2.26 Defaulting Lenders.

- (1) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:
- (a) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement is restricted as set forth in Section 10.08.
  - (b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), will be applied at such time or times as may be determined by the Administrative Agent as follows:
    - (i) *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder;
    - (ii) *second*, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to the Issuing Bank or Swingline Lender hereunder;
    - (iii) *third*, if so determined by the Administrative Agent or requested by the Issuing Bank or Swingline Lender, to be held as cash collateral for future funding obligations of such Defaulting Lender of any participation in any Swingline Loan or Letter of Credit;
    - (iv) *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Revolving Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent;
    - (v) *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Revolving Loans under this Agreement;
    - (vi) *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Bank or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Bank or Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement;
    - (vii) *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and

(viii) *eight*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction;

*provided* that if such payment is a payment of the principal amount of any Loans or L/C Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, such payment will be applied solely to pay the Loans of, and L/C Disbursements 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 Disbursements owed to, such Defaulting Lender. Any payments 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 2.26(1)(b) will be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

- (c) Certain Fees. Such Defaulting Lender (i) will not be entitled to receive any Commitment Fee pursuant to Section 2.12(1) for any period during which that Lender is a Defaulting Lender (and the Borrower will be required to pay any such fee that otherwise would have been required to have been paid to such Defaulting Lender) and (ii) will not be entitled to receive any L/C Participation Fee pursuant to Section 2.12(2) for any period during which that Lender is a Defaulting Lender (although the Borrower will be required to pay any such L/C Participation Fee that otherwise would have been required to have been paid to such Defaulting Lender to the non-Defaulting Lenders or Issuing Bank, in accordance with any reallocation of Fronting Exposure to non-Defaulting Lenders or as may be retained by the Issuing Bank, as the case may be).
- (d) 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 Swingline Loans pursuant to Sections 2.04 and 2.05, the “**Revolving Facility Percentage**” of each non-Defaulting Lender will be computed without giving effect to the Commitment of such Defaulting Lender; *provided*, that, each such reallocation will be given effect only to the extent such that the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swingline Loans will not exceed the positive difference, if any, of (i) the Revolving Facility Commitment of such non-Defaulting Lender *minus* (ii) the aggregate outstanding amount of the Revolving Loans of such Defaulting Lender.
- (e) Elimination of Remaining Fronting Exposure. At any time that there exists a Defaulting Lender, (i) immediately upon the request of the Administrative Agent or the Issuing Bank, the Borrower will deliver to the Administrative Agent cash collateral in an amount sufficient to cover all Fronting Exposure of the Revolving L/C Exposure (after giving effect to Section 2.26(1)(d)) which will be held as security for the reimbursement obligations of the Borrower with respect to the Revolving L/C Exposure and (ii) immediately upon request of the Administrative Agent or the Swingline Lender, the Borrower will repay an amount of Swingline Loans sufficient to eliminate the Fronting Exposure of the Swingline Lender.

- (2) **Defaulting Lender Cure.** If the Borrower, the Administrative Agent, the Swingline Lender and the Issuing Bank 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), such Lender will, to the extent applicable, purchase that portion of outstanding Revolving Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a *pro rata* basis by the Lenders in accordance with their Revolving Facility Percentages (without giving effect to Section 2.26(1)(d)), whereupon such 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 Borrower while such 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 such Lender's having been a Defaulting Lender.

### ARTICLE III

#### Representations and Warranties

Each of Merger Sub, the Company and the Restricted Subsidiaries of the Company represents and warrants to each Agent and to each of the Lenders, with respect to Borrowings made on the Closing Date, that on the Closing Date immediately prior to consummation of the Merger, the Specified Merger Agreement Representations and the Specified Representations are true and correct in all material respects.

With respect to any Borrowing made after the Closing Date, the Borrower, with respect to itself, each Borrowing Base Party, if any, and each of the Restricted Subsidiaries, and Holdings, solely with respect to Sections 3.01, 3.02, 3.03, 3.04, 3.08 and 3.20, 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 the Initial Borrower, Successor Borrower and Holdings 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 Borrowing Base Certificate. At the time of delivery of each Borrowing Base Certificate, assuming that any eligibility criteria that requires the approval or satisfaction of the Administrative Agent has been approved by or is satisfactory to the Administrative Agent, each material Account reflected therein as eligible for inclusion in the Borrowing Base is an Eligible Account, the material Inventory reflected therein as eligible for inclusion in the Borrowing Base constitutes Eligible Inventory and the cash and Cash Equivalents reflected therein as eligible for inclusion in the Borrowing Base constitute Qualified Cash.

SECTION 3.06 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 Borrowing Base Parties 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 Borrowing Base Parties' 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 3.06(2), on the Closing Date the Borrowing Base Parties 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 3.07 Subsidiaries.

- (1) Schedule 3.07(1) 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 3.08 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 the Borrowing Base Parties 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 3.14), 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 Borrowing Base Parties, the Restricted Subsidiaries 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 3.14) 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 3.09 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 Loan or Letter of Credit 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 3.10 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 3.11 Use of Proceeds. The Borrower shall use the proceeds of the Revolving Loans and Swingline Loans, and may request the issuance of Letters of Credit, for general corporate purposes or other transaction permitted by the Loan Documents (including for capital expenditures, Permitted Acquisitions, the repayment or refinancing of Indebtedness and the making of Investments and Restricted Payments, in each case to the extent not prohibited hereunder).

SECTION 3.12 Tax Returns. Except as set forth on Schedule 3.12:

- (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 extensions) on the returns referred to in clause (1) of this Section 3.12 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 3.13 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 3.14 Environmental Matters. Except as set forth on Schedule 3.14 or as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

- (1) each of the Borrowing Base Parties and the Restricted Subsidiaries is 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) none of the Borrowing Base Parties or 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 any Borrowing Base Party or any Restricted Subsidiary in violation of Environmental Law and no Hazardous Material has been generated, owned, treated, stored, handled or controlled by any Borrowing Base Party 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 any Borrowing Base Party or any Restricted Subsidiary; and
- (4) there are no agreements in which any Borrowing Base Party 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 3.15 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, 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 3.15) 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 3.16 Location of Real Property and Leased Premises.

- (1) Schedule 3.16(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 3.16(1).
- (2) Schedule 3.16(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 3.16(2).

SECTION 3.17 Solvency. On the Closing Date, after giving effect to the consummation of the Transactions, including the Borrowing of the Loans hereunder, and after giving effect to the application of the proceeds of such Indebtedness:

- (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 3.17, 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 3.18 No Material Adverse Effect. Since January 31, 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 3.19 Insurance. Schedule 3.19 sets forth a true, complete and correct description of all material insurance maintained by or on behalf of any Borrowing Base Party or any Restricted Subsidiary as of the Closing Date. As of such date, such insurance is in full force and effect.

SECTION 3.20 USA PATRIOT Act; FCPA; OFAC; Anti-Terrorism.

- (1) To the extent applicable, each of Holdings, the Borrowing Base Parties and the Restricted Subsidiaries is in compliance, in all material respects, with the USA PATRIOT Act.
- (2) No part of the proceeds of the 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, as amended from time to time ("**FCPA**").
- (3) None of Holdings, the Borrower or any Restricted Subsidiary 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 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 3.21 Intellectual Property; Licenses, Etc. Except as set forth on Schedule 3.21:

- (1) except as would not reasonably be expected to have a Material Adverse Effect, each Borrowing Base Party and 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, no Borrowing Base Party or Restricted Subsidiary nor any Intellectual Property Rights, product, process, method, substance, part or other material now employed, sold or offered by any Borrowing Base Party or Restricted Subsidiary 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 3.22 Employee Benefit Plans.

The Borrowing Base Parties and each of their respective 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 3.23 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

The obligations of (a) the Lenders (including the Swingline Lender) to make Loans and (b) any Issuing Bank to issue Letters of Credit or amend, extend or renew Letters of Credit hereunder (each, a “**Credit Event**”) are subject to the satisfaction of the following conditions:

SECTION 4.01 All Credit Events After the Closing Date. On the date of each Credit Event, other than Credit Events on the Closing Date:

- (1) The Administrative Agent shall have received, in the case of a Borrowing, a Borrowing Request as required by Section 2.03 (or a Borrowing Request shall have been deemed given in accordance with Section 2.03(4)) or, in the case of the issuance of a Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance of such Letter of Credit (and if requested by such Issuing Bank, a letter of credit application) as required by Section 2.05(2).
- (2) Except with respect to any Borrowing pursuant to Section 2.21 (solely when the proviso in Section 2.21(6)(b) is applicable and then only to the extent required thereby), the representations and warranties set forth in the Loan Documents will be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) as of such date, as applicable, with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties will be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date).
- (3) At the time of and immediately after any Borrowing (other than a Borrowing pursuant to Section 2.21 (solely when the proviso in Section 2.21(6)(a) is applicable)) or issuance, amendment, extension or renewal of a Letter of Credit (other than an extension not beyond the applicable Maturity Date, or renewal of a Letter of Credit without any increase in the stated amount thereof), as applicable, no Default or Event of Default shall have occurred and be continuing or would result therefrom.
- (4) At the time after such Borrowing or issuance, amendment, extension or renewal of a Letter of Credit, as applicable, the sum of, without duplication, of Revolving Loans (including Swingline Loans), unreimbursed drawings under Letters of Credit and the face amount of undrawn amount of outstanding Letters of Credit does not exceed the Line Cap.

Each such Credit Event occurring after the Closing Date will be deemed to constitute a representation and warranty by the Borrower on the date of such Credit Event as to the matters specified in paragraphs (2), (3) and (4) of this Section 4.01.

There are no conditions, implied or otherwise, to the making of Loans after the Closing Date other than as set forth in the preceding clauses (1) through (4) of this Section 4.01 and upon satisfaction or waiver of such conditions Loans will be made by the Lenders and any applicable Letters of Credit will be issued, amended, extended or renewed.

SECTION 4.02 Closing Date Conditions On the Closing Date:

- (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) Acquisition Transactions. Merger Sub shall have confirmed to the Administrative Agent that the following transactions have been consummated or will be consummated substantially concurrently with the making of the Revolving Loan on the Closing Date:
  - (a) the Merger;
  - (b) the Equity Contribution; and
  - (c) the Closing Date Refinancing and evidence that arrangements satisfactory to the Administrative Agent shall have been made for the termination and release of guarantees, Liens and security interests granted in connection therewith in a form reasonably satisfactory to the Administrative Agent.
- (4) Pro Forma Balance Sheet; Financial Statements. The Administrative Agent shall have received (a) unaudited consolidated balance sheets and related statements of income and cash flows of the Company for each fiscal quarter, if any, ended after August 1, 2015 (other than the fourth fiscal quarter of the Company) and at least 45 days prior to the Closing Date and setting forth, with respect to statements of income and cash flows, comparative figures for the related period in the prior fiscal year, (b) audited consolidated balance sheets and related statements of income and cash flows of the Company, in each case, for the three fiscal years most recently ended at least 90 days before the Closing Date, and (c) a *pro forma* consolidated balance sheet and income statement of the Borrower as of October 31, 2015 and for the four-quarter period then ended, in each case, prepared on a pro forma basis giving effect to the Transactions as if the Transactions had occurred as of such date (in the case of such balance sheet) or at the beginning of such period (in the case of such income statement).
- (5) Fees. Payment of all fees (a) required to be paid pursuant to the Fee Letter and (b) reasonable (and reasonably documented) out-of-pocket expenses required to be paid on the Closing Date pursuant to the Commitment Letter, in each case to the extent invoiced in reasonable detail at least five Business Days prior to the Closing Date.
- (6) Solvency Certificate. The Administrative Agent shall have received a solvency certificate substantially in the form attached hereto as Exhibit C.
- (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, as applicable, 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;
  - (d) as to the incumbency and specimen signature of each Responsible Officer executing the Loan Documents specified in Section 4.02(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 4.02(7)); and
  - (e) that on the Closing Date following consummation of the Equity Contribution the Sponsors will control Merger Sub.
- (8) Legal Opinions. The Administrative Agent shall have received a customary legal opinion of Gibson, Dunn & Crutcher LLP, special New York and California counsel to the Loan Parties.
- (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, to the extent obtained by Merger Sub from the Company on or prior to the Closing Date, 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) No Material Adverse Effect. Since the date of the Merger Agreement, there shall not have occurred any facts, events, changes, developments or effects which, individually or in the aggregate, has had, or is reasonably expected to have, a Material Adverse Effect (as defined in the Merger Agreement).
- (12) Initial Borrowing Base Certificate. The Administrative Agent shall have received an executed Borrowing Base Certificate dated as of the Closing Date in form and substance reasonably satisfactory to the Administrative Agent.
- (13) 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 Purchase Date, will be provided not later than the date that is three Business Days prior to the Purchase Date.
- (14) Representations and Warranties. Subject to the Certain Funds Provisions, the Specified Merger Agreement Representations and Specified Representations will be true and correct in all material respects; *provided* that the failure of a Specified Merger Agreement Representation to be true and correct will not result in a failure of a condition precedent under this Article IV unless such failure gives Merger Sub the right to terminate the Merger Agreement pursuant to its terms (after giving effect to any applicable notice and cure provisions).

There are no conditions, implied or otherwise, to the making of Loans on the Closing Date other than as set forth in the preceding clauses (1) through (14) of this Section 4.02 and upon satisfaction or waiver of such conditions Loans will be made by the Lenders and any applicable Letters of Credit will be issued, amended, extended or renewed.

## **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, 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 obligations that are not yet due and payable and for which no claim has been asserted) have been paid in full and all Letters of Credit have expired, terminated or been cash-collateralized on terms satisfactory to the Issuing Bank, unless the Required Lenders otherwise consent in writing, the Borrower will, and will cause each Borrowing Base Party and each Restricted Subsidiary, 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. With respect to each Mortgaged Property that is located in an area identified by the Federal Emergency Management Agency, (or any successor agency thereto) as a "special flood hazard area" with respect to which flood insurance has been made available under the Flood Insurance Laws, the applicable Loan Party (a) shall obtain and maintain with financially sound and reputable insurance companies (except to the extent that any insurance company insuring such Mortgaged Property of such Loan Party ceases to be financially sound and reputable after the Closing Date, in which case such Loan Party shall promptly replace such insurance company with a financially sound and reputable insurance company), such flood insurance in such reasonable total amount as the Administrative Agent and the Lenders may from time to time reasonably require and otherwise sufficient to

comply with all applicable rules and regulations promulgated under the Flood Insurance Laws and (b) promptly upon request of the Administrative Agent or any Lender, shall deliver to the Administrative Agent or such Lender as applicable, evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent or such Lender, including, without limitation, evidence of annual renewals of such flood insurance. 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 120 days following the end of the fiscal year ending on the earlier of (a) on or about January 30, 2016 or (b) the fiscal year ended after the Closing Date, and within 90 days following the end of each fiscal year thereafter, 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*”);
- (2) within 60 days following the end of the fiscal quarters ending on or about April 30, 2016 and on or about July 31, 2016, and, thereafter, within 45 days following the end of each of the first three fiscal quarters of each fiscal year, 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 (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 in reasonable detail calculations of the Fixed Charge Coverage Ratio for the most recent period of four consecutive fiscal quarters as of the close of the fiscal year or fiscal quarter, as applicable;
  - (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;” and

- (d) 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 120 days following the end of the fiscal year ending on or about January 30, 2017 and within 90 days following the end of each full fiscal year ended thereafter, 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);
- (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; and
- (9) on or before the 15th Business Day of each month from and after the Closing Date, a Borrowing Base Certificate from the Borrower as of the last day of the immediately preceding month, with such supporting materials as the Administrative Agent may reasonably request (which requests may be more frequent with respect to information regarding Qualified Cash); *provided* that, after the occurrence and during the continuance of a Liquidity Condition or a Designated Event of Default, the Administrative Agent may require the Borrower to deliver the Borrowing Base Certificate more frequently as reasonably determined by the Administrative Agent. Notwithstanding the foregoing, the

Administrative Agent may not require the Borrower to deliver a Borrowing Base Certificate more frequently than weekly, and in the case of such weekly reporting the Borrowing Base Certificate will be due on Wednesday of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day) calculated as of the close of business on Saturday of the immediately preceding calendar week.

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; ~~and~~
- (4) any material change in accounting policies or financial reporting practices by any Loan Party with respect to the Borrower's Accounts and Inventory or which otherwise could reasonably be expected to affect the calculation of the Borrowing Base or Reserves.; and
- (5) any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in parts (c) or (d) of such certification.

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; Appraisals.

- (1) 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).
- (2) At any time in the Administrative Agent's sole discretion upon the occurrence and during the continuance of a Designated Event of Default, and at such other times not more frequently than (a) once per 12-month period if subclause (b) does not apply and (b) twice per 12-month period during any period commencing upon the date on which Excess Availability has been less than the greater of \$65.0 million and 15.0% of the Line Cap then in effect for at least five consecutive Business Days and ending on the date on which Excess Availability has been less than the greater of \$65.0 million and 15.0% of the Line Cap then in effect for 20 consecutive calendar days, the Loan Parties will, at their expense and upon the Administrative Agent's request, permit any Persons designated by the Administrative Agent to conduct field examinations at reasonable business times and upon reasonable prior notice to the Borrower; *provided* that if a field exam has commenced pursuant to immediately preceding clause (b) but not completed prior to such time as Excess Availability has been less than the greater of \$65.0 million and 15.0% of the Line Cap then in effect for 20 consecutive Business Days, such field exam will be completed at the expense of the Loan Parties. The Loan Parties will reasonably cooperate with the Administrative Agent and such Persons in the conduct of such field examinations. The Administrative Agent shall provide a copy of any field examination to any Lender upon such Lender's request.
- (3) At any time in the Administrative Agent's sole discretion upon the occurrence and during the continuance of a Designated Event of Default, and at such other times not more frequently than (a) once per 12-month period if subclause (b) does not apply and (b) twice per 12-month period during any period commencing upon the date on which Excess Availability has been less than the greater of \$65.0 million and 15.0% of the Line Cap then in effect for at least five consecutive Business Days and ending on the date on which Excess Availability has been less than the greater of \$65.0 million and 15.0% of the Line Cap then in effect for 20 consecutive calendar days, the Loan Parties will, at their expense and upon the Administrative Agent's request, permit any Acceptable Appraiser to conduct appraisals of the Collateral at reasonable business times and upon reasonable prior notice to the Borrower; *provided* that if an appraisal of the Collateral has commenced pursuant to immediately preceding clause (b) but not completed prior to such time as Excess Availability has been less than the greater of \$65.0 million and 15.0% of the Line Cap then in effect for 20 consecutive Business Days, such appraisal will be completed at the expense of the Loan Parties. The Loan Parties will reasonably cooperate with the Administrative Agent and such Acceptable Appraiser in the conduct of such appraisals. Such appraisals will be prepared in a form and on a basis reasonably satisfactory to the Administrative Agent, such appraisals to include, without limitation, information required by applicable law and by the internal policies of the Lenders. In addition, the Loan Parties will have the right (but not the obligation), at their expense, at any time and from time to time to provide the Administrative Agent with additional

appraisals or updates thereof of any or all of the Collateral from any Acceptable Appraiser prepared in a form and on a basis reasonably satisfactory to the Administrative Agent, in which case such appraisals or updates shall be used in connection with the determination of the Net Orderly Liquidation Value and the calculation of the Borrowing Base hereunder. With respect to each appraisal made pursuant to this Section 5.07(3) after the Closing Date, (i) the Administrative Agent and the Loan Parties will each be given a reasonable amount of time to review and comment on a draft form of the appraisal prior to its finalization and (ii) any adjustments to the Net Orderly Liquidation Value or the Borrowing Base hereunder as a result of such appraisal shall be reflected in the Borrowing Base Certificate delivered immediately succeeding such appraisal. The Administrative Agent shall provide a copy of any appraisal to any Lender upon such Lender's request.

- (4) The Borrowing Base Parties will conduct a physical count of the Inventory after an occurrence and during the continuation of an Event of Default, at the Administrative Agent's request. The Borrowing Base Parties, at their own expense, shall deliver to the Administrative Agent the results of each physical verification that the Borrowing Base Parties have made, or have caused any other Person to make on its behalf, of all or any portion of its Inventory. The Borrowing Base Parties will maintain a retail stock ledger inventory reporting system at all times.
- (5) Notwithstanding anything to the contrary in this Agreement (including Sections 5.04(7), 5.05, 5.07(1) through (4) 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 Revolving Loans and the Swingline Loans and request issuance of Letters of Credit solely for general corporate purposes (including for capital expenditures, Permitted Acquisitions, the repayment or refinancing of Indebtedness and the making of Investments and Restricted Payments, in each case to the extent not prohibited hereunder).

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 Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, within five Business Days after the date such Restricted Subsidiary is formed or acquired or such Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, as applicable, notify the Administrative Agent thereof and, within 20 Business Days after the date such Restricted Subsidiary is formed or acquired (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 \$7.5 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;
- (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) The Collateral Agent shall have received from each applicable Loan Party: (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~~ 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 (including by division);
  - (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;
  - (e) except, in the case of each of the foregoing clauses (a) through (c), in connection with the LLC Conversion.

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) the Administrative Agent shall not enter into any Mortgage in respect of any Real Property acquired by any Loan Party after the First Amendment Effective Date until (1) the date that occurs 45 days after the Administrative Agent has delivered to the Lenders (which may be delivered electronically) the following documents in respect of such Real Property: (i) a completed flood hazard determination from a third party vendor, (ii) if such Real Property is located in a "special flood hazard area," (A) a notification to the applicable Loan Party of that fact and (if applicable) notification to the applicable Loan Party that flood insurance is not available and (B) evidence of receipt by the applicable Loan Party of such notice, and (iii) if such notice is required to be provided to the applicable Loan Party and flood insurance is available in the community in which such Real Property is located, evidence of flood insurance, and (2) the Administrative Agent shall have received written confirmation from the Lenders that flood insurance due diligence and flood insurance compliance has been completed by the Lenders (such written confirmation not to be unreasonably conditioned, withheld or delayed); and

- (d) ~~(e)~~ 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.
- (6) For the avoidance of doubt, and without limitation, this Section 5.10 shall apply to any division of a Loan Party and to any division of a Person required to become a Loan Party pursuant to the terms of the Loan Documents and to any allocation of assets to a series of a limited liability company.

SECTION 5.11 Cash Management Systems; Application of Proceeds of Accounts.

- (1) Within 90 days after the Closing Date (or such longer period as may be consented to by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed):
- (a) enter into blocked account agreements (each, a “**Blocked Account Agreement**”), in form reasonably satisfactory to the Administrative Agent, with the Collateral Agent and any bank with which any Borrowing Base Party or any Subsidiary Loan Party maintains any DDA other than an Excluded Account (a “**Blocked Account**”) covering each such Blocked Account maintained with such bank;
  - (b) ensure that all cash, checks, proceeds of collections of Accounts and other amounts received by or on behalf of any Borrowing Base Party or any Subsidiary Loan Party are deposited promptly upon receipt in accordance with historical practices into a DDA maintained in the name of such Borrowing Base Party or such Subsidiary Loan Party; and
  - (c) deliver notifications to each depository institution with which any DDA is maintained, in form reasonably satisfactory to the Administrative Agent (each, a “**DDA Notification**”), instructing such depository institution to sweep, no less frequently than once per Business Day, all available cash balances and cash receipts, including the then contents or then entire ledger balance of such DDA net of such minimum balance (not to exceed \$500,000 per account), if any, required by the bank at which such DDA is maintained to a concentration account of the Borrowing Base Parties and the other Subsidiary Loan Parties that are subject to Blocked Account Agreements; *provided* that Holdings, the Borrowing Base Parties and other Subsidiary Loan Parties may maintain credit balances (including cash and cash equivalents) in DDAs or other deposit or securities accounts that are Excluded Accounts.

Notwithstanding anything herein to the contrary, the provisions of this Section 5.11(a) will not apply to any deposit account that is acquired by a Loan Party in connection with a Permitted Acquisition or other Investment permitted under this Agreement prior to the date that is 90 days (or such later date as may be consented to by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed) following the date of such Permitted Acquisition

or other Investment, and the balances held in such deposit accounts at the date of such Permitted Acquisition or other Investment shall not be counted toward the amount set forth in clause (1) of the definition of “Excluded Account” until the end of such 90 day period (or later period, if applicable).

- (2) Within 90 days after the Closing Date (or such longer period as may be consented to by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed), deliver to the Administrative Agent notifications in form reasonably satisfactory to the Administrative Agent executed on behalf of each applicable Borrowing Base Party and addressed to such Borrowing Base Party’s Credit Card Processors (each, a “**Credit Card Notification**”);

*provided that*, with respect to each of Sections 5.11(1) and (2):

- (a) Each Blocked Account Agreement and Credit Card Notification will require, during a Cash Dominion Period and upon receipt by the Borrower of written notice thereof by the Administrative Agent, the ACH or wire transfer no less frequently than once per Business Day of all available cash balances and cash receipts, including the then contents or then entire ledger balance of each Blocked Account net of such minimum balance (not to exceed \$100,000 per account), if any, required by the bank at which such Blocked Account is maintained to an account established with, and subject to the control of, the Administrative Agent (the “**Dominion Account**”).
- (b) All collected amounts received in the Dominion Account during a Cash Dominion Period and upon receipt by the Borrower of written notice thereof by the Administrative Agent shall be distributed and applied on a daily basis to the repayment of all Loans outstanding under this Agreement and to the payment of all other Obligations then due and owing pursuant to the waterfall set forth in Section 2.18(3); *provided that* amounts applied pursuant to subclauses (iv) and (v) thereof will be applied:
- (i) first, to ABR loans;
  - (ii) second, to Eurocurrency Revolving Loans; and
  - (iii) third, to the cash collateralization of Letters of Credit at 103% of the principal value thereof;
- with any excess, unless an Event of Default shall have occurred and be continuing, to be remitted to the Borrower.
- (c) At any time after the occurrence and during the continuance of a Cash Dominion Period as to which the Administrative Agent has notified the Borrower, any cash or Cash Equivalents owned by any Borrowing Base Party or Subsidiary Loan Party are deposited to any account, held or invested in any manner, otherwise than in a Blocked Account subject to a Blocked Account Agreement (or a DDA which is swept daily to such Blocked Account), the Administrative Agent will be entitled to require the applicable Borrowing Base Party or Subsidiary Loan Party to close such account and have all funds therein transferred to a Blocked Account;

*provided* that the foregoing will not apply to cash or Cash Equivalents constituting Term Priority Collateral required to be deposited in a blocked account in favor of the lenders under the Term Loan Credit Agreement pursuant to the terms of the Term Loan Credit Agreement; *provided*, further, that the foregoing will not apply to cash or Cash Equivalents deposited, held or invested in any of the following:

- (i) any Excluded Account;
  - (ii) an amount not to exceed \$20,000,000 in the aggregate that is on deposit in a segregated DDA that the Borrower designates in writing to the Agent as being the “uncontrolled cash account” (the “***Designated Disbursement Account***”), which funds will not be funded from, or when withdrawn from the Designated Disbursement Account, will not be replenished by, funds constituting Collateral (or proceeds of Collateral) so long as such Cash Dominion Period continues; or
  - (iii) de minimus cash or cash equivalents from time to time inadvertently misapplied by the Borrower or any Restricted Subsidiary.
- (d) The Loan Parties may close DDAs or Blocked Accounts and/or open new DDAs or Blocked Accounts, subject to the contemporaneous execution and delivery to the Administrative Agent of a DDA Notification or Blocked Account Agreement consistent with the provisions of this Section 5.11; *provided*, that the Loan Parties may close DDAs or open new DDAs that are Excluded Accounts without executing or delivering any such DDA Notification or Blocked Account Agreement. Unless consented to in writing by the Administrative Agent, the Loan Parties will not enter into any agreements with credit card processors unless contemporaneously therewith a Credit Card Notification is executed by a Loan Party or Restricted Subsidiary and a copy thereof is delivered to the Administrative Agent.
- (e) The Dominion Account will at all times be under the sole dominion and control of the Collateral Agent.
- (f) So long as (i) no Event of Default has occurred and is continuing and (ii) no Cash Dominion Period is then in effect, the Loan Parties will have full and complete access to, and may direct the manner of disposition of, funds in the Blocked Accounts.
- (g) Any amounts held or received in the Dominion Account (including all interest and other earnings with respect thereto, if any) at any time (i) after this Agreement has been terminated, the Commitments have been terminated and the Obligations (other than contingent indemnification obligations for which no claim has been asserted) have been paid in full and all Letters of Credit have expired, terminated or been cash collateralized on terms satisfactory to the Issuing Bank or (ii) when all Events of Default have been cured and no Cash Dominion Period is then in effect will be remitted to the Loan Parties as the Borrower may direct.

SECTION 5.13 Lender Calls. Participate in annual and quarterly conference calls with the Administrative Agent and the Lenders, such calls to be held at such time as may be agreed to by the Borrower and the Administrative Agent, but in any event not later than on or prior to the date that is 10 Business Days following the date after which the applicable Required Financial Statements are to be delivered pursuant to Section 5.04(1) and 5.04(2), with a Financial Officer of the Borrower, such other members of senior management of the Borrower as the Borrower deems appropriate, the Lenders and the Lenders' respective representatives and advisors to discuss the state of the Borrower's business, including, but not limited to, recent performance, cash and liquidity management, operational activities, current business and market conditions and material performance changes; *provided* that in no event shall more than one such call be requested in any fiscal quarter (in total with respect to this Agreement and the Term Loan Credit Agreement); *provided, further*, that the requirements set forth in this Section 5.13 may be satisfied with a public earnings call for the applicable period.

SECTION 5.14 Post-Closing Matters.

Deliver to Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, the items described on Schedule 5.14 hereof on or before the dates specified with respect to such items on Schedule 5.14 (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 Term Priority Collateral, in the sole discretion of the administrative agent under the Term Loan 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 5.14 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 and Letters of Credit have expired, terminated or been cash-collateralized on terms satisfactory to the Issuing Bank, unless the Required Lenders otherwise consent in writing, it will not and will not permit any Borrower or any Restricted Subsidiary to:

SECTION 6.01 Indebtedness. Issue, incur or assume any Indebtedness; *provided* that the Borrower, any Borrowing Base Party 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 may not exceed \$75.0 million at any time outstanding.

The foregoing limitation will not apply to (collectively, "**Permitted Debt**"):

- (1) Indebtedness created under the Loan Documents (including Indebtedness created under Incremental Revolving Facility Increases and Extended Commitments);
- (2) (a) Indebtedness incurred pursuant to the Term Loan Credit Agreement (including all Incremental Term Loans, Other Term Loans and Extended Term Loans, in each case, as defined in the Term Loan Credit Agreement); (b) any Incremental Equivalent Term Debt; and (c) Credit Agreement Refinancing Indebtedness (as defined in the Term Loan Credit Agreement); *provided* that the aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (2) (and any successive Permitted Refinancing Indebtedness), as of the date any such Indebtedness is incurred, does not exceed the sum of:
  - (i) \$2,825.0 million; plus
  - (ii) (A) with respect to any such Incremental Term Loans or Incremental Equivalent Term Debt to be secured on a *pari passu* basis to the Term Loans (as defined in the Term Loan Credit Agreement), such amount as would not result in the Senior Secured First Lien Net Leverage Ratio, as of the date of such incurrence, being greater than 4.50 to 1.00; and  
(B) with respect to any such Incremental Term Loans or Incremental Equivalent Term Debt to be secured on a junior basis to the Term Loans (as defined in the Term Loan Credit Agreement), such amount as would not result in the Total Net Leverage Ratio, as of the date of such incurrence, being equal to, or greater than, the Closing Date Total Net Leverage Ratio (but in no event greater than 6.00 to 1.00);

*provided*, that in the case of any Indebtedness in the aggregate principal amount not to exceed \$300.0 million incurred under clause (i) above in reliance on Section 2.18 of the Term Loan Credit Agreement (including any Incremental Term Loans or Incremental Equivalent Term Debt incurred thereunder) (the "Non-Ratio Based Incremental Facility Basket") on the same date as Indebtedness incurred pursuant to either clause (ii)(A) and (ii)(B) above, the First Lien Net Leverage Ratio or the Total Net Leverage Ratio, as applicable, with respect to the amounts incurred under either clause (ii)(A) and (ii)(B), will be calculated without including any such incurrence of Indebtedness under the Non- Ratio Based Incremental Facility Basket pursuant to clause (i) above;

- (3) the Senior Notes issued on the Closing Date, any notes issued in exchange for the Senior Notes pursuant to a registration rights agreement, 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);
- (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) \$125.0 million and (b) 2.25% 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(3) and (4);

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- (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 (other than Section 6.04(18));
- (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 of the Borrower would increase; and
  - (iii) the aggregate principal amount of any such Indebtedness incurred pursuant to this clause (12) 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 this clause (12) (and any successive Permitted Refinancing Indebtedness), may not exceed \$75.0 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, 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) proceeds of Excluded Contributions, (c) proceeds of Cure Amounts and (d) proceeds used prior to the date of incurrence to 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) \$50.0 million and (b) 1.00% 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 not exceed the greater of (a) \$75.0 million and (b) 1.50% 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 the Transactions or any Permitted Investment;
- (25) any Permitted Refinancing Indebtedness incurred to Refinance Indebtedness incurred under clauses (3), (4), (5), (12), (16), (21), (22), this clause (25) or clauses (28), (29) or (30) 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) (a) unsecured Indebtedness of the Borrower or any Restricted Subsidiary so long as (i) immediately after giving effect to the incurrence of such Indebtedness the Payment Conditions are satisfied and (ii) the maturity date and Weighted Average Life to Maturity of such Indebtedness is at least six months after the Latest Maturity Date at the time of incurrence of such Indebtedness, (b) other Indebtedness that is secured on a junior basis; *provided* that such Indebtedness (i) is subject to an intercreditor agreement containing terms that are at least as favorable to the Secured Parties as those contained in the Intercreditor Agreement (as reasonably determined by a Responsible Officer of the Borrower) and (ii) has a maturity date and Weighted Average Life to Maturity that is at least six months after the Latest Maturity Date at the time of incurrence of such Indebtedness and (c) any Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (28) (and any successive Permitted Refinancing Indebtedness);
- (29) Indebtedness incurred in respect of any mortgage financing or similar financing in respect of the Headquarters; and
- (30) additional Indebtedness in an aggregate outstanding principal amount, including all Permitted Refinancing Indebtedness incurred to Refinance any Indebtedness originally incurred pursuant to this clause (30) (and any successive Permitted Refinancing Indebtedness), not to exceed the greater of (a) \$100.0 million and (b) 1.85% of Consolidated Total Assets as of the date any such Indebtedness is incurred.

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 this Agreement and the Term Loan 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 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; *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 securing Indebtedness incurred in accordance with Section 6.01(13) solely encumbering the assets that are the subject of such Indebtedness;
- (5) 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);
- (6) Liens on assets or Equity Interests of Foreign Subsidiaries securing Indebtedness incurred in accordance with Section 6.01(22);
- (7) 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);
- (8) (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;
- (9) Liens on property or assets of any Restricted Subsidiary that is not a Guarantor;
- (10) Liens for Taxes, assessments or other governmental charges or levies not yet delinquent or that are being contested in compliance with Section 5.03;
- (11) 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;
- (12) 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;

- (13) 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;
- (14) (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;
- (15) 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;
- (16) 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;
- (17) 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;
- (18) 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;

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- (19) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights;
  - (20) 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;
  - (21) 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;
  - (22) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;
  - (23) Liens arising from precautionary Uniform Commercial Code financing statements;
  - (24) 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;
  - (25) 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;
  - (26) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition thereof;
  - (27) Liens securing insurance premium financing arrangements;
  - (28) Liens on vehicles or equipment of the Borrower or any of the Restricted Subsidiaries granted in the ordinary course of business;
  - (29) Liens on property or assets used to defease or to satisfy and discharge Indebtedness; *provided* that such defeasance or satisfaction and discharge is not prohibited by this Agreement;
  - (30) 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;

- (31) 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;
- (32) Liens that rank *pari passu* with the Liens securing the Term Loan 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 the lesser of (a) the Closing Date Senior Secured First Lien Net Leverage Ratio and (b) 4.50 to 1.00, subject to appropriate reserves being taken by the Administrative Agent in its Reasonable Credit Judgment; *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 Credit Agreement) and (y) the pricing of such Indebtedness complies with Section 2.18(8) of the Term Loan Credit Agreement;
- (33) Liens that rank junior to the Liens securing both the Obligations and the Term Loan Obligations, if the Total Net Leverage Ratio as of the date on which such Liens are first created is less than or equal to the lesser of (a) the Closing Date Total Net Leverage Ratio and (b) 6.00 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 Credit Agreement) or (y) an intercreditor agreement in form and substance satisfactory to the Administrative Agent;
- (34) Liens securing additional obligations in an aggregate outstanding principal amount not to exceed the greater of (a) \$100.0 million and (b) 1.85% of Consolidated Total Assets as of the date such Liens are first created;
- (35) Liens securing (a) amounts owing to any Qualified Counterparty under any Specified Hedge Agreement and Cash Management Obligations, which amounts are secured under the Loan Documents and (b) Specified Hedge Obligations (as defined in the Term Loan Credit Agreement) and Cash Management Obligations (as defined in the Term Loan Credit Agreement), which amounts are secured under the Term 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; and
- (36) Liens securing Indebtedness incurred in accordance with Section 6.01(29), solely encumbering the Headquarters.

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, (a) in respect of any Sale and Lease-Back Transaction in respect of the Headquarters and (b) in respect of any other property of the Borrower, 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 \$150.0 million, provided that in each case the, the Net Cash Proceeds (as defined in the Term Loan Credit Agreement) are applied in accordance with the Term Loan Credit Agreement to the extent applicable.

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 (including payment of the purchase consideration under the Merger Agreement);
- (2) loans and advances to officers, directors, employees or consultants of any Parent Entity, the Borrower or any Restricted Subsidiary not to exceed \$15.0 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) 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(5) may not exceed the greater of (i) \$25.0 million and (ii) 0.50% 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);
- (4) 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 in such entities 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 following Permitted Acquisitions, may not exceed the greater of (i) \$75.0 million and (ii) 1.50% 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);
- (5) 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(3), may not exceed the greater of (i) \$25.0 million and (ii) 0.50% 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);
- (6) 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;

- (7) 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;
- (8) 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;
- (9) 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;
- (10) Hedge Agreements;
- (11) 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 (11) 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);
- (12) Investments resulting from pledges and deposits that are Permitted Liens;
- (13) intercompany loans among Foreign Subsidiaries and Guarantees by Foreign Subsidiaries permitted by Section 6.01(22);
- (14) 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;
- (15) 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;
- (16) Investments to the extent that payment for such Investments is made with Equity Interests of any Parent Entity;
- (17) Investments consisting of the redemption, purchase, repurchase or retirement of any Equity Interests permitted under Section 6.06;

- (18) 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;
- (19) Guarantees permitted under Section 6.01;
- (20) 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;
- (21) 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;
- (22) 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;
- (23) 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;
- (24) 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 (as defined in the Term Loan Credit Agreement as originally in effect) 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;
- (25) 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;
- (26) 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;
- (27) Investments that are made with Excluded Contributions;
- (28) 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)(a) and Restricted Payments pursuant to Section 6.06(15) does not exceed, as of the date such Investments are made, the greater of (i) \$100.0 million and (ii) 1.85% of Consolidated Total Assets (plus any returns of capital actually received by the respective investor in respect of such Investments);

- (29) 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 \$50.0 million plus an additional \$10.0 million per fiscal year following the fiscal year in which such initial investment was made; and
- (30) additional Investments (including Permitted Acquisitions); *provided* that both immediately before such Investment is made and immediately after giving effect to such Investment, the Payment Conditions are satisfied.

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 clause (a) and this clause (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; or

- (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;
- (2) any sale, transfer or other disposition if:
- (a) at least 75% of the consideration therefor is in the form of cash and Cash Equivalents; and
  - (b) 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) \$125.0 million and (B) 2.25% 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 merger, consolidation or amalgamation in order to effect a Permitted Acquisition; provided that following any such merger, consolidation or amalgamation: (a) involving a Borrowing Base Party, such Borrowing Base Party is the surviving person; and (b), immediately before and immediately after such transaction, the Payment Conditions are satisfied), Permitted Liens, and Restricted Payments permitted by Section 6.06;
- (6) the sale of defaulted receivables in the ordinary course of business and not as part of an accounts receivables financing transaction;
- (7) [Reserved];
- (8) leases, licenses, or subleases or sublicenses of any real or personal property in the ordinary course of business;
- (9) 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;
- (10) acquisitions and purchases made with Below Threshold Asset Sale Proceeds;
- (11) 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; or
- (12) 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 \$10.0 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, 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) Cure Amounts and (c) any such proceeds that are used prior to the date of determination to make a Restricted Payment under Section 6.06(2)(b) or 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) \$20.0 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) Cure Amounts and (c) any such proceeds that are used prior to the date of determination to (1) make a Restricted Payment under Section 6.06(1) or (2) 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 or to pay any amounts pursuant to the Merger Agreement;
- (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 (including Holdings) that files, or to any Parent Entity for the purpose of paying to any other Parent Entity that files, a consolidated U.S. federal consolidated or combined or unitary state 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, 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 federal or state or local income or franchise taxes (including franchise taxes and similar taxes) in an amount not to exceed the liability of Borrower and its relevant subsidiaries for such 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 to 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 Subsidiaries 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 a 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 a 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) [Reserved.];
- (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) 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)(a) and Investments made pursuant to Section 6.04(28) that remain outstanding, not to exceed, as of the date such Restricted Payment is made, \$50.0 million; and
- (16) Restricted Payments; *provided* that both immediately before such Restricted Payment is made and immediately after giving effect thereto, the Payment Conditions are satisfied.

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 \$15.0 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) the Transactions and transactions pursuant to the Transaction Documents 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 the Transactions;
- (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 (x) Junior Financing, or (y) 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) aggregate payments which when taken together with the aggregate amount of payments made with respect to Investments pursuant to Section 6.04(28) and the aggregate Restricted Payments pursuant to Section 6.06(15), do not exceed the greater of (i) \$50.0 million and (ii) 1.00% of Consolidated Total Assets;
  - (b) additional payments if immediately before and immediately after consummation of such payment, the Payment Conditions are satisfied;
  - (c) (i) the conversion or exchange of any Indebtedness into or for Equity Interests of any Parent Entity 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;
  - (d) any conversion or exchange of any Indebtedness into or for Indebtedness incurred (and permitted to be incurred) under Section 6.01 (other than Permitted Debt under clause (1) of the definition thereof), or any payment of Indebtedness with net cash proceeds of any substantially contemporaneous issue of Indebtedness incurred (and permitted to be incurred) under Section 6.01 (other than Permitted Debt under clause (1) of the definition thereof);

- (e) (i) payments of regularly scheduled principal and interest (including capitalized “paid-in-kind” 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 Indebtedness;
  - (f) payments or distributions in respect of all or any portion of such Indebtedness 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 or Borrower, 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 Term Loan Documents;
    - (ii) under the 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), (28), (29) or (30), Indebtedness that is secured on a *pari passu* basis with Indebtedness under the Loan Documents or the Term Loan 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.

SECTION 6.10 Financial Performance Covenant. Upon the occurrence and during the continuance of a Covenant Trigger Event, the Borrower will maintain a Fixed Charge Coverage Ratio of not less than 1.0 to 1.0 measured for the most recent period of four consecutive fiscal quarters for which Required Financial Statements are available (or were required to be furnished) at the time of occurrence of such Covenant Trigger Event, and each subsequent four fiscal quarter period ending during the continuance of such Covenant Trigger Event.

## ARTICLE VII

### Holdings Covenant

SECTION 7.01 Holdings Covenant. Holdings will not, so long as this Agreement is in effect and until the Commitments have been terminated, 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 and Letters of Credit have expired, terminated or been cash-collateralized on terms satisfactory to the Issuing Bank, 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 Revolving Facility, the Term Loan Credit Agreement, other Indebtedness permitted by this Agreement, the Merger Agreement and the other agreements contemplated by the Merger 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 LLC Conversion or any other Transactions on the Closing Date; 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 or deemed made;
- (2) default is made in the payment of any principal of any 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 (other than Swingline Loans that become Revolving Loans in accordance with Article II);
- (3) default is made in the payment of any interest on any Loan or the reimbursement of any L/C Disbursement 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 other Restricted Subsidiary Loan Party or, solely with respect to Article VII, Holdings, of any covenant, condition or agreement contained in (a) Section 5.01(1), 5.05(1), 5.07, 5.08, 5.11 (but only if such default occurs during a Cash Dominion Period), or in Article VI or Article VII or (b) Section 5.04(9) and such default shall continue unremedied for a period of five Business Days (or, after the occurrence and during the continuance of a Liquidity Condition or a Designated Event of Default, two Business Days) following notice thereof from the Administrative Agent to the Borrower;

- (5) default is made in the due observance or performance by the Borrower or any other Restricted Subsidiary Loan Party 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), 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 Borrowing Base Parties or any Restricted Subsidiary fail 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 Loans and termination of the Commitments pursuant to the final paragraph of this Section 8.01;
- (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, any Borrowing Base Party or any of the Material Subsidiaries, or of a substantial part of the property or assets of Holdings, any Borrowing Base Party 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, any Borrowing Base Party or any of the Material Subsidiaries or for a substantial part of the property or assets of Holdings, any Borrowing Base Party or any Restricted Subsidiary; or
  - (c) the winding up or liquidation of Holdings, any Borrowing Base Party 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) any Borrowing Base Party or any Restricted Subsidiary fails to pay one or more final judgments aggregating in excess of (a) if Excess Availability is less than or equal to \$62.5 million as of the date of such judgment, \$25.0 million or (b) if Excess Availability is greater than \$62.5 million as of the date of such judgment, \$50.0 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 any Borrowing Base Party or any other Restricted Subsidiary 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 included in the Borrowing Base or otherwise 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 or take any other action 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, any Borrowing Base Party or any 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 with respect to ~~any the~~ Borrower ~~Party~~ 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 may and, 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) terminate forthwith the Commitments, (B) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the 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; (C) if the Loans have been declared due and payable pursuant to clause (B) above, demand cash collateral pursuant to Section 2.05(11); and (D) 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 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 and the Administrative Agent shall be deemed to have made a demand for cash collateral to the full extent permitted under Section 2.05(11), 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.

SECTION 8.02 Right to Cure. Notwithstanding anything to the contrary contained in Section 8.01, in the event that the Borrower fails (or, but for the operation of this Section 8.02, would fail) to comply with the requirements of the Financial Performance Covenant, until the expiration of the tenth Business Day subsequent to the date the Required Financial Statements are required to be delivered pursuant to Section 5.04(1) or (2) for the applicable fiscal quarter, Holdings shall have the right to issue Permitted Cure Securities for cash or otherwise receive cash contributions to the capital of Holdings, and, in each case, to contribute any such cash to the capital of the Borrower (collectively, the "**Cure Right**") and, upon the receipt by the Borrower of such cash (the "**Cure Amount**") pursuant to the exercise by Holdings of such Cure Right, the Financial Performance Covenant shall be recalculated giving effect to a *pro forma* adjustment by which Consolidated EBITDA shall be increased with respect to such applicable fiscal quarter and any four-quarter period that contains such 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. The resulting increase to Consolidated EBITDA from the application of a Cure Amount shall not result in any adjustment to Consolidated EBITDA or any other financial definition for any purpose under this Agreement other than for purposes of calculating the Financial Performance Covenant. In each four fiscal quarter period there shall be at least two fiscal quarters in which the Cure Right is not exercised and the Cure Right may not be exercised more than five times during the term of this Agreement and, for purposes of this Section 8.02, the Cure Amount shall be no greater than the amount required for purposes of complying with the Financial Performance Covenant. If, after giving effect to the adjustments in this Section 8.02, the Borrower shall then be in compliance with the requirements of the Financial Performance Covenant, the Borrower 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 of the Financial Performance Covenant and any related default that had occurred shall be deemed cured for the purposes of this Agreement.

## ARTICLE IX

### The Agents

#### SECTION 9.01 Appointment.

- (1) Each Lender (in its capacities as a Lender and the Swingline Lender (if applicable) and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) and each Issuing Bank (in such capacities 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 and the Issuing Banks 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 or Issuing Bank'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 the Swingline Lender (if applicable) and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) and each Issuing Bank (in such capacities 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 the Swingline Lender (if applicable) and on behalf of itself and its Affiliates as potential counterparties to Hedge Agreements) and each Issuing Bank (in such capacities 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) and the expiration, termination or cash-collateralization (to the satisfaction of the respective Issuing Bank) of all Letters of Credit;

- (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, the Issuing Banks 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 and Issuing Bank 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 and the Issuing Banks, 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 or Issuing Bank any plan of reorganization, arrangement, adjustment or composition (each, a "**Plan of Reorganization**") affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank 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 and subject to the proviso to the final paragraph of Section 8.01, 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 applicable Maturity Date with respect to any 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, (a) 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 (b) 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:

- (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 or Event of 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 Security Documents;
- (v) the value or the sufficiency of any Collateral; or
- (vi) 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 Credit Event, that by its terms must be fulfilled to the satisfaction of a Lender or any Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Bank 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 (including, after the Discharge of ABL Revolving Claims, the Required Term 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 (including, after the Discharge of ABL Revolving Claims, the Required Term Lenders)), and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Loans.

SECTION 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 (including, after the Discharge of ABL Revolving Claims, the Required Term 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 neither the Agents, Arrangers, Syndication Agents, Senior Managing Agents or Documentation Agents, nor 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, Arrangers, Syndication Agents, Senior Managing Agents and Documentation Agents, that it has,

independently and without reliance upon the Administrative Agent, Arrangers, Syndication Agents, Senior Managing Agents or Documentation Agents, 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 Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent, Arrangers, Syndication Agents, Senior Managing Agents or Documentation Agents, 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 and each Issuing Bank, in each case in its capacity as such (to the extent not reimbursed by Holdings or the Borrower and without limiting the obligation Holdings or the Borrower to do so), in the amount of its pro rata share (based on its aggregate Revolving Facility Credit Exposure and, in the case of the indemnification of each Agent, unused Commitments hereunder; *provided* that the aggregate principal amount of Swingline Loans owing to the Swingline Lender and of L/C Disbursements owing to any Issuing Bank shall be considered to be owed to the Revolving Lenders ratably in accordance with their respective Revolving Facility Credit Exposure) (determined at the time such indemnity is sought), 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 Loans) be imposed on, incurred by or asserted against the Administrative Agent or such Issuing Bank 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 or such Issuing Bank 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 or such Issuing Bank's gross negligence or willful misconduct. The failure of any Lender to reimburse the Administrative Agent or any Issuing Bank, as the case may be, promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the Administrative Agent or such Issuing Bank, as the case may be, as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Administrative Agent or such Issuing Bank, as the case may be, 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 or such Issuing Bank, as the case may be, for such other Lender's ratable share of such amount. The agreements in this Section 9.07 shall survive the payment of the 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 Loans made or renewed by it and with respect to any Letter of Credit issued, or Letter of Credit or Swingline Loan participated in 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. Any such resignation by the Administrative Agent hereunder shall also constitute its resignation as an Issuing Bank and the Swingline Lender, in which case the resigning Administrative Agent (x) shall not be required to issue any further Letters of Credit or make any additional Swingline Loans hereunder and (y) shall maintain all of its rights as Issuing Bank or Swingline Lender, as the case may be, with respect to any Letters of Credit issued by it, or Swingline Loans made by it, prior to the date of such resignation. 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 Loans. 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 shall nevertheless thereupon become effective, and the retiring Administrative Agent hereunder shall, on behalf of the Lenders and the Issuing Bank appoint a successor 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 Arrangers; Syndication Agents; Senior Managing Agents Documentation Agents. None of the Arrangers, Syndication Agents, Senior Managing Agents or Documentation Agents will have any duties, responsibilities or liabilities hereunder in their respective capacities 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, the Administrative Agent, any Issuing Bank as of the Closing Date or the Swingline Lender, 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 or Issuing Bank, to the address, facsimile number, e-mail address or telephone number specified in its Administrative Questionnaire.
- (2) Notices and other communications to the Lenders and any Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender or any Issuing Bank pursuant to Article II if such Lender or any Issuing Bank, as applicable, 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 shall be considered to have been relied upon by the Lenders and each Issuing Bank and shall survive the making by the Lenders of the Loans, the execution and delivery of the Loan Documents and the issuance of the Letters of Credit, 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 Loan or L/C Disbursement or any Fee or any other amount payable under this Agreement or any other Loan Document is outstanding and unpaid or any Letter of Credit is outstanding 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 2.15, 2.17 and 10.05) shall survive the payment in full of the principal and interest hereunder, the expiration of the Letters of Credit 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, Merger Sub 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 Loan Parties, each Agent, each Issuing Bank, 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 (including any affiliate of the Issuing Bank that issues any Letter of Credit), 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), except pursuant to the Merger on the Closing Date pursuant to the Transactions, 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, will be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), 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, any Issuing Bank 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, 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 its Commitments and Revolving 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; and
  - (ii) the Administrative Agent, each Issuing Bank and the Swingline Lender; *provided* that no consent of the Administrative Agent will be required for an assignment of all or any portion of Loan to a Lender, an Affiliate of a Lender or an Approved Fund; and
- (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 Commitments or Loans, the amount of the Commitments or 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 \$5.0 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 for 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, except in the case of an assignment to an Approved Fund, 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); *provided* that such processing and recordation fee shall not be payable in the case of assignments by any Lead Arranger or any Affiliate of the Lead Arrangers;
- (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 2.17;
- (iv) the Assignee will not be the Borrower or any of the Borrower's Affiliates or Subsidiaries; and
- (v) the assignor shall deliver to the Administrative Agent any Note issued to it with respect to the assigned 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 2.15, 2.16, 2.17 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 Commitments of, and principal amount (and stated interest with respect thereto) of the Loans and Revolving L/C Exposure 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 Bank and the Lenders may 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, the Issuing Bank and any Lender (solely with respect to such Lender’s 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 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 and that its Revolving Facility Commitment, and the outstanding balances of its Revolving Loans, in each case, without giving effect to assignments thereof which have not become effective, are as set forth in such Assignment and Acceptance; (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 its Commitments and 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 Borrower, the Administrative Agent, the Issuing Bank 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. 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 2.15, 2.16 and 2.17 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 2.19(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 2.19(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 2.18(4) 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 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 2.15, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant shall not be entitled to the benefits of Section 2.17 to the extent such Participant fails to comply with Section 2.17(5) as though it were a Lender.

- (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 Loans or Commitments with ones having different terms (which would otherwise have been permitted in accordance with Section 10.08(4) if made as new Loans or Commitments), it shall have the option, with the consent of the Administrative Agent and, where relevant, the Swingline Lender and each Issuing Bank, and subject to at least three Business Days' advance notice to the Lenders, instead of repaying the Loans or reducing or terminating the Commitments to be replaced, to (i) require the Lenders to assign such Loans or Commitments to the Administrative Agent or its designees and (ii) 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 Loans and Commitments to be replaced shall be purchased at par (allocated among the Lenders in the same manner as would be required if such Loans were being optionally prepaid or such Commitments were being

optionally reduced or terminated by the Borrower), 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 Loans or Commitments 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, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Commitment of such Disqualified Institution and repay all obligations of the Borrower owing to such Disqualified Institution in connection with such Commitment, (B) [reserved.] 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 lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, 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 under this Agreement (including all or a portion of their Commitments and the Loans owing to them) to Disqualified Institutions if the Borrower has not posted the list of Disqualified Institutions to the Platform.

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, the Arrangers, Syndication Agents, Senior Managing Agents and Documentation Agents in connection with the syndication of Revolving Facility, 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, Issuing Bank and the Swingline Lender) in connection with the 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, the Arrangers, Syndication Agents, Senior Managing Agents and Documentation Agents, 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, the Arrangers, Syndication Agents, Senior Managing Agents and Documentation Agents and, in the case of enforcement of this Agreement, each Lender, Issuing Bank and the Swingline Lender.

- (2) The Borrower agrees to indemnify the Administrative Agent, each Arranger, each Syndication Agent, each Senior Managing Agent, each Documentation Agent, each Lender, each Issuing Bank, the Swingline 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 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, Arrangers, Syndication Agents, Senior Managing Agents or Documentation Agents or their respective Affiliates, in each case, in their capacity or in fulfilling their role as the agent or arranger, syndication agents, senior managing agent or documentation agents or any other similar role under the Revolving Facility (excluding their role as a Lender) to the extent such Persons are otherwise entitled to receive indemnification under this Section 10.05(2) or (B) claims arising out of any act or omission on the part of Holdings, the Borrower or their Restricted Subsidiaries.

- (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 2.17.
- (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 Commitment, any Letter of Credit, any 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 Revolving Lender and each Issuing Bank 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 Revolving Lender or such Issuing Bank to or for the credit or the account of Holdings, any Borrowing Base Party or any Subsidiary Loan Party against any and all of the Obligations of Holdings, any Borrowing Base Party or any Subsidiary Loan Party now or hereafter existing under this Agreement or any other Loan Document held by such Revolving Lender or such Issuing Bank, irrespective of whether or not such Revolving Lender or such Issuing Bank shall have made any demand under this Agreement or such other Loan Document and although such Obligations may be unmatured. The rights of each Revolving Lender and each Issuing Bank under this Section 10.06 are in addition to other rights and remedies (including other rights of set-off) that such Revolving Lender or such Issuing Bank may have, but 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, any Issuing Bank 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, each Issuing Bank 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 2.21, 2.23 and 10.20;

- (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 (or after the Discharge of ABL Revolving Claims, the Required Term 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 (or after the Discharge of ABL Revolving Claims, the Required Term Lenders);

provided, however, that, except as provided in Sections 2.21, 2.23 and 10.20, no such agreement will:

- (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 Loan or any L/C Disbursement, or extend the stated expiration of any Letter of Credit beyond the applicable Maturity Date, without the prior written consent of each Lender adversely directly affected thereby, except as provided in Section 2.05(3) with respect to the expiration of Letters of Credit;
- (ii) increase or extend the Commitment of any Lender or decrease, waive or excuse the Commitment Fees or L/C Participation Fees or other fees of any Lender, Agent or Issuing Bank without the prior written consent of such Lender, Agent or Issuing Bank (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the aggregate Commitments shall not constitute an increase of the Commitments of any Lender);
- (iii) extend any date on which payment of principal or interest on any Loan or any L/C Disbursement or any Fees is due, without the prior written consent of each Lender adversely affected thereby;
- (iv) amend the provisions of Section 2.18 of this Agreement, Section 5.02 of the Collateral Agreement or Section 4.2 of the Intercreditor Agreement or any analogous provision of any of this Agreement or any other Loan Document, in a manner that would by its terms alter the pro rata sharing of payments required thereby or the relative priorities of such payments, without the prior written consent of each Lender adversely affected thereby;
- (v) change the definition of the term "Borrowing Base" or any component definition thereof if as a result thereof the amounts available to be borrowed by the Borrower would be increased, or increase any of the percentages set forth in the definition of "Borrowing Base", without the prior written consent of Lenders which would constitute the Required Lenders if the percentage "50.0%" contained in the definition thereof were changed to "66-2/3%" (such Lenders, the "**Supermajority Lenders**");

*provided* that the foregoing shall not limit the ability of the Administrative Agent to implement, change or eliminate any Reserves in its Reasonable Credit Judgment as permitted hereunder without the prior written consent of any Lenders;

- (vi) amend or modify the provisions of this Section 10.08 or the definition of the term “Supermajority Lenders” or “Required Lenders”, as the case may be, or any other provision hereof specifying the number or percentage of Supermajority Lenders or Required Lenders, as the case may be, 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 applicable Lender;
- (vii) 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 ABL Priority Collateral in the Intercreditor Agreement), unless pursuant to a transaction permitted by this Agreement, or release any of Holdings, any Borrowing Base Party or any Subsidiary Loan Party from their respective obligations as a Borrowing Base Party or Subsidiary Loan Party under this Agreement or from their respective Guarantees under the Collateral Agreement (as applicable), 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 are sold or otherwise disposed of in a transaction permitted by this Agreement, without the prior written consent of each Lender;
- (viii) increase the aggregate Revolving Facility Commitments, other than as provided in Section 2.21, without the prior written consent of each Revolving Lender; or
- (ix) at any time when there is outstanding more than one tranche of Loans, amend, modify or waive any provision of this Agreement which adversely impacts one or more tranches in a manner different than that which applies to one or more other tranches, without the consent of Lenders holding a majority of each tranche of such adversely affected Loans;

*provided* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or an Issuing Bank hereunder without the prior written consent of the Administrative Agent or such Issuing Bank 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 or Issuing Bank, 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) 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 2.21, Extension Amendments in accordance with Section 2.23, and such Incremental Facility Amendments and Extension 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.
- (5) 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 Commitments on substantially the same basis as the Revolving Loans.
- (6) Notwithstanding the foregoing, no consent of any Defaulting Lender will be required other than with respect to any amendment or waiver set forth in clauses (a) through (c) of Section 10.08(2) that directly and adversely affects such Lender.
- (7) 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 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 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. Notwithstanding the foregoing, the Fee Letter shall survive the execution and delivery of this Agreement and remain in full force and effect. 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, 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, each Issuing Bank and each of the Agents agrees (and agrees to cause each of its respective 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 Merger or 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, such Issuing Bank or the Administrative Agent without violating this Section 10.16; or (3) was available to such Lender, such Issuing Bank 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) 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 Revolving Facility 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).

Notwithstanding the foregoing, no such information 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 Arrangers will make available to the Lenders and the Issuing Bank 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 Arrangers, the Issuing Bank 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 Arrangers 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.”

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 a Borrowing Base Party) 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 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 a Borrowing Base Party) 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 this Agreement and the Collateral Agreement (as applicable) 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 this Agreement and the Collateral Agreement (as applicable). 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 all Commitments are terminated Letters of Credit expired, terminated or cash collateralized on terms satisfactory to the Issuing Bank.

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 Term Loan Claims (as defined in the Intercreditor Agreement), the Loan Parties shall not be required to act or refrain from acting under any Security Document with respect to the Term Loan Priority Collateral in any manner that would result in a "Default" or "Event of Default" (as defined in any Term Loan Document) under the terms and provisions of the Term Loan Documents. Each Lender hereunder (i) consents to the subordination of Liens on Term Priority Collateral provided for in the Intercreditor Agreement, (ii) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement and (iii) authorizes and instructs the Administrative Agent to enter into the Intercreditor Agreement as ABL Agent (as defined in the Intercreditor Agreement) and on behalf of such Lender. The foregoing provisions are intended as an inducement to the lenders under the Term Loan 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 (x) Junior Lien Intercreditor Agreement in the form attached hereto or in such other form as may be satisfactory to the Administrative Agent and (y) any other intercreditor agreement as may be contemplated herein or determined by the Administrative Agent to be consistent herewith, in such 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 Junior Lien Intercreditor Agreement or any other 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 Liability of the Issuing Banks. The Borrower assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letter of Credit. Neither any Issuing Bank nor any of its officers or directors shall be liable or responsible for: (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by such Issuing Bank against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, except that the Borrower shall have a claim against such Issuing Bank, and such Issuing Bank shall be liable to the Borrower, to the extent of any

direct, but not consequential, damages suffered by the Borrower that the Borrower prove were caused by (i) such Issuing Bank's willful misconduct or gross negligence as determined in a final, non-appealable judgment by a court of competent jurisdiction in determining whether documents presented under any Letter of Credit comply with the terms of the Letter of Credit or (ii) such Issuing Bank's willful failure to make lawful payment under a Letter of Credit after the presentation to it of a draft and certificates strictly complying with the terms and conditions of the Letter of Credit. In furtherance and not in limitation of the foregoing, such Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

**SECTION 10.22 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 Arrangers are arm's-length commercial transactions between Holdings and the Borrower, on the one hand, and the Agents and the Arrangers, 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 any Borrowing Base Party, Holdings, or any other Person and (b) neither any Agent nor any Arranger has any obligation to any Borrowing Base Party, 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 Arrangers 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 neither any Agent nor 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 Borrowing Base Party and Holdings hereby waives and releases any claims that it may have against the Agents and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**SECTION 10.23 Assumption and Release.**

(1) The Administrative Agent, the Collateral Agent, each Lender, each Issuing Bank, the Swingline Lender, Merger Sub as Initial Borrower, Successor Borrower, Petco Holdings, Inc., as Holdings, agree that, immediately upon consummation of the Merger, pursuant to this Section 10.23, (A) Merger Sub hereby assigns to Petco Animal Supplies, Inc., in its capacity as Successor Borrower, and Successor Borrower hereby expressly, unconditionally and irrevocably assumes all obligations of Merger Sub as "Initial Borrower" and "Borrower" hereunder and of all other obligations and liabilities of Merger Sub under this Agreement and each other Loan Document, in each case as if Merger Sub were never a party hereto or thereto as "Borrower" and (B) Successor Borrower agrees to perform and observe all of the obligations (including, without limitation, all obligations in respect of the Term Loans and other indebtedness), covenants,

agreements, terms, conditions, duties and liabilities of the Initial Borrower as the “Initial Borrower” and “Borrower” under or with respect to this Agreement, any Notes and any of the other Loan Documents to which the Initial Borrower is a party in its capacity as the “Initial Borrower” and “Borrower” as fully as if the Successor Borrower was originally the obligor in respect thereof and the signatory in the capacity of “Borrower” thereto.

(2) The Administrative Agent, the Collateral Agent, each Lender, each Issuing Bank, and the Swingline Lender, agree that, immediately after the assignment of the obligations of the Company as the Initial Borrower on the Closing Date pursuant to this Section 10.23 and the Merger and the LLC Conversion have been completed, the Company, as survivor of the Merger, ceases to be a party to this Agreement and each other Loan Document as a “Borrower,” and Company shall be released from the payment and performance of any and all obligations of a Borrower and from all other obligations and liabilities of a “Borrower” under this Agreement and each other Loan Document, in each case as if it were never a party hereto or thereto in such capacity. For the avoidance of doubt, after giving effect to the assignment of the obligations of the Company as the Initial Borrower on the Closing Date pursuant to this Section 10.23, the Merger and the LLC Conversion, Company’s sole obligations under this Agreement and each other Loan Document shall be as “Holdings” hereunder and thereunder (including any definition or covenant applicable thereto that applies to Holdings in such capacity).

(3) The Successor Borrower hereby represents and warrants to the Administrative Agent, the Collateral Agent and the Lenders that all of the representations and warranties of the Successor Borrower set forth in this Agreement and each of the other Loan Documents are true and correct in all material respects as of the Closing Date, except to the extent such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(4) The Successor Borrower hereby acknowledges that it has reviewed the terms and provisions of this Agreement and consents hereto. The Successor Borrower acknowledges and agrees that each of the Loan Documents to which it is a party or otherwise bound shall continue in full force and effect and that all of its obligations thereunder shall be valid and enforceable and shall not be impaired or limited by the execution or effectiveness of this Agreement.

SECTION 10.24 Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Revolving 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 10.25 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.

SECTION 10.26 Certain ERISA Matters.

- (a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:
- (i) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of an performance of the Loans, the Letters of Credit, the Commitments or this Agreement;
  - (ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) such Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each other 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 the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

*[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.

MERGER SUB:

PET ACQUISITION MERGER SUB LLC (which on the Closing Date shall be merged with and into PETCO HOLDINGS, INC., with PETCO HOLDINGS, INC., surviving such merger as Holdings)  
by PET ACQUISITION LLC, as its sole Member

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

*[Signature Page to ABL Credit Agreement]*

The undersigned hereby confirms that, as a result of its merger with PET ACQUISITION MERGER SUB LLC on the Closing Date, it hereby assumes all of the rights and obligations of PET ACQUISITION MERGER SUB LLC under this Agreement (in furtherance of, and not in lieu of, any assumption or deemed assumption as a matter of law) and hereby agrees to be joined to this Agreement as the Holdings hereunder.

Holdings:

PETCO HOLDINGS, INC.

By \_\_\_\_\_

Name:

Title:

*[Signature Page to ABL Credit Agreement]*

The undersigned hereby confirms that, pursuant to Section 10.23 hereto, it hereby assumes all of the rights and obligations of PET ACQUISITION MERGER SUB LLC as “Initial Borrower” and “Borrower” under this Agreement and hereby agrees to be joined to this Agreement as the Successor Borrower and Borrower hereunder.

Successor Borrower:

PETCO ANIMAL SUPPLIES, INC.

By \_\_\_\_\_

Name:

Title:

*[Signature Page to ABL Credit Agreement]*

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CITIBANK, N.A.,  
as Administrative Agent, Collateral Agent, Issuing Bank,  
Swingline Lender and a Lender

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

*[Signature Page to ABL Credit Agreement]*

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BARCLAYS BANK PLC,  
as a Lender and as Issuing Bank

By \_\_\_\_\_

Name:

Title:

*[Signature Page to ABL Credit Agreement]*

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ROYAL BANK OF CANADA,  
as a Lender and as Issuing Bank

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

*[Signature Page to ABL Credit Agreement]*

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,  
as a Lender

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

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

*[Signature Page to ABL Credit Agreement]*

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NOMURA CORPORATE FUNDING AMERICAS, LLC,  
as a Lender

By \_\_\_\_\_

Name:

Title:

*[Signature Page to ABL Credit Agreement]*

MIHI LLC,  
as a Lender

By \_\_\_\_\_

Name:

Title:

By \_\_\_\_\_

Name:

Title:

*[Signature Page to ABL Credit Agreement]*

**PETCO HEALTH AND WELLNESS COMPANY, INC.  
2020 EMPLOYEE STOCK PURCHASE PLAN**

**1. Purpose**

The purpose of this Petco Health and Wellness Company, Inc. 2020 Employee Stock Purchase Plan (the “**Plan**”) is to provide employees of the Company and its Designated Subsidiaries with an opportunity to purchase Common Stock through accumulated Contributions. The Company’s intention is to have Plan qualify as an “employee stock purchase plan” under Section 423 of the Code. The provisions of the Plan, accordingly, will be construed so as to extend and limit Plan participation in a uniform and nondiscriminatory basis consistent with the requirements of Section 423 of the Code.

**2. Definitions.**

(a) “**Administrator**” means the Compensation Committee of the Board (or any successor committee) or such other committee as designated by the Board to administer the Plan under Section 14.

(b) “**Applicable Laws**” means the requirements relating to the administration of equity-based awards under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where options are, or will be, granted under the Plan.

(c) “**Board**” means the Board of Directors of the Company.

(d) “**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and the rulings and regulations issued thereunder.

(e) “**Common Stock**” means the Class A common stock of the Company, \$0.001 par value per share.

(f) “**Company**” means Petco Health and Wellness Company, Inc., a Delaware corporation, and any successor corporation.

(g) “**Compensation**” means an Eligible Employee’s base salary or base hourly rate of pay before deduction for any salary deferral contributions made by the Eligible Employee to any tax-qualified or nonqualified deferred compensation plan, but excluding commissions, overtime, incentive compensation, bonuses and other forms of compensation. The Administrator, in its discretion, may, on a uniform and nondiscriminatory basis, establish a different definition of Compensation for an Offering Period.

(h) “**Contributions**” means the payroll deductions and any other additional payments that the Administrator may permit to be made by a Participant to fund the exercise of options granted pursuant to the Plan.

(i) “**Designated Subsidiary**” means any Subsidiary that has been designated by the Administrator from time to time in its sole discretion as eligible to participate in the Plan. As of the date of adoption of the Plan, the Designated Subsidiaries consist exclusively of: Petco Animal Supplies Stores, Inc.

(j) “**Eligible Employee**” means any person, including an officer, who is employed by the Company or a Designated Subsidiary. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual is on sick leave or other leave of absence approved by the Company. Where the period of leave exceeds 90 days and the individual’s right to reemployment is not guaranteed either by statute or by contract, the employment relationship shall be deemed to have terminated on the 91st day of such leave. “Eligible Employee” shall not include any person who is a citizen or resident of a foreign jurisdiction if granting them an option under the Plan would violate the law of such jurisdiction, or if compliance with the laws of the jurisdiction would cause the Plan to violate Section 423 of the Code.

(k) “**Employer**” means the Company and each Designated Subsidiary.

(l) “**Enrollment Date**” means the first Trading Day of each Offering Period.

(m) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended, including the rules and regulations promulgated thereunder.

(n) “**Exercise Date**” means the last Trading Day of each Purchase Period.

(o) “**Fair Market Value**” means as of any date, the value of the Common Stock determined as follows: (i) if the Common Stock is listed on any established stock exchange, system or market, its Fair Market Value shall be the closing price for the Common Stock as quoted on such exchange, system or market as reported in the Wall Street Journal or such other source as the Administrator deems reliable (or, if no sale of Common Stock is reported for such date, on the next preceding date on which any sale shall have been reported); and (ii) in the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Administrator.

(p) “**New Exercise Date**” means a new Exercise Date if the Administrator shortens any Offering Period then in progress.

(q) “**Offering**” means an offer under the Plan of an option that may be exercised during an Offering Period as further described in Section 4. For purposes of the Plan, the Administrator may designate separate Offerings under the Plan (the terms of which need not be identical) in which Employees of one or more Employers will participate, even if the dates of the applicable Offering Periods of each such Offering are identical and the provisions of the Plan will separately apply to each Offering. To the extent permitted by Treasury Regulation Section 1.423-2(a)(1), the terms of each Offering need not be identical provided that the terms of the Plan and an Offering together satisfy Treasury Regulation Sections 1.423-2(a)(2) and (a)(3).

(r) “**Offering Periods**” means the periods established by the Administrator (not to exceed 27 months) during which an option granted pursuant to the Plan may be exercised. The duration and timing of Offering Periods may be changed pursuant to Sections 4, 18 and 19. The

first Offering Period shall commence on the date the Common Stock is first publicly traded and end on the last day of the Company's third full fiscal quarter in 2022, and subsequent Offering Periods shall be each twelve-month period (four full fiscal quarters) commencing after the first Offering Period ends.

(s) "**Parent**" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(t) "**Participant**" means an Eligible Employee who elects to participate in the Plan.

(u) "**Purchase Period**" means the period during an Offering Period which shares of Common Stock may be purchased on a Participant's behalf in accordance with the terms of the Plan. During the first Offering Period, the Purchase Period will begin on the date the Common Stock is first publicly traded and end on the last day of the Company's third full fiscal quarter in 2021, and subsequent Purchase Periods shall be each six-month period (two full fiscal quarters) commencing thereafter. Unless the Administrator determines otherwise, each Purchase Period will be a six-month period (two full fiscal quarters).

(v) "**Purchase Price**" means an amount equal to 85% of the Fair Market Value of a share of Common Stock on the Enrollment Date or on the Exercise Date, whichever is lower; provided however, that the Purchase Price may be determined for subsequent Offering Periods by the Administrator subject to compliance with Section 423 of the Code (or any other applicable law, regulation or stock exchange rule) or pursuant to Section 18.

(w) "**Subsidiary**" means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code.

(x) "**Trading Day**" means a day on which the national stock exchange upon which the Common Stock is listed is open for trading or, if the Common Stock is not listed on a national stock exchange, a business day as determined by the Administrator in good faith.

(y) "**Treasury Regulations**" means the Treasury regulations of the Code. Reference to a specific Treasury Regulation or Section of the Code shall include such Treasury Regulation or Section, any valid regulation promulgated under such Section, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such Section or regulation.

### **3. Eligibility.**

(a) *Offering Periods.* Any Eligible Employee on a given Enrollment Date will be eligible to participate in the Plan if he or she was employed by the Company for at least 14 days immediately preceding the Enrollment Date, subject to the requirements of Section 5; provided, however, that an Eligible Employee who commences employment with the Company or a Designated Subsidiary following such 14-day period will be eligible to participate in the Plan at the beginning of the next Purchase Period to occur that is at least 14 days following the commencement of his or her employment with the Company or a Designated Subsidiary. Eligible Employees who do not elect to participate in the Plan on a given Enrollment Date may elect to

participate in the Plan at the beginning of any subsequent Purchase Period as determined by the Administrator.

(b) *Non-U.S. Employees.* Employees who are citizens or residents of a non-U.S. jurisdiction (without regard to whether they also are citizens or residents of the United States or resident aliens (within the meaning of Section 7701(b)(1)(A) of the Code)) may be excluded from participation in the Plan or an Offering if the participation of such Employees is prohibited under the laws of the applicable jurisdiction or if complying with the laws of the applicable jurisdiction would cause the Plan or an Offering to violate Section 423 of the Code. In addition, as provided in Section 14, the Administrator may establish one or more sub-plans of the Plan (which may, but are not required to, comply with the requirements of Section 423 of the Code) to provide benefits to employees of Designated Subsidiaries located outside the United States in a manner that complies with local law. Any such sub-plan will be a component of the Plan and will not be a separate plan.

(c) *Limitations.* Any provisions of the Plan to the contrary notwithstanding, no Eligible Employee will be granted an option under the Plan (i) to the extent that, immediately after the grant, such Eligible Employee (or any other person whose stock would be attributed to such Eligible Employee pursuant to Section 424(d) of the Code) would own capital stock of the Company or any Parent or Subsidiary of the Company and/or hold outstanding options to purchase such stock possessing 5% or more of the total combined voting power or value of all classes of the capital stock of the Company or of any Parent or Subsidiary of the Company, or (ii) to the extent that his or her rights to purchase stock under all employee stock purchase plans (as defined in Section 423 of the Code) of the Company or any Parent or Subsidiary of the Company accrues at a rate, which exceeds \$25,000 worth of stock (determined at the Fair Market Value of the stock at the time such option is granted) for each calendar year in which such option is outstanding at any time, as determined in accordance with Section 423 of the Code and the regulations thereunder.

#### **4. Offering Periods**

The Plan will be implemented by consecutive Offering Periods with new Offering Periods commencing at such times as determined by the Administrator. The Administrator will have the power to change the duration of Offering Periods (including the commencement dates thereof) without stockholder approval.

#### **5. Participation**

An Eligible Employee may participate in the Plan by (i) submitting to the Company's Human Resources department (or its delegate), on or before a date determined by the Administrator prior to an applicable Enrollment Date (or prior to the first day of the applicable Purchase Period, as provided under Section 3(a)), a properly completed subscription agreement authorizing Contributions in the form provided by the Administrator for such purpose, or (ii) following an electronic or other enrollment procedure determined by the Administrator.

#### **6. Contributions**

(a) At the time a Participant enrolls in the Plan pursuant to Section 5, such Participant will elect to have payroll deductions made on each pay day or other Contributions (to the extent

permitted by the Administrator) made during the Offering Period (or portion thereof) in an amount not exceeding 15% of the Compensation (or such other percentage of Compensation as determined by the Administrator in its sole discretion), which he or she receives on each pay day during the Offering Period; provided, however, that should a pay day occur on an Exercise Date, a Participant will have any payroll deductions made on such day applied to his or her notional account under the subsequent Purchase Period or Offering Period. The Administrator, in its sole discretion, may permit all Participants in a specified Offering to contribute amounts to the Plan through payment by cash, check or other means set forth in the subscription agreement prior to each Exercise Date of each Purchase Period. A Participant's subscription agreement will remain in effect for successive Offering Periods unless terminated as provided in Section 10.

(b) Payroll deductions for a Participant will commence on the first pay day following the Enrollment Date (or such later date on which a Participant enrolls in the Plan pursuant to Section 5) and will end on the last pay day prior to the Exercise Date of such Purchase Period to which such authorization is applicable, unless sooner terminated by the Participant as provided in Section 10; provided, however, that with respect to the first Offering Period, payroll deduction for a Participant will not commence until such time as determined by the Administrator.

(c) All Contributions made for a Participant will be credited to his or her notional account under the Plan and payroll deductions will be made in whole percentages only. Except to the extent permitted by the Administrator pursuant to Section 6(a), a Participant may not make any additional payments into such notional account.

(d) A Participant may discontinue his or her participation in the Plan as provided in Section 10. Participants shall not be permitted to increase or to otherwise decrease their rates of Contributions during a Purchase Period unless otherwise determined by the Administrator in its sole discretion; provided, however, Participants shall be permitted to increase or decrease their rates of Contributions effective as of the beginning of each Purchase Period.

(e) Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code, a Participant's Contributions may be decreased to 0% at any time during a Purchase Period. Subject to Section 423(b)(8) of the Code, Contributions will recommence at the rate originally elected by the Participant effective as of the beginning of the first Purchase Period scheduled to end in the following calendar year, unless terminated by the Participant as provided in Section 10.

(f) At the time the option under the Plan is exercised, in whole or in part, or at the time some or all of the Common Stock issued under the Plan is disposed of (or any other time that a taxable event related to the Plan occurs), the Participant must make adequate provision for the Company's or Employer's federal, state, local or any other tax liability payable to any authority including taxes imposed by jurisdictions outside of the United States, national insurance, social security or other tax withholding obligations, if any, which arise upon the exercise of the option or the disposition of the Common Stock (or any other time that a taxable event related to the Plan occurs). At any time, the Company or the Employer may, but will not be obligated to, withhold from the Participant's compensation the amount necessary for the Company or the Employer to meet applicable withholding obligations, including any withholding required to make available to the Company or the Employer any tax deductions or benefits attributable to sale or early

disposition of Common Stock by the Eligible Employee. In addition, the Company or the Employer may, but will not be obligated to, withhold from the proceeds of the sale of Common Stock or any other method of withholding the Company or the Employer deems appropriate to the extent permitted by Treasury Regulation Section 1.423-2(f).

## **7. Grant of Option**

On the Enrollment Date of each Offering Period, each Eligible Employee participating in such Offering Period (or any Purchase Period within such Offering Period) will be granted an option to purchase on each Exercise Date during such Offering Period (at the applicable Purchase Price) up to a number of shares of Common Stock determined by dividing such Eligible Employee's Contributions accumulated prior to such Exercise Date and retained in the Eligible Employee's notional account as of the Exercise Date by the applicable Purchase Price; provided, however, that in no event will an Eligible Employee be permitted to purchase during each Purchase Period more than 5,000 shares of Common Stock (subject to any adjustment pursuant to [Section 18](#)); provided, further, that such purchase will be subject to the limitations set forth in [Sections 3\(c\)](#) and [13](#). The Eligible Employee may accept the grant of such option by electing to participate in the Plan in accordance with the requirements of [Section 5](#). The Administrator may, for future Offering Periods, increase or decrease, in its absolute discretion, the maximum number of shares of Common Stock that an Eligible Employee may purchase during each Purchase Period of an Offering Period. Exercise of the option will occur as provided in [Section 8](#), unless the Participant has withdrawn pursuant to [Section 10](#). The option will expire on the last day of the Offering Period.

## **8. Exercise of Option**

(a) Unless a Participant withdraws from the Plan as provided in [Section 10](#), such Participant's option for the purchase of shares of Common Stock will be exercised automatically on the Exercise Date, and the maximum number of full shares subject to the option will be purchased for such Participant at the applicable Purchase Price with the accumulated Contributions from his or her notional account. No fractional shares of Common Stock will be purchased; unless determined by the Administrator, any Contributions accumulated in a Participant's notional account that are not sufficient to purchase a full share will be retained in the Participant's notional account for the subsequent Purchase Period or Offering Period, subject to earlier withdrawal by the Participant as provided in [Section 10](#). Any other funds left over in a Participant's notional account after the Exercise Date will be returned to the Participant. During a Participant's lifetime, a Participant's option to purchase shares hereunder is exercisable only by him or her.

(b) If the Administrator determines that, on a given Exercise Date, the number of shares of Common Stock with respect to which options are to be exercised may exceed (i) the number of shares of Common Stock that were available for sale under the Plan on the Enrollment Date of the applicable Offering Period, or (ii) the number of shares of Common Stock available for sale under the Plan on such Exercise Date, the Administrator may in its sole discretion (x) provide that the Company will make a pro rata allocation of the shares of Common Stock available for purchase on such Enrollment Date or Exercise Date, as applicable, in as uniform a manner as will be practicable and as it will determine in its sole discretion to be equitable among all Participants exercising options to purchase Common Stock on such Exercise Date, and continue all Offering Periods then in effect, or (y) provide that the Company will make a pro rata allocation of the shares

available for purchase on such Enrollment Date or Exercise Date, as applicable, in as uniform a manner as will be practicable and as it will determine in its sole discretion to be equitable among all participants exercising options to purchase Common Stock on such Exercise Date, and terminate any or all Offering Periods then in effect pursuant to [Section 19](#). The Company may make a pro rata allocation of the shares available on the Enrollment Date of any applicable Offering Period pursuant to the preceding sentence, notwithstanding any authorization of additional shares for issuance under the Plan by the Company's stockholders subsequent to such Enrollment Date.

## **9. Delivery**

As soon as reasonably practicable after each Exercise Date on which a purchase of shares of Common Stock occurs, the Company will arrange the delivery to each Participant of the shares purchased upon exercise of his or her option in a form determined by the Administrator (in its sole discretion) and pursuant to rules established by the Administrator. The Company may permit or require that shares be deposited directly with a broker designated by the Company or to a designated agent of the Company, and the Company may utilize electronic or automated methods of share transfer. The Company may require that shares be retained with such broker or agent for a designated period of time and/or may establish other procedures to permit tracking of disqualifying dispositions of such shares. No Participant will have any voting, dividend, or other stockholder rights with respect to shares of Common Stock subject to any option granted under the Plan until such shares have been purchased and delivered to the Participant as provided in this [Section 9](#).

## **10. Withdrawal**

A Participant may withdraw all, but not less than all, the Contributions credited to his or her notional account and not yet used to exercise his or her option under the Plan at any time by (a) submitting to the Company's human resources department (or its delegate) a written notice of withdrawal in the form determined by the Administrator for such purpose, or (b) following an electronic or other withdrawal procedure determined by the Administrator. All of the Participant's Contributions credited to his or her notional account will be paid to such Participant as soon as reasonably practicable after receipt of notice of withdrawal and such Participant's option for the Offering Period will be automatically terminated, and no further Contributions for the purchase of shares will be made for such Offering Period. If a Participant withdraws from an Offering Period, Contributions will not resume at the beginning of the succeeding Offering Period, unless the Participant re-enrolls in the Plan in accordance with the provisions of [Section 5](#).

## **11. Termination of Employment**

Upon a Participant's ceasing to be an Eligible Employee, for any reason, he or she will be deemed to have elected to withdraw from the Plan and the Contributions credited to such Participant's notional account during the Offering Period but not yet used to purchase shares of Common Stock under the Plan will be returned to such Participant or, in the case of his or her death, to the person or persons entitled thereto under [Section 15](#), and such Participant's option will be automatically terminated.

## 12. Interest

No interest will accrue on the Contributions of a participant in the Plan, except as may be required by Applicable Law, as determined by the Company, and if so required by the laws of a particular jurisdiction, shall apply to all Participants in the relevant Offering except to the extent otherwise permitted by Treasury Regulation Section 1.423-2(f).

## 13. Stock

(a) Subject to adjustment upon changes in capitalization of the Company as provided in Section 18 hereof, the maximum number of shares of Common Stock that will be made available for sale under the Plan will be \_\_\_\_\_ shares of Common Stock.

(b) Until the shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), a Participant will only have the rights of an unsecured creditor with respect to such shares, and no right to vote or receive dividends or any other rights as a stockholder will exist with respect to such shares.

(c) Shares of Common Stock to be delivered to a Participant under the Plan will be registered in the name of the Participant or in the name of the Participant and his or her spouse.

## 14. Administration

The Plan shall be administered by the Administrator. The Board shall fill vacancies on, and from time to time may remove or add members to, the Administrator. Any power of the Administrator may also be exercised by the Board. The Administrator will have full and exclusive discretionary authority to construe, interpret and apply the terms of the Plan, to designate separate Offerings under the Plan, to determine eligibility, to adjudicate all disputed claims filed under the Plan and to establish such procedures that it deems necessary for the administration of the Plan (including, without limitation, to adopt such procedures and sub-plans as are necessary or appropriate to permit the participation in the Plan by employees who are foreign nationals or employed outside the United States, the terms of which sub-plans may take precedence over other provisions of this Plan, with the exception of Section 13(a)), but unless otherwise superseded by the terms of such sub-plan, the provisions of this Plan shall govern the operation of such sub-plan). Unless otherwise determined by the Administrator, the Employees eligible to participate in each sub-plan will participate in a separate Offering. Without limiting the generality of the foregoing, the Administrator is specifically authorized to adopt rules and procedures regarding eligibility to participate, the definition of Compensation, handling of Contributions, making of Contributions to the Plan (including, without limitation, in forms other than payroll deductions), establishment of bank or trust accounts to hold Contributions, payment of interest, conversion of local currency, obligations to pay payroll tax, determination of beneficiary designation requirements, withholding procedures and handling of stock certificates that vary with applicable local requirements. The Administrator also is authorized to determine that, to the extent permitted by Treasury Regulation Section 1.423-2(f), the terms of an option granted under the Plan or an Offering to citizens or residents of a non-U.S. jurisdiction will be less favorable than the terms of options granted under the Plan or the same Offering to employees resident solely in the United States. The Administrator hereby delegates to and designates the Chief Human Resources Officer of the Company (or such

other officer with similar authority), and to his or her delegates or designates, the authority to assist the Administrator in the day-to-day administration of the Plan. The Administrator may also delegate some or all of its responsibilities to one or more other persons (which may include Company personnel) and, to the extent there has been any such delegation, any reference in the Plan to the Administrator shall include the delegate of the Administrator. Every finding, decision and determination made by the Administrator will, to the full extent permitted by Applicable Laws, be final and binding upon all parties.

#### **15. Designation of Beneficiary**

(a) If permitted by the Administrator, a Participant may file a designation of a beneficiary who is to receive any shares of Common Stock and cash, if any, from the Participant's notional account under the Plan in the event of such Participant's death subsequent to an Exercise Date on which the option is exercised but prior to delivery to such Participant of such shares and cash. In addition, if permitted by the Administrator, a Participant may file a designation of a beneficiary who is to receive any cash from the Participant's notional account under the Plan in the event of such Participant's death prior to exercise of the option. If a Participant is married and the designated beneficiary is not the spouse, spousal consent will be required for such designation to be effective.

(b) Such designation of beneficiary may be changed by the Participant at any time by notice in a form determined by the Administrator. In the event of the death of a Participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such Participant's death, the Company will deliver such shares and/or cash to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such shares and/or cash to the spouse or to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

(c) All beneficiary designations will be in such form and manner as the Administrator may designate from time to time. Notwithstanding Sections 15(a) and 15(b), the Company and/or the Administrator may decide not to permit such designations by Participants in non-U.S. jurisdictions to the extent permitted by Treasury Regulation Section 1.423-2(f).

#### **16. Transferability**

Neither Contributions credited to a Participant's notional account nor any rights with regard to the exercise of an option or to receive shares of Common Stock under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided in Section 15) by the Participant. Any such attempt at assignment, transfer, pledge or other disposition will be without effect, except that the Company may treat such act as an election to withdraw funds from an Offering Period in accordance with Section 10 hereof.

#### **17. Use of Funds**

The Company may use all Contributions received or held by it under the Plan for any corporate purpose, and the Company will not be obligated to segregate such Contributions except under

Offerings in which applicable local law requires that Contributions to the Plan by Participants be segregated from the Company's general corporate funds and/or deposited with an independent third party for Participants in non-U.S. jurisdictions. Until shares of Common Stock are issued, Participants will only have the rights of an unsecured creditor with respect to such shares.

#### **18. Adjustments, Dissolution, Liquidation, Merger or Other Corporate Transaction**

(a) *Adjustments.* In the event that any dividend or other distribution (whether in the form of cash, Common Stock, other securities, or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, or exchange of Common Stock or other securities of the Company, or other change in the corporate structure of the Company affecting the Common Stock occurs, the Administrator, in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, will, in such manner as it may deem equitable, adjust the number and class of Common Stock that may be delivered under the Plan, the Purchase Price per share and the number of shares of Common Stock covered by each option under the Plan that has not yet been exercised, and the numerical limits of Sections 7 and 13.

(b) *Dissolution or Liquidation.* In the event of the proposed dissolution or liquidation of the Company, any Offering Period then in progress will be shortened by setting a New Exercise Date, and will terminate immediately prior to the consummation of such proposed dissolution or liquidation, unless provided otherwise by the Administrator. The New Exercise Date will be before the date of the Company's proposed dissolution or liquidation. The Administrator will notify each Participant in writing or electronically, prior to the New Exercise Date, that the Exercise Date for the Participant's option has been changed to the New Exercise Date and that the Participant's option will be exercised automatically on the New Exercise Date, unless prior to such date the Participant has withdrawn from the Offering Period as provided in Section 10.

(c) *Merger or Other Corporate Transaction.* In the event of a merger, sale or other similar corporate transaction involving the Company, each outstanding option will be assumed or an equivalent option substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. In the event that the successor corporation refuses to assume or substitute for the option, the Offering Period with respect to which such option relates will be shortened by setting a New Exercise Date on which such Offering Period shall end. The New Exercise Date will occur before the date of the Company's proposed merger, sale or other similar corporate transaction. The Administrator will notify each Participant in writing or electronically prior to the New Exercise Date, that the Exercise Date for the Participant's option has been changed to the New Exercise Date and that the Participant's option will be exercised automatically on the New Exercise Date, unless prior to such date the Participant has withdrawn from the Offering Period as provided in Section 10.

#### **19. Amendment or Termination**

(a) The Administrator, in its sole discretion, may amend, suspend, or terminate the Plan, or any part thereof, at any time and for any reason. If the Plan is terminated, the Administrator, in its discretion, may elect to terminate all outstanding Offering Periods either immediately or upon completion of the purchase of shares of Common Stock on the next Exercise

Date (which may be sooner than originally scheduled, if determined by the Administrator in its discretion), or may elect to permit Offering Periods to expire in accordance with their terms (and subject to any adjustment pursuant to Section 18). If the Offering Periods are terminated prior to expiration, all amounts then credited to Participants' notional accounts that have not been used to purchase shares of Common Stock will be returned to the Participants (without interest thereon, except as otherwise required under local laws, as further set forth in Section 12) as soon as administratively practicable.

(b) Without stockholder consent and without limiting Section 19(a), the Administrator will be entitled to change the Offering Periods or Purchase Periods, designate separate Offerings, limit the frequency and/or number of changes in the amount withheld during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the Company's processing of properly completed withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each Participant properly correspond with Contribution amounts, and establish such other limitations or procedures as the Administrator determines in its sole discretion advisable that are consistent with the Plan.

(c) In the event the Administrator determines that the ongoing operation of the Plan may result in unfavorable financial accounting consequences, the Administrator may, in its discretion and, to the extent necessary or desirable, modify, amend or terminate the Plan to reduce or eliminate such accounting consequence including, but not limited to:

(i) amending the Plan to conform with the safe harbor definition under the Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto), including with respect to an Offering Period underway at the time;

(ii) altering the Purchase Price for any Offering Period or Purchase Period including an Offering Period or Purchase Period underway at the time of the change in Purchase Price;

(iii) shortening any Offering Period or Purchase Period by setting a New Exercise Date, including an Offering Period or Purchase Period underway at the time of the Administrator action;

(iv) reducing the maximum percentage of Compensation a Participant may elect to set aside as Contributions; and

(v) reducing the maximum number of Shares a Participant may purchase during any Offering Period or Purchase Period.

Such modifications or amendments will not require stockholder approval or the consent of any Plan Participants.

## **20. Notices**

All notices or other communications by a Participant to the Company under or in connection with the Plan will be deemed to have been duly given when received in the form and manner specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

## **21. Conditions Upon Issuance of Shares**

(a) Shares of Common Stock will not be issued with respect to an option unless the exercise of such option and the issuance and delivery of such shares pursuant thereto will comply with all applicable provisions of law, domestic or foreign, including the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, and the requirements of any stock exchange upon which the shares may then be listed, and will be further subject to the approval of counsel for the Company with respect to such compliance.

(b) As a condition to the exercise of an option, the Company may require the person exercising such option to represent and warrant at the time of any such exercise that the shares are being purchased only for investment and without any present intention to sell or distribute such shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned applicable provisions of Applicable Law.

## **22. Term of Plan**

The Plan will become effective upon the earlier to occur of its adoption by the Board or its approval by the stockholders of the Company. It will continue in effect until terminated pursuant to Section 19.

## **23. Stockholder Approval**

The Plan will be subject to approval by the stockholders of the Company within 12 months after the date the Plan is adopted by the Board. Such stockholder approval will be obtained in the manner and to the degree required under Applicable Laws.

## **24. Governing Law**

This Plan and any agreements or other documents hereunder shall be interpreted and construed in accordance with the laws of the State of Delaware and applicable federal law. Any reference in this Plan or in any agreements or other documents hereunder to a provision of law or to a rule or regulation shall be deemed to include any successor law, rule or regulation of similar effect or applicability.

## **25. Severability**

If any provision of the Plan is or becomes or is deemed to be invalid, illegal, or unenforceable for any reason in any jurisdiction or as to any Participant, such invalidity, illegality or unenforceability shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as to such jurisdiction or Participant as if the invalid, illegal or unenforceable provision had not been included.

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## **26. Interpretation**

Headings are given to the Sections and subsections of the Plan solely as a convenience to facilitate reference and shall not be deemed in any way material or relevant to the construction or interpretation of the Plan or any provision thereof. Words in the masculine gender shall include the feminine gender, and where appropriate, the plural shall include the singular and the singular shall include the plural. The use herein of the word “including” following any general statement, term or matter shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation”, “but not limited to”, or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter. References herein to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and not prohibited by the Plan.

**EXHIBIT A**

**PETCO HEALTH AND WELLNESS COMPANY, INC.  
2020 EMPLOYEE STOCK PURCHASE PLAN**

**SUBSCRIPTION AGREEMENT**

\_\_\_\_ Original Application  
\_\_\_\_ Change in Payroll Deduction Rate

Offering Date: \_\_\_\_\_

1. I hereby elect to participate in the Petco Health and Wellness Company, Inc. 2020 Employee Stock Purchase Plan (the "**Plan**") and subscribe to purchase shares of the Company's Common Stock in accordance with this Subscription Agreement and the Plan. Capitalized terms used but not defined in this Subscription Agreement have the meanings provided under the Plan

2. I hereby authorize payroll deductions from each paycheck in the amount of \_\_\_\_% of my Compensation on each payday (from 0% to 15%) during the Offering Period in accordance with the Plan, commencing with the next Offering Period; provided that, in no event may more than \$25,000 of Common Stock be purchased under the Plan in any calendar year. (Please note that no fractional percentages are permitted.)

3. I understand that said payroll deductions will be accumulated for the purchase of shares of Common Stock at the applicable Purchase Price determined in accordance with the Plan. I understand that if I do not withdraw from an Offering Period, any accumulated payroll deductions will be used to automatically exercise my option and purchase Common Stock under the Plan.

4. I have received a copy of the complete Plan and its accompanying prospectus. I understand that my participation in the Plan is in all respects subject to the terms of the Plan.

5. Shares of Common Stock purchased for me under the Plan should be issued in the name(s) of \_\_\_\_\_ (Eligible Employee or Eligible Employee and Spouse only).

6. I understand that if I dispose of any shares received by me pursuant to the Plan within two years after the Offering Date (the first day of the Offering Period during which I purchased such shares), I will be treated for federal income tax purposes as having received ordinary income at the time of such disposition in an amount equal to the excess of the fair market value of the shares at the time such shares were purchased by me over the price that I paid for the shares. I acknowledge and agree that the shares must remain in a brokerage account specified by the Company until at least 12 months following the Exercise Date and may not be sold by me until at least 12 months after the applicable Exercise Date. The Company may, but will not be obligated to, withhold from my compensation the amount necessary to meet any applicable withholding obligation including any withholding necessary to make available to the Company any tax

deductions or benefits attributable to sale or early disposition of Common Stock by me. If I dispose of such shares at any time after the expiration of the two-year holding period, I understand that I will be treated for federal income tax purposes as having received income only at the time of such disposition, and that such income will be taxed as ordinary income only to the extent of an amount equal to the lesser of (a) the excess of the fair market value of the shares at the time of such disposition over the purchase price which I paid for the shares, or (b) 15% of the fair market value of the shares on the first day of the Offering Period. The remainder of the gain, if any, recognized on such disposition will be taxed as capital gain.

7. I hereby agree to be bound by the terms of the Plan. The effectiveness of this Subscription Agreement is dependent upon my eligibility to participate in the Plan.

Employee's Social Security #: \_\_\_\_\_

Employee's Address: \_\_\_\_\_  
\_\_\_\_\_

I UNDERSTAND THAT THIS SUBSCRIPTION AGREEMENT WILL REMAIN IN EFFECT THROUGHOUT SUCCESSIVE OFFERING PERIODS UNLESS TERMINATED BY ME.

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

**EXHIBIT B**

**PETCO HEALTH AND WELLNESS COMPANY, INC.  
2020 EMPLOYEE STOCK PURCHASE PLAN**

**NOTICE OF WITHDRAWAL**

The undersigned participant in the Offering Period of the Petco Health and Wellness Company, Inc. 2020 Employee Stock Purchase Plan that began on \_\_\_\_\_, \_\_\_\_\_ (the "***Offering Date***") hereby notifies the Company that he or she hereby withdraws from the Offering Period. He or she hereby directs the Company to pay to the undersigned as soon as reasonably practicable all the payroll deductions credited to his or her notional account with respect to such Offering Period. The undersigned understands and agrees that his or her option for such Offering Period will be automatically terminated. The undersigned understands further that no further payroll deductions will be made for the purchase of shares in the current Offering Period and the undersigned will be eligible to participate in succeeding Offering Periods only by delivering to the Company a new Subscription Agreement.

Participant's Name: \_\_\_\_\_

Participant's Address: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

**AMENDED AND RESTATED EMPLOYMENT AGREEMENT**

This AMENDED AND RESTATED EMPLOYMENT AGREEMENT (the “**Agreement**” or “**Employment Agreement**”) is made and entered into as of December 3, 2020 to be effective immediately prior to the consummation of the Qualified Public Offering (as defined below) (the date of such consummation, the “**Effective Date**”) by and between Petco Animal Supplies Stores, Inc., a Delaware corporation (“**Petco**” or “**the Company**”), PET Acquisition LLC, a Delaware limited liability company (including its successor, Petco Health and Wellness Company, Inc., “**Parent**”), and Ronald V. Coughlin (“**Executive**”) and supersedes in its entirety that certain employment agreement dated as of June 4, 2018 (such date, the “**Prior Effective Date**”) between the Company and the Executive. Petco, Parent and Executive are hereinafter collectively referred to as the “**Parties**,” and are individually referred to as a “**Party**.” If the Qualified Public Offering does not occur on or before June 30, 2021, this Agreement shall be null and void and the Prior Employment Agreement shall continue in full force and effect.

**RECITALS**

- A. WHEREAS, Petco and the Executive are parties to an employment agreement dated June 4, 2018 (the “**Prior Employment Agreement**”);
- B. WHEREAS, the Board of Managers of Parent (including the Board of Directors of its successor, Petco Health and Wellness Company, Inc., the “**Board**”) believes it is in the best interests of Petco and Parent to amend and restate the Prior Employment Agreement in anticipation of Parent becoming a publicly traded company, and to make certain other changes as set forth herein;
- C. WHEREAS, Petco desires to continue to assure the association and services of Executive in order to retain Executive’s experience, skills, abilities, background and knowledge, and is willing to engage Executive’s services on the terms and conditions set forth in this Agreement; and
- D. WHEREAS, Executive has served as the Chief Executive Officer (“**CEO**”) of Petco since June 13, 2018 (the “**Start Date**”) and Executive desires to continue to serve as the CEO of Petco and Parent and to serve as Chairman of Parent, and is willing to accept such employment on the terms and conditions set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants herein contained, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

**1. EMPLOYMENT.**

1.1 Petco hereby employs Executive, and Executive hereby accepts employment by Petco, upon the terms and conditions set forth in this Agreement, for the period commencing on the Effective Date and ending as provided in Section 4 hereof (the “**Employment Period**”). In addition, while employed by Petco pursuant to this Agreement, Executive shall serve as a member of the Board.

1.2 Executive shall serve as the CEO of Petco and the Chairman and CEO of Parent and shall report to the Board.

1.3 Executive shall do and perform all services, acts or things necessary or advisable to manage and conduct the business of the Company and Parent, consistent with the bylaws of the Company and Parent and as required by the Board, and which are customarily associated with his position as Chairman and CEO.

1.4 Unless the Parties otherwise agree in writing, during the Employment Period, Executive shall perform his services at Petco's offices, located in San Diego, California or such other facilities of the Company as the Company and Executive may agree upon from time to time; provided, however, that the Company may from time to time require Executive to travel temporarily to other locations in connection with the Company's business.

## **2. LOYAL AND CONSCIENTIOUS PERFORMANCE; NONCOMPETITION.**

2.1 During the Employment Period, Executive shall devote his full business energies, interest, abilities and productive time to Petco. This section shall not preclude Executive from managing personal investments, subject to Section 2.3, engaging in civic, charitable or religious activities, or serving on boards of directors of companies or organizations that do not present any conflict with the interests of the Company or otherwise adversely affect the Executive's performance of his duties.

2.2 Except with the prior written consent of the Board, Executive will not, during the Employment Period, compete with the Company, either directly or indirectly, in any manner or capacity, as adviser, consultant, principal, agent, partner, officer, director, employee, member of any association or otherwise, in any phase of developing, manufacturing or marketing any product or service that is in the same field of use or that otherwise competes with a product or service that is offered, is actively under development, or is actively being considered for development by the Company.

2.3 Except as permitted herein, Executive agrees not to acquire, assume or participate in, directly or indirectly, any position, investment or interest that Executive knows or should know is adverse or antagonistic to the Company, its business, clients, strategic partners, investors or prospects. Ownership by Executive, as a passive investment, of less than five percent (5%) of the outstanding shares of capital stock of any corporation with one or more classes of its capital stock listed on a national securities exchange or publicly traded in the over-the-counter market shall not constitute a breach of this paragraph. If common stock in Parent becomes publicly traded on a national securities exchange, ownership by Executive of Parent's common stock shall not constitute a breach of this paragraph, provided that the Executive shall be subject to Parent's insider trading and other similar policies, as may be adopted and in effect from time to time.

### 3. COMPENSATION AND BENEFITS.

3.1 Base Salary. The Company will pay Executive an annual base salary (the “**Base Salary**”) of one million one-hundred thousand dollars (\$1,100,000) per year, payable in accordance with the Company’s standard payroll practices. Such salary shall be prorated for any partial year of employment on the basis of a 365-day fiscal year.

3.2 Executive’s Base Salary shall be reviewed annually and may be increased (but not decreased) in the Company’s sole discretion.

3.3 Withholding. All of Executive’s compensation, including amounts payable pursuant to Section 4.1, shall be subject to withholding taxes, standard deductions and any other employment taxes as are required to be collected or withheld by the Company under applicable law.

3.4 Repayment Obligation. Executive agrees that, if Executive’s employment is terminated by the Company for Cause (as defined below) or Executive resigns without Good Reason (as defined below), in either case, prior to the third anniversary of the Start Date, Executive will promptly repay to the Company two million six hundred sixty-six thousand six hundred sixty-six dollars (\$2,666,666). If Executive fails to repay any portion of any amount owed pursuant to the immediately-preceding sentence, the Company and its affiliates may, subject to Section 409A of the Internal Revenue Code of 1986, as amended (the “**Code**”), withhold any compensation or other payments owed to Executive to the extent necessary to satisfy such repayment obligation.

3.5 Annual Performance Bonus. Executive will be eligible for a bonus payment for each fiscal year of the Company (the “**Annual Performance Bonus**”), with a target bonus of one hundred twenty-five percent (125%) of Executive’s annualized Base Salary for the applicable fiscal year, based on the achievement of specific performance criteria established by the Board in consultation with Executive. The annual bonus earned by Executive shall be paid to Executive in no event later than the later of (i) the 15th day of the third month following the end of the Executive’s taxable year in which such annual bonus is earned or (ii) the 15th day of the third month following the end of the Company’s taxable year in which such bonus is earned. Executive must be actively employed at Petco at the time the bonus is paid in order to be eligible to receive the payment, except as provided in Sections 4.1(b) or 4.1(c).

#### 3.6 Special Performance Bonus; Special RSU Grant.

(a) If the Company’s EBITDA exceeds \$500 million for any two consecutive fiscal years that commence on or after January 2019, Executive shall be paid a cash bonus of Five Million Dollars (\$5,000,000) (the “**Special Performance Bonus**”), subject to his continued employment through the last day of the second such fiscal year, except as provided in Section 4.1(b)(iv) and Section 4.1(c)(iv). Such bonus shall be payable at the same time as the Annual Performance Bonus described in Section 3.5 that is earned for such second fiscal year. For purposes hereof, “EBITDA” means the Company’s earnings before interest, taxes, depreciation and amortization, as determined by the Board in good faith, provided that EBITDA shall be measured and adjusted on the same basis

used by the Company in measuring the Company's adjusted EBITDA for the fiscal year that ended in January 2018, subject to reasonable further adjustments by the Board for acquisitions, dispositions, non-recurring items, and other appropriate circumstances. For the avoidance of doubt, (i) only one Special Performance Bonus may be paid hereunder and (ii) if the Special RSUs described below are not granted (i.e., because a Qualified Public Offering does not occur within thirty (30) days of the last day of the Company's 2020 fiscal year), this paragraph shall continue in effect and Executive shall remain eligible to receive a Special Performance Bonus pursuant to the terms hereof.

(b) Notwithstanding the foregoing, in lieu of the Special Performance Bonus, if a Qualified Public Offering (as defined below) occurs no later than thirty (30) days following the last day of the Company's 2020 fiscal year, Parent shall grant Executive restricted stock units (the "**Special RSUs**") with respect to common stock with a fair market value of \$5,000,000 as of the date of the Qualified Public Offering, as determined by the Board in good faith. Such Special RSUs shall be subject to the Equity Plan and a grant agreement with Executive, and shall fully vest within 30 days after the end of the Company's 2021 fiscal year only if the Company's EBITDA (as determined by the Board in good faith) exceeds \$500 million for the Company's 2021 fiscal year, subject to Executive's continued employment through the last day of such fiscal year except as provided in Section 4.1(b)(iv), Section 4.1(c)(iv) and Section 4.1(d). If the Special RSUs are granted, no Special Performance Bonus shall be payable hereunder. For purposes hereof, "**Qualified Public Offering**" means the sale in an underwritten public offering registered under the Securities Act of 1933, as amended, of shares of the Parent's common stock having an aggregate offering value of at least \$30 million.

3.7 Business Expenses. During the Employment Period, the Company agrees to reimburse Executive for all reasonable and necessary business expenses subject to the Company's standard requirements regarding the reporting and documentation of such expenses.

3.8 Benefits. During the Employment Period, Executive shall, in accordance with Company policy and the terms of any then applicable plan documents, be entitled to participate in the Petco group medical, dental, vision, 401(k), deferred compensation, and flex spending plans and other benefits, in each case, on a basis no less favorable than on which such plans, programs or benefits are provided to the Company's other senior executives from time to time. It is understood that the Company may modify or cancel any or all such plans, programs or benefits in its discretion, consistent with the requirements of state or federal law. Currently these benefits, plans and programs include the elements described in the remainder of Sections 3.9 through 3.14.

3.9 Financial Planning and Tax Services. Financial, investment, estate and tax planning services from AYCO Financial Services (or such other financial services company as may be designated by Executive having an equal or lower cost) will be provided at no cost to Executive.

3.10 Disability and Life Insurance. Short-term and long-term disability insurance, Company-paid Group Term Life Insurance equal to three times Executive's annual earnings up to a maximum of \$1,000,000.00, and AD&D Insurance will be provided at no cost to Executive.

3.11 401(k) Savings Plan. Executive will be eligible to participate in the Company sponsored 401(k) plan, provided that Executive meets all eligibility requirements. Under current plan terms, Executive may elect to contribute up to sixty (60) percent of his salary on a tax-deferred basis (subject to IRS annual contribution limits and any plan discrimination testing limits), and Petco will provide a matching one hundred percent (100%) contribution on the first one percent (1%) and fifty percent (50%) contribution on the next two percent (2%) of Executive's deferred salary contribution.

3.12 Paid Time Off. Executive will be entitled to Paid Time Off (PTO) in accordance with the Company's then existing standard policy for the Company's senior executives. PTO must be taken according to the terms of Petco's policy and Executive shall use such PTO in a manner that is minimally disruptive to Company's business.

3.13 Non-Qualified Deferred Compensation Plan. Executive may contribute up to eighty-five percent (85%) of his base pay and up to one hundred percent (100%) of his bonus pay each calendar year into the Company's non-qualified deferred compensation plan. Petco currently has a discretionary match of \$.50 on each dollar up to a maximum of three percent (3%) of an employee's contribution for base pay and \$.50 on each dollar up to a maximum of six percent (6%) of an employee's contribution for bonus pay.

3.14 Petco Discount and Other Benefits. Executive will be eligible to participate in a number of Petco-sponsored benefits, including a twenty percent (20%) merchandise discount at all Petco stores, discounted pet insurance through Petco's then existing preferred pet insurance vendor, membership privileges at the San Diego County Credit Union, a discount at 24-Hour Fitness Centers, discounted childcare at Children's World Learning Centers, and an annual executive physical through Scripps Executive Health.

3.15 Private Air Travel. Executive will be entitled to private air travel in accordance with Petco's travel policy, as such travel policy may be amended from time to time.

#### 4. TERM

4.1 Petco is an "**at will**" employer and as such, employment with Petco is not for a fixed term or definite period and may be terminated at the will of either party, with or without Cause, and with or without prior notice. No supervisor or other representative of the Company (except the Board) has the authority to enter into any agreement for employment for any specified period of time, or to make any agreement contrary to the preceding sentence. This is the final and complete agreement on this term. Any contrary representations which may have been made or which may be made to Executive are superseded by this Agreement. Upon termination of Executive's employment with Petco for any reason (such cessation of employment, a "**termination**" and the effective date of such termination, the "**termination date**" or "**date of termination**"), he shall automatically be deemed to have resigned from all positions with the Company and its affiliates.

(a) Accrued Obligations. If the Employment Period is terminated by the Company or by Executive for any reason, including as a result of Executive's death or Disability (as defined below), Executive (or Executive's legal representatives or estate, as applicable) shall be entitled to receive his earned but unpaid Base Salary through his termination date plus any accrued but unused PTO and vacation and unreimbursed business expenses through the termination date, in each case, payable within five days following the termination date (or such earlier date required by applicable law), in addition to any other vested employee benefits to which Executive is entitled as of the termination date under the employee benefit plans of the Company.

(b) Covered Termination Other Than During a Change in Control Period. Notwithstanding the at-will nature of the employment relationship between Petco and Executive, if Executive experiences a Covered Termination at any time other than during a Change in Control Period, explicitly conditioned upon Executive's furnishing to the Company, and not revoking, an executed waiver and release of claims (in substantially the form of APPENDIX B, which is attached to this Agreement), in addition to any amounts under Section 4.1(a) herein, Executive shall also be entitled to receive:

(i) A lump sum payment equal to eighteen (18) months of his current Base Salary in effect as of the date of termination, payable thirty (30) days after the date of termination (or, if later, when the release of claims becomes irrevocable, but no later than sixty (60) days after the date of termination);

(ii) A lump sum payment of any unpaid Annual Performance Bonus for a fiscal year ending prior to the date of termination, payable when such Annual Performance Bonus would have otherwise been payable to Executive pursuant to Section 3.5 had Executive's employment not terminated;

(iii) A lump sum payment equal to the pro rata portion of any Annual Performance Bonus that Executive would have been entitled to receive pursuant to Section 3.5 in respect of the fiscal year in which such termination occurs based on the ratio of the number of days employed during such fiscal year to 365, but only to the extent of achievement of the applicable Company performance criteria (disregarding any individual performance criteria) for such Annual Performance Bonus, payable when such Annual Performance Bonus would have otherwise been payable to Executive pursuant to Section 3.5 had Executive's employment not terminated;

(iv) If (A) the Special Performance Bonus has not previously been paid, the Special RSUs have not been granted and such termination occurs in the fiscal year immediately following a fiscal year in which the Company's EBITDA (as determined pursuant to Section 3.6) exceeded \$500 million, Executive shall receive a lump sum payment equal to the pro rata portion of the Special Performance Bonus (if any) that Executive would have been entitled to receive pursuant to Section 3.6 in respect of the fiscal year in which such termination occurs, based on the ratio of the number of days employed during the applicable two consecutive fiscal years to 730, but only to the extent of achievement of the applicable EBITDA performance metric for such second fiscal year, payable when such Special Performance Bonus would have otherwise been payable to Executive pursuant to Section 3.6 had Executive's employment not terminated, or

(B) if the Special RSUs were granted, the termination occurs in the Company's 2021 fiscal year and the Company's EBITDA (as determined pursuant to Section 3.6) exceeds \$500 million for such fiscal year, Executive shall be entitled to pro rata vesting of the Special RSUs that would have vested based on the ratio of the number of days that Executive was employed during fiscal 2021 to 365, vesting at the time the Special RSUs would have vested had Executive's employment not terminated;

(v) With respect to outstanding equity or equity-based awards granted by Parent to Executive and held by Executive on his termination date which vest solely on the basis of service ("**Time-Based Awards**"), effective on Executive's termination date, the portion of each Time-Based Award that would have become vested had Executive remained continuously employed by Petco for an additional twelve (12) months following his termination date shall become vested and exercisable (as applicable); provided, however, that this Section 4.1(b)(v) shall not apply to the Special RSUs or any outstanding Class C common units in Scooby LP, a Delaware limited partnership ("**Scooby**");

(vi) With respect to outstanding equity or equity-based awards granted by Parent to Executive and held by Executive on his termination date which vest on the basis of performance ("**Performance-Based Awards**"), effective on Executive's termination date, Performance-Based Awards with performance periods that end within the twelve (12) month period following his termination date will remain outstanding and eligible to become earned (subject to the applicable performance-based vesting conditions set forth in the applicable grant agreement) as if Executive had remained continuously employed by Petco for an additional twelve (12) months following his termination date; provided, however, that this Section 4.1(b)(vi) shall not apply to the Special RSUs or any outstanding Class C common units in Scooby; and

(vii) Continued medical benefits at the Company's sole expense for a period of eighteen (18) months (the "**Severance Period**"), to the extent Executive elects and remains eligible to continue those benefits under COBRA; provided, that if the Company determines that it cannot provide such continued medical benefits without adverse tax consequences to Executive or the Company or for any other reason, then the Company shall, in lieu thereof, provide to Executive a taxable amount equal to the monthly plan premium payment for such medical benefits in substantially equal monthly installments over the Severance Period (or the remaining portion thereof).

(c) Covered Termination During a Change in Control Period. Notwithstanding the at-will nature of the employment relationship between Petco and Executive, if Executive experiences a Covered Termination during a Change in Control Period, explicitly conditioned upon Executive's furnishing to the Company, and not revoking, an executed waiver and release of claims (in substantially the form of APPENDIX B, which is attached to this Agreement), in addition to any amounts under Section 4.1(a) herein, Executive shall also be entitled to receive:

(i) A lump sum payment equal to two (2) times the sum of (A) Executive's current Base Salary in effect as of the termination date, plus (B) an amount equal to Executive's then current target Annual Performance Bonus; provided, however, that if Executive's Base Salary or target Annual Performance Bonus has been reduced during the sixty (60) day period prior to Executive's termination date, then for purposes of such severance payment calculation the higher Base Salary and/or target Annual Performance Bonus, as applicable, will be used; provided, further, however, that the term "target Annual Performance Bonus" as used in this Section 4.1(c)(i) is intended merely as a method to compute the amount of the severance payment provided for herein. Such lump sum payment shall be payable thirty (30) days after the termination date (or, if later, when the release of claims becomes irrevocable, but no later than sixty (60) days after the termination date);

(ii) A lump sum payment of any unpaid Annual Performance Bonus for a fiscal year ending prior to the termination date, payable when such Annual Performance Bonus would have otherwise been payable to Executive pursuant to Section 3.5 had Executive's employment not terminated;

(iii) A lump sum payment equal to the pro rata portion of any Annual Performance Bonus that Executive would have been entitled to receive pursuant to Section 3.5 in respect of the fiscal year in which such termination occurs based on the ratio of the number of days employed during such fiscal year to 365, but only to the extent of achievement of the applicable Company performance criteria (disregarding any individual performance criteria) for such Annual Performance Bonus, payable when such Annual Performance Bonus would have otherwise been payable to Executive pursuant to Section 3.5 had Executive's employment not terminated;

(iv) If (A) the Special Performance Bonus has not previously been paid, the Special RSUs have not been granted and such termination occurs in the fiscal year immediately following a fiscal year in which the Company's EBITDA (as determined pursuant to Section 3.6) exceeded \$500 million, Executive shall receive a lump sum payment equal to the Special Performance Bonus that Executive would have been entitled to receive pursuant to Section 3.6 in respect of the fiscal year in which such termination occurs, but only to the extent of achievement of the applicable EBITDA performance metric for such second fiscal year, payable when such Special Performance Bonus would have otherwise been payable to Executive pursuant to Section 3.6 had Executive's employment not terminated or (B) if the Special RSUs were granted and the termination occurs in the Company's 2021 fiscal year and the Company's EBITDA (as determined pursuant to Section 3.6) exceeds \$500 million for such fiscal year, Executive shall be entitled to vesting of the Special RSUs at the time the Special RSUs would have vested had Executive's employment not terminated;

(v) Effective on Executive's termination date, full vesting and exercisability (as applicable) of all Time-Based Awards; provided, however, that this Section 4.1(c)(v) shall not apply to the Special RSUs or any outstanding Class C common units in Scooby;

(vi) Effective on Executive's termination date, all Performance-Based Awards will remain outstanding and eligible to become earned (subject to the applicable performance-based vesting conditions set forth in the applicable grant agreement) as if Executive had remained continuously employed by Petco through settlement of the Performance-Based Award; provided, however, that this Section 4.1(c)(vi) shall not apply to the Special RSUs or any outstanding Class C common units in Scooby; and

(vii) Continued medical and/or dental insurance benefits (including family enrollment, if applicable) at the Company's sole expense for the Severance Period, to the extent Executive elects and remains eligible to continue those benefits under COBRA; provided, that if the Company determines that it cannot provide such continued benefits without adverse tax consequences to Executive or the Company or for any other reason, then the Company shall, in lieu thereof, provide to Executive a taxable amount equal to the monthly plan premium payment for such medical and/or dental benefits in substantially equal monthly installments over the Severance Period (or the remaining portion thereof).

(d) Termination Due to Death or Disability. In the event of Executive's termination due to death or Disability, in addition to any amounts under Section 4.1(a) herein, Executive shall also be entitled to receive:

(i) Effective on Executive's termination date, full vesting and exercisability (as applicable) of all Time-Based Awards; provided, however, that this Section 4.1(d)(i) shall not apply to the Special RSUs or any outstanding Class C common units in Scooby;

(ii) Effective on Executive's termination date, all Performance-Based Awards will remain outstanding and eligible to become earned (subject to the applicable performance-based vesting conditions set forth in the applicable grant agreement) as if Executive had remained continuously employed by Petco through settlement of the Performance-Based Award; provided, however, that this Section 4.1(d)(ii) shall not apply to the Special RSUs or any outstanding Class C common units in Scooby; and

(iii) If the Special RSUs were granted and the termination occurs in the Company's 2021 fiscal year and the Company's EBITDA (as determined pursuant to Section 3.6) exceeds \$500 million for such fiscal year, Executive shall be entitled to vesting of the Special RSUs at the time the Special RSUs would have vested had Executive's employment not terminated.

#### 4.2 Section 409A.

(a) To the extent applicable, this Agreement shall be interpreted and applied consistent and in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder. If, however, the Parties determine that any compensation or benefits payable under this Agreement may be or become subject to Section 409A of the Code, the Parties shall cooperate to adopt such amendments to this Agreement or to adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take such other actions, as the Parties determine to be necessary or appropriate to (i) exempt the compensation and benefits payable under this Agreement from Section 409A of the Code and/or preserve the intended tax treatment of such compensation and benefits, or (ii) comply with the requirements of Section 409A of the Code. In furtherance of the foregoing, Executive's date of termination of service with the Company for purposes of determining the date that any payment or benefit that is treated as nonqualified deferred compensation under Section 409A of the Code is to be paid or provided (or in determining whether an exemption to such treatment applies), shall be the date on which Executive has incurred a "**separation from service**" within the meaning of Section 409A(a)(2)(A)(i) and applicable guidance thereunder ("**Separation from Service**"). Notwithstanding any provision of this Agreement to the contrary, to the extent necessary to avoid the imposition of taxes under Section 409A of the Code, no payment or distribution under this Agreement that becomes payable by reason of Executive's termination of employment with the Company will be made to Executive unless Executive's termination of employment constitutes a Separation from Service. In addition, for purposes of this Agreement, each amount to be paid or benefit to be provided shall be construed as a separate identified payment for purposes of Section 409A of the Code. To the extent the Company is required pursuant to this Agreement to reimburse expenses or provide a gross-up for taxes incurred by Executive, and such reimbursement or gross-up obligation is subject to Section 409A of the Code, the Company shall reimburse any such eligible expenses by the end of the calendar year next following the calendar year in which the expense was incurred (and provide the tax gross-up payments no later than the end of the calendar year next following the calendar year in which the related taxes were remitted), subject to any earlier required deadline for payment otherwise applicable under this Agreement. In addition, to the extent any expense reimbursements or in-kind benefits are subject to Section 409A, (x) the amount of expenses reimbursed in one year shall not affect the amount eligible for reimbursement in any subsequent year, and the amount of any in-kind benefits provided in one year shall not affect the amount of in-kind benefits provided in any other year, and (y) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit.

(b) If the Company in good faith determines that Executive is a "**specified employee**" (as defined in Section 409A(a)(2)(B)(i) of the Code) with respect to the payment of benefits or the provision of benefits coverage under this Agreement at the time of his Separation from Service and that the immediate commencement of such payment or provision, as otherwise provided in this Agreement, would constitute a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code, then, to the extent necessary to avoid the imposition of taxes under Section 409A of the Code, notwithstanding any provision to the contrary in this Agreement (and in an effort to spare Executive such additional taxes), the Company shall delay the commencement of payments or benefits coverage to which Executive would otherwise become entitled under this Agreement in connection with Executive's Separation from Service until the earlier of:

- (i) the expiration of the six (6)-month period measured from the date of Executive's Separation from Service, or
- (ii) the date of Executive's death.

Upon expiration of the applicable Code Section 409A(a)(2) deferral period, all payments and benefits deferred pursuant to this provision (whether they would have otherwise been payable in a single sum or in installments in the absence of such deferral) shall be paid or reimbursed to Executive in a lump sum, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.

## 5. DEFINED TERMS.

The following terms referred to in this Agreement shall have the following meanings:

(a) "Cause" shall mean:

(i) Executive's material breach of this Agreement, which breach is not cured within thirty (30) days of receipt by Executive of written notice from the Board specifying the breach, which notice shall be delivered to Executive within ninety (90) days after such breach is discovered by the Board and shall identify the manner in which the Company believes that the Executive has committed such breach and the steps required to cure such breach;

(ii) The willful failure or refusal by Executive to substantially perform his duties hereunder that has not been remedied within thirty (30) business days after written demand for substantial performance has been delivered to Executive by the Company, which demand shall be delivered to Executive within ninety (90) days after the initial existence of such failure or refusal and shall identify the manner in which the Company believes that the Executive has committed such failure or refusal and the steps required to cure such failure or refusal;

(iii) The conviction of Executive of, or the entering of a plea of nolo contendere by Executive with respect to a felony or a misdemeanor involving moral turpitude;

(iv) Executive's inability or failure to competently perform his duties hereunder in any material respect due to the use of drugs or alcohol; or

(v) Executive's material breach of any policy or code of conduct of Petco, Parent or their respective affiliates, which breach, if capable of cure, is not cured within thirty (30) days of receipt by Executive of written notice from the Board specifying the breach, which notice shall be delivered to Executive within ninety (90) days after such breach is discovered by the Board and shall identify the manner in which the Company believes that the Executive has committed such breach and the steps required to cure such breach.

(b) “**Change in Control**” shall have the meaning set forth in the Equity Plan.

(c) “**Change in Control Period**” shall mean the period of time commencing three (3) months prior to and ending eighteen (18) months following a Change in Control.

(d) “**Covered Termination**” shall mean a termination of Executive’s employment with Petco and its affiliates by Petco without Cause or by Executive for Good Reason.

(e) “**Disability**” shall mean that Executive either (i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months or (ii) is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under the Company’s accident and health plan.

(f) “**Equity Plan**” shall mean the Petco Health and Wellness Company, Inc. 2020 Equity Incentive Plan.

(g) “**Good Reason**” shall mean the occurrence, without the express written consent of Executive, of any of the following conditions:

(i) the removal of Executive from the Board for any reason while he is entitled to serve on the Board pursuant to Section 1.1;

(ii) a material diminution in Executive’s authority, duties or responsibilities;

(iii) Executive is required to report to any person or body other than the Board;

(iv) a material diminution in Executive’s Base Salary or target bonus amount;

(v) the relocation of Executive’s own office to a location more than thirty (30) miles from its present location;

(vi) the failure of the Company to obtain the assumption in writing of its obligation to perform this Agreement by any successor to all or substantially all of the assets of the Company, whether direct or indirect by a merger, consolidation, sale or similar transaction, unless such assumption occurs by operation of law; or

(vii) any other action or inaction that constitutes a material breach by the Company of the Agreement.

If Executive intends to resign for Good Reason for one or more of the conditions listed above, Executive shall give notice of such intent to the Company within ninety (90) days after the initial existence of such condition, detailing such condition with specificity. If the Company does not remedy the condition within thirty (30) days of receiving such notice, then any resignation by Executive from the Company within the one hundred eighty (180)-day period beginning with the initial existence of such foregoing condition shall be deemed a resignation for “Good Reason.”

## 6. AMENDMENT AND WAIVER.

6.1 The provisions of this Agreement may be amended or waived only with the prior written consent of the Company and Executive, and no course of conduct or failure or delay in enforcing the provisions of this Agreement shall affect the validity, binding effect or enforceability of this Agreement.

## 7. CONFIDENTIAL AND PROPRIETARY INFORMATION; NONSOLICITATION.

7.1 Executive agrees to execute and abide by the Proprietary Information and Inventions Agreement attached hereto as APPENDIX A.

7.2 Executive recognizes that his employment with the Company will involve contact with information of substantial value to the Company, which is not generally known in the trade, and which gives the Company an advantage over its competitors who do not know or use it, including but not limited to, techniques, designs, drawings, processes, inventions, developments, equipment, prototypes, sales and customer information, and business and financial information relating to the business, products, practices and techniques of the Company, (hereinafter referred to as “**Confidential and Proprietary Information**”). Executive will at all times regard and preserve as confidential such Confidential and Proprietary Information obtained by Executive from whatever source and will not, either during his employment with the Company or thereafter, publish or disclose any part of such Confidential and Proprietary Information in any manner at any time, or use any Confidential and Proprietary Information except on behalf of the Company, without the prior written consent of the Company.

7.3 While employed by the Company and for one (1) year thereafter, the Executive agrees that in order to protect the Company’s Confidential and Proprietary Information from unauthorized use, that Executive will not, either directly or through others, (i) solicit or attempt to solicit any employee, consultant or independent contractor of the Company to terminate his or her relationship with the Company in order to become an employee, consultant or independent contractor to or for any other person or business entity; or (ii) use the Company’s trade secrets or confidential information to solicit or attempt to solicit the business of any customer, vendor or distributor, partner or strategic alliance of the Company which, at the time of termination or one (1) year immediately prior thereto, was doing business with the Company.

7.4 Notwithstanding any other provision in this Agreement or the Proprietary Information and Inventions Agreement, Executive understands and acknowledges that, pursuant to Section 7 of the Defend Trade Secrets Act of 2016 (which added 18 U.S.C. § 1833(b)), Executive shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (A) (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. If Executive files a lawsuit for retaliation by Petco for reporting a suspected violation of law, Executive may disclose the Company's trade secrets to Executive's attorney and use the trade secret information in the court proceeding if Executive: (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order. Nothing in this Agreement or the Proprietary Information and Inventions Agreement is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by such Section.

#### **8. INDEMNIFICATION.**

Parent will indemnify Executive pursuant to Parent's bylaws and the terms of that certain Indemnification Agreement to be entered into between Parent and Executive in connection with the Qualified Public Offering and provide Executive with directors and officers insurance obtained by Parent, insuring Executive against insurable events which occur or have occurred or may occur while Executive is a director of Parent or employed by the Company or any of its affiliates, on terms and conditions that are at least as favorable as that then provided to other directors and officers of Parent. This Section shall survive for 6 years following termination of the Employment Period.

#### **9. LEGAL FEES.**

The Company shall reimburse Executive for reasonable legal fees of up to \$20,000 actually incurred by Executive in connection with the preparation and execution of this Agreement; provided, that Executive furnishes the Company with reasonable written supporting documentation with respect to such legal fees.

#### **10. ASSIGNMENT AND BINDING EFFECT.**

This Agreement shall be binding upon and inure to the benefit of Executive and Executive's heirs, executors, personal representatives, assigns, administrators and legal representatives. Due to the unique and personal nature of Executive's duties under this Agreement, neither this Agreement nor any rights or obligations under this Agreement shall be assignable by Executive. This Agreement shall be binding upon and inure to the benefit of the Company and its successors, assigns and legal representatives. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company, to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

## 11. NOTICES.

11.1 All notices or demands of any kind required or permitted to be given by the Company or Executive under this Agreement shall be given in writing and shall be personally delivered (and receipted for), e-mailed (delivery receipt requested), or mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Company:

PETCO Animal Supplies Stores, Inc.  
10850 Via Frontera  
San Diego, CA 92127  
Attn: Chief Legal Officer

with a copy (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166  
Attention: Sean P. Griffiths

**If to Executive:** At the address reflected in the Company's payroll records.

Any such written notice shall be deemed received when personally delivered, when delivered by e-mail or three (3) days after its deposit in the United States mail as specified above. Either Party may change its address for notices by giving notice to the other Party in the manner specified in this section.

## 12. CHOICE OF LAW.

This Agreement is made in San Diego, California. The parties agree that it shall be construed and interpreted in accordance with the laws of the State of California, regardless of the choice of law's provisions of such state or any other jurisdiction.

## 13. INTEGRATION.

This Agreement contains the complete, final and exclusive agreement of the Parties relating to the subject matter of this Agreement, and supersedes all prior oral and written employment agreements or arrangements between the Parties unless otherwise expressly referenced above.

**14. AMENDMENT.**

This Agreement cannot be amended or modified except by a written agreement signed by Executive and a duly authorized representative of the Board.

**15. WAIVER.**

No term, covenant or condition of this Agreement or any breach thereof shall be deemed waived, except with the written consent of the Party against whom the waiver is claimed, and any waiver or any such term, covenant, condition or breach shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other term, covenant, condition or breach.

**16. SEVERABILITY.**

The finding by a court or arbitrator of the unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid or illegal. Such court shall have the authority to modify or replace the invalid or unenforceable term or provision with a valid and enforceable term or provision that will most accurately represent the parties' intention with respect to the invalid or unenforceable term or provision.

**17. INTERPRETATION; CONSTRUCTION.**

The headings set forth in this Agreement are for convenience of reference only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Company, but Executive has been encouraged, and has consulted with, his own independent counsel with respect to the terms of this Agreement. The Parties acknowledge that each Party and its counsel has reviewed and revised, or had an opportunity to review and revise, this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

**18. REPRESENTATIONS AND WARRANTIES.**

Executive represents and warrants that he is not restricted or prohibited, contractually or otherwise, from entering into and performing each of the terms and covenants contained in this Agreement, and that his execution and performance of this Agreement will not violate or breach any other agreements between Executive and any other person or entity.

## 19. ARBITRATION.

19.1 The Parties agree to arbitrate any dispute, claim, or controversy (“**Claim**”) including, but not limited to, claims of employment discrimination and harassment under Title VII of the Civil Rights Act, as amended, and the California Fair Employment & Housing Act, age discrimination under the Age Discrimination in Employment Act, as amended, the Americans with Disabilities Act, 42 U.S.C. section 1981, the Employment Retirement Income Security Act, the California Labor Code, breach of employment contract or the implied covenant of good faith and fair dealing, wrongful discharge, or tortious conduct (whether intentional or negligent) including defamation, misrepresentation, fraud, infliction of emotional distress, but excluding claims for workers’ compensation benefits or unemployment insurance or claims for wages before the California Department of Industrial Relations.

19.2 The arbitration shall be conducted by a single neutral arbitrator in accordance with the rules issued by the American Arbitration Association (“**AAA**”) for resolution of employment disputes. The arbitration shall take place in the City of San Diego. The Company will pay the fee for the arbitration proceeding, as well as any other charges by the AAA.

19.3 The Arbitrator shall issue a written decision or award. The decision or award of the arbitrator shall be final and binding upon the Parties. The arbitrator shall have the power to award any type of relief that would be available in a court of competent jurisdiction. Any award may thereafter be entered as a judgment in any court of competent jurisdiction. Executive agrees that any relief to which he is entitled arising out of his employment or cessation of that employment shall be limited to that awarded by the arbitrator.

19.4 Executive agrees to file any demand for arbitration within the time limit established by the applicable statute of limitations for the asserted claims. Failure to demand arbitration within the prescribed time period shall result in waiver of any claims.

19.5 A court or arbitrator construing this Agreement may modify, or interpret it to the extent and such manner as to render it enforceable.

19.6 Executive has agreed to this arbitration provision in consideration of his employment by the Company and upon consultation with private counsel of his choice.

19.7 EXECUTIVE HAS READ AND UNDERSTANDS THIS SECTION 19 WHICH DISCUSSES ARBITRATION. EXECUTIVE UNDERSTANDS THAT BY SIGNING THIS AGREEMENT, EXECUTIVE AGREES TO SUBMIT ANY FUTURE CLAIMS ARISING OUT OF, RELATED TO, OR IN CONNECTION WITH EXECUTIVE’S EMPLOYMENT OR TERMINATION THEREOF, OR THE INTERPRETATION, VALIDITY, CONSTRUCTION, PERFORMANCE OR BREACH OF THIS AGREEMENT, TO BINDING ARBITRATION, AND THAT THIS ARBITRATION CLAUSE CONSTITUTES A WAIVER OF EXECUTIVE’S RIGHT TO A JURY TRIAL AND RELATES TO THE RESOLUTION OF ALL DISPUTES RELATING TO ALL RESPECTS OF THE EMPLOYER/EXECUTIVE RELATIONSHIP, INCLUDING BUT NOT LIMITED TO, DISCRIMINATION CLAIMS.

**20. LITIGATION COSTS.**

Should any litigation, arbitration, or administrative action be commenced between the Parties or their personal representatives concerning any provision of this Agreement or the rights and duties of any person in relation to this Agreement, the Party or Parties prevailing in such action shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for that Party's attorney's fees, which shall be determined by the court, arbitrator, or administrative agency.

**21. TRADE SECRETS OF OTHERS.**

It is the understanding of both the Company and Executive that Executive shall not divulge to the Company and/or its subsidiaries any confidential information or trade secrets belonging to others, including Executive's former employers, nor shall the Company and/or its affiliates seek to elicit from Executive any such information. Consistent with the foregoing, Executive shall not provide to the Company and/or its affiliates, and the Company and/or its affiliates shall not request, any documents or copies of documents containing such information.

**22. SECTION 280G.**

Notwithstanding anything to the contrary in this Agreement, if Executive is a "disqualified individual" (as defined in Section 280G(c) of the Code), and the payments and benefits provided for in this Agreement, together with any other payments and benefits which Executive has the right to receive from Petco, Parent or any of their affiliates, would constitute a "parachute payment" (as defined in Section 280G(b)(2) of the Code), then the payments and benefits provided for in this Agreement shall be either (a) reduced (but not below zero) so that the present value of such total amounts and benefits received by Executive from Petco, Parent and their affiliates will be one dollar (\$1.00) less than three times Executive's "base amount" (as defined in Section 280G(b)(3) of the Code) such that no portion of such amounts and benefits received by Executive shall be subject to the excise tax imposed by Section 4999 of the Code or (b) paid in full, whichever produces the better net after-tax position to Executive (taking into account any applicable excise tax under Section 4999 of the Code and any other applicable taxes). The reduction of payments and benefits hereunder, if applicable, shall be made by reducing, first, payments or benefits to be paid in cash hereunder in the order in which such payment or benefit would be paid or provided (beginning with such payment or benefit that would be made last in time and continuing, to the extent necessary, through to such payment or benefit that would be made first in time) and, then, reducing any benefit to be provided in-kind hereunder or otherwise in a similar order. The determination as to whether any such reduction in the amount of the payments and benefits provided hereunder is necessary shall be made by a nationally recognized accounting or consulting firm retained by Petco at Petco's expense. If a reduced payment or benefit is made or provided and through error or otherwise that payment or benefit, when aggregated with other payments and benefits from Petco, Parent or their affiliates used in determining if a "parachute payment" exists, exceeds one dollar (\$1.00) less than three times Executive's base amount, then Executive shall immediately repay such excess to Petco, Parent or their affiliate, as applicable, upon notification that an overpayment has been made.

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Nothing in this Section 22 shall require Petco or Parent to be responsible for, or have any liability or obligation with respect to, Executives' excise tax liabilities under Section 4999 of the Code.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written to be effective on the Effective Date.

**EXECUTIVE**

/s/ Ronald V. Coughlin

Ronald V. Coughlin

**PETCO ANIMAL SUPPLIES STORES, INC.**

By: /s/ Michelle Bonfilio

Name: Michelle Bonfilio

Title: Chief Human Resources Officer

**PET ACQUISITION LLC**

By: /s/ Michelle Bonfilio

Name: Michelle Bonfilio

Title: Chief Human Resources Officer

SIGNATURE PAGE To  
AMENDED AND RESTATED EMPLOYMENT AGREEMENT

November 20, 2020

Securities and Exchange Commission  
Washington, D.C. 20549

Ladies and Gentlemen:

We were previously principal accountants for Petco Holdings, Inc. LLC (“Petco Holdings”), a consolidated, wholly owned subsidiary of PET Acquisition LLC (“PET Acquisition”), and, under the date of March 23, 2020, we reported on the consolidated financial statements of Petco Holdings as of and for the fiscal years ended February 2, 2019 and February 1, 2020. On July 6, 2020, we were dismissed as Petco Holdings’ auditor. We have read PET Acquisition’s statements included in its Form S-1 dated November 20, 2020, and we agree with such statements, except we are not in a position to agree or disagree with PET Acquisition’s statements regarding that (a) the appointment of Ernst & Young LLP (“Ernst & Young”) was approved by PET Acquisition’s audit committee on July 17, 2020 for Petco Holdings and on September 30, 2020 for PET Acquisition and (b) Ernst & Young was not consulted regarding either the application of accounting principles to a specified transaction or the type of opinion that might be rendered on Petco Holdings’ consolidated financial statements.

Very truly yours,

/s/ KPMG LLP

**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 December 3, 2020, in the Registration Statement (Form S-1) and related Prospectus of PET Acquisition LLC for the registration of shares of its common stock.

/s/ Ernst & Young LLP

San Diego, California  
December 3, 2020