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

FORM 10-K

(Mark One)

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

For the fiscal year ended February 3, 2024

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM TO**

Commission File Number 001-39878

Petco Health and Wellness Company, Inc.
(Exact name of Registrant as specified in its Charter)

Delaware	**81-1005932**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
10850 Via Frontera San Diego, California	**92127**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (858) 453-7845

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A Common Stock, par value $0.001 per share	WOOF	The Nasdaq Stock Market LLC

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

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

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

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

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

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

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

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

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

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES ☐ NO ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant, based on the closing price of the Common Stock on The Nasdaq Global Select Market on July 28, 2023, the last business day of the registrant's most recently completed second fiscal quarter, was approximately $687 million.

The number of shares of registrant's Class A Common Stock outstanding as of March 28, 2024 was 231,786,223.

The number of shares of registrant's Class B-1 Common Stock outstanding as of March 28, 2024 was 37,790,781.

The number of shares of registrant's Class B-2 Common Stock outstanding as of March 28, 2024 was 37,790,781.

Auditor Firm Id: 42 Auditor Name: Ernst & Young LLP Auditor Location: San Diego, California

DOCUMENTS INCORPORATED BY REFERENCE

The information required by Part III of this Annual Report on Form 10-K, to the extent not set forth herein, is incorporated herein by reference from the registrant's definitive proxy statement to be filed pursuant to Regulation 14A in connection with the registrant's 2024 annual meeting of stockholders within 120 days after the end of the fiscal year to which this Annual Report on Form 10-K relates.

Table of Contents

Note on the Presentation

Unless otherwise indicated or the context otherwise requires, references in this Annual Report on Form 10-K to (i) "Petco," "our company," "we," "our," and "us," or like terms, refer to Petco Health and Wellness Company, Inc. and/or its subsidiaries, individually and/or collectively, and (ii) "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, as amended, and our second amended and restated bylaws, respectively.

We are currently indirectly controlled by certain funds (the "CVC Funds") that are advised and/or managed by CVC Capital Partners ("CVC") and Canada Pension Plan Investment Board, a Canadian company (together with its affiliates, "CPP Investments" and, together with the CVC Funds, our "Sponsors"). Our Sponsors primarily exercise their control through Scooby Aggregator, LP (our "Principal Stockholder").

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 2023 refer to the fiscal year beginning January 29, 2023 and ending February 3, 2024.

Industry and Market Data

This Annual Report on Form 10-K includes market data and forecasts with respect to the pet care industry. Although we are responsible for all of the disclosure contained in this Annual Report on Form 10-K, 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 Annual Report on Form 10-K are based on independent industry publications, government publications, reports by market research firms or other published independent sources, such as 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" in Part I, Item 1A of this Annual Report on Form 10-K. As a result, although we believe that these sources are reliable, we have not independently verified the information.

Cautionary Note Regarding Forward-Looking Statements

This Annual Report on Form 10-K contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, as contained in Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), 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, including, but not limited to, statements regarding: our expectations with respect to our revenue, expenses, profitability, and other operating results; our growth plans; our ability to compete effectively in the markets in which we participate; the execution on our transformation initiatives; and the impact of certain macroeconomic factors, including inflationary and interest rate pressures, consumer spending patterns, global supply chain constraints, and global economic and geopolitical developments, on our business. Forward-looking and other statements in this Annual Report on Form 10-K may also address our progress, plans, and goals with respect to sustainability initiatives, and the inclusion of such statements is not an indication that these contents are necessarily material to investors or required to be disclosed in our filings with the U.S. Securities and Exchange Commission. Such plans and goals may change, and statements regarding such plans and goals are not guarantees or promises that they will be met. In addition, historical, current, and forward-looking sustainability-related statements may be based on standards for measuring progress that are still developing, internal controls and processes that continue to evolve, and assumptions that are subject to change in the future.

Such forward-looking statements can generally be identified by the use of forward-looking terms such as "believes," "expects," "may," "intends," "will," "shall," "should," "anticipates," "opportunity," "illustrative", or the negative thereof or other variations thereon or comparable terminology. 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 or that any forward-looking results will occur or be realized. Nothing contained in this Annual Report on Form 10-K is, or should be relied upon as, a promise or representation or warranty as to any future matter, including any matter in respect of our operations or business or financial condition. All forward-looking statements are based on current expectations and assumptions about future events that may or may not be correct or necessarily take place and that are by their nature subject to significant uncertainties and contingencies, many of which are outside of our control.

Forward-looking statements are subject to many risks, uncertainties, and other factors that could cause actual results or events to differ materially from the potential results or events discussed in such forward-looking statements, including, without limitation, those identified in this Annual Report on Form 10-K as well as the following: (i) increased competition (including from multi-channel retailers, mass and grocery retailers, and e-Commerce providers); (ii) reduced consumer demand for our products and/or services; (iii) our reliance on key vendors; (iv) our ability to attract and retain qualified employees; (v) risks arising from statutory, regulatory and/or legal developments; (vi) macroeconomic pressures in the markets in which we operate, including inflation and prevailing interest rates; (vii) failure to effectively manage our costs; (viii) our reliance on our information technology systems; (ix) our ability to prevent or effectively respond to a privacy or security breach; (x) our ability to effectively manage or integrate strategic ventures, alliances, or acquisitions and realize the anticipated benefits of such transactions; (xi) economic or regulatory developments that might affect our ability to provide attractive promotional financing; (xii) business interruptions and other supply chain issues; (xiii) catastrophic events, political tensions, conflicts and wars (such as the ongoing conflicts in Ukraine and the Middle East), health crises, and pandemics; (xiv) our ability to maintain positive brand perception and recognition; (xv) product safety and quality concerns; (xvi) changes to labor or employment laws or regulations; (xvii) our ability to effectively manage our real estate portfolio; (xviii) constraints in the capital markets or our vendor credit terms; (xix) changes in our credit ratings; (xx) impairments of the carrying value of our goodwill and other intangible assets; (xxi) our ability to successfully implement our operational adjustments, achieve the expected benefits of our cost action plans, and drive improved profitability; and (xxii) the other risks, uncertainties, and other factors identified herein under "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations." The occurrence of any such factors could significantly alter the results set forth in these statements.

We caution that the foregoing list of risks, uncertainties, and other factors is not complete, and forward-looking statements speak only as of the date they are made. We undertake no duty to update publicly any such forward-looking statement, whether as a result of new information, future events, or otherwise, except as may be required by applicable law, regulation, or other competent legal authority.

In addition, statements such as "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 Annual Report on Form 10-K. 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.

Risk Factors Summary

Investing in our securities involves a high degree of risk. The following is a summary of the principal factors that make an investment in our securities speculative or risky, all of which are more fully described below in the section titled "Risk Factors." This summary should be read in conjunction with the "Risk Factors" section and should not be relied upon as an exhaustive summary of the material risks facing our business. In addition to the following summary, you should consider the information set forth in the "Risk Factors" section and the other information contained in this Annual Report on Form 10-K before investing in our securities.

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.
- 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.
- 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 have experienced 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.
- 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.
- 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.
- 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.
- Our quarterly operating results may fluctuate due to the timing of expenses, new pet care center openings, pet care center closures, and other factors.
- Pet consumables safety, quality, and health concerns could adversely affect our business.
- Failure to attract and retain quality employees and experienced management personnel could adversely affect our performance.
- Our results may be adversely affected by serious disruptions or catastrophic events, including public health issues, geopolitical events, and severe weather.

Risks Related to Legal and Regulatory Matters

- 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.
- 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.
- 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.
- We are party to routine litigation arising in the ordinary course of 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 subject to environmental, health, and safety laws and regulations that could result in costs to us.
- 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.
- Our aspirations, goals, and initiatives related to sustainability, and our public statements and disclosures regarding them, expose us to numerous risks.

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.
- The agreements governing our indebtedness include restrictive covenants that limit our operating flexibility, which could harm our long-term interests.
- Our failure to comply with the covenants contained in the credit agreements for the First Lien Term Loan and ABL Revolving Credit Facility, 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.
- The amount of borrowings permitted under the ABL Revolving Credit Facility may fluctuate significantly, which may adversely affect our liquidity, results of operations, and financial position.
- 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.

Risks Related to Our Class A Common Stock

- Our Sponsors have significant influence over us, 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, qualify for, and rely on, exemptions from certain corporate governance requirements. Accordingly, the holders of our Class A common stock do not have the same protections as those afforded to stockholders of companies that are subject to such governance requirements.
- We are a holding company with nominal net worth and will depend on dividends and distributions from our subsidiaries to pay any dividends.

General Risk Factors

- A significant portion of our total outstanding shares may be sold into the market in the near future, which could cause the market price of our Class A common stock to drop significantly, even if our business is doing well.

- 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 Class A common stock price may decline.

PART I

Item 1. Business.

Our Company

Founded in 1965, Petco is a pet health and wellness company focused on improving the lives of pets, pet parents, and our own Petco partners. Building on nearly 60 years of providing solutions for pets and the people who love and care for them, we serve our customers as a fully-integrated, omnichannel provider of pet health and wellness products, services, and solutions. Through our ecosystem, we provide our customers with a comprehensive offering of products and services to fulfill their pets' health and wellness needs through our 1,423 pet care centers in the U.S. and Puerto Rico, our digital channel, and our flexible fulfillment options. We also operate 131 pet care centers in Mexico and 2 in Chile through a joint venture.

Our product offering leverages a broad assortment of national, owned brand, and exclusive merchandise, providing customers with a wide variety of nutritional options, including health-focused options free from artificial ingredients, complemented by a wide variety of pet care supplies and companion animals. While we offer pet parents a full spectrum of product choices, we maintain a number of premium products to address ongoing humanization and premiumization trends in the market. In addition, our owned product assortment, such as WholeHearted, Reddy, and Well & Good, serves as a significant driver of sales, customer loyalty, and repeat purchasing and was a meaningful contributor to enterprise sales in fiscal 2023.

We integrate our product offering with our services business, building on the foundation of treating the whole pet, including their physical, mental, and social well-being. Our service offering includes veterinary care, grooming, and training. Leveraging our experience in Vetco mobile clinics, we operate a network of full service, general practice veterinary hospitals complemented by prescription and insurance offerings. As of February 3, 2024, we operated 288 full service veterinary hospitals, and 1,400 Vetco clinics on a weekly basis. By integrating our veterinary hospitals into existing pet care centers, we benefit from certain structural advantages compared to stand-alone veterinary care providers, such as lower cost of acquisition and additional basket opportunities (including further tapping into the prescription food and drug market).

Our multichannel, go-to-market strategy integrates our digital assets with our nationwide physical footprint to meet the needs of pet parents who are looking for a single source for all their pet's needs. Petco.com, our e-commerce site, and the Petco app, our personalized mobile app, together serve as hubs for pet parents to book appointments and manage their pets' health, wellness, and merchandise needs, while enabling them to shop wherever, whenever, and however they want. Through our connected platform, we offer our customers the convenience of repeat delivery, buy online and pick up in store ("BOPUS"), curbside pick-up, same day delivery, and ship from store. Further enhancing the customer experience, our over 26,000 knowledgeable, passionate partners in our pet care centers provide important high-quality advice to our customers.

The full value of our ecosystem can be realized through our Vital Care membership program, which has a two-tiered offering—Vital Care Core, our free membership tier, and Vital Care Premier, our paid membership tier. Sitting at the intersection of value and loyalty, Vital Care Premier makes it easier and more affordable for pet parents to care for their pet's whole health and links pet parents with our merchandise and services offerings, while Vital Care Core provides pet parents with a suite of loyalty offerings. Vital Care is the foundation of our customer-centric model, serving as a driver of repeat visits and engagement.

Industry Dynamics

The U.S. pet care industry is large, serving millions of households with pets, and has exhibited steady growth driven by an increase in the pet population and trends in pet humanization and premiumization. Due to the essential, repeat nature of pet care, the industry has demonstrated resilience across economic cycles. However, during fiscal 2023, we observed a softening in discretionary spend and shifting consumer preferences for more value-centric products associated with the current inflationary macroeconomic environment. In response to this shifting demand, during fiscal 2023, we broadened our assortment to include more national brands and implemented strategic pricing actions to offer more balanced price points in an effort to appeal to a broader base of consumers.

We are strategically focused on growing our presence in veterinary care, e-commerce, and services. Though we do face competition from both large and small pet specialty retailers, e-commerce retailers, and mass and grocery retailers, among others, we believe that we have built an ecosystem that appeals to a broad base of consumers through the breadth and depth of our assortment and services capabilities, including veterinary care, that we offer across an integrated omnichannel platform.

Marketing and Advertising

In fiscal 2023, we continued to evolve our marketing and media strategy, creating an in-house retail media network to enable advertising activities across paid and owned channels. Our marketing efforts leverage our integrated ecosystem and health & wellness positioning to drive customer acquisition, monetization, and retention. We also utilize personalization technology to provide relevant content to our first-party customers.

Human Capital

Our Partners

Our employees, who we call Petco partners, are our most significant assets, critical to the delivery of our transformation and our continued progress. As of February 3, 2024, we had over 29,000 total partners. Our over 26,000 pet care center partners offer a level of customer engagement and content that is differentiated in retail and based on a true passion for pets. Our partners are primarily employed on an at-will basis and are compensated through base salary and incentive programs. We strive for our partners to grow and develop in their careers, and offer competitive compensation and benefits programs, incentive compensation, and a range of health and wellness offerings. None of our partners are represented by labor unions or covered by collective bargaining agreements. We consider our relationship with our partners to be good.

Diversity and Inclusion

Our employees are our partners and we strive to create an environment that embraces diverse backgrounds and perspectives. Our commitment to fostering equal employment opportunities and a diverse, equitable, and inclusive environment is key to our mission of improving the lives of pets, pet parents, and the Petco partners who work for us. We are committed to creating a culture where partners feel as if they can achieve their career goals through ongoing growth and development opportunities, and fair and transparent performance management and promotion processes. So that our partners feel valued and heard, we gather and respond to our partners' feedback, including, but not limited to, anonymous, periodic, formal, partner engagement surveys, round table sessions, and one-on-one interactions. Based on the feedback received, leaders review and create action plans in an effort to drive meaningful changes in our business. In addition, all Petco leaders participate in diversity, equity, and inclusion training aimed at building respect in the workplace.

Partner Communities

We believe that building and supporting connections between our partners and our communities creates a more fulfilling and enjoyable workplace experience. We have continued to expand our partner resource groups, which enable partners to build connections among themselves and their communities, as well as our diversity, inclusion and belonging programs to encourage partners to bring their "whole selves" to work. Petco currently has seven Partner Resource Groups that are foundational to our culture of inclusion and belonging. Our current partner-led Partner Resource Groups are: Ability at Petco; Black at Petco; LGBTQIA+ at Petco; Pan Asian American at Petco; Petcontigo (Latinx) at Petco; Military and Veterans at Petco; and Women at Petco. In partnership with our Diversity, Equity, and Inclusion team, these seven groups facilitate engagement activities to increase cultural competencies, educate partners on issues facing affinity group members, and deepen our workplace connections.

Compensation and Benefits

We provide competitive compensation and benefits programs to help meet the needs of our partners and their families. In addition to base cash compensation, we offer our partners a mix of annual bonuses, restricted stock units, various incentive plans, an Employee Stock Purchase Plan, a 401(k) Plan, healthcare and insurance benefits, health savings and flexible spending accounts, paid time off, family leave, and a range of employee assistance programs, including investments in fertility care, medical travel, and mental health benefits that were implemented in fiscal 2023. In addition, we offer a range of webinars, trainings, and subscriptions to support our partners' total wellbeing. Finally, in fiscal 2023 we completed the implementation of an increase in every non-trainee partner's base wage to at least $15 an hour. This change, along with other adjustments, resulted in approximately 15% average wage increases for our pet care center partners.

Talent Development

We invest significant resources to attract, develop, and retain top talent. In recent years, we have introduced foundational leadership development training for all new General Managers and above, provided comprehensive pet health and wellness certifications in select pet care centers (with plans to expand to all pet care centers in fiscal 2024), and continuous development of sales and customer engagement skills. In fiscal 2023, we are proud to have provided nearly 650,000 hours of training across our pet care center partners. In addition, nearly 40% of open General Manager and District General Managers positions were filled by internal candidates, either through lateral moves or promotions.

Distribution

We currently have seven primary and two regional distribution centers in our network, which are located in various parts of the United States, that handle almost all distribution for our company. In addition, our ship-from-store, BOPUS, and curbside programs enhance our distribution network, affording us the opportunity to utilize our pet care centers as micro-distribution centers.

The majority of relationships we have with third-party domestic transportation and logistics providers are governed by non-exclusive agreements that do not obligate us to minimum volume or fees, and such agreements may generally be terminated by either party on 45 days' prior written notice.

Vendor Arrangements

In fiscal 2023, we purchased merchandise from approximately 680 vendors. Our top 10 vendors represented approximately 42% of our annual sales, and no single vendor accounted for more than 9% of our sales. In addition, 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 materially rely on third-party distributors to conduct our business. We onboard our vendors using a standardized process to confirm their adherence to our applicable standards, policies, and procedures, including those relating to legal compliance, human rights, 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 instead allow us to terminate the relationship for convenience at any time upon written notice to the vendor. Our vendors generally may terminate the relationship on 90-days' written notice but are obligated to fulfill or perform any purchase order accepted prior to such notice.

Petco Love

Petco Love is a nonprofit organization changing lives by making communities and pet families healthier, stronger, and closer. It is a separately incorporated 501(c)(3) nonprofit organization supported both by contributions from us and contributions from Petco customers and community partners. Since its founding in 1999, Petco Love has inspired and empowered animal welfare organizations to make a difference, investing nearly $380 million 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, Petco Love partners with our pet care centers and animal welfare organizations across the country to increase pet adoptions, helping nearly 7 million pets to date find their new loving families.

In April 2021, Petco Love launched Petco Love Lost, a national lost and found pet database that uses image recognition technology to help reunite lost pets with their families should they ever go missing. To date, nearly 3,000 animal welfare organizations and pet industry partners across the U.S. have adopted the platform, and Petco Love Lost has helped return over 34,000 pets to their loving homes.

Launched in August 2021, Petco Love's *Vaccinated and Loved* initiative marked a significant milestone when it reached its two millionth free pet vaccine in November 2023, and subsequently committed to distributing another one million free pet vaccines. Since that milestone, Petco Love continued the distribution of free pet vaccines to its partners, bringing the total number of vaccines distributed as part of its *Vaccinated and Loved* initiative to more than 2.2 million to date. Distributing these much-needed vaccinations in under-resourced communities is something Petco Love believes gives all pets the best chance to live long and healthy lives.

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., EveryYay, Good 2 Go, Good Lovin', Harmony, Imagitarium, Leaps & Bounds, Pals Rewards, Petco, Petco Love, PetCoach, Reddy, Ruff & Mews, So Phresh, Vetco, Well & Good, WholeHearted, You & Me, Youly, Vital Care Core, and Vital Care Premier. 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 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.

Government Regulation

We are subject to a broad range of federal, state, local, and foreign laws and regulations intended to protect public health, animal welfare, natural resources, and the environment. Our operations, including our owned brand manufacturing outsourcing partners, are subject to regulation 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"), and by various other federal, state, local, and foreign authorities regarding the sale, processing, packaging, storage, distribution, advertising, labeling, and import of our products, including food safety standards. For more information, please read "Risk Factors—Risks Related to Legal and Regulatory Matters—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."

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 labeled. 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.

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 Association of American Feed Control Officials (the "AAFCO"). 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.

The 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.

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.

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.

Available Information

Our website address is petco.com, and our investor relations website is ir.petco.com. We promptly make available on our investor relations website, free of charge, the reports that we file or furnish with the U.S. Securities and Exchange Commission ("SEC"), corporate governance information (including our Code of Business Conduct and Ethics and Principles of Corporate Governance) and select press releases. We file annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, proxy and information statements, and amendments to reports filed or furnished pursuant to Sections 13(a), 14, and 15(d) of the Exchange Act. The SEC maintains a website at sec.gov that contains reports, proxy and information statements, and other information regarding Petco and other issuers that file electronically with the SEC.

Item 1A. Risk Factors.

Investing in our securities 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 Annual Report on Form 10-K. 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 "Risk Factors Summary," which immediately precedes Part I, Item 1 of this Annual Report on Form 10-K.

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, inflation, the availability of discretionary income and credit, weather, consumer confidence, and unemployment levels. We have experienced, and could continue to experience, declines in sales of certain products and changes in the types of products and services purchased 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. For instance, a decline in the amount of discretionary consumer spending due in part to persistent inflation has negatively impacted sales of discretionary items, which has had, and could continue to have, an adverse affect on our profitability.

We have also benefited from increasing pet ownership, discretionary spending on pets, and trends in humanization and premiumization in the pet industry, as well as favorable pet ownership demographics. To the extent these trends continue to slow or reverse, our sales and profitability would continue to be adversely affected. Specifically, though we've experienced significant growth in sales of non-discretionary consumables, spending on non-discretionary items has declined due in part to persistent inflation, which has adversely impacted our profitability. Further, in response to shifting consumer demand, in fiscal 2023 we broadened our assortment to include more national brand products, which are typically lower priced and less profitable. If sales of such products are not significant, we do not increase the average basket size of customers purchasing such products, or we are unsuccessful in transitioning such customers into higher margin products over time, then our profitability could be adversely affected. 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. For instance, in response to shifting consumer demand, in fiscal 2023 we broadened our assortment to include more national brand products, particularly consumables.

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. Additionally, the development and introduction of innovative new products and services and expansion into new offerings involves considerable costs. Any new product, service, or offering may not generate sufficient customer interest and sales to become profitable or to cover the costs of its development and promotion and, as a result, may adversely impact our results of operations, including our profitability. Concern about sustainability and climate change might cause consumer preferences to switch away from products or ingredients considered to have high climate change impact and towards products that are more sustainably grown and made, and we may incur additional costs as we potentially evolve our portfolio and engage in due diligence, verification, and reporting in connection with our environmental, social, and governance and sustainability initiatives.

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 (even if based on rumor or misunderstanding) 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 and retention 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 and service 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 more resources than we do.

We have been facing greater competition from national, regional, local, and online retailers. In particular, major competitors have sought to gain or retain market share by reducing prices or by introducing additional products or services, and this has required us to reduce prices on certain products or services and introduce new offerings in order to remain competitive, which could negatively affect our profitability and/or require a change in our operating strategies.

Sustained change in consumer preferences could decrease the attractiveness of what we believe to be our competitive advantages, including our extensive product assortment, premium product offerings, omnichannel capabilities, high-quality service offerings, and a unique customer experience, which could adversely affect our business and results of operations. Further, 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, among other things, 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, growing our brick and mortar footprint in rural communities, 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 personnel, including veterinarians, information technology professionals, owned brand merchants, and groomers and trainers;
- our acceptance in new markets, as well as our ability to withstand competition in such markets; 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 have experienced difficulties recruiting and retaining skilled veterinarians due to shortages that could disrupt our business.

The successful growth of our veterinary services business depends significantly 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 have experienced shortages of skilled veterinarians in markets in which we operate, or desire to operate, our veterinary service businesses, which has required 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, and expect to continue to make, 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, they could have an adverse effect on our business.

Additionally, customer expectations about the methods by which they purchase and receive products or services are also becoming more demanding. Customers routinely use technology and a variety of electronic devices and digital platforms to rapidly compare products and prices, read product reviews, determine real-time product availability, and purchase products. Once products are purchased, customers are seeking alternate options for delivery of those products, and they often expect quick, timely, and low-price or free delivery and/or convenient pickup options. We must continually anticipate and adapt to these changes in the purchasing process.

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 buy online and pick up in store, curbside pickup, and 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, including offering competitive pricing for our products, 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 First Lien Term Loan and ABL Revolving Credit Facility 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 executive officers, we may not be able to run our business effectively.

We are dependent upon the efforts of our key personnel, including our executive officers. The loss of any of our key personnel could affect our ability to run our business effectively. Our success will depend on our ability to retain our current management and to develop, attract, and retain qualified personnel in the future. Competition for senior management personnel is intense with increasingly aggressive compensation packages, and we cannot assure you that we can retain our key personnel or that our succession planning will prove effective. Furthermore, significant declines in our stock price have reduced the retention value of our outstanding share-based awards, which could impact the competitiveness of our compensation over time. The loss of a member of senior management requires the remaining executive officers and our board of directors to divert immediate and substantial attention to seeking a replacement. The inability to fill vacancies in our key personnel positions, including executive positions, on a timely basis could adversely affect our ability to implement our business strategy and be disruptive to our business, 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, could 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 business. As a result of the disruptions resulting from COVID-19, as well as surges in consumer demand for certain products, shortages of raw materials and disruptions to the global supply chain resulting from, among other things, lack of carrier capacity, labor shortages, port congestion and /or closures, and rising fuel prices, some of our vendors were not able to supply us with products in a timely or cost-effective manner. An 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.

We generally do not maintain long-term supply contracts with our merchandise vendors. Thus, most vendors 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 owned brand pet food, or pet supplies that we offer could have a negative impact on our business, financial condition, and results of operations. For more information regarding our vendors, please read “Business—Vendor Arrangements.”

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.

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 certain circumstances, 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, 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. For example, as a result of the COVID-19 pandemic, we reduced operations in many of our pet care centers in fiscal 2020, which decreased our pet care center revenues. 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. Health epidemics, pandemics, and similar outbreaks may 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.

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 severe weather or other disruptions 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. Further, increased transportation costs, including sustained increases fuel costs, have resulted in higher operating costs in the past. 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.

In the past we have faced labor shortages at several of our distribution centers, which has adversely affected our results of operations. If any of our distribution centers were to shut down, 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, labor shortages, or regulatory issues with respect to any of our distribution centers, could adversely affect our sales and results of operations. Previous interruptions in our inventory supply chain have resulted in certain out-of-stock or excess merchandise inventory levels, and could adversely affect our ability to make timely deliveries to e-commerce customers, as well as our sales 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, including veterinary hospitals. 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, successfully integrating personnel, 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.

We may also be unsuccessful in identifying and evaluating business, legal, or financial risks as part of the due diligence process associated with a particular transaction. Furthermore, acquired entities or businesses may have differing or inadequate controls, procedures, or policies, including those related to financial reporting, disclosure, practice management, handling of controlled substances, and cyber and information security, which could expose us to additional risks and potentially increase anticipated costs or time to integrate the business. 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.

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, and to comply with public health requirements. 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.

While to date, we do not believe such identified security events have been material to us, including to our reputation or business operations, or had a material financial impact, we cannot 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 or account information, 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 or phishing 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 breaches 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, including substantial legal fees, and significant expenditures to reimburse third parties for damages, each of 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, may not apply to the circumstances relating to any particular loss, or may become materially more costly over time.

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 (as modified by the CPRA) "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 Payment Card Industry ("PCI") Data Security Standard ("PCI DSS"). 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 DSS, as well as significant unanticipated expenses. Any unauthorized access into our customers' or employees' 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' or employees' 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 or those of our vendors 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 and those of our vendors. 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 and online. The failure of our information systems or those of our vendors to perform as designed, the loss of data, or any interruption of our information systems or those of our vendors 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 and those of our vendors are vulnerable to damage from fire, floods, earthquakes, power loss, telecommunications failures, terrorist and cyber-attacks, and similar events. Our disaster recovery planning and those of our vendors 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 or handling of animals by them, do not provide the proper level of care. Our efforts to establish our reputation as a health and wellness company increase 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 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 a health epidemic, pandemic or similar outbreak, or natural disaster or extreme weather event causes disruptions 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, 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. There continues to be uncertainty regarding the future of international trade agreements and ultimately the United States' position on international trade. For example, the U.S. government has previously 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. In addition, the U.S. government has previously issued sanctions on Chinese companies, raised tariffs, and imposed new tariffs on a wide range of imports of Chinese products. Additional trade restrictions, including sanctions, tariffs, quotas, embargoes, safeguards, border shutdowns, 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 or raise prices, any of which could harm our business, financial condition, and results of 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 long-term performance.

Quarterly operating results may also vary depending on a number of factors, many of which are outside of 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, cost, and inflationary pressures;
- changes in fuel prices or electrical rates;
- costs related to acquisitions of businesses; and
- general economic factors.

Pet consumables 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 consumable pet 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 consumables 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 health epidemics, pandemics, and similar outbreaks, 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 prices 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 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.

Fluctuations in the prices and availability of certain commodities, such as 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 prices and 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 that are used in the production of certain pet accessories. Additionally, increased human and/or pet consumption or population increases may potentially limit the supply of or increase prices for certain meat proteins, many of which are used in animal feed. Throughout 2023, costs of certain commodities increased due to increased fuel prices, heightened transportation costs, and general inflationary pressures, and at times we have resultingly observed increases in the costs we pay for certain vendor-supplied products. To help mitigate the impact of these cost increases, we have in the past implemented select price increases, which is consistent with our historical practice. 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 would experience decreased demand for or products and services and reduced margins, which could have a material adverse effect on our business, financial condition, and results of operations.

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

We lease 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 commercial area 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 commercial areas 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 could have a material adverse effect on our business, financial condition, and results of operations.

Failure to attract and retain quality employees and experienced management personnel could adversely affect our performance.

Our performance depends on recruiting, developing, training, and retaining top talent in our support centers, partners who are capable sales associates in large numbers in our pet care centers, experienced personnel in our distribution centers, 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, inflationary pressures, the availability of qualified persons in the markets where we operate, changing demographics, behavioral changes, health and other insurance costs, and governmental labor and employment requirements. We have in the past faced labor shortages at several of our distribution centers, which adversely affected our operations. We have also faced, and could continue to face, increased wage competition and costs across our business in recruiting and retaining top talent. Recently, various legislative movements have sought to increase the federal minimum wage in the United States and the minimum wage in a number of individual states, some of which have been successful at the state level. As federal or state minimum wage rates increase, or market pressures upwardly impact prevailing competitive wage rates, we may need to increase not only the wage rates of our minimum wage partners but also the wages paid to our other hourly partners. For example, in an effort to retain and attract key talent, in fiscal 2023 we completed the implementation of an increase in every non-trainee partner's base wage to at least $15 an hour. If we fail to offer competitive wages, we could fail to recruit and retain top talent and face labor shortages or staffing issues, and the quality of our workforce could decline, causing our customer service to suffer, while increasing our wages could cause our earnings to decrease. Moreover, failure to achieve and maintain a diverse workforce and leadership team, maintain a safe and inclusive environment or promote the well-being of our employees could affect our reputation and also result in lower performance and an inability to retain valuable employees. 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. We have, however, experienced attempted union organizing campaigns, and may continue to experience union organizing campaigns, which can be disruptive to our operations, increase our labor and operating costs, and decrease our operational flexibility. 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. In addition, organized labor may benefit from new legislation or legal interpretations by the current presidential administration, as well as current or future unionization efforts among other large employers. Particularly, in light of current support for changes to federal and state labor laws, we cannot provide any assurance that we will not experience additional and/or successful union organization activity in the future. Any labor disruptions could have an adverse effect on our business or results of operations and could cause us to lose customers. Further, our responses to any union organizing efforts could negatively impact our reputation and have adverse effects on our business, including on our financial results.

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 coverage for potential liabilities for workers' compensation, general liability, business interruption, property damage, directors' and officers' liability, vehicle liability, cybersecurity and criminal incidents that we suffer, and employee health-care benefits. Our insurance coverage may not be sufficient, and any insurance proceeds may not be timely paid to us. Moreover, as insurance premiums continue to increase, we cannot be certain that insurance will continue to be available to us on economically reasonable terms, or at all. 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.

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.

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

Geopolitical events, such as war or civil unrest in a country in which our vendors are located or dependent upon, 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 severe weather and climate conditions (including those resulting from climate change), 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, severely damage or destroy one or more of our pet care centers or distribution centers located in the affected areas, result in temporary or long-term supply chain disruptions, or cause increased transportation costs (whether due to fuel prices, fuel supply, or otherwise). For example, the ongoing conflicts in Ukraine and the Middle East have resulted, and could continue to result, in volatile commodity markets, supply chain disruptions, and increased costs for transportation, energy, packaging and raw materials and other input costs. As a result of any such events, 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.

A potential result of climate change is more frequent or more severe weather events or natural disasters. To the extent such weather events or natural disasters do become more frequent or severe, disruptions to our business, including store closures and/or damage, and our vendors and costs to repair damaged facilities or maintain or resume operations could increase. The long-term impacts of climate change, whether involving physical risks (such as extreme weather conditions or rising sea levels) or transition risks (such as regulatory or technology changes or increased operating costs, including the cost of insurance) are expected to be widespread and unpredictable. These changes over time could also affect, for example, the availability and cost of certain products, insurance, commodities (including grains and proteins), and energy (including utilities), which in turn may impact our ability to procure those certain goods or services required for the operation of our business at the quantities and levels we require or on otherwise commercially reasonable terms.

Inflation has adversely impacted, and is expected to continue to adversely impact, our financial condition and results of operations.

Inflation in the United States remained elevated throughout fiscal 2023. This is primarily believed to be the result of a multitude of factors, including elevated costs of product inputs and transportation costs, increased labor costs, and spending of excess savings, among other factors. We have experienced inflationary pressures in certain areas of our business, including with respect to employee wages and the cost of merchandise, and it has become increasingly difficult to mitigate such pressures through price increases. We cannot predict any future trends in the rate of inflation or associated increases in our operating costs and how that may impact our business. To the extent we are unable to recover higher operating costs resulting from inflation or otherwise mitigate the impact of such costs on our business, our revenues and gross margins could decrease, and our financial condition and results of operations could be adversely affected.

We use artificial intelligence in our business, and challenges with properly managing its use could result in harm to our brand, reputation, business or customers, and adversely affect our results of operations.

We are implementing the use of artificial intelligence ("AI") solutions, including machine learning and generative AI tools that collect, aggregate, and analyze data to assist in the development of our services and products and in the use of internal tools that support our business. These applications may become increasingly important in our operations over time. This emerging technology presents a number of risks inherent in its use. AI algorithms are based on machine learning and predictive analytics, which can create accuracy issues, unintended biases, and discriminatory outcomes that could harm our brand, reputation, business, or customers. Additionally, no assurance can be made that the usage of AI will assist us in being more efficient. Further, dependence on AI without adequate safeguards to make certain business decisions may introduce additional operational vulnerabilities by producing inaccurate outcomes, recommendations, or other suggestions based on flaws in the underlying data or other unintended results. Our competitors or other third parties may incorporate AI into their business, services, and products more rapidly or more successfully than us, which could hinder our ability to compete effectively and adversely affect our results of operations. Implementing the use of AI successfully, ethically and as intended, will require significant resources. In addition, the use of AI may increase cybersecurity and data privacy risks, such as intended, unintended, or inadvertent transmission of proprietary or sensitive information. The technologies underlying AI and their use cases are rapidly developing, and it is not possible to predict all of the legal, operational or technological risks related to the use of AI. While new AI initiatives, laws, and regulations are emerging and evolving, what they ultimately will look like remains uncertain, and our obligation to comply with them could entail significant costs, negatively affect our business, or limit our ability to incorporate certain AI capabilities into our business.

Risks Related to Legal and Regulatory Matters

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 those of some of our vendors, are subject to federal, state, and local laws and regulations established by the OSHA, the FDA, the USDA, the DEA, the U.S. Environmental Protection Agency, the EEOC, the National Labor Relations Board, the Federal Trade Commission ("FTC"), 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; 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. For more information regarding laws and regulations that we are subject to, please 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 product 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 the 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 and other governmental authorities.

Currently, many states in the United States have adopted the AAFCO’s 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 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 any veterinary services we provide. 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.

Regulation of the sale of pet insurance is subject to change, and future regulations could harm our business, operating results, and financial condition.

Our business operates in the pet insurance market. The laws and regulations governing the offer, sale, and purchase of pet insurance are subject to change, and future changes may be adverse to our business. For example, if a jurisdiction were to alter the requirements for obtaining or maintaining an agent's license in connection with the enrollment of a member, it could have a material adverse effect on our operations. Some states in the U.S. have adopted, and others are expected to adopt, new laws and regulations related to the pet insurance industry. It is difficult to predict how these or any other new laws and regulations will impact our business, but, in some cases, changes in insurance laws, regulations, and guidelines may require that we make significant modifications to our practices, which may be costly and difficult to implement, could harm our ability to effectively grow our pet insurance offerings, and could also harm our business, operating results and financial condition.

We are subject to risks related to online payment methods and our Petco Pay promotional financing program.

We currently accept payments using a variety of methods, including, but not limited to, credit cards, debit cards, PayPal, Apple Pay, Klarna, 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 PCI DSS, which 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. Additionally, 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.

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, licenses, 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. Although we have measures in place to detect, reduce, and mitigate the occurrence of such fraudulent activity, those measures are not always effective, and we have incurred, and could in the future incur, financial losses, losses of customers, and reputational harm for such fraudulent transactions, which could harm our business, financial condition, and results of operations.

We offer promotional financing and credit cards issued by third-party banks that manage and directly extend credit to our customers through our Petco Pay program. Customers using Petco Pay can earn rewards for making purchases on the Petco-branded credit cards or receive extended payment terms and low interest financing on qualifying purchases. Petco Pay has generated incremental revenue from customers who prefer the financing terms to other available forms of payment or otherwise need access to financing in order to make purchases. In addition, we earn profit share income and share in any losses from certain of our banking partners based on the performance of the programs. The income or loss we earn in this regard is subject to numerous factors, including the volume and value of transactions, the terms of promotional financing offers, bad debt rates, interest rates, the macroeconomic, regulatory and competitive environment, and expenses of operating the program. Adverse changes to any of these factors could impair our ability to offer Petco Pay to customers, reduce customer purchases, or impair our ability to earn income from sharing in the profits of the program.

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 personal information provided to us through online activities and other consumer, employee, and business-to-business interactions in order to provide a better experience for our customers, employees, and vendors. Our current and future marketing programs depend on our ability to collect, maintain, use, and share this personal information with service providers and other vendors, 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 vendor 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. Due to the rapidly evolving nature of this area of the law, we have seen an increase in claims filed against us and others by plaintiffs alleging violations of various data privacy laws. Although we believe many such proceedings are filed without merit, and no such proceeding filed against us has subjected us to material liability to date, 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, as well as advertise certain employment opportunities, is through the use of third-party "cookies" and similar online tracking technologies. 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 (such as pixels, tags, and beacons) for behavioral advertising and other purposes. The U.S. government and various states have enacted, have considered, or are considering legislation or regulations that 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. In addition, private litigants may claim the use of these tracking technologies invades their privacy, violates privacy or other laws, or constitutes an unfair business practice. 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, including for recruiting purposes. The regulation of the use of these cookies and other current online tracking, recruiting, 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/or recruitment, and limit our ability to acquire new customers and/or staff 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 gave California residents expanded rights to access and delete their personal information, opt out of certain uses 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 provided for civil penalties for violations enforced by the California Attorney General, as well as a private right of action for data breaches that has resulted in an increase in data breach litigation. Further, on November 3, 2020, the California Privacy Rights Act (the "CPRA") was voted into law by California residents and went into effect on January 1, 2023. 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 created the California Privacy Protection Agency, a new data protection agency specifically tasked to issue privacy regulations and enforce the law, which is likely to result in increased regulatory scrutiny of California businesses in the areas of data protection and security. 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 passed in several states (including Colorado, Virginia, Utah, Oregon, Montana, Texas, Florida, New Jersey, and others), and have been proposed in additional states and at the federal level. Such laws have potentially conflicting requirements that make compliance challenging. We have incurred and may continue to incur costs to adapt our systems and practices to comply with these requirements, and these costs may adversely affect our financial condition and results of operations. Additionally, the FTC and many state attorneys general are interpreting existing federal and state consumer protection laws to impose evolving standards for the 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 and/or telephone calls made in violation of the Telephone Consumer Protection Act and its state law equivalents.

We send short message service, or SMS, text messages to customers and job candidates, and make outbound telephone calls. The actual or perceived improper sending of text messages or placing of telephone calls may subject us to potential risks, including liabilities or claims relating to consumer protection laws. 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 and certain dialing practices without proper consent. Numerous class action suits under federal and state laws have been filed in recent years against companies who conduct SMS texting or outbound calling programs, with many resulting in multi-million-dollar settlements to the plaintiffs. 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 or calling practices are not adequate or violate applicable law, resulting in civil claims against us. The scope and interpretation of the laws that are or may be applicable to the delivery of text messages and/or outbound calling 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, or could face negative publicity, and our business, financial condition, and results of operations could be adversely affected as a result. Even an unsuccessful challenge of our SMS texting or calling 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.

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 decreased sales or 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.

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., EveryYay, Good 2 Go, Good Lovin', Harmony, Imagitarium, Leaps & Bounds, Pals Rewards, Petco, Petco Love, PetCoach, Reddy, Ruff & Mews, So Phresh, Vetco, Well & Good, WholeHearted, You & Me, Youly, Vital Care Core, and Vital Care Premier, 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 violations 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, systems, applications, or marketing materials infringe the proprietary rights of third parties, regardless of their merit or resolution, could be costly to investigate, defend and/or settle, result in injunctions against us or payment of damages or licensing fees 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 in the markets in which we operate could be affected or our business, financial condition, and results of operations may be materially adversely affected.

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, claims from customers or employees alleging failure to maintain safe premises, 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.

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.

Continuing political and social attention to the issue of climate change has resulted in both existing and pending international agreements and national, regional, or local legislation and regulatory measures to limit greenhouse gas emissions, such as cap and trade regimes, carbon taxes, restrictive permitting, increased fuel efficiency standards, and incentives or mandates for renewable energy, as well as legal and regulatory requirements requiring certain climate-related disclosures, and pressure from shareholders, ratings agencies, state agencies, the SEC, and other third parties to make various climate-related disclosures. We may also be subject to additional and more complex reporting requirements in the future. For example, the State of California recently passed the Climate Corporate Data Accountability Act and the Climate-Related Financial Risk Act that will impose broad climate-related disclosure obligations on companies doing business in California, including us. The SEC has also adopted rulemaking on climate change disclosures that could significantly increase compliance burdens and associated regulatory costs and complexity. Such measures have subjected us, and may subject our vendors, to additional costs and restrictions and require significant operating and capital expenditures, including with respect to waste and energy reduction, compliance costs, and workforce initiatives, which could adversely impact our business, financial condition, results of operations and cash flows.

We may fail to comply with various state or federal regulations covering the dispensing and/or administration 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, delivery, and/or administration 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 and/or administration 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, fines, or suspensions, which could have a material adverse effect on our business, financial condition, and results of operations.

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

As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act"), 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 has increased our legal and financial compliance costs and makes some activities more difficult, time-consuming, and/or costly. For example, the Exchange Act requires us, among other things, to file annual, quarterly, and current reports with respect to our business and operating results. Being subject to rules and regulations applicable to public companies makes 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 impose significant additional costs on us and require a significant amount of our management's attention, and could affect our ability to attract and retain qualified board members.

Our aspirations, goals, and initiatives related to sustainability, and our public statements and disclosures regarding them, expose us to numerous risks.

We have developed, and will continue to establish, goals, targets, and other objectives related to sustainability matters. These statements reflect our current plans and do not constitute a guarantee that they will be achieved. Our efforts to research, establish, accomplish, and accurately report on these goals, targets, and objectives expose us to numerous operational, reputational, financial, legal, and other risks. Our ability to achieve any stated goal, target, or objective is subject to numerous factors and conditions, many of which are outside of our control. Examples of such factors include evolving regulatory requirements affecting sustainability standards or disclosures or imposing different requirements, evolving disclosure standards and/or policies established by regulators and standards organizations, stockholders, ratings agencies, and proxy advisory firms, the pace of changes in technology, the availability of requisite financing, and the availability of suppliers that can meet our sustainability and other standards. Furthermore, methodologies for reporting sustainability information may be updated and previously reported information may be adjusted to reflect improvement in the availability and quality of third-party data, changing assumptions, changes in the nature and scope of our operations, and other changes in circumstances. Our processes and controls for reporting sustainability information across our operations are evolving along with multiple disparate standards for identifying, measuring, and reporting sustainability metrics, including sustainability-related disclosures that may be required by the SEC and other regulators, and such standards may change over time, which could result in significant revisions to our current goals or reported progress in achieving such goals, or adversely impact our ability to achieve such goals in the future.

Our business may face increased scrutiny from regulators, the investment community, other stakeholders, and the media related to our sustainability activities, including the goals, targets, and objectives that we announce, and our methodologies and timelines for pursuing them. If our sustainability practices do not meet the expectations and standards of regulators, investors, or other stakeholders, which continue to evolve, our reputation, our ability to attract or retain employees and customers, and our attractiveness as an investment, business partner, or as an acquiror could be negatively impacted. Similarly, our failure or perceived failure to pursue or fulfill our goals, targets, and objectives, to comply with ethical, environmental, or other standards, regulations, or expectations, or to satisfy various reporting standards with respect to these matters, within required timelines or those which we announce, or at all, could have the same negative impacts, as well as expose us to federal and state government enforcement actions and private litigation. Furthermore, positions we take or do not take on social issues may be unpopular with some of our customers, partners, advocacy groups, or other stakeholders in the communities in which we operate, which may lead to adverse effects on our business. Even if we achieve our goals, targets, and objectives, we may not realize all of the benefits that we expected at the time they were established.

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.

At February 3, 2024, we had outstanding a (i) $1,700 million secured term loan facility maturing on March 4, 2028 (the "First Lien Term Loan") and (ii) secured asset-based revolving credit facility providing for senior secured financing of up to $500 million, subject to a borrowing base, maturing on March 4, 2026 (the "ABL Revolving Credit Facility"). Our substantial indebtedness 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.

In March 2024, we amended the ABL Revolving Credit Facility, which now consists of two tranches, to increase its total availability from $500.0 million to $581.0 million and extend the maturity on a portion of this availability. The first tranche has availability of up to $35.0 million, subject to a borrowing base, maturing on March 4, 2026. The second tranche has availability of up to $546.0 million, subject to a borrowing base, maturing on March 29, 2029. Interest on the ABL Revolving Credit Facility is now based on, at the Company's option, either the base rate subject to a 1% floor, or Term SOFR subject to a floor of 0%, plus an applicable margin. All other key terms of the ABL Revolving Credit Facility remained unchanged. Please read "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources" for descriptions of the First Lien Term Loan and ABL Revolving Credit Facility.

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

The First Lien Term Loan and ABL Revolving Credit Facility both 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;
- 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 ABL 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 First Lien Term Loan, ABL 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 First Lien Term Loan and ABL Revolving Credit Facility allow us and our subsidiaries to incur additional indebtedness, subject to limitations. As of February 3, 2024, we and our subsidiaries had an additional $446.6 million of unused commitments available to be borrowed under the ABL Revolving Credit Facility. This amount is net of $53.4 million of outstanding letters of credit issued in the normal course of business and no borrowing base reduction for a shortfall in qualifying assets. 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 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, depends on our ability to generate or access cash in the future. This ability is subject to general economic, financial (including prevailing interest rates), 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 ABL Revolving Credit 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 First Lien Term Loan and the ABL Revolving Credit Facility, on commercially reasonable terms, or at all.

Our failure to comply with the covenants contained in the credit agreements for the First Lien Term Loan and the ABL Revolving Credit Facility, 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 First Lien Term Loan, the ABL Revolving Credit Facility, 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 ABL 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 ABL 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 ABL 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 ABL 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 has caused, and may continue to cause, our indebtedness service obligations to increase significantly.

Borrowings under the First Lien Term Loan and ABL Revolving Credit Facility are at variable rates of interest and expose us to interest rate risk. Due to continued interest rate increases into the first half of fiscal 2023, our debt service obligations on the variable rate indebtedness have increased even though the amount borrowed remains the same, and our net income and cash flows, including cash available for servicing our indebtedness, have correspondingly decreased. If interest rates continue to rise in the future, our liquidity, results of operations, and financial position may be further adversely affected. Although we have entered into agreements capping portions of our exposure to higher interest rates, these agreements may not prove to be effective in the aggregate, as a significant portion of our variable rate debt remains uncapped.

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, and we have faced, and may continue to face, downgrades from credit rating agencies. 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, including with respect to sustainability matters, could lead to further ratings downgrades 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.

The replacement of LIBOR with SOFR may adversely affect interest expense related to our outstanding debt.

We have outstanding debt with variable interest rates based on the Secured Overnight Financing Rate ("SOFR"). Previously, the variable interest rates related to our outstanding debt were based on the London Inter-bank Offered Rate ("LIBOR"). The composition and characteristics of SOFR significantly differ from those of LIBOR. For instance, SOFR is a secured rate, while LIBOR is an unsecured rate; and while SOFR is an overnight rate, LIBOR represents interbank funding for a specified term. The use of SOFR-based rates may result in interest rates and/or payments that are higher or lower than the rates and payments that we previously experienced when referenced to LIBOR. SOFR remains a relatively new reference rate, has a limited history, and is based on short-term repurchase agreements backed by U.S. Treasury securities. Changes in SOFR could be volatile and difficult to predict, and there can be no assurance that SOFR will perform similarly to the way LIBOR would have performed at any time, including as a result of, without limitation, changes in interest and yield rates in the market, bank credit risk, market volatility or global or regional economic, financial, political, regulatory, judicial, or other events. As a result, the amount of interest we may pay on our credit facilities can be difficult to predict. Prior observed patterns, if any, in the behavior of market variables and their relation to SOFR, such as correlations, may change in the future, and there can be no assurance that SOFR will be positive. Additionally, there can be no assurance that SOFR will continue to maintain market acceptance or that the method by which the reference rate is calculated will continue in its current form. Uncertainty as to the nature of such potential changes may adversely affect the trading market for our securities as well as our results of operations and cash flows.

Please read "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources" for more information about the replacement of LIBOR-based interest rates applicable to borrowings under our debt agreements with SOFR-based interest rates.

Risks Related to Our Class A Common Stock

Our Sponsors have significant influence over us, 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 by our Sponsors through our Principal Stockholder. Our Principal Stockholder controls approximately 69% 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 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, qualify for, and rely on, exemptions from certain corporate governance requirements. Accordingly, the holders of our Class A common stock do not have the same protections as those afforded to stockholders of companies that are subject to such governance requirements.

Our Sponsors, through our Principal Stockholder, control a majority of the voting power of our common stock with respect to director elections. As a result, we are 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; and
- the requirement that our compensation committee be composed entirely of independent directors.

We currently utilize all of these exemptions. As a result, we do not have a majority of independent directors serving on our board of directors and neither our compensation committee nor our nominating and corporate governance committee 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.

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

Four of our ten directors are 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 may have the effect of delaying or preventing a change of control or changes in our management. Our certificate of incorporation and bylaws 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 with our Principal Stockholder (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 are a Delaware corporation 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 have elected in our certificate of incorporation not to be subject to Section 203. However, our certificate of incorporation contains provisions that have the same effect as Section 203, except that they provide our Sponsors, our Principal Stockholder, their affiliates, and their respective successors (other than our company), as well as their direct and indirect transferees, are not 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, please read Exhibit 4.3 to this Annual Report on Form 10-K.

Since we have no current plans to pay regular cash dividends on our Class A common stock, 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 have not paid, and do not anticipate paying, any regular cash dividends on our Class A common stock. 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 First Lien Term Loan and ABL Revolving Credit Facility, as well as by the terms of our stockholder's agreement. 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.

Petco Health and Wellness Company, Inc. and certain of our subsidiaries 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 Stores, Inc. and certain of 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. 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. Although S&P Dow Jones has since revised its eligibility criteria to again permit companies with multiple classes of common stock to be added to its indices, including the S&P 500, the S&P MidCap 400, and the S&P SmallCap 600, there can be no assurances that such companies will remain eligible. As a result, our multi-class capital structure makes us ineligible for inclusion from certain 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 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 designates 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 provides 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 made in 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 does 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 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

Our operating results and share price may be volatile, and the market price of our Class A common stock may drop.

Our quarterly operating results are likely to fluctuate in the future. 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, has, and could continue to, 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 price that you paid for them, 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;
- 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, including interest rates and financial market uncertainty;
- changes in accounting principles;
- default under agreements governing our indebtedness; and
- other events or factors, including those from severe weather events (including as a result of climate change), natural disasters, pandemic, pet 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 and/or settling 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.

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 has 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 may be sold into the market, which 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. We have also filed 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 has demand registration rights that will require us to file registration statements in connection with future sales of our stock by our Principal Stockholder. 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 lock-up agreements. 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.

If securities or industry analysts 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 is influenced in part 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, 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 Class A common stock price may decline.

We have been, and anticipate to continue, providing guidance on our expected operating and financial results for future periods. 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 Annual Report on Form 10-K 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.

As a public company, we are required to comply with the requirements of the Sarbanes-Oxley Act. 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 to report on the effectiveness of our internal control over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act. Additionally, our independent public accounting firm also is required to issue an attestation 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 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 Class A common 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. Moreover, any material weaknesses could result in a material misstatement of our annual or quarterly consolidated financial statements or disclosures that may not be prevented or detected.

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.

From time to time, U.S. tax authorities, including state and local governments, consider legislation that, if enacted, could have a material effect on our effective tax rate.

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.

Additional impairments of the carrying value of our goodwill or other intangible assets could adversely affect our financial condition and results of operations.

Our goodwill and other intangible assets represent a significant portion of our total assets. We test our goodwill and our indefinite-lived intangible assets for impairment at least annually and whenever events or changes in circumstances indicate that their carrying value may not be recoverable. A significant amount of judgment is involved in determining if an indication of impairment exists. Factors indicating impairment of goodwill or other intangible assets may include, among others: a significant decline in our expected future cash flows; a sustained, significant decline in our stock price and market capitalization; changes in the macroeconomic environment, increases in interest rates, a significant adverse change in legal factors or in the business climate; unanticipated or changing competition; and reduced growth rates. There are inherent uncertainties in management's estimates, judgments, and assumptions used in the impairment evaluation process. To the extent that business conditions deteriorate or there are any material changes in key assumptions and estimates, it may be necessary to record additional impairment charges in the future which could have a material adverse effect on our financial condition and results of operations.

During the third quarter of fiscal 2023, we concluded indicators of impairment existed due to declines in the Company's share price, as well as current macroeconomic conditions, and performed an interim impairment test of our goodwill and indefinite-lived trade name, which resulted in a pre-tax goodwill impairment charge of $1,222.5 million for the thirteen week period ended October 28, 2023. For further information on our evaluation of impairment of our goodwill and indefinite-lived trade name, please read the discussion under "Management's Discussion and Analysis of Financial Condition and Results of Operations– Critical Accounting Policies and Estimates."

Item 1B. Unresolved Staff Comments.

None.

Item 1C. Cybersecurity.

Cybersecurity Risk Management and Strategy

Our executive team and board of directors recognize that effective cybersecurity risk management is critical to the safety and security of our data, systems, and products and, ultimately, the long-term success of the Company. We have a comprehensive multi-layered cybersecurity risk assessment program, which covers the identification, analysis, evaluation, and management of cybersecurity risks. The program is cross-functional involving the participation and input of internal stakeholders, third-party consultants, and board oversight. The program is reviewed and updated on a semi-annual basis, or sooner if needed.

We engage in frequent and comprehensive monitoring of our systems, including network, systems, and application security monitoring integrated into a Security Information and Event Monitoring (SIEM) system. In addition, should a cybersecurity incident occur, our response plan is based on the NIST Special Publication 800-61 Revision 2 Computer Security Incident Handling Guide, and requires the following steps:

Discovery. Occurs when a potential security incident is reported. Discovery can be initiated in several ways, including by customer support, employees, business partners, as a result of IT logging and monitoring, or in response to customer or vendor correspondence. Containment is the priority in the Discovery phase.

Investigation. Occurs when the Discovery phase establishes a likelihood that the event is an actionable security incident that warrants further research and analysis. In the Investigation phase, the priority is to swiftly complete an accurate, thorough investigation of the security incident.

Response. Occurs when a security incident is a confirmed data breach; when a security incident requires the Company to take further action to protect the organization and/or affected parties whose sensitive personal information is at risk or has been compromised; or when additional administrative, physical, or technical controls are needed after a security incident. In the Response phase, the priority is to swiftly complete required notification and other procedures according to applicable law.

Closure. Occurs when the Company's incident response steering committee can review the security incident and actions taken to evaluate whether proper investigation and documentation have occurred, and the matter requires no further notice or containment. Root causes and steps to prevent future incidents have been identified.
In the Closure phase, the priority is to confirm that all necessary containment, investigation, and response tasks have been completed.

Review. Occurs after the event has been resolved. The priority in this phase is to review the investigation/response process and update this Plan based on the lessons learned.

We also have processes in place to oversee and identify risks from cybersecurity threats associated with our use of third party service providers. We classify third parties engaged by us based on risk and impact to our business. Classification is broken into tiers as follows:

Tier 1. Access to critical infrastructure, data, or services affecting critical infrastructure. Administrative or privileged access to production systems, including hosting or developing systems, applications, websites, software, or SaaS solutions.

Tier 2. Non-privileged access to Company applications.

Tier 3. No direct system access but may be associated through a partnership or have links hosted embedded within Company marketing material or websites.

Third party risk scores are weighted based on the classification tier and monitored over the course of the year. A change in risk score may trigger an audit for the third party as well as a remediation plan to address any

identified gaps, which our information security team oversees in conjunction with the relevant business owner for the third party relationship.

While we face a variety of cybersecurity risks, such as phishing attempts, ransomware attacks, account takeover, fraudulent order, and unauthorized access attempts, such risks have not materially affected us to date, including our business strategy, results of operations or financial condition, and we do not believe such risks are reasonably likely to have such an effect over the long term. For more information about the cybersecurity risks we face, see "Item 1A – Risk Factors - *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.*"

Cybersecurity Governance

Our board of directors has ultimate oversight of our risk management policies and strategies. Our executive team, which is responsible for our day-to-day overall risk management practices, present to the board of directors on the various material risks to our Company, including risks related to information technology and cybersecurity.

The audit committee has formal oversight responsibility for cybersecurity, as delegated by our board of directors, and is responsible for reviewing our policies and procedures with respect to cybersecurity risk assessment and risk management. As part of the board of directors and audit committee's oversight, our Chief Administrative Officer, Chief Technology Officer ("CTO"), and/or Chief Information Security Officer ("CISO") provide semi-annual updates to the audit committee with respect to cybersecurity incidents, mitigation, threats, risks, and management, which are also communicated to the full board.

Our CISO, who has extensive cybersecurity knowledge and skills gained from over 25 years of work experience at the Company and elsewhere, is responsible for developing and overseeing matters related to cybersecurity and reports directly to our CTO, who is accountable for the overall information technology and security strategy of the Company. The CISO receives reports on cybersecurity threats from several experienced information security professionals responsible for various parts of the business on an ongoing basis and, in conjunction with our enterprise risk steering committee, regularly reviews risk management measures implemented by the Company to identify and mitigate data protection and cybersecurity risks. Our CISO works closely with our legal department to oversee compliance with legal, regulatory and contractual security requirements. Our enterprise risk steering committee is comprised of key stakeholders throughout the Company and works with management and our CISO to (i) identify and review certain cybersecurity risks that we face, including the probability and impact of such risks, and (ii) identify steps needed to eliminate or mitigate such risks. In addition, we have a well-defined cybersecurity incident response plan, as described above. Finally, we have protocols by which certain cybersecurity incidents are escalated within the Company and, where appropriate, reported in a timely manner to the audit committee and the board of directors.

Item 2. Properties.

The Company's headquarters is located in San Diego, California and comprises a total of approximately 257,000 square feet, and is under a long-term lease. The Company also leases facilities for corporate functions in San Antonio, Texas and Querétaro, Mexico.

We lease all of our distribution center locations and all of our 1,423 pet care centers in the U.S. and Puerto Rico. 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.

Item 3. Legal Proceedings.

We are involved in the legal proceedings described in Note 14, Commitments and Contingencies, in our consolidated financial statements included elsewhere in this Annual Report on Form 10-K, 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.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II

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

Market Information

Our Class A common stock is currently listed on The Nasdaq Global Select Market under the ticker "WOOF" and began trading on January 14, 2021. Prior to that date, there was no public trading market for our Class A common stock. There is no public trading market for our Class B-1 common stock, par value $0.001 per share, or our Class B-2 common stock, par value $0.000001 per share.

Holders

As of March 28, 2024, there were eighty-nine shareholders of record of our Class A common stock, one shareholder of record of our Class B-1 common stock, and two shareholders of record of our Class B-2 common stock. The number of record holders of our Class A common stock does not reflect the number of persons or entities holding their stock in "street" name through brokerage firms or other nominee holders.

Recent Sales of Unregistered Equity Securities

None.

Issuer Purchases of Equity Securities

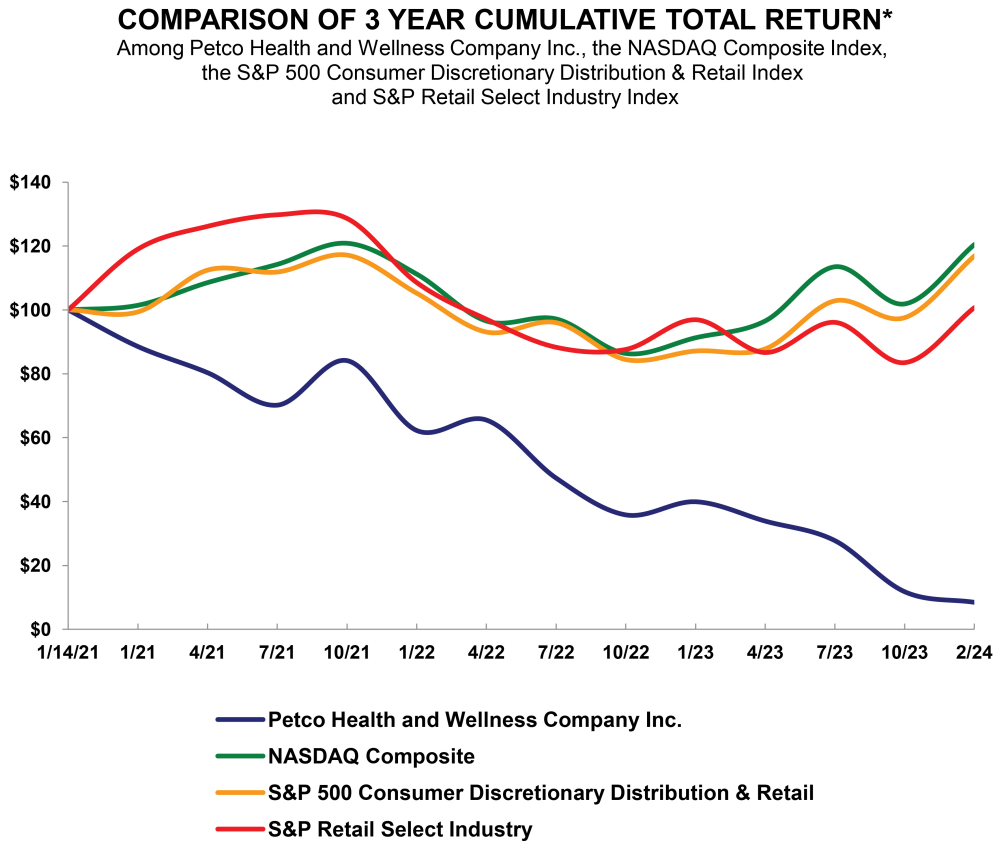
None.

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 and pay down our indebtedness. Our future dividend policy is within the discretion of our board of directors, subject to applicable law, 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," and "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources" in this Annual Report on Form 10-K for descriptions of restrictions on our ability to pay dividends.

Performance Graph

The graph below compares the cumulative total return on our Class A common stock with the cumulative total returns of the Nasdaq Composite index, S&P 500 Consumer Discretionary Distribution & Retail index (formerly the S&P Retail index), and S&P Retail Select Industry index from January 14, 2021 (the initial day of trading for our Class A common stock) through February 3, 2024. In 2023, we elected to replace the S&P 500 Consumer Discretionary Distribution & Retail index with the S&P Retail Select Industry index because due to the broader recognition of the S&P Retail Select Industry index. In future years, we will no longer provide a comparison to the S&P 500 Consumer Discretionary Distribution & Retail index. The graph assumes that the value of the investment in our Class A common stock and in each index (including reinvestment of dividends) was $100 on January 14, 2021 and tracks it through February 3, 2024. The comparisons in the graph below are based upon historical data and are not indicative of, nor intended to forecast, future performance of our Class A common stock.



*$100 invested on 1/14/21 in stock or 12/31/20 in index, including reinvestment of dividends.Indexes calculated on month-end basis.

	1/14/21	1/21	4/21	7/21	10/21	1/22	4/22	7/22	10/22	1/23	4/23	7/23	10/23	2/24
Petco Health and Wellness Company Inc.	100.00	88.54	80.34	70.17	84.12	62.24	65.51	47.35	35.82	39.93	33.88	27.76	11.77	8.44
NASDAQ Composite	100.00	101.44	108.55	114.26	120.88	111.23	96.52	97.17	86.35	91.27	96.54	113.51	101.88	120.46
S&P 500 Consumer Discretionary Distribution & Retail	100.00	99.36	112.41	111.83	117.11	105.22	93.07	96.00	84.47	87.14	87.79	102.81	97.56	116.84
S&P Retail Select Industry	100.00	119.02	126.18	129.78	128.65	108.58	97.09	88.30	87.62	96.92	86.65	96.09	83.48	100.70

The above performance graph shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or incorporated by reference into any filing of Petco Health and Wellness Company, Inc. under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

Item 6. [Reserved]

Item 7. 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 consolidated financial statements and the accompanying notes included elsewhere in this Annual Report on Form 10-K. 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," included in Part I, Item 1A, and elsewhere in this Annual Report on Form 10-K. 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. The risks described in documents we file from time to time with the U.S. Securities and Exchange Commission (the "SEC"), including the sections entitled "Cautionary Note Regarding Forward-Looking Statements" and "Risk Factors" in this Annual Report on Form 10-K, should be carefully reviewed.

Overview

Petco Health and Wellness Company, Inc. ("Petco", the "Company", "we", "our" and "us") is a pet health and wellness company focused on improving the lives of pets, pet parents, and our own partners. Through our omnichannel ecosystem, we provide our customers with a comprehensive offering of products and services to fulfill their pets' health and wellness needs through our more than 1,500 pet care centers in the U.S., Mexico, and Puerto Rico, including a growing network of 288 full service veterinary hospitals, our digital channel, and our flexible fulfillment options.

Our multicategory strategy integrates our digital assets with our nationwide physical footprint to meet the needs of pet parents who are looking for a single source for all their pet's needs. Our e-commerce site and mobile app serve as hubs for pet parents to manage their pets' health, wellness, and merchandise needs, while enabling them to shop wherever, whenever, and however they want. The full value of our ecosystem can be realized through our Vital Care Premier membership program. From the nutrition and supplies pets need each day, to the services that keep them at optimal health, Vital Care Premier makes it easier and more affordable for pet parents to care for their pet's whole health all in one place. Vital Care Premier memberships are at the top of our loyalty programs, followed by Vital Care Core and our perks programs that provide rewards for frequent purchasing.

We strive to be a company that is improving millions of pet lives as well as the lives of pet parents and the partners who work for us. In tandem with Petco Love, a life-changing independent nonprofit organization, we work with and support thousands of local animal welfare groups across the country and, through in-store adoption events, we have helped find homes for nearly 7 million animals.

Our product offering leverages a broad assortment of national, owned brand and exclusive merchandise, providing customers with a wide variety of nutritional options, including health-focused options free from artificial ingredients, complemented by a wide variety of pet care supplies and companion animals. While we offer pet parents a full spectrum of product choices, we maintain a number of premium products to address ongoing humanization and premiumization trends in the market. We integrate our product offering with our services business which includes veterinary care, grooming and training. Leveraging our experience in Vetco mobile clinics, we operate a network of full service, general practice veterinary hospitals complemented by prescription, and insurance offerings. We are increasingly linking our offerings with membership programs such as Vital Care Premier and pet health insurance in an effort to create deeper engagement with our customers, and with our Vital Care Core loyalty program members specifically, which members accounted for over 90% of transactions in fiscal 2023. Further enhancing the customer experience, our over 26,000 knowledgeable, passionate partners in our pet care centers provide important high-quality advice to our customers.

Macroeconomic factors, including rising interest rates, inflationary pressures, supply chain constraints, and global economic and geopolitical developments have had varying impacts on our results of operations, such as decreases in sales of discretionary items like supplies, that are difficult to isolate and quantify. We cannot predict the duration or ultimate severity of these macroeconomic factors or the ultimate impact on our operations and liquidity. For more information regarding certain risks associated with these macroeconomic factors, please refer to the risk factors in Part I, Item 1A, "Risk Factors" of this Form 10-K.

How We Assess the Performance of Our Business

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

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 pet care centers become comparable pet care centers on the first day of operation if the original pet care center was open longer than 12 full fiscal months. If, during the period presented, a pet care center was closed, sales from that pet care center are included up to the first day of the month of closing. 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 filing 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 also a key driver of changes in comparable sales.

Non-GAAP Financial Measures

Management and our board of directors review, in addition to GAAP (as defined herein) measures, certain non-GAAP financial measures, including Adjusted EBITDA, and Free Cash Flow, to evaluate our operating performance, generate future operating plans, and make strategic decisions regarding the allocation of capital. Further explanations of these non-GAAP measures, along with reconciliations to their most comparable GAAP measures, are presented below under "Reconciliation of Non-GAAP Financial Measures to GAAP Measures."

Factors Affecting Our Business

We believe that our performance and future success depend on several factors that present significant opportunities for us but also pose risks and challenges, including those discussed below and in the section titled "Risk Factors" included in Part I, Item 1A of this Annual Report on Form 10-K.

Pet Industry Trends

The U.S. pet care industry is large, serving millions of households with pets, and has exhibited steady growth driven by an increase in the pet population and trends in pet humanization and premiumization. Due to the essential, repeat nature of pet care, the industry has demonstrated resilience across economic cycles. However, during fiscal 2023, we observed a softening in discretionary spend and shifting consumer preferences for more value-centric products associated with the current inflationary macroeconomic environment. In response to this shifting demand, during fiscal 2023, we broadened our assortment to include more national brands and implemented strategic pricing actions to offer more balanced price points in an effort to appeal to a broader base of consumers.

Customer Pet Purchase Trends

Our multi-channel ecosystem is designed to support our customers regardless of how customers choose to shop for their pet care needs. As we saw the major purchase trend shift and grow 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 timely 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 encourage 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 animals). This is the primary focus of our customer engagement efforts from digital, to performance marketing campaigns, to new product introductions, and to Petco partner cross- and up-selling activities in pet care centers. The ability to convert more of our customers to loyal, multi-channel shoppers will positively affect business performance.

Innovation and Transformation

We have made significant investments to support our innovation and business transformation strategies. These investments include: expansion of our veterinary footprint, digital and e-commerce integration and expansion; enhanced supply chain capacity including additional distribution centers; data analytical capabilities; and marketing and advertising.

While these investments provide a key foundation and help 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 BOPUS, curbside pick-up, and same day delivery, 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 gross margins (though attractive operating margins), as well as customer shopping preferences, impacts 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. In response to shifting consumer demand, in fiscal 2023 we broadened our assortment to include more national brand products, which are typically lower priced and less profitable. If sales of such products are not significant, we do not increase the average basket size of customers purchasing such products, or we are unsuccessful in transitioning such customers into higher margin products over time, then our profitability could be adversely affected.

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 our ongoing growth.

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 associated with sales to customers;
- freight costs associated with moving merchandise inventories;
- inventory shrinkage costs and write-downs;
- payroll and benefit costs of pet groomers, trainers, veterinarians, and other direct costs of services; and

- costs associated with operating our distribution centers including payroll and benefits, occupancy costs, and depreciation.

Selling, General, and Administrative Expense

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

- payroll and benefit costs of pet care center employees and corporate employees;
- occupancy and operating costs of pet care centers and corporate facilities;
- depreciation and amortization related to pet care centers and corporate assets;
- credit card fees;
- store pre-opening and remodeling costs;
- advertising costs; and
- other selling and administrative costs.

SG&A includes both fixed and variable costs and therefore is not directly correlated with net sales.

Goodwill and Indefinite-Lived Intangible Impairment

In connection with the fiscal 2015 acquisition by our 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. During the third quarter of fiscal 2023, we concluded indicators of impairment existed due to declines in the Company's share price, as well as current macroeconomic conditions, and performed an interim impairment test of our goodwill and indefinite-lived trade name, which resulted in a pre-tax goodwill impairment charge of $1,222.5 million. Please read the discussion of these assets under "Critical Accounting Policies and Estimates."

Interest Expense

Our interest expense in fiscal 2021 was primarily associated with a term loan facility, and a revolving credit facility. On March 4, 2021, we borrowed $1,700.0 million under a new first lien term loan facility, repaid all outstanding principal and interest on the existing term loan facility, and replaced our existing revolving credit facility with a new revolving credit facility. Please read the discussion under "Liquidity and Capital Resources—Sources of Liquidity" for further information.

Our interest expense in fiscal 2022 was primarily associated with a first lien term loan facility and a revolving credit facility. In November 2022, we entered into a series of interest rate cap agreements to limit the maximum interest on a portion of our variable-rate debt and decrease our exposure to interest rate variability. In December 2022, we amended our first lien term loan facility and our revolving credit facility to replace the LIBOR-based rate with a SOFR-based rate as the interest rate benchmark. Please read the discussion under "Liquidity and Capital Resources—Sources of Liquidity" for further information.

Our interest expense in fiscal 2023 was primarily associated with a first lien term loan facility, a revolving credit facility, and interest rate caps and collars. Throughout fiscal 2023, we entered into interest rate collar agreements to limit the maximum interest on a portion of our variable-rate debt and decrease our exposure to interest rate variability. Refer to the discussion under "Liquidity and Capital Resources—Sources of Liquidity" for further information.

Income Tax Expense (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 from Equity Method Investees

Investments for which the Company exercises significant influence but does not have control are accounted for under the equity method. Equity method investment activity is primarily related to a 50% joint venture with Grupo Gigante, S.A.B. de C.V. (the "Mexico joint venture") to establish Petco locations in Mexico. The Company's share of the investee's results is presented as either income or loss from equity method investees in the accompanying consolidated statements of operations.

Net Loss Attributable to Noncontrolling Interest

The noncontrolling interest represents 50% of the net loss of our veterinary joint venture, which was 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. In May 2022, the Company completed the purchase of the remaining 50% of the issued and outstanding membership interests of the joint venture, which is now a wholly owned subsidiary of the Company.

Executive Summary

Comparing fiscal 2023 and fiscal 2022, our results included the following:

- an increase in net sales from $6.04 billion to $6.26 billion, representing period-over-period growth of 3.6%;
- comparable sales growth of 1.8%;
- net loss attributable to Class A and B-1 common stockholders of $1,280.2 million impacted by goodwill impairment, compared to net income attributable to Class A and B-1 common stockholders of $90.8 million in the prior year; and
- A decrease in Adjusted EBITDA from $530.8 million to $401.1 million.

Results of Operations

The following tables summarize our results of operations and the percent of net sales of line items included in our consolidated statements of operations (dollars in thousands):

	Fiscal years ended		
	February 3, 2024	January 28, 2023	January 29, 2022
	(53 weeks)	(52 weeks)	(52 weeks)
Net sales:			
Products	$ 5,273,710	$ 5,230,515	$ 5,136,859
Services and other	981,574	805,452	670,290
Total net sales	6,255,284	6,035,967	5,807,149
Cost of sales:			
Products	3,269,628	3,035,249	2,875,313
Services and other	631,821	573,611	505,226
Total cost of sales	3,901,449	3,608,860	3,380,539
Gross profit	2,353,835	2,427,107	2,426,610
Selling, general and administrative expenses	2,311,625	2,201,548	2,160,539
Goodwill impairment	1,222,524	—	—
Operating (loss) income	(1,180,314)	225,559	266,071
Interest income	(3,405)	(1,032)	(62)
Interest expense	150,909	101,643	77,397
Loss on extinguishment and modification of debt	920	—	20,838
Other non-operating (income) loss	(4,727)	12,667	(34,497)
(Loss) income before income taxes and income from equity method investees	(1,324,011)	112,281	202,395
Income tax (benefit) expense	(27,613)	35,347	53,473
Income from equity method investees	(16,188)	(12,976)	(10,883)
Net (loss) income	(1,280,210)	89,910	159,805
Net loss attributable to noncontrolling interest	—	(891)	(4,612)
Net (loss) income attributable to Class A and B-1 common stockholders	$ (1,280,210)	$ 90,801	$ 164,417

	Fiscal years ended		
	February 3, 2024 (53 weeks)	January 28, 2023 (52 weeks)	January 29, 2022 (52 weeks)
Net sales:			
Products	84.3%	86.7%	88.5%
Services and other	15.7	13.3	11.5
Total net sales	100.0	100.0	100.0
Cost of sales:			
Products	52.3	50.3	49.5
Services and other	10.1	9.5	8.7
Total cost of sales	62.4	59.8	58.2
Gross profit	37.6	40.2	41.8
Selling, general and administrative expenses	37.0	36.5	37.2
Goodwill impairment	19.5	—	—
Operating (loss) income	(18.9)	3.7	4.6
Interest income	(0.1)	(0.0)	(0.0)
Interest expense	2.5	1.6	1.3
Loss on extinguishment and modification of debt	0.0	—	0.4
Other non-operating (income) loss	(0.1)	0.2	(0.6)
(Loss) income before income taxes and income from equity method investees	(21.2)	1.9	3.5
Income tax (benefit) expense	(0.4)	0.6	0.9
Income from equity method investees	(0.3)	(0.2)	(0.2)
Net (loss) income	(20.5)	1.5	2.8
Net loss attributable to noncontrolling interest	—	0.0	0.0
Net (loss) income attributable to Class A and B-1 common stockholders	(20.5)%	1.5%	2.8%

	Fiscal years ended		
	February 3, 2024 (53 weeks)	January 28, 2023 (52 weeks)	January 29, 2022 (52 weeks)
Operational Data:			
Comparable sales increase	1.8%	4.5%	18.9%
Total pet care centers (U.S. and Puerto Rico) at end of period	1,423	1,430	1,433
Total veterinarian practices at end of period	288	247	197

Fiscal 2023 (53 weeks) Compared with Fiscal 2022 (52 weeks)

Net Sales and Comparable Sales

	Fiscal years ended			
(dollars in thousands)	February 3, 2024	January 28, 2023	$ Change	% Change
Consumables	$ 3,063,845	$ 2,859,602	$ 204,243	7.1%
Supplies and companion animals	2,209,865	2,370,913	(161,048)	(6.8%)
Services and other	981,574	805,452	176,122	21.9%
Net sales	$ 6,255,284	$ 6,035,967	$ 219,317	3.6%

Net sales increased $219.3 million, or 3.6%, to $6.26 billion in fiscal 2023 compared to net sales of $6.04 billion in fiscal 2022, driven by a 1.8% increase in our comparable sales and an increase of $116.6 million as a result of the 53rd week in fiscal 2023. We continue to experience momentum in consumables and services, although we have also experienced a decrease in supplies and companion animal sales driven by softening in discretionary spend associated with the current inflationary macroeconomic environment.

The increase in consumables sales between the periods was driven in part by our strategic investments in customer acquisition and retention, and our investment in bringing additional brands into our consumables assortment. The decrease in supplies and companion animal sales is due to a decrease in spending on certain non-essential items. The increase in services and other was due to growth in our membership offerings including Vital Care Premier and Vital Care Core, and growth in our grooming services and veterinary business in which we now operate 288 veterinary hospitals – an increase of 41 over the prior year.

In fiscal 2023, pet care center merchandise revenue increased 1.0%, which partially offset the impact of lower discretionary purchasing in supplies and companion animals. Our e-commerce and digital sales increased 8.5% from fiscal 2022 to fiscal 2023, driven by strength in our digital pharmacy and repeat customers. Service-related sales, which include veterinary hospitals, increased 15.3%, reflecting expansion and maturity of our veterinary hospital footprint and growth in our veterinary and grooming business.

We are unable to quantify certain factors impacting sales described above due to the fact that such factors are based on input measures or qualitative information that do not lend themselves to quantification.

Gross Profit

Gross profit decreased $73.3 million, or 3.0%, to $2.35 billion in fiscal 2023 compared to gross profit of $2.43 billion for fiscal 2022. As a percentage of sales, our gross profit rate was 37.6% for fiscal 2023 compared to 40.2% for fiscal 2022. The decrease in gross profit rate was primarily due to the mix impact of higher consumables sales and softer supplies and companion animal sales as well as investments made in bringing additional brands into our consumables assortment. Sales channel impacts driven by strength in our digital and services business (which includes the vet business) also contributed to the decrease in gross profit rate. We are unable to quantify the factors impacting gross profit rate described above due to the fact that such factors are based on input measures or qualitative information that do not lend themselves to quantification.

Selling, General and Administrative Expenses

SG&A expenses increased $110.1 million, or 5.0%, to $2.31 billion for fiscal 2023 compared to $2.20 billion for fiscal 2022. As a percentage of net sales, SG&A expenses increased from 36.5% in fiscal 2022 to 37.0% in fiscal 2023. The increase in SG&A expenses period-over-period was to support our growth as we continue to invest in infrastructure and our people. The increase included higher payroll and fringe benefits, store occupancy costs, and equity-based compensation expense driven by additional awards issued throughout the past year.

Goodwill Impairment

In fiscal 2023, the Company recorded a pre-tax goodwill impairment charge of $1.22 billion as a result of performing an interim impairment test in the third quarter of fiscal 2023 due to the identification of certain triggering events. For more information on this charge, refer to Note 6, *"Goodwill,"* to the Notes to Consolidated Financial Statements included in Part II, Item 8 of this of this Annual Report on Form 10-K.

Interest Expense

Interest expense increased $49.3 million, or 48.5%, to $150.9 million in fiscal 2023 compared with $101.6 million in fiscal 2022. The increase was primarily driven by higher interest rates on the First Lien Term Loan. For more information refer to Note 7, "*Senior Secured Credit Facilities*," in the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K.

Loss on Extinguishment and Modification of Debt

In fiscal 2023, the Company recognized $0.9 million of losses on partial extinguishment of debt. This loss was recognized in conjunction with the $35.0 million, $25.0 million and $15.0 million repayments on the First Lien Term Loan in March 2023, May 2023 and August 2023, respectively. In fiscal 2022, the Company did not recognize any losses on extinguishment or modification of debt. In fiscal 2021, the Company recognized $20.8 million of losses on the March 2021 refinancing of the Amended Term Loan Facility and Amended Revolving Credit Facility. For more information regarding these activities, refer to Note 7, "*Senior Secured Credit Facilities*," in the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K.

Other Non-Operating (Income) Loss

Other non-operating income was $4.7 million and other non-operating loss was $12.7 million for fiscal 2023 and fiscal 2022, respectively. These gains and losses related to remeasurements of the fair value of the Company's investment in Rover Group, Inc., which began after the consummation of its merger with a publicly traded special purpose acquisition company in fiscal 2021. In fiscal 2023, the Company sold its interest in Rover Group, Inc. For more information refer to Note 9, *"Fair Value Measurements,"* to the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K.

Income Tax (Benefit) Expense

Our effective tax rate was 2.1% for fiscal 2023, resulting in income tax benefit of $27.6 million, compared to an effective tax rate of 28.0% and income tax expense of $35.3 million for fiscal 2022. The decrease in effective tax rate in fiscal 2023 as compared to fiscal 2022 is primarily driven by non-deductible goodwill impaired during the third quarter of fiscal 2023, in addition to a shortfall in tax deductions resulting from the exercise and vesting of equity-based compensation awards.

Net Income (Loss) Attributable to Class A and B-1 Common Stockholders

Net loss attributable to Class A and B-1 common stockholders was $(1,280.2) million for fiscal 2023 compared with a net income attributable to Class A and B-1 common stockholders of $90.8 million for fiscal 2022. The decline period-over-period was primarily driven by a goodwill impairment charge of $1,222.5 million, higher SG&A costs of $110.1 million, higher interest expense of $49.3 million, offset partially by a $17.4 million change in the remeasurement of our investment in Rover Group, Inc.

Prior Year Discussion of Results and Comparisons

For information on fiscal 2022 results and similar comparisons, please read "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our previous Annual Report on Form 10-K filed with the SEC on March 28, 2023.

Reconciliation of Non-GAAP Financial Measures to GAAP Measures

The following information provides definitions and reconciliations of certain non-GAAP financial measures to the most directly comparable financial measures calculated and presented in accordance with GAAP. Such non-GAAP financial measures are not calculated in accordance with GAAP and should not be considered superior to, as a substitute for or alternative to, and should be considered in conjunction with, the most comparable GAAP measures. The non-GAAP financial measures presented may differ from similarly-titled measures used by other companies.

Adjusted EBITDA

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.

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.

The table below reflects the calculation of Adjusted EBITDA and Adjusted EBITDA Margin for the periods presented:

	Fiscal years ended		
	February 3, 2024	January 28, 2023	January 29, 2022
(dollars in thousands)	(53 weeks)	(52 weeks)	(52 weeks)
Net (loss) income attributable to Class A and B-1 common stockholders	$ (1,280,210)	$ 90,801	$ 164,417
Interest expense, net	147,504	100,611	77,335
Income tax (benefit) expense	(27,613)	35,347	53,473
Depreciation and amortization	200,782	193,828	172,431
Income from equity method investees	(16,188)	(12,976)	(10,883)
Loss on extinguishment and modification of debt	920	—	20,838
Goodwill impairment	1,222,524	—	—
Asset impairments and write offs	2,833	1,992	10,918
Equity-based compensation expense	81,859	60,784	49,265
Other non-operating (income) loss	(4,727)	12,667	(34,497)
Mexico joint venture EBITDA (1)	38,226	29,584	26,837
Acquisition-related integration costs (2)	—	15,314	—
Other costs (3)	35,193	2,817	18,235
Adjusted EBITDA	$ 401,103	$ 530,769	$ 548,369
Net sales	$ 6,255,284	$ 6,035,967	$ 5,807,149
Net margin (4)	(20.5)%	1.5%	2.8%
Adjusted EBITDA Margin	6.4%	8.8%	9.4%

(1) Mexico joint venture EBITDA represents 50% of the entity's operating results for the periods presented, 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 years ended		
	February 3, 2024	January 28, 2023	January 29, 2022
(dollars in thousands)	(53 weeks)	(52 weeks)	(52 weeks)
Net income	$ 32,375	$ 24,757	$ 21,773
Depreciation	26,141	19,820	15,679
Income tax expense	11,449	9,409	11,390
Foreign currency loss (gain)	1,520	(268)	(431)
Interest expense, net	4,966	5,449	5,263
EBITDA	$ 76,451	$ 59,167	$ 53,674
50% of EBITDA	$ 38,226	$ 29,584	$ 26,837

(2) Acquisition-related integration costs include direct costs resulting from acquiring and integrating businesses. These include third-party professional and legal fees and other integration-related costs that would not have otherwise been incurred as part of the Company's operations. In fiscal 2022, approximately $8.2 million of these integration costs was recorded in cost of sales, and $7.1 million of these integration costs was recorded in selling, general and administrative expenses.

(3) Other costs include, as incurred: restructuring costs and restructuring-related severance costs; legal reserves associated with significant, non-ordinary course legal or regulatory matters; and costs related to certain significant strategic transactions.

(4) We define net margin as net (loss) income attributable to Class A and B-1 common stockholders divided by net sales and Adjusted EBITDA margin as Adjusted EBITDA divided by net sales.

Free Cash Flow

Free Cash Flow is a non-GAAP financial measure that is calculated as net cash provided by operating activities less cash paid for fixed assets. Management believes that Free Cash Flow, which measures our ability to generate additional cash from our business operations, is an important financial measure for use in evaluating the Company's financial performance.

Although other companies report their free cash flow, numerous methods exist for calculating a company's free cash flow. As a result, the method used by the Company's management to calculate our Free Cash Flow may differ from the methods used by other companies to calculate their free cash flow.

The table below reflects the calculation of Free Cash Flow for the periods presented:

	Fiscal years ended		
(dollars in thousands)	February 3, 2024 (53 weeks)	January 28, 2023 (52 weeks)	January 29, 2022 (52 weeks)
Net cash provided by operating activities	$ 215,719	$ 346,003	$ 358,215
Cash paid for fixed assets	(225,598)	(278,020)	(239,110)
Free Cash Flow	$ (9,879)	$ 67,983	$ 119,105

Liquidity and Capital Resources

Overview

Our primary sources of liquidity are funds generated by operating activities and available capacity for borrowings on our secured asset-based revolving credit facility (the "ABL 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. Our liquidity as of February 3, 2024 was $572.0 million inclusive of cash and cash equivalents of $125.4 million and $446.6 million of availability on the ABL Revolving Credit Facility. We believe that our current resources, together with anticipated cash flows from operations and borrowing capacity under the ABL Revolving Credit Facility, will be sufficient to finance our operations, meet our current cash requirements, and fund anticipated capital investments for at least 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.

We are a party to contractual obligations involving commitments to make payments to third parties. These obligations impact our short-term and long-term liquidity and capital resource needs. Certain contractual obligations are reflected on the consolidated balance sheet as of February 3, 2024, while others are considered future obligations. Our contractual obligations primarily consist of operating leases and long-term debt and related interest payments. We also enter certain short-term lease commitments, letters of credit and purchase obligations in the normal course of business. Refer to Note 5, "*Leases*," and Note 7, "*Senior Secured Credit Facilities*," in the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for amounts outstanding as of February 3, 2024 related to operating leases and debt, respectively. Refer also to further discussion on our debt refinancing transaction in "Sources of Liquidity" below.

Purchase obligations and commitments consist of open purchase orders, non-cancellable commitments for information technology, marketing and other products and services used in the normal course of business as well as our commitment for naming rights to the baseball stadium. As of February 3, 2024, our purchase obligations and commitments were $349.0 million of which $281.1 million is considered short-term.

Cash Flows

The following table summarizes our consolidated cash flows:

	Fiscal years ended		
(dollars in thousands)	February 3, 2024 (52 weeks)	January 28, 2023 (52 weeks)	January 29, 2022 (52 weeks)
Total cash provided by (used in):			
Operating activities	$ 215,719	$ 346,003	$ 358,215
Investing activities	(207,445)	(320,324)	(237,083)
Financing activities	(85,352)	(33,842)	(18,782)
Net (decrease) increase in cash, cash equivalents and restricted cash	$ (77,078)	$ (8,163)	$ 102,350

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) income 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; other non-operating (income) loss; and the effect of changes in operating assets and liabilities.

Net cash provided by operating activities was $215.7 million in fiscal 2023 compared with net cash provided by operating activities of $346.0 million in fiscal 2022. The decrease in operating cash flow was driven by an increase in cash paid for inventory, higher payroll and fringe benefits as well as increases in cash paid for interest and operating leases. This was partially offset by an increase in sales, effective management of accounts payable, and lower payouts of prior year accrued incentive bonuses.

Net cash provided by operating activities was $346.0 million in fiscal 2022 compared with $358.2 million in fiscal 2021. The decrease in operating cash flow was due to lower operating income, higher interest payments, higher cash paid for payroll and fringe as well as payouts of prior year accrued incentive bonuses. This was partially offset by lower cash paid for advertising and lower cash payments on operating leases due to the timing of rent payments.

Investing Activities

Net cash used in investing activities was $207.4 million, $320.3 million, and $237.1 million for fiscal 2023, fiscal 2022, and fiscal 2021, respectively, and consisted primarily of capital expenditures supporting our growth and initiatives.

The decrease in capital expenditures between fiscal 2023 and fiscal 2022 was primarily driven by reductions in capital spend partially offset by proceeds received from the sale of our investment in Rover Group, Inc. Additionally, in fiscal 2022, we paid $35.0 million for the remaining 50% stake in our veterinary joint venture. In fiscal 2024, we expect to spend approximately $140 million in capital expenditures, reflecting fewer anticipated hospital build-outs and a balanced approach between focused investments and cash flow.

The increase in capital expenditures between fiscal 2022 and fiscal 2021 was primarily due to the build-out of our veterinary hospitals, innovation, capital expenditures for our new distribution centers and enhanced supply chain capacity in response to our sales growth.

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

	Fiscal years ended		
(dollars in thousands)	**February 3, 2024**	**January 28, 2023**	**January 29, 2022**
New and existing pet care center locations	$ 121,815	$ 146,432	$ 140,721
Digital and information technology	70,598	78,611	57,319
Supply chain and other	33,185	52,977	41,070
Total capital expenditures	$ 225,598	$ 278,020	$ 239,110

Financing Activities

Net cash used in financing activities was $85.4 million for fiscal 2023, compared with $33.8 million used in financing activities in fiscal 2022 and $18.8 million used in financing activities in fiscal 2021.

Financing cash flows in fiscal 2023 primarily consisted of $75.0 million in principal repayments on the term loan, borrowings and repayments under the ABL Revolving Credit Facility, and payments for tax withholdings on stock-based awards.

Financing cash flows in fiscal 2022 primarily consisted of borrowings and repayments under the ABL Revolving Credit Facility, quarterly term loan repayments, and payments for tax withholdings on stock-based awards.

Financing cash flows in fiscal 2021 primarily consisted of borrowings and repayments of debt in connection with the March 4, 2021 debt refinancing transaction discussed under "Sources of Liquidity" below.

Sources of Liquidity

Senior Secured Credit Facilities

On March 4, 2021, the Company completed a refinancing transaction by entering into a $1,700 million secured term loan facility maturing on March 4, 2028 (the "First Lien Term Loan") and the ABL Revolving Credit Facility, which matures on March 4, 2026 and has availability of up to $500.0 million, subject to a borrowing base.

On December 12, 2022, the Company amended the First Lien Term Loan to replace the LIBOR-based rate with a SOFR-based rate as the interest rate benchmark. Interest on the First Lien Term Loan is based on, at the Company's option, either a base rate or Adjusted Term SOFR, subject to a 0.75% floor, payable upon maturity of the SOFR contract, in either case plus the applicable rate. The base rate is the greater of the bank prime rate, federal funds effective rate plus 0.5% or Adjusted Term SOFR plus 1.0%. The applicable rate is 2.25% per annum for a base rate loan or 3.25% per annum for an Adjusted Term SOFR loan. Principal and interest payments commenced on June 30, 2021. Principal payments are typically $4.25 million quarterly.

In March 2023, May 2023 and August 2023, the Company repaid $35.0 million, $25.0 million and $15.0 million in principal, respectively, of the First Lien Term Loan using existing cash on hand. The repayments were applied to remaining principal payments in order of scheduled payment date.

In March 2024, the Company amended the ABL Revolving Credit Facility, which now consists of two tranches, to increase its total availability from $500.0 million to $581.0 million and extend the maturity on a portion of this availability. The first tranche has availability of up to $35.0 million, subject to a borrowing base, maturing on March 4, 2026. The second tranche has availability of up to $546.0 million, subject to a borrowing base, maturing on March 29, 2029. Interest on the ABL Revolving Credit Facility is now based on, at the Company's option, either the base rate subject to a 1% floor, or Term SOFR subject to a floor of 0%, plus an applicable margin. All other key terms of the ABL Revolving Credit Facility remained unchanged.

For more information regarding this indebtedness, refer to Note 7, "*Senior Secured Credit Facilities*," in the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K.

Derivative Instruments

In November 2022, the Company entered into a series of interest rate cap agreements to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to three-month Term SOFR. The interest rate caps became effective December 30, 2022 and expire on December 31, 2024.

In March 2023, the Company entered into an interest rate collar agreement to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to three-month Term SOFR. The interest rate collar became effective March 31, 2023 and expires on March 31, 2026.

In June 2023, the Company entered into an interest rate collar agreement to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to three-month Term SOFR. The interest rate collar became effective September 30, 2023 and expires on December 31, 2026.

In December 2023, the Company entered into an interest rate collar agreement to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to three-month Term SOFR. The interest rate collar becomes effective December 31, 2024 and expires on December 31, 2026.

In March 2024, the Company entered into two interest rate collar agreements to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to three-month Term SOFR. The interest rate collars become effective on December 31, 2024 and expire on December 31, 2026.

For more information regarding derivative instruments, refer to Note 8, "*Derivative Instruments*," in the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K.

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.

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 ("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 Annual Report on Form 10-K. 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 pet care center locations, and cycle counts are performed for inventory at distribution centers to ensure inventory is properly stated in our consolidated financial statements. During the period between counts at pet care 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 3, 2024 would have affected pre-tax loss by $1.6 million in fiscal 2023. 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 shrink reserve at February 3, 2024 would have affected pre-tax loss by $3.5 million in fiscal 2023.

Vendor Allowances

We receive various forms of consideration from our merchandise vendors (vendor allowances). We receive 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 operations 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 operations as the costs are incurred, as the related costs are also classified as selling, general and administrative expenses.

We establish a deferral for vendor income that is earned but not yet received and record the deferral as a reduction to merchandise inventory. The majority of the year-end vendor income deferrals are collected within the following fiscal quarter, and we do not believe there is reasonable likelihood that the assumptions used in our estimate will change significantly. Historically, adjustments to our vendor income deferral have not been material. A 10% difference in our vendor income deferred at February 3, 2024 would have affected pre-tax loss by $2.3 million in fiscal 2023.

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

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. Long-lived assets are reviewed for impairment at the lowest level of identifiable cash flows, and are not recoverable if the carrying amount exceeds the sum of the undiscounted cash flows expected to result from the 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 pet care center 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 pet care center 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. In cases where a quantitative test is performed, the fair value of our reporting unit is estimated using the assistance of a third-party valuation firm. If a quantitative assessment is performed, the evaluation includes management estimates of cash flow projections based on internal future projections and/or use of a market approach by reviewing transactional and financial data of publicly traded companies. The assumptions used in the impairment analysis are inherently subject to uncertainty and small changes in these assumptions could have a significant impact on the concluded value. The Company's market capitalization is also considered as part of the analysis, in order to further validate the reasonableness of the fair values concluded for the reporting unit. Factors that may trigger an interim impairment test may include, but are not limited to, current economic and market conditions or a significant decline in the Company's stock price and market capitalization compared to net book value.

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 qualitative 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.

In cases where a quantitative test is performed, the fair value of our trade name is estimated using the assistance of a third-party valuation firm. Factors that may trigger an interim impairment test may include, but are not limited to, a significant decline in the Company's stock price and market capitalization compared to net book value, or changes in the pattern of utilization of the intangible asset. Significant assumptions used in the determination of fair value of the trade name generally include prospective financial information, growth rates, discount rates and comparable multiples from publicly traded companies in similar industries. 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 3, 2024 would have affected pre-tax loss by $8.9 million in fiscal 2023.

Recent Accounting Pronouncements

Refer to Note 1, "*Summary of Significant Accounting Policies*," in the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for information regarding recently issued accounting pronouncements.

Item 7A. 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 First Lien Term Loan and the ABL Revolving Credit Facility. As of February 3, 2024, we had $1,595.3 million outstanding under the First Lien Term Loan and no amounts outstanding under the ABL Revolving Credit Facility. The First Lien Term Loan and the ABL Revolving Credit Facility each bear interest at variable rates. An increase of 100 basis points in the variable rates on the First Lien Term Loan and the ABL Revolving Credit Facility as of February 3, 2024 would have increased annual cash interest in the aggregate by approximately $16.2 million. For information regarding the cash flow hedge agreements that we entered into to limit the maximum interest rate on a portion of our variable-rate debt and limit our exposure to interest rate variability, please refer to the section defined within Liquidity and Capital Resources in Part II, Item 7, "Derivative Instruments" of this Form 10-K.

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 3, 2024, 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.

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.

Item 8. Financial Statements and Supplementary Data.

PETCO HEALTH AND WELLNESS COMPANY, INC.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

PETCO HEALTH AND WELLNESS COMPANY, INC.

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of
Petco Health and Wellness Company, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Petco Health and Wellness Company, Inc. (the Company) as of February 3, 2024 and January 28, 2023, the related consolidated statements of operations, comprehensive income (loss), equity, and cash flows for each of the three years in the period ended February 3, 2024, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at February 3, 2024 and January 28, 2023, and the results of its operations and its cash flows for each of the three years in the period ended February 3, 2024, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of February 3, 2024, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 Framework) and our report dated April 2, 2024 expressed an unqualified opinion thereon.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with 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. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters

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

Vendor allowances

Description of the Matter	As discussed in Note 1 to the consolidated financial statements, the Company receives vendor allowances from certain merchandise vendors through a variety of programs intended to offset the cost of inventory and for promoting and selling merchandise inventory. Certain of these programs consist of promotional allowances that are contractually tied to the sale of inventory and are recognized as a reduction to cost of sales at the time of the sale of the specific goods. Auditing vendor allowances was complex due to the number of individual agreements and the varying terms in the respective agreements. Significant audit effort was required to evaluate the terms of the vendor agreements and the related treatment of the vendor allowances in the consolidated financial statements.
How We Addressed the Matter in Our Audit	We obtained an understanding, evaluated the design and tested the operating effectiveness of internal controls over the Company's vendor allowances process, including management's assessment of the terms of vendor agreements, the timing of recognition to the statement of operations and related classification of the vendor allowances. To test the recorded amount of vendor allowances, for a sample of vendor contracts, we tested whether the recorded amounts were consistent with the nature of the contractual arrangement and evaluated whether the allowances had been earned as of February 3, 2024, were appropriately recorded in the statement of operations, and were appropriately classified as a reduction of cost of sales based on the contractual terms. For a sample of vendor arrangements, we confirmed the terms of the agreement directly with the vendor.

Goodwill and trade name impairment

Description of the Matter	At February 3, 2024, the Company's goodwill was $1.0 billion and trade name was $1.0 billion, net of accumulated impairment. As discussed in Note 6 to the consolidated financial statements, goodwill and trade name are tested for impairment on an annual basis during the fourth quarter, or more frequently if events occur that indicate the estimated fair value of the reporting unit and trade name may no longer exceed their carrying amounts. During the third quarter of fiscal 2023, the Company identified indicators of impairment and performed an impairment test which resulted in a $1.2 billion impairment of goodwill and no impairment of the trade name. During the fourth quarter of fiscal 2023, no additional impairment was recorded to goodwill or trade name. Auditing the Company's impairment test was complex and required significant judgment in testing the estimates of fair value of the reporting unit and trade name. For goodwill, the fair value estimate was sensitive to assumptions such as forecasted net sales growth rates, operating income margin, and weighted average cost of capital ("WACC"). For trade name, the fair value estimate was sensitive to assumptions such as net sales growth rates, royalty rate, and discount rate. These assumptions are affected by management's expectations about future market or economic conditions, as well as Company specific strategic initiatives. Evaluating comparable market-based information, including assessing the control premium implied by a comparison of management's discounted financial projections to the Company's market capitalization required subjective and challenging auditor judgment.
How We Addressed the Matter in Our Audit	We obtained an understanding, evaluated the design and tested the operating effectiveness of controls over the Company's goodwill and trade name impairment review process, including controls over management's review of the significant assumptions described above. We also tested controls over management's review of the data used in its valuation models. To test the estimated fair value of the Company's reporting unit and trade name, we performed audit procedures that included, among others, assessing methodologies and testing the significant assumptions discussed above and the underlying data used by the Company in its analysis. We involved our valuation specialists to assist in reviewing the valuation methodologies and testing the royalty rate, WACC, and discount rate. We also performed sensitivity analyses to evaluate the impact that changes in the significant assumptions would have on the fair value of the reporting unit and trade name. In addition, we tested management's reconciliation of the fair value of the reporting unit to the market capitalization of the Company and evaluated the implied control premium relative to a range of control premiums on observed transactions of comparable companies.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2020.

San Diego, California
April 2, 2024

Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Petco Health and Wellness Company, Inc.

Opinion on Internal Control over Financial Reporting

We have audited Petco Health and Wellness Company, Inc.'s internal control over financial reporting as of February 3, 2024, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, Petco Health and Wellness Company, Inc. (the Company) maintained, in all material respects, effective internal control over financial reporting as of February 3, 2024, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of February 3, 2024 and January 28, 2023, and the related consolidated statements of operations, comprehensive income (loss), equity, and cash flows for each of the three years in the period ended February 3, 2024, and the related notes and our report dated April 2, 2024, expressed an unqualified opinion thereon.

Basis for Opinion

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

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

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

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

/s/ Ernst & Young LLP

San Diego, California
April 2, 2024

PETCO HEALTH AND WELLNESS COMPANY, INC.

CONSOLIDATED BALANCE SHEETS
(In thousands, except per share amounts)

	February 3, 2024	January 28, 2023
ASSETS		
Current assets:		
Cash and cash equivalents	$ 125,428	$ 201,901
Receivables, less allowance for credit losses ($1,806 and $952, respectively)	44,369	49,580
Merchandise inventories, net	684,502	652,430
Prepaid expenses	58,615	51,274
Other current assets	38,830	60,809
Total current assets	951,744	1,015,994
Fixed assets, net	816,367	803,327
Operating lease right-of-use assets	1,384,050	1,397,761
Goodwill	980,297	2,193,941
Trade name	1,025,000	1,025,000
Other long-term assets	205,694	176,806
Total assets	$ 5,363,152	$ 6,612,829
LIABILITIES AND EQUITY		
Current liabilities:		
Accounts payable and book overdrafts	$ 485,131	$ 381,213
Accrued salaries and employee benefits	101,265	89,929
Accrued expenses and other liabilities	200,278	217,556
Current portion of operating lease liabilities	310,507	309,766
Current portion of long-term debt and other lease liabilities	15,962	22,794
Total current liabilities	1,113,143	1,021,258
Senior secured credit facilities, net, excluding current portion	1,576,223	1,628,331
Operating lease liabilities, excluding current portion	1,116,615	1,148,155
Deferred taxes, net	251,629	303,121
Other long-term liabilities	121,113	130,487
Total liabilities	4,178,723	4,231,352
Commitments and contingencies (Notes 7 and 14)		
Stockholders' equity:		
Class A common stock, $0.001 par value: Authorized - 1.0 billion shares; Issued and outstanding - 231.2 million and 228.3 million shares, respectively	231	228
Class B-1 common stock, $0.001 par value: Authorized - 75.0 million shares; Issued and outstanding - 37.8 million shares	38	38
Class B-2 common stock, $0.000001 par value: Authorized - 75.0 million shares; Issued and outstanding - 37.8 million shares	—	—
Preferred stock, $0.001 par value: Authorized - 25.0 million shares; Issued and outstanding - none	—	—
Additional paid-in-capital	2,229,582	2,152,342
(Accumulated deficit) retained earnings	(1,047,243)	232,967
Accumulated other comprehensive income (loss)	1,821	(4,098)
Total stockholders' equity	1,184,429	2,381,477
Total liabilities and stockholders' equity	$ 5,363,152	$ 6,612,829

See accompanying notes to consolidated financial statements.

PETCO HEALTH AND WELLNESS COMPANY, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share amounts)

	Fiscal years ended		
	February 3, 2024	January 28, 2023	January 29, 2022
	(53 weeks)	(52 weeks)	(52 weeks)
Net sales:			
Products	$ 5,273,710	$ 5,230,515	$ 5,136,859
Services and other	981,574	805,452	670,290
Total net sales	6,255,284	6,035,967	5,807,149
Cost of sales:			
Products	3,269,628	3,035,249	2,875,313
Services and other	631,821	573,611	505,226
Total cost of sales	3,901,449	3,608,860	3,380,539
Gross profit	2,353,835	2,427,107	2,426,610
Selling, general and administrative expenses	2,311,625	2,201,548	2,160,539
Goodwill impairment	1,222,524	—	—
Operating (loss) income	(1,180,314)	225,559	266,071
Interest income	(3,405)	(1,032)	(62)
Interest expense	150,909	101,643	77,397
Loss on extinguishment and modification of debt	920	—	20,838
Other non-operating (income) loss	(4,727)	12,667	(34,497)
(Loss) income before income taxes and income from equity method investees	(1,324,011)	112,281	202,395
Income tax (benefit) expense	(27,613)	35,347	53,473
Income from equity method investees	(16,188)	(12,976)	(10,883)
Net (loss) income	(1,280,210)	89,910	159,805
Net loss attributable to noncontrolling interest	—	(891)	(4,612)
Net (loss) income attributable to Class A and B-1 common stockholders	$ (1,280,210)	$ 90,801	$ 164,417
Net (loss) income per Class A and B-1 common share:			
Basic	$ (4.78)	$ 0.34	$ 0.62
Diluted	$ (4.78)	$ 0.34	$ 0.62
Weighted average shares used in computing net (loss) income per Class A and B-1 common share:			
Basic	267,549	265,522	264,261
Diluted	267,549	265,951	265,338

See accompanying notes to consolidated financial statements.

PETCO HEALTH AND WELLNESS COMPANY, INC.

CONSOLIDATED STATEMENTS OF COMPREHENSIVE (LOSS) INCOME
(In thousands)

	Fiscal years ended		
	February 3, 2024	January 28, 2023	January 29, 2022
	(53 weeks)	(52 weeks)	(52 weeks)
Net (loss) income	$ (1,280,210)	$ 89,910	$ 159,805
Net loss attributable to noncontrolling interest	—	(891)	(4,612)
Net (loss) income attributable to Class A and B-1 common stockholders	(1,280,210)	90,801	164,417
Other comprehensive income (loss), net of tax:			
Foreign currency translation adjustment	5,534	194	(963)
Unrealized gain (loss) on derivatives	752	(2,180)	—
(Gains) losses on derivatives reclassified to income	(367)	126	—
Total other comprehensive income (loss), net of tax	5,919	(1,860)	(963)
Comprehensive (loss) income	(1,274,291)	88,050	158,842
Comprehensive loss attributable to noncontrolling interest	—	(891)	(4,612)
Comprehensive (loss) income attributable to Class A and B-1 common stockholders	$ (1,274,291)	$ 88,941	$ 163,454

See accompanying notes to consolidated financial statements.

PETCO HEALTH AND WELLNESS COMPANY, INC.

CONSOLIDATED STATEMENTS OF EQUITY
(In thousands)

	Common stock									
	Class A (shares)	Class B-1 (shares)	Class B-2 (shares)	Amount	Additional paid-in capital	(Accumulated deficit) Retained earnings	Accumulated other comprehensive (loss) income	Total stockholders' equity	Noncontrolling interest	Total equity
Balance at January 30, 2021	226,424	37,791	37,791	$ 264	$ 2,092,110	$ (22,251)	$ (1,275)	$ 2,068,848	$ (13,583)	$ 2,055,265
Equity-based compensation expense (Note 11)	—	—	—	—	45,603	—	—	45,603	—	45,603
Net income	—	—	—	—	—	164,417	—	164,417	(4,612)	159,805
Foreign currency translation adjustment, net of tax of $(337)	—	—	—	—	—	—	(963)	(963)	—	(963)
Issuance of restricted stock awards	55	—	—	—	—	—	—	—	—	—
Issuance of common stock, net of tax withholdings	708	—	—	1	(3,892)	—	—	(3,891)	—	(3,891)
Balance at January 29, 2022	227,187	37,791	37,791	$ 265	$ 2,133,821	$ 142,166	$ (2,238)	$ 2,274,014	$ (18,195)	$ 2,255,819
Equity-based compensation expense (Note 11)	—	—	—	—	61,355	—	—	61,355	—	61,355
Net income	—	—	—	—	—	90,801	—	90,801	(891)	89,910
Foreign currency translation adjustment, net of tax of $71	—	—	—	—	—	—	194	194	—	194
Unrealized loss on derivatives, net of tax of $(714) (Note 8)	—	—	—	—	—	—	(2,180)	(2,180)	—	(2,180)
Losses on derivatives reclassified to income, net of tax of $42 (Note 8)	—	—	—	—	—	—	126	126	—	126
Investment in veterinary joint venture, net of tax of $(13,774) (Note 1)	—	—	—	—	(40,312)	—	—	(40,312)	19,086	(21,226)
Issuance of common stock, net of tax withholdings	1,151	—	—	1	(2,522)	—	—	(2,521)	—	(2,521)
Balance at January 28, 2023	228,338	37,791	37,791	$ 266	$ 2,152,342	$ 232,967	$ (4,098)	$ 2,381,477	$ —	$ 2,381,477
Equity-based compensation expense (Note 11)	—	—	—	—	82,680	—	—	82,680	—	82,680
Net loss	—	—	—	—	—	(1,280,210)	—	(1,280,210)	—	(1,280,210)
Foreign currency translation adjustment, net of tax of $1,932	—	—	—	—	—	—	5,534	5,534	—	5,534
Unrealized gain on derivatives, net of tax of $246 (Note 8)	—	—	—	—	—	—	752	752	—	752
Gains on derivatives reclassified to income, net of tax of $(120) (Note 8)	—	—	—	—	—	—	(367)	(367)	—	(367)
Issuance of common stock, net of tax withholdings	2,818	—	—	3	(5,440)	—	—	(5,437)	—	(5,437)
Balance at February 3, 2024	231,156	37,791	37,791	$ 269	$ 2,229,582	$ (1,047,243)	$ 1,821	$ 1,184,429	$ —	$ 1,184,429

See accompanying notes to consolidated financial statements.

PETCO HEALTH AND WELLNESS COMPANY, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Fiscal years ended		
	February 3, 2024	January 28, 2023	January 29, 2022
	(53 weeks)	(52 weeks)	(52 weeks)
Cash flows from operating activities:			
Net (loss) income	$ (1,280,210)	$ 89,910	$ 159,805
Adjustments to reconcile net (loss) income to net cash provided by operating activities:			
Depreciation and amortization	200,782	193,828	172,431
Amortization of debt discounts and issuance costs	4,972	4,940	5,796
Provision for deferred taxes	(53,549)	(893)	37,741
Equity-based compensation expense	81,859	60,784	49,265
Impairments, write-offs and losses on sale of fixed and other assets	2,833	1,992	10,918
Loss on extinguishment and modification of debt	920	—	20,838
Income from equity method investees	(16,188)	(12,976)	(10,883)
Amounts reclassified out of accumulated other comprehensive (loss) income (Note 8)	(488)	168	—
Goodwill impairment	1,222,524	—	—
Non-cash operating lease costs	429,056	422,792	422,465
Other non-operating (income) loss	(4,727)	12,667	(34,497)
Changes in assets and liabilities:			
Receivables	5,211	6,038	(13,791)
Merchandise inventories	(32,072)	22,681	(136,404)
Prepaid expenses and other assets	(8,009)	(5,933)	(17,664)
Accounts payable and book overdrafts	103,919	(22,763)	71,775
Accrued salaries and employee benefits	11,347	(51,427)	10,679
Accrued expenses and other liabilities	(8,495)	13,616	42,899
Operating lease liabilities	(446,981)	(386,259)	(418,210)
Other long-term liabilities	3,015	(3,162)	(14,948)
Net cash provided by operating activities	215,719	346,003	358,215
Cash flows from investing activities:			
Cash paid for fixed assets	(225,598)	(278,020)	(239,110)
Cash paid for acquisitions, net of cash acquired (Note 3)	(6,725)	(9,640)	(4,334)
Cash paid for interest in veterinary joint venture (Note 1)	—	(35,000)	—
Proceeds from investments	24,878	—	6,135
Proceeds from sale of assets	—	2,336	226
Net cash used in investing activities	(207,445)	(320,324)	(237,083)
Cash flows from financing activities:			
Borrowings under long-term debt agreements	273,000	123,000	1,700,000
Repayments of long-term debt	(348,000)	(140,000)	(1,690,861)
Debt refinancing costs	—	—	(24,665)
Payments for finance lease liabilities	(5,925)	(5,083)	(3,564)
Proceeds from employee stock purchase plan and stock option exercises	4,223	3,796	4,185
Tax withholdings on stock-based awards	(8,650)	(15,555)	(33)
Payment of offering costs	—	—	(3,844)
Net cash used in financing activities	(85,352)	(33,842)	(18,782)
Net (decrease) increase in cash, cash equivalents and restricted cash	(77,078)	(8,163)	102,350
Cash, cash equivalents and restricted cash at beginning of year	213,727	221,890	119,540
Cash, cash equivalents and restricted cash at end of year	$ 136,649	$ 213,727	$ 221,890
Supplemental cash flow disclosures:			
Interest paid, net	$ 142,114	$ 89,285	$ 64,545
Capitalized interest	$ 1,260	$ 1,480	$ 1,003
Income taxes paid	$ 32,192	$ 14,443	$ 16,092
Supplemental non-cash investing and financing activities disclosures:			
Accounts payable and accrued expenses for capital expenditures	$ 18,888	$ 29,051	$ 36,935
Accrued tax withholdings on stock-based awards	$ 809	$ —	$ 6,552

See accompanying notes to consolidated financial statements.

1. Summary of Significant Accounting Policies

Description of Business and Basis of Presentation

Petco Health and Wellness Company, Inc. (together with its consolidated subsidiaries, the "Company") is a pet health and wellness company focused on improving the lives of pets, pet parents, and its own partners with 1,423 pet care centers in 50 states, the District of Columbia and Puerto Rico as of February 3, 2024. The Company also offers an expanded range of consumables, supplies, and services through its *www.petco.com* website and mobile app.

The Company was formed as a Delaware limited liability company under the name PET Acquisition LLC on November 19, 2015 as an acquisition entity controlled by Scooby LP, which was indirectly owned by funds affiliated with CVC Capital Partners, Canada Pension Plan Investment Board, 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. Under this ownership structure, the Company had four classes of membership units: (i) Common Series A Units; (ii) Common Series B Units; (iii) Common Series C Units; and (iv) Voting Common Units.

Common Stock

In January 2021, all of the Company's Common Series A Units, Common Series B Units, and Common Series C Units were contributed from Scooby LP to a newly formed and wholly owned subsidiary, Scooby Aggregator, LP. The Company then converted to a Delaware corporation pursuant to a statutory conversion and changed its name to Petco Health and Wellness Company, Inc.

In connection with the conversion and immediately prior to the Company's initial public offering, all outstanding membership units were converted into shares of newly-issued Class A common stock, Class B-1 common stock, and Class B-2 common stock.

The rights of the holders of Class A common stock and Class B-1 common stock are identical in all respects, except that Class B-1 common stock does not vote on the election or removal of the Company's directors. The rights of the holders of Class B-2 common stock differ from the rights of the holders of Class A common stock and Class B-1 common stock in that holders of Class B-2 common stock only possess the right to vote on the election or removal of the Company's directors.

In June 2021, Scooby Aggregator, LP, the Company's principal stockholder, completed the sale of 25.3 million existing shares of Class A common stock in connection with a secondary offering. The offering price was $24.00 per share. The Company received no proceeds from the secondary offering. Expenses incurred by the Company related to the secondary offering were not material.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of Petco Health and Wellness Company, Inc., its wholly owned subsidiaries, and a variable interest entity for which it was the primary beneficiary prior to the transaction described below. 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 ("GAAP") 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.

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 2023 refer to the fiscal year that began on January 29, 2023 and ended on February 3, 2024. Fiscal 2023 included 53 weeks and fiscal 2022 and 2021 included 52 weeks.

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. The CEO 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 pet care center 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 $40.0 million and $40.0 million at February 3, 2024 and January 28, 2023, respectively. 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 3, 2024	January 28, 2023
Cash and cash equivalents	$ 125,428	$ 201,901
Restricted cash included in other current assets	11,221	11,826
Total cash, cash equivalents and restricted cash in the statement of cash flows	$ 136,649	$ 213,727

Outstanding checks in excess of funds on deposit (book overdrafts) totaled $74.4 million and $27.4 million at February 3, 2024 and January 28, 2023, respectively, and are reflected in accounts payable and book overdrafts in the consolidated balance sheets.

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 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 operations 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 operations 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 pet care center locations and cycle counts are performed for inventory at distribution centers. During the period between counts at pet care 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 or fair value as of the date of the Acquisition less accumulated depreciation and amortization. Pet care center facilities and equipment under finance leases are recorded at the present value of 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 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 pet care center 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 operations.

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. In cases where the quantitative test is performed, the fair value of the Company's reporting unit is estimated by management with the assistance of a third party valuation firm. Significant assumptions used in the determination of fair value of the reporting unit generally include prospective financial information, discount rates, terminal growth rates and earnings multiples.

Trade Name

The Company's trade name has an indefinite life. 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 trade name to determine whether it is necessary to perform a quantitative impairment test. In cases where the quantitative test is performed, the fair value of the Company's trade name is estimated by management with the assistance of a third party valuation firm. Significant assumptions used in the determination of fair value of the trade name generally include prospective financial information, growth rates, discount rates and comparable multiples from publicly traded companies in similar industries. An impairment charge is recorded for the amount by which the carrying amount of the 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. Equity method investment activity is primarily related to a 50% joint venture with Grupo Gigante, S.A.B. de C.V. (the "Mexico joint venture") to establish Petco locations in Mexico. The Company's share of the investee's results is presented as either income or loss from equity method investees in the accompanying consolidated statements of operations.

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 joint venture is not material to the Company's consolidated financial statements.

The Mexico joint venture purchases certain inventory items and pet care center 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 2023, 2022, and 2021. The cumulative unrealized foreign currency adjustment on the translation of the Company's investment in the joint venture is recorded in accumulated other comprehensive income ("AOCI"), net of tax in the consolidated balance sheets.

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 previously held a 50% investment in a joint venture with a domestic partner to build and operate veterinary clinics in Petco locations. The joint venture was a VIE for which the Company was the primary beneficiary. Under the amended agreement, the domestic partner provided certain management and support services to the joint venture. These services included 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 paid the domestic partner a quarterly joint venture management fee equal to a portion of clinic revenues, subject to a minimum fixed fee. The Company incurred and recorded $0.7 million and $2.5 million of joint venture management fees under this agreement in fiscal 2022 and 2021, respectively, which were included in selling, general and administrative expenses in the

consolidated statements of operations. In May 2022, the Company completed the purchase of the remaining 50% of the issued and outstanding membership interests of the joint venture, which is now a wholly owned subsidiary of the Company, for cash consideration of $35.0 million. Direct transaction costs related to this purchase were not material.

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.

The carrying amounts of the Company's cash and cash equivalents, accounts receivable, trade accounts payable, and accrued expenses and other current liabilities approximate fair value based on the short-term maturities of these instruments.

Refer to Notes 7, 8 and 9 for fair value disclosures for the senior secured term credit facilities, 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 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 3, 2024, insurance recoveries of $6.5 million and $14.9 million were recorded in other current assets and other long-term assets, respectively. As of January 28, 2023, insurance recoveries of $7.0 million and $16.4 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 3, 2024	January 28, 2023
Current:		
Workers' compensation and employee-related health care benefits	$ 26,996	$ 27,175
General and auto liability reserves	6,703	5,678
	$ 33,699	$ 32,853
Non-current:		
Workers' compensation reserve	$ 39,854	$ 40,336
General and auto liability reserves	15,626	12,444
	$ 55,480	$ 52,780

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;
- Inventory shrinkage costs and write-downs;
- Payroll and benefit costs of pet groomers, trainers, veterinarians and other direct costs of services; and
- Costs associated with operating the Company's distribution centers including payroll and benefits, 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 pet care center and corporate employees;
- Occupancy and operating costs of pet care center and corporate facilities;
- Depreciation and amortization related to pet care center and corporate assets;
- Credit card fees;
- Store pre-opening and remodeling costs;

- Advertising costs; and
- Other selling and 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 operations. The Company's advertising expenses, net of cooperative advertising reimbursements, were $194.4 million, $203.7 million, and $227.9 million for fiscal 2023, 2022, and 2021, respectively. Vendor cooperative advertising reimbursements were not material in fiscal 2023. Vendor cooperative advertising reimbursements reduced total advertising expense by $10.0 million and $32.5 million for fiscal 2022 and 2021, respectively.

Leases

The majority of the Company's lease liabilities are real estate operating leases from which pet care center, corporate support, and distribution operations are conducted. The Company also leases equipment, vehicles, and certain pet care center locations under finance leases. Lease terms generally do not include options to terminate the lease and only include options to extend the lease, if it is reasonably certain that the option will be exercised. 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 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 pet care center and corporate support locations are included in selling, general and administrative expenses in the consolidated statements of operations. 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 pet care center and corporate support locations are included in selling, general and administrative expenses in the consolidated statements of operations. Interest on finance lease right-of-use assets is included in interest expense in the consolidated statements of operations. 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 2023, 2022, and 2021 was not material. The Company's asset retirement obligation was $5.9 million and $6.2 million at February 3, 2024 and January 28, 2023, 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 operations 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. Refer to Note 12 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 benefit is recognized. The minimum threshold for recognizing the 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 11). The Company recognizes the effect of pre-vesting forfeitures as they occur.

Equity Valuation

The per unit fair value of equity underlying the partnership unit awards prior to the Company's initial public offering 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.

Derivative Instruments

In November 2022, the Company entered into a series of interest rate cap agreements to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to the three-month Secured Overnight Financing Rate as published by CME Group ("Term SOFR"). The interest rate caps became effective December 30, 2022 and expire on December 31, 2024. 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 accumulated other comprehensive income (loss) ("AOCI").

In March 2023, the Company entered into an interest rate collar agreement to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to three-month Term SOFR. The interest rate collar became effective March 31, 2023 and expires on March 31, 2026.

In June 2023, the Company entered into an interest rate collar agreement to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to three-month Term SOFR. The interest rate collar became effective September 30, 2023 and expires on December 31, 2026.

In December 2023, the Company entered into an interest rate collar agreement to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to

three-month Term SOFR. The interest rate collar becomes effective December 31, 2024 and expires on December 31, 2026.

The interest rate collars are accounted for as cash flow hedges, and changes in the fair value of the interest rate collars are reported as a component of AOCI.

In March 2024, the Company entered into two interest rate collar agreements to limit the maximum interest on a portion of the Company's variable-rate debt and decrease its exposure to interest rate variability relating to three-month Term SOFR. The interest rate collars become effective on December 31, 2024 and expire on December 31, 2026.

Refer to Note 8 for further disclosures of the Company's derivative instruments and hedging activities.

Recent Accounting Pronouncements

In November 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2023-07 – Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures, which provides guidance on improvements to reportable segment disclosures, primarily through enhanced disclosures about significant segment expenses. Public entities with a single reportable segment must provide all the disclosures required by ASU 2023-07, as well as all existing segment disclosures in accordance with Accounting Standards Codification 280. The ASU is effective for fiscal years beginning after December 15, 2023 and interim periods within fiscal years beginning after December 15, 2024. The Company is currently evaluating the impact of this accounting standard on the Company's consolidated financial statements and related disclosures.

In December 2023, the FASB issued Accounting Standards Update No. 2023-09 – Income Taxes (Topic 740): Improvements to Income Tax Disclosures, which is intended to enhance the transparency of income tax matters within financial statements. The ASU requires public business entities to disclose, on an annual basis, specific categories in the rate reconciliation and provide additional information for reconciling items that meet a specific quantitative threshold. ASU 2023-09 is effective for fiscal years beginning after December 15, 2024. The Company is currently evaluating the impact of this accounting standard 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):

	Fiscal years ended		
	February 3, 2024	January 28, 2023	January 29, 2022
	(53 weeks)	(52 weeks)	(52 weeks)
Consumables	$ 3,063,845	$ 2,859,602	$ 2,533,755
Supplies and companion animals	2,209,865	2,370,913	2,603,104
Services and other	981,574	805,452	670,290
Net sales	$ 6,255,284	$ 6,035,967	$ 5,807,149

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. The Company's refund liability and expected cost recoveries were not material as of February 3, 2024 and January 28, 2023. 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.

Revenue is recognized net of applicable sales tax in the consolidated statements of operations. 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. Substantially all of the Company's remaining performance obligations have an original expected duration of one year or less. The Company did not have any material contract assets as of February 3, 2024 and January 28, 2023.

Product Revenue

Product revenue is recognized when control passes, which generally occurs at a point in time when the customer completes a transaction in a pet care center 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 pet care centers ("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 pet care centers, 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 future purchases generally 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. The Company's contract liabilities for its customer loyalty program were not material as of February 3, 2024 and January 28, 2023. 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.

The Company sells annual membership plans that include access to benefits such as vet exams, percentage discounts on certain products and services and additional loyalty program points. The Company allocates the transaction price to all performance obligations identified in the contract based on their relative fair values. Performance obligations provided over the term of the contract are recognized as revenue on a usage basis. This involves the estimation of expected usage patterns, primarily derived from historical information.

3. Other Acquisitions

During fiscal 2023, 2022 and 2021, the Company completed acquisitions of small, regional veterinary businesses for total consideration of approximately $10.0 million, $9.9 million and $5.5 million, respectively. Noncash consideration was not material. Net tangible and identifiable intangible assets acquired and liabilities assumed were not material. The acquisitions resulted in the recognition of $10.0 million, $9.9 million and $4.7 million of goodwill, respectively. The tax-deductible portion of goodwill in these acquisitions was $10.0 million, $9.9 million and $2.4 million, respectively.

Pro forma results of operations for the acquisitions have not been presented because they are not material to the consolidated results of operations.

4. Composition of Balance Sheet Accounts

Fixed Assets, Net

Fixed assets, net, consisted of the following (in thousands):

	February 3, 2024	January 28, 2023
Equipment	$ 978,242	$ 885,370
Leasehold improvements	753,160	686,888
Furniture and fixtures	428,561	398,187
Buildings and related improvements	12,816	16,696
Land	236	418
	2,173,015	1,987,559
Less accumulated depreciation	(1,356,648)	(1,184,232)
	$ 816,367	$ 803,327

The Company's depreciation and amortization expense for fixed assets, net was $201.0 million, $193.9 million, and $171.1 million for fiscal 2023, 2022 and 2021, respectively.

Accrued Salaries and Employee Benefits

Accrued salaries and employee benefits consisted of the following (in thousands):

	February 3, 2024	January 28, 2023
Accrued compensation and related taxes	$ 55,358	$ 44,724
Self-insurance reserves	26,996	27,175
Accrued paid time-off	18,911	18,030
	$ 101,265	$ 89,929

Accrued Expenses and Other Liabilities

Accrued expenses and other liabilities consisted of the following (in thousands):

	February 3, 2024	January 28, 2023
Deferred revenue	$ 33,523	$ 23,045
Accrued real estate taxes	28,843	26,485
Sales taxes payable	21,241	22,950
Accrued capital expenditures	18,888	29,051
Accrued advertising	15,079	24,020
Other accrued expenses and liabilities	82,704	92,005
	$ 200,278	$ 217,556

Other Long-Term Liabilities

Other long-term liabilities consisted of the following (in thousands):

	February 3, 2024	January 28, 2023
Self-insurance reserves	$ 55,480	$ 52,780
Finance leases	8,210	23,642
Other liabilities	57,423	54,065
	$ 121,113	$ 130,487

5. Leases

Lease assets and liabilities are reflected in the Company's consolidated balance sheets as follows (in thousands):

Leases	Balance sheet location	February 3, 2024	January 28, 2023
Assets			
Operating leases	Operating lease right-of-use assets	$ 1,384,050	$ 1,397,761
Finance leases	Fixed assets, net(1)	19,394	24,624
Total lease assets		$ 1,403,444	$ 1,422,385
Liabilities			
Current			
Operating leases	Current portion of operating lease liabilities	$ 310,507	$ 309,766
Finance leases	Current portion of long-term debt and other lease liabilities	15,962	5,794
Non-current			
Operating leases	Operating lease liabilities, excluding current portion	1,116,615	1,148,155
Finance leases	Other long-term liabilities	8,210	23,642
Total lease liabilities		$ 1,451,294	$ 1,487,357

(1) Finance lease right-of-use assets are recorded net of accumulated amortization of $25.9 million and $24.6 million as of February 3, 2024 and January 28, 2023, respectively.

The components of total lease cost are as follows (in thousands):

	Fiscal years ended		
	February 3, 2024	January 28, 2023	January 29, 2022
Operating lease cost	$ 429,056	$ 422,792	$ 422,465
Finance lease cost:			
Amortization of right-of-use lease assets	5,838	5,660	3,933
Interest on lease liabilities	1,250	1,329	876
Variable lease cost	119,361	110,335	109,723
Sublease income	(2,241)	(2,810)	(5,091)
Total lease cost	$ 553,264	$ 537,306	$ 531,906

Other information for the Company's leases is as follows (in thousands):

	Fiscal years ended		
	February 3, 2024	January 28, 2023	January 29, 2022
Cash paid for amounts included in the measurement of lease liabilities:			
Operating cash flows from operating leases	$ 446,981	$ 386,259	$ 418,210
Operating cash flows from finance leases	$ 1,267	$ 1,349	$ 850
Financing cash flows from finance leases	$ 5,925	$ 5,083	$ 3,564
Lease assets obtained in exchange for lease liabilities:			
Operating leases	$ 298,672	$ 363,311	$ 308,166
Finance leases	$ 712	$ 4,784	$ 19,841

	February 3, 2024	January 28, 2023
Weighted average remaining lease term:		
Operating leases	6.0 years	6.0 years
Finance leases	2.3 years	3.2 years
Weighted average discount rate:		
Operating leases	8.2%	8.4%
Finance leases	4.7%	4.7%

At February 3, 2024, the maturities of the Company's operating and finance lease liabilities were as follows (in thousands):

Fiscal years	Operating leases	Finance leases
2024	413,399	16,903
2025	325,839	3,927
2026	298,076	2,361
2027	225,451	1,206
2028	157,127	538
Thereafter	383,286	1,031
Total lease payments	$ 1,803,178	$ 25,966
Less imputed interest	(376,056)	(1,794)
Present value of lease payments	1,427,122	24,172
Less current portion	(310,507)	(15,962)
Lease liabilities, excluding current portion	$ 1,116,615	$ 8,210

6. Goodwill

The changes in the carrying amount of the Company's goodwill were as follows (in thousands):

	February 3, 2024	January 28, 2023
Beginning balance	$ 2,193,941	$ 2,183,991
Activity from acquisitions	8,880	9,950
Impairment	(1,222,524)	—
Ending balance	$ 980,297	$ 2,193,941

The Company has one reporting unit. 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. During the third quarter of fiscal 2023, the Company concluded that indicators of impairment existed due to declines in the Company's share price, as well as current macroeconomic conditions, and performed an interim quantitative impairment test. The fair value of the Company's reporting unit was estimated by management with the assistance of a third-party valuation specialist. Fair value estimates used in the quantitative impairment test were calculated using a combination of 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 Company makes estimates and assumptions about sales, gross margins, selling, general and administrative percentages and profit margins, based on budgets and forecasts, business plans, economic projections, anticipated future cash flows, and marketplace data. 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 used in the determination of fair value of the reporting unit generally include prospective financial information, discount rates, terminal growth rates and earnings multiples. The discounted cash flow model used to determine the fair value of the reporting unit during the third quarter of fiscal 2023 reflected the

Company's most recent cash flow projections, a discount rate of 16.4% and a terminal growth rate of 3%. The reporting unit fair value measurement is classified as Level 3 in the fair value hierarchy because it involves significant unobservable inputs.

As a result of the impairment test, the Company concluded that the carrying value of the Company's reporting unit exceeded its fair value and recorded a pre-tax goodwill impairment charge of $1,222.5 million during the third quarter of fiscal 2023. This charge was recorded in goodwill impairment in the consolidated statements of operations. During the fourth quarter of fiscal 2023, the Company determined that the fair value of its reporting unit was greater than its carrying amount, and therefore no additional goodwill impairment charge was recorded.

7. Senior Secured Credit Facilities

The Company previously had a senior secured term loan facility (the "Amended Term Loan Facility"), which was fully repaid on March 4, 2021, and a senior secured asset-based revolving credit facility (the "Amended Revolving Credit Facility"), which was terminated on March 4, 2021. On March 4, 2021, the Company entered into a $1,700.0 million secured term loan facility maturing on March 4, 2028 (the "First Lien Term Loan") and a secured asset-based revolving credit facility with availability of up to $500.0 million, subject to a borrowing base, maturing on March 4, 2026 (the "ABL Revolving Credit Facility"). In March 2024, the Company amended the ABL Revolving Credit Facility, which now consists of two tranches, to increase its total availability from $500.0 million to $581.0 million and extend the maturity on a portion of this availability. The first tranche has availability of up to $35.0 million, subject to a borrowing base, maturing on March 4, 2026. The second tranche has availability of up to $546.0 million, subject to a borrowing base, maturing on March 29, 2029. Interest on the ABL Revolving Credit Facility is now based on, at the Company's option, either the base rate subject to a 1% floor, or Term SOFR subject to a floor of 0%, plus an applicable margin. All other key terms of the ABL Revolving Credit Facility remained unchanged.

The Company's obligations under the First Lien Term Loan and ABL Revolving Credit Facility 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. The 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 February 3, 2024, the Company was in compliance with its covenants on the agreements.

The credit agreements governing the First Lien Term Loan and ABL Revolving Credit Facility 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 ABL Revolving Credit Facility and could result in the applicable lenders under the First Lien Term Loan and ABL Revolving Credit Facility accelerating the maturity of such indebtedness and foreclosing upon the collateral pledged thereunder.

Term Loan Facilities

On March 4, 2021, the Company entered into the $1,700.0 million First Lien Term Loan and repaid all outstanding principal and interest on the Amended Term Loan Facility. The Company recognized a loss on debt extinguishment and modification of $19.6 million on the term loan facilities, which consisted of a $6.5 million write-off of unamortized debt discount and issuance costs on the Amended Term Loan Facility and $13.1 million of third-party expenses.

Fees relating to the Company's entry into the First Lien Term Loan consisted of arranger fees and other third-party expenses. Of those fees, $3.2 million was capitalized as debt issuance costs, along with $4.3 million of original issue discount. The remaining portion of original issue discount and debt issuance costs of the Amended Term Loan Facility previously capitalized is being amortized over the contractual term of the First Lien Term Loan to interest expense using the effective interest rate in effect on the date of issuance, as these amounts represent the portion that was not substantially modified.

On December 12, 2022, the Company amended the First Lien Term Loan to replace the LIBOR-based rate with a SOFR-based rate as the interest rate benchmark. Interest on the First Lien Term Loan is based on, at the Company's option, either a base rate or Term SOFR plus the credit spread adjustment recommended by the Alternative Reference Rates Committee ("Adjusted Term SOFR"), subject to a 0.75% floor, payable upon maturity of the SOFR contract, in either case plus the applicable rate. The base rate is the greater of the bank prime rate, federal funds effective rate plus 0.5% or Adjusted Term SOFR plus 1.0%. The applicable rate is 2.25% per annum for a base rate loan or 3.25% per annum for an Adjusted Term SOFR loan. Principal and interest payments commenced on June 30, 2021. Principal payments are normally $4.25 million quarterly.

The Company voluntarily prepaid $35.0 million, $25.0 million and $15.0 million of the First Lien Term Loan using existing cash on hand in March 2023, May 2023, and August 2023, respectively. The repayments were applied to the remaining principal payments in order of scheduled payment date and, as a result, the entire remaining balance was included in senior secured credit facilities, net, excluding current portion in the consolidated balance sheets as of February 3, 2024. The Company accounted for the repayments as partial extinguishments and recognized losses on debt extinguishment of $0.9 million during fiscal 2023.

As of February 3, 2024, the outstanding principal balance of the First Lien Term Loan was $1,595.3 million ($1,578.6 million, net of the unamortized discount and debt issuance costs). As of January 28, 2023, the outstanding principal balance of the First Lien Term Loan was $1,670.3 million ($1,648.9 million, net of the unamortized discount and debt issuance costs). The weighted average interest rate on the borrowings outstanding was 9.0% and 8.2% as of February 3, 2024 and January 28, 2023, respectively. 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 3, 2024 and January 28, 2023, the estimated fair value of the First Lien Term Loan was approximately $1,497.6 million and $1,649.4, respectively, based upon Level 2 fair value hierarchy inputs (Note 1).

Revolving Credit Facilities

On March 4, 2021, the Company entered into an agreement establishing the ABL Revolving Credit Facility and terminated the Amended Revolving Credit Facility. The ABL Revolving Credit Facility has availability up to $500.0 million, subject to a borrowing base.

Fees relating to the Company's entry into the ABL Revolving Credit Facility consisted of arranger fees and other third-party expenses. Of those fees, $4.1 million was capitalized as debt issuance costs. Unamortized debt issuance costs of $1.2 million were written off and recognized as a loss on debt extinguishment and modification in connection with this transaction. The remaining portion of debt issuance costs of the Amended Revolving Credit Facility previously capitalized is being amortized over the contractual term of the ABL Revolving Credit Facility as these amounts represent the portion that was not substantially modified.

As of February 3, 2024 and January 28, 2023, no amounts were outstanding under the ABL Revolving Credit Facility. At February 3, 2024, $446.6 million was available under the ABL Revolving Credit Facility, which is net of $53.4 million of outstanding letters of credit issued in the normal course of business and no borrowing base reduction for a shortfall in qualifying assets. Unamortized debt issuance costs of $2.4 million and $3.6 million relating to the ABL Revolving Credit Facility were outstanding and were being amortized using the straight-line method over the remaining term of the agreement as of February 3, 2024 and January 28, 2023, respectively.

The ABL Revolving Credit Facility had availability up to $500.0 million, which was increased to up to $581.0 million in the March 2024 amendment, 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 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 ABL Revolving Credit Facility by their face value.

On December 12, 2022, the Company amended the ABL Revolving Credit Facility to replace the LIBOR-based rate with a SOFR-based rate as the interest rate benchmark. Prior to the March 2024 amendment, interest on the ABL Revolving Credit Facility was based on, at the Company's option, either the base rate or Adjusted Term

SOFR subject to a floor of 0%, in either case, plus an applicable margin. Following the March 2024 amendment, interest on the ABL Revolving Credit Facility is now based on, at the Company's option, either the base rate subject to a 1% floor, or Term SOFR subject to a floor of 0%, plus an applicable margin. As of February 3, 2024, the applicable margin was equal to 25 basis points in the case of base rate loans and 125 basis points in the case of Adjusted Term SOFR 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 ABL Revolving Credit Facility and the borrowing base, as follows:

Average Historical Excess Availability	Applicable Margin for Adjusted Term SOFR Loans	Applicable Margin for Base Rate Loans
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 ABL 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.

8. Derivative Instruments

The Company's interest rate caps and collars are accounted for as cash flow hedges because they are expected to be highly effective in hedging variable rate interest payments. Changes in the fair value of the cash flow hedges are reported as a component of AOCI. As of February 3, 2024 and January 28, 2023, AOCI included unrealized losses of $2.2 million ($1.7 million, net of tax) and $2.7 million ($2.1 million, net of tax), respectively. Approximately $0.5 million of pre-tax gains and $0.2 million of pre-tax losses deferred in AOCI were reclassified to interest expense during fiscal 2023 and fiscal 2022, respectively. There were no amounts deferred in AOCI that were reclassified to interest expense during fiscal 2021. The Company currently estimates that $3.0 million of losses related to trade date costs on its cash flow hedges 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.

The cash flow hedges are reflected in the Company’s consolidated balance sheets as follows (in thousands):

Assets (Liabilities)	Balance sheet location	February 3, 2024	January 28, 2023
Current asset portion of cash flow hedges	Other current assets	$ 2,259	$ —
Non-current asset portion of cash flow hedges	Other long-term assets	—	—
Current liability portion of cash flow hedges	Accrued expenses and other liabilities	(124)	(1,176)
Non-current liability portion of cash flow hedges	Other long-term liabilities	(3,067)	(1,717)
Total cash flow hedges		$ (932)	$ (2,893)

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 cash flow hedge agreements contain provisions that would be triggered in the event the Company defaults on its debt agreements (Note 7), which in turn could impact the assessment of hedge effectiveness or cause termination of the underlying cash flow hedge agreements. As of February 3, 2024, no events of default have occurred. There is no collateral posting requirement outside the provisions in the debt agreements.

9. 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 3, 2024		
	Level 1	Level 2	Level 3
Assets (liabilities):			
Money market mutual funds	$ 80,186	$ —	$ —
Investments of officers' life insurance	$ —	$ 14,945	$ —
Non-qualified deferred compensation plan	$ —	$ (20,355)	$ —

	January 28, 2023		
	Level 1	Level 2	Level 3
Assets (liabilities):			
Money market mutual funds	$ 156,626	$ —	$ —
Investments of officers' life insurance	$ —	$ 13,112	$ —
Non-qualified deferred compensation plan	$ —	$ (18,464)	$ —
Investment in Rover Group, Inc.	$ 20,152	$ —	$ —

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 $69.6 million and $145.5 million as of February 3, 2024 and January 28, 2023, respectively. Also included in the Company's money market mutual funds balances were $10.6 million and $11.1 million as of February 3, 2024 and January 28, 2023, respectively, which relate to the Company's restricted cash, and are included in other current assets in the consolidated balance sheets.

The Company maintains a deferred compensation plan for key executives and other members of management, which is 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.

The Company previously held an equity investment, in the form of multiple series of preferred stock, in A Place for Rover, Inc., an online marketplace for pet care, which was historically accounted for as an equity security without a readily determinable fair value. In July 2021, A Place for Rover, Inc. completed a business combination with Nebula Caravel Acquisition Corp., a publicly-traded special purpose acquisition company. The combined entity was renamed to Rover Group, Inc. ("Rover"), and the Company's equity investment was converted into shares of Rover Class A common stock. In September 2021, the Company received additional shares of Rover Class A common stock in accordance with certain earnout provisions from the July 2021 business combination. In fiscal 2022 and 2021, the Company remeasured the fair value of its investment on a quarterly basis, and the resulting gains or losses were included in other non-operating income in the consolidated statements of operations. In April 2023, the Company sold its interest in Rover Class A common stock to a buyer at a price determined based on the daily volume weighted average price, in addition to a premium, over an agreed upon period. The cash proceeds were received throughout fiscal 2023, with the final payment being received in August 2023. The Company's interest in the unsettled cash proceeds were remeasured at fair value at each reporting period, and the resulting gains or losses were included in other non-operating income in the consolidated statements of operations.

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 other investments, are reported at carrying value, or at fair value as of the date of the Company's acquisition of Petco Holdings, Inc. LLC on January 26, 2016, 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's trade name has an indefinite life. 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. During the third quarter of fiscal 2023, the Company concluded that indicators of impairment existed due to declines in the Company's share price, as well as current macroeconomic conditions, and performed interim quantitative impairment tests of its goodwill and indefinite-lived trade name. Refer to Note 6 for further discussion of the results of interim impairment testing performed on the Company's goodwill. During the fourth quarter of fiscal 2023, the Company determined that the fair value of its reporting unit was greater than its carrying amount, and therefore no additional goodwill impairment charge was recorded. In fiscal 2022 and 2021, 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.

The fair value of the Company's trade name was estimated by management with the assistance of a third-party valuation specialist using the relief from royalty valuation method, which estimates the hypothetical royalties that would have to be paid if the trade name was not owned. The fair value of the Company's trade name reflected the Company's most recent revenue projections, a discount rate of 17.4% and a terminal growth rate of 3%. The Company concluded that the fair value of its trade name exceeded its carrying value, and therefore no trade name impairment charge was recorded during the third quarter of fiscal 2023.

In fiscal 2023, 2022, and 2021, the Company determined that the fair value of its trade name was greater than its carrying amount, and therefore no tradename impairment charge was recorded. There were no indications of impairment of the Company's other intangible assets or equity and other investments in fiscal 2023, 2022, and 2021.

The Company recorded fixed asset and right-of-use asset impairment charges of $2.7 million, $2.2 million $10.4 million in fiscal years 2023, 2022, and 2021, respectively. Impairment charges are primarily related to pet care center locations and are recorded in selling, general and administrative expense in the accompanying consolidated statements of operations.

10. 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.

The Company generally matches 100% of the first 1% plus 50% of the next 5% of compensation contributed by each participating employee to the 401(k) plan. 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 required to complete six months of service with the Company to participate in the 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 $12.1 million, $10.7 million, and $9.2 million for fiscal years 2023, 2022, and 2021, respectively.

11. Stockholders' Equity

Equity-based compensation awards under the Company's current equity incentive plan (the "2021 Equity Incentive Plan") include restricted stock units ("RSUs," which include performance-based stock units), restricted stock awards ("RSAs"), non-qualified stock options, and other equity compensation awards. The Company also has an employee stock purchase plan ("ESPP").

The Company issues new shares of Class A common stock upon exercise of stock options and the vesting of restricted stock units. As of February 3, 2024, there were 40.2 million shares of Class A common stock available for issuance pursuant to future equity-based compensation awards under the 2021 Equity Incentive Plan.

The Company's controlling parent, Scooby LP, also maintains an incentive plan (the "2016 Incentive Plan") under which it has awarded partnership unit awards to certain current and former employees, consultants, and non-employee directors of the Company that are restricted profit interests in Scooby LP subject to a distribution threshold ("Series C Units").

The following table summarizes the Company's equity-based compensation expense by award type (in thousands):

	Fiscal years ended		
	February 3, 2024	January 28, 2023	January 29, 2022
	(53 weeks)	(52 weeks)	(52 weeks)
RSUs and RSAs	$ 57,619	$ 38,146	$ 25,459
Options	16,586	9,418	8,002
ESPP	1,474	1,274	1,034
Other awards	6,180	11,946	14,770
Total equity-based compensation expense	$ 81,859	$ 60,784	$ 49,265
Total related tax benefit	$ 11,473	$ 8,160	$ 5,033

RSUs and RSAs

The Company has both time-vested RSUs and performance-based RSUs. Time-vested RSUs are awarded to eligible employees and non-employee directors and entitle the grantee to receive shares of Class A common stock at the end of a vesting period, subject solely to the individual's continued employment or service as a director. In most cases, 34% of the units becomes vested on the anniversary of the grant date, followed by 16.5% of the units in four equal semi-annual installments thereafter. Performance-based RSUs are awarded to eligible employees and entitle the grantee to receive shares of Class A common stock if the Company achieves specified performance goals during the performance period and the grantee remains employed through the vesting period.

RSU activity under the 2021 Equity Incentive Plan was as follows (in thousands, except per share and contractual life amounts):

	Shares	Weighted average grant date fair value per share	Weighted average remaining contractual life (years)	Aggregate intrinsic value
Nonvested, January 28, 2023	7,802	$ 15.36	1.2	$ 91,596
Granted	7,737	8.78		
Vested and delivered	(3,458)	15.83		
Forfeited/expired	(2,463)	11.64		
Nonvested, February 3, 2024	9,618	$ 10.87	0.9	$ 23,852

As of February 3, 2024, unrecognized compensation expense related to unvested RSUs was $71.8 million, which is expected to be recognized over a weighted average period of approximately 1.7 years.

RSA activity has not been material and relates to an RSA of Class A common stock granted to an executive in March 2021. For this grant, 50% of the RSA vested on each of the first two anniversaries of the grant date.

Options

The Company provides stock option grants, which are time-vested, as a form of employee compensation. In most cases, 34% of the options generally becomes vested on the anniversary of the grant date, followed by 16.5% of the options in four equal semi-annual installments thereafter. Stock options generally expire 10 years from the grant date.

Stock option activity under the 2021 Equity Incentive Plan was as follows (in thousands, except per share and contractual life amounts):

	Shares subject to options	Weighted average exercise price per share	Weighted average remaining contractual life (years)	Aggregate intrinsic value
Outstanding, January 28, 2023	7,814	$ 14.02	9.1	$ 3,512
Granted	—	—		
Exercised	—	—		
Forfeited/expired	(1,504)	12.99		
Outstanding, February 3, 2024	6,310	$ 14.26	8.0	$ -
Exercisable, February 3, 2024	3,699	$ 16.14	7.4	$ -

No stock option awards were granted in fiscal 2023 or 2021. The fair value of stock option awards granted in fiscal 2022 was estimated at the grant dates using the Black-Scholes option pricing model with the following assumptions:

	Fiscal year ended January 28, 2023 (52 weeks)
Dividend yield	0.0%
Expected volatility (1)	38.0% - 48.4%
Risk-free interest rate (2)	2.8% - 3.6%
Expected term (3)	5.8 to 5.9 years
Grant date fair value per share	$10.98 - $21.06
Estimated fair value per option granted	$5.46 - $8.64

(1) The expected volatility was estimated based on the historical volatility of a select peer group of similar publicly traded companies for a term consistent with the expected term of the stock options.

(2) The risk-free interest rates were based on the U.S. Treasury constant maturity interest rate for a term consistent with the expected term of the stock options.

(3) The expected term of the stock options represents the estimated period of time until exercise and was calculated using the simplified method.

As of February 3, 2024, unrecognized compensation expense related to unvested options was $9.1 million, which is expected to be recognized over a weighted average period of approximately 1.0 years.

ESPP

The ESPP allows eligible employees to contribute up to 15% of their base earnings towards purchases of Class A common stock, subject to an annual maximum. The purchase price will be 85% of the lower of (i) the fair market value of the stock on the associated lookback date and (ii) the fair market value of the stock on the last day of the related purchase period. As of February 3, 2024, 6.6 million shares of Class A common stock were available for issuance under the ESPP.

Other Awards

Other awards primarily consist of partnership unit awards ("Series C Units") issued by Scooby LP to eligible employees, consultants, and non-employee directors of the Company under the 2016 Incentive Plan, which was established in connection with the Acquisition. Series C Unit awards are restricted profit interests in Scooby LP subject to a distribution threshold and have generally been issued in the form of time-based units that vest in three to five equal annual installments following the grant date. In addition to acceleration upon a change in control, a portion of grantees' Series C Units may vest upon certain levels of direct or indirect sales by Scooby LP of the Company's Class A common stock, and all unvested Series C Units will fully accelerate in the event Scooby LP sells 90% of its direct or indirect holdings of the Company's Class A common stock. No additional Series C Units have been or will be awarded following the Company's initial public offering.

Series C Unit activity under the 2016 Incentive Plan was as follows (in thousands):

	Units
Outstanding, January 28, 2023	201,359
Granted	—
Forfeited	(3,215)
Outstanding, February 3, 2024	198,145
Vested, February 3, 2024	178,289

Charges with respect to awards issued pursuant to the 2016 Incentive Plan are reflected in the Company's consolidated financial statements. Compensation expense related to Series C Units is generally not tax deductible.

As of February 3, 2024, unrecognized compensation expense related to the unvested portion of Scooby LP's Series C Units was $3.4 million, which is expected to be recognized over a weighted average period of 0.7 years.

(Loss) Income Per Share

Shares of Class A common stock and Class B-1 common stock participate equally in the earnings and losses of the Company and have identical rights in distribution. Basic net income (loss) per Class A and B-1 common share is based on the weighted-average Class A and B-1 common shares outstanding during the relevant period. Diluted net income (loss) per Class A and B-1 common share is based on the weighted-average Class A and B-1 common shares outstanding during the relevant period adjusted for the effect of potentially dilutive securities.

Potentially dilutive securities include potential Class A common shares related to outstanding stock options and unvested RSUs, calculated using the treasury stock method. The calculation of diluted shares outstanding excludes options and RSUs where the combination of the exercise price (in the case of options) and the associated unrecognized compensation expense is greater than the average market price of Class A common shares because the inclusion of these securities would be antidilutive.

In fiscal 2023, all outstanding stock options and unvested RSUs were excluded from the calculation of diluted loss per Class A and B-1 common share, as their effect would be antidilutive in a net loss period. In fiscal 2022 and 2021, there were approximately 6.7 million and 3.3 million potential shares, respectively, that were anti-dilutive and excluded from the computation of diluted shares outstanding.

Shares of Class B-2 common stock are not included in the calculation of net income (loss) per share as they only possess voting rights. Unvested RSUs contain forfeitable rights to dividend equivalent units if dividends are paid to holders of Class A and B-1 common stock. Because the dividend equivalent units are forfeitable, unvested RSUs are not considered participating securities.

12. Income Taxes

Income tax (benefit) expense consisted of the following (in thousands):

	Fiscal years ended		
	February 3, 2024 (53 weeks)	January 28, 2023 (52 weeks)	January 29, 2022 (52 weeks)
Current:			
Federal	$ 23,321	$ 23,141	$ 4,550
State	2,615	13,099	11,182
	$ 25,936	$ 36,240	$ 15,732
Deferred:			
Federal	$ (41,684)	$ 4,649	$ 39,087
State	(11,865)	(5,542)	(1,346)
	$ (53,549)	$ (893)	$ 37,741
Income tax (benefit) expense	$ (27,613)	$ 35,347	$ 53,473

A reconciliation of income tax (benefit) expense at the federal statutory rate with the provision for income taxes is as follows (in thousands):

	Fiscal years ended					
	February 3, 2024 (53 weeks)		January 28, 2023 (52 weeks)		January 29, 2022 (52 weeks)	
Income tax (benefit) expense at federal statutory rate	$ (274,642)	21.0%	$ 26,490	21.0%	$ 45,751	21.0%
Non-deductible expenses	(26)	0.0	2,035	1.9	1,425	0.7
Impairment (1)	242,819	(18.6)	—	—	—	—
Equity compensation	16,493	(1.3)	6,754	5.4	5,988	2.7
State taxes, net of federal tax benefit	(11,228)	0.9	4,289	3.1	7,636	3.5
Tax credits	(3,800)	0.3	(3,800)	(3.0)	(2,500)	(1.1)
Uncertain tax positions	1,829	(0.1)	1,142	0.9	925	0.4
IPO transaction costs (2)	—	—	—	—	(5,201)	(2.4)
Other, net	942	(0.1)	(1,563)	(1.3)	(551)	(0.3)
	$ (27,613)	2.1%	$ 35,347	28.0%	$ 53,473	24.5%

(1) Impairment represents adjustments for the non-deductible component of the $1.2 billion partial goodwill impairment recorded during the third quarter of fiscal 2023.

(2) IPO transaction costs represent consulting, accounting, and other transaction costs recognized in fiscal 2021 that were incurred by the Company in connection with its initial public offering on January 13, 2021.

The effective tax rate is driven by income earned in various taxing jurisdictions, including U.S. states, and the statutory tax rates imposed by those jurisdictions, as well as permanent differences including nondeductible equity compensation, goodwill impairment charges, and tax credits.

Significant components of the Company's deferred tax assets and liabilities were as follows (in thousands):

	February 3, 2024	January 28, 2023
Deferred tax assets:		
Inventory	$ 29,164	$ 25,758
Accrued employee benefits	29,336	30,847
Net operating losses, state tax credit carryforwards	7,800	5,918
Interest expense limitation carry-forward under IRC §163(j)	49,888	25,761
Capitalized research and experimental costs	23,416	7,301
Lease-related items	368,278	377,270
Other	1,178	1,927
Total deferred tax assets	509,060	474,782
Valuation allowance	(2,163)	(2,520)
Net deferred tax assets	506,897	472,262
Deferred tax liabilities:		
Fixed assets	(119,931)	(120,169)
Intangible assets	(248,602)	(261,333)
Debt restructuring	(1,475)	(1,975)
Lease-related items	(357,743)	(361,833)
Investments in joint ventures	(28,396)	(30,073)
Other	(2,379)	—
Total deferred tax liabilities	(758,526)	(775,383)
	$ (251,629)	$ (303,121)

In assessing the realizability of deferred tax assets, the Company considers whether it is more likely than not that some portion or all 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 over the periods in which the deferred tax assets are deductible.

As of February 3, 2024, the Company has recorded a deferred tax asset of $2.2 million reflecting the benefit of $45.5 million in state income tax net operating loss carryforwards, which will begin to expire in fiscal 2024. The Company believes that it is more likely than not that the state net operating loss carryforward will not be realized and recorded a valuation allowance of $2.2 million on the deferred tax asset related to these state net operating loss carryforwards as of February 3, 2024. The valuation allowance decreased by $0.4 million as compared to the prior year due to the expiration of statutes of limitations. If or when recognized, the tax benefits related to any reversal of the valuation allowance on deferred tax assets is accounted for as a reduction of income tax expense.

The Company has recorded a net deferred tax asset of $5.7 million reflecting the gross benefit of state income tax credits totaling $0.5 million and $6.6 million in Georgia and California, respectively. The Georgia credits will begin to expire in 2025. The California credits have an unlimited carryforward period.

The Company's interest expense carryforward of $152.5 million has an unlimited carryforward period.

Reserves are established when positions are "more likely than not" to not be sustained if challenged. Reserves are adjusted at each reporting period to reflect the impact of audit settlements, expiration of statutes of limitation, developments in the tax law and ongoing discussions with the tax authorities. Accrued interest and penalties associated with uncertain tax positions are recognized as part of the income tax provision.

The Company has approximately $16.4 million of unrecognized tax benefits as of February 3, 2024, of which $4.2 million, if recognized, would impact the effective tax rate and $12.2 million would result in an adjustment to the net deferred tax liability.

A reconciliation of the beginning and ending amount of unrecognized tax benefits, is as follows (in thousands):

	February 3, 2024	January 28, 2023
Beginning balance	$ 16,421	$ 16,421
Additions for tax positions taken in prior years	—	—
Decreases related to lapse of statute limitation	—	—
Ending balance	$ 16,421	$ 16,421

The Company has approximately $4.8 million accrued for interest and penalties as of February 3, 2024 in the consolidated balance sheets and recorded $1.9 million in interest during fiscal 2023 in the consolidated statements of operations. The Company recognizes interest and penalties related to unrecognized tax benefits as a component of income tax expense. The Company does not anticipate that unrecognized tax benefits will significantly increase or decrease over the next 12 months.

The Company is no longer subject to examination for U.S. federal income tax for periods prior to fiscal 2019. The Company is no longer subject to examination by state tax authorities for tax periods prior to fiscal 2018. 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.

13. Accumulated Other Comprehensive (Loss) Income

Changes in the balances of each component included in AOCI are presented below (net of tax, in thousands):

	Derivatives	Foreign currency translation adjustment	Total
Balance at January 30, 2021	$ —	$ (1,275)	$ (1,275)
Other comprehensive loss	—	(963)	(963)
Balance at January 29, 2022	$ —	$ (2,238)	$ (2,238)
Other comprehensive (loss) income before reclassifications	(2,180)	194	(1,986)
Amounts reclassified from AOCI	126	—	126
Other comprehensive (loss) income	(2,054)	194	(1,860)
Balance at January 28, 2023	$ (2,054)	$ (2,044)	$ (4,098)
Other comprehensive (loss) income before reclassifications	752	5,534	6,286
Amounts reclassified from AOCI	(367)	—	(367)
Other comprehensive (loss) income	385	5,534	5,919
Balance at February 3, 2024	$ (1,669)	$ 3,490	$ 1,821

14. 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. Pursuant to the agreement, the Company pays an annual contract fee. Fees for fiscal 2023, 2022, and 2021 were $4.6 million, $4.4 million, and $4.1 million, respectively. These fees are included in selling, general and administrative expenses in the consolidated statements of operations, and will be adjusted by the maximum annual change related to the San Diego consumer price index per year through the 2030 Major League Baseball season.

Litigation

The Company is involved in 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.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Management's Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required financial disclosure.

As of the end of the period covered by this Annual Report on Form 10-K, our management, under the supervision and with the participation of our principal executive officer and principal financial officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Exchange Act Rules 13a-15(e) and 15d-15(e). Based upon this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective at a reasonable assurance level as of February 3, 2024.

Management's Annual Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rule 13a-15(f) of the Exchange Act. Management has assessed the effectiveness of our internal control over financial reporting as of February 3, 2024 based on criteria established in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. As a result of this assessment, management concluded that, as of February 3, 2024, we maintained effective internal control over financial reporting.

The effectiveness of our internal control over financial reporting as of February 3, 2024 has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report that appears under Part II, Item 8 of this Annual Report on Form 10-K.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting that occurred during the quarter ended February 3, 2024, which has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Limitations on the Effectiveness of Controls

Our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives as specified above. Management does not expect, however, that our disclosure controls and procedures will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based on certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

Item 9B. Other Information.

In March 2024, the Company amended the ABL Revolving Credit Facility, which now consists of two tranches, to increase its total availability from $500.0 million to $581.0 million and extend the maturity on a portion of this availability. The first tranche has availability of up to $35.0 million, subject to a borrowing base, maturing on March 4, 2026. The second tranche has availability of up to $546.0 million, subject to a borrowing base, maturing

on March 29, 2029. Interest on the ABL Revolving Credit Facility is now based on, at the Company's option, either the base rate subject to a 1% floor, or Term SOFR subject to a floor of 0%, plus an applicable margin. All other key terms of the ABL Revolving Credit Facility remained unchanged.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

Information responsive to this Item is incorporated herein by reference to our definitive proxy statement with respect to our 2024 annual meeting of stockholders to be filed with the SEC within 120 days after the end of our fiscal year covered by this Annual Report on Form 10-K.

Item 11. Executive Compensation.

Information responsive to this Item is incorporated herein by reference to our definitive proxy statement with respect to our 2024 annual meeting of stockholders to be filed with the SEC within 120 days after the end of our fiscal year covered by this Annual Report on Form 10-K.

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

Information responsive to this Item is incorporated herein by reference to our definitive proxy statement with respect to our 2024 annual meeting of stockholders to be filed with the SEC within 120 days after the end of our fiscal year covered by this Annual Report on Form 10-K.

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

Information responsive to this Item is incorporated herein by reference to our definitive proxy statement with respect to our 2024 annual meeting of stockholders to be filed with the SEC within 120 days after the end of our fiscal year covered by this Annual Report on Form 10-K.

Item 14. Principal Accountant Fees and Services.

Information responsive to this Item is incorporated herein by reference to our definitive proxy statement with respect to our 2024 annual meeting of stockholders to be filed with the SEC within 120 days after the end of our fiscal year covered by this Annual Report on Form 10-K.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

1. Financial Statements

As part of this Annual Report on Form 10-K, the consolidated financial statements are listed in the accompanying index to financial statements on page 64.

2. Financial Statement Schedules

Not applicable.

3. Exhibit Index

The following is a list of exhibits filed as part of this Annual Report on Form 10-K or are incorporated herein by reference:

Exhibit Number	Description
3.1	Second Amended and Restated Certificate of Incorporation of Petco Health and Wellness Company, Inc. (incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K, filed on January 19, 2021)
3.2	Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Petco Health and Wellness Company, Inc. (incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K, filed on June 23, 2023)
3.3	Second Amended and Restated Bylaws of Petco Health and Wellness Company, Inc. (incorporated by reference to Exhibit 3.2 of the Company's Current Report on Form 8-K, filed on January 19, 2021)
4.1	Registration Rights Agreement, dated as of January 19, 2021, by and between Petco Health and Wellness Company, Inc. and Scooby Aggregator, LP (incorporated by reference to Exhibit 4.1 of the Company's Current Report on Form 8-K, filed on January 19, 2021)
4.2	Stockholder's Agreement, dated as of January 19, 2021, by and between Petco Health and Wellness Company, Inc. and Scooby Aggregator, LP (incorporated by reference to Exhibit 4.2 of the Company's Current Report on Form 8-K, filed on January 19, 2021)
4.3	Description of Securities registered pursuant to Section 12 of the Exchange Act (incorporated by reference to Exhibit 4.3 of the Company's Annual Report on Form 10-K for the fiscal year ended January 31, 2021)
10.1†	Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, filed on January 19, 2021)
10.2†	Petco Health and Wellness Company, Inc. 2021 Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K, filed on January 19, 2021)
10.3†	Form of Indemnification Agreement for Directors and Certain Officers (incorporated by reference to Exhibit 10.2 of the Company's Registration Statement on Form S-1, filed on December 3, 2020)
10.4†	Petco Health and Wellness Company, Inc. Executive Severance Plan and Form of Participation Agreement (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, filed on September 30, 2022)
10.5†	Amended and Restated Employment Agreement between Petco Animal Supplies Stores, Inc., Petco Health and Wellness Company, Inc., and Ronald Coughlin, Jr. dated December 3, 2020 (incorporated by reference to Exhibit 10.23 of the Company's Registration Statement on Form S-1, filed on December 3, 2020)

10.6†	Employment Agreement between Petco Animal Supplies, Inc. and Darren MacDonald dated May 25, 2019 (incorporated by reference to Exhibit 10.6 of the Company's Registration Statement on Form S-1, filed on December 3, 2020)
10.7†	Employment Letter between Petco Animal Supplies Stores, Inc. and Justin Tichy dated September 17, 2018 (incorporated by reference to Exhibit 10.7 of the Company's Registration Statement on Form S-1, filed on December 3, 2020)
10.8†	Employment Letter between Petco Animal Supplies Stores, Inc. and John Zavada dated August 21, 2016 (incorporated by reference to Exhibit 10.3 of the Company's Quarterly Report on Form 10-Q for the quarter ended April 30, 2022)
10.9†	Form of Common Series C Unit Award Agreement (incorporated by reference to Exhibit 10.11 of the Company's Registration Statement on Form S-1, filed on December 3, 2020)
10.10†	Form of Restricted Stock Unit Award Grant Notice and Standard Terms and Conditions under the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (Director Form) (incorporated by reference to Exhibit 99.2 of the Company's Registration Statement on Form S-8, filed on January 19, 2021)
10.11†	Form of Restricted Stock Unit Award Grant Notice and Standard Terms and Conditions under the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (CEO Form) (incorporated by reference to Exhibit 99.3 of the Company's Registration Statement on Form S-8, filed on January 19, 2021)
10.12†	Form of Restricted Stock Unit Award Grant Notice and Standard Terms and Conditions under the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (Executive Form) (incorporated by reference to Exhibit 99.4 of the Company's Registration Statement on Form S-8, filed on January 19, 2021)
10.13†	Form of Nonqualified Stock Options Grant Notice and Standard Terms and Conditions under the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (CEO Form) (incorporated by reference to Exhibit 99.5 of the Company's Registration Statement on Form S-8, filed on January 19, 2021)
10.14†	Form of Nonqualified Stock Options Grant Notice and Standard Terms and Conditions under the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (Executive Form) (incorporated by reference to Exhibit 99.6 of the Company's Registration Statement on Form S-8, filed on January 19, 2021)
10.15†	Form of Performance Stock Unit Award Grant Notice and Standard Terms and Conditions under the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (incorporated by reference to Exhibit 99.7 of the Company's Registration Statement on Form S-8, filed on January 19, 2021)
10.16†	Form of Restricted Stock Unit Award Grant Notice and Standard Terms and Conditions under the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (Retention Award Form) (incorporated by reference to Exhibit 10.1 of the Company's Quarterly Report on Form 10-Q for the quarter ended April 30, 2022)
10.17†	Form of Performance Stock Unit Award Grant Notice and Standard Terms and Conditions under the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (CEO Form) (incorporated by reference to Exhibit 10.2 of the Company's Quarterly Report on Form 10-Q for the quarter ended April 30, 2022)
10.18†	Form of Performance Stock Unit Award Grant Notice and Standard Terms and Conditions under the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (Executive Form) (incorporated by reference to Exhibit 10.1 of the Company's Quarterly Report on Form 10-Q for the quarter ended July 30, 2022)

10.19†	Form of Nonqualified Stock Options Grant Notice and Standard Terms and Conditions under the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (CEO Form; 2-year vesting) (incorporated by reference to Exhibit 10.24 of the Company's Annual Report on Form 10-K for the year ended January 28, 2023)
10.20†	Form of Nonqualified Stock Options Grant Notice and Standard Terms and Conditions under the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (Executive Form; 2-year vesting) (incorporated by reference to Exhibit 10.25 of the Company's Annual Report on Form 10-K for the year ended January 28, 2023)
10.21†	Form of Restricted Stock Unit Award Grant Notice and Standard Terms and Conditions under the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (Executive Form; 2-year vesting) (incorporated by reference to Exhibit 10.26 of the Company's Annual Report on Form 10-K for the year ended January 28, 2023)
10.22†	Form of Performance Stock Unit Award Grant Notice and Standard Terms and Conditions under the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (2023 CEO Form) (incorporated by reference to Exhibit 10.1 of the Company's Quarterly Report on Form 10-Q for the quarter ended April 29, 2023)
10.23†	Form of Performance Stock Unit Award Grant Notice and Standard Terms and Conditions under the Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (2023 Executive Form) (incorporated by reference to Exhibit 10.2 of the Company's Quarterly Report on Form 10-Q for the quarter ended April 29, 2023)
10.24†	Employment Letter between Petco Animal Supplies Stores, Inc. and Amy College dated February 18, 2022 (incorporated by reference to Exhibit 10.3 of the Company's Quarterly Report on Form 10-Q for the quarter ended April 29, 2023)
10.25†	First Amendment to Petco Health and Wellness Company, Inc. 2021 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, filed on June 23, 2023)
10.26†	Form of Retention Bonus Agreement (incorporated by reference to Exhibit 10.2 of the Company's Quarterly Report on Form 10-Q for the quarter ended July 29, 2023)
10.27†	Employment Letter, dated March 12, 2024, between Petco Health and Wellness Company, Inc. and R. Michael Mohan, effective as of March 13, 2024 (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, filed on March 13, 2024)
10.28†	Separation and Consulting Agreement and General Release of Claims by and between Petco Animal Supplies Stores, Inc., Petco Health and Wellness Company, Inc., Scooby LP and Ronald V. Coughlin, Jr., dated March 12, 2024 (incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K, filed on March 13, 2024)
10.29	First Lien Credit Agreement, dated March 4, 2021, by and among Petco Health and Wellness Company, Inc., the Lenders party thereto, and Citibank, N.A., as Administrative Agent and Collateral Agent, as amended by the First Amendment to Credit Agreement, dated December 12, 2022, by and between Petco Health and Wellness Company, Inc. and Citibank, N.A., as administrative agent (incorporated by reference to Exhibit 10.1 of the Company's Quarterly Report on Form 10-Q for the quarter ended October 28, 2023)
10.30	ABL Revolving Credit Agreement, dated March 4, 2021, by and among Petco Health and Wellness Company, Inc., the Lenders party thereto, and Citibank, N.A., as Administrative Agent and Collateral Agent, as amended by the First Amendment to ABL Revolving Credit Agreement, dated December 12, 2022, by and between Petco Health and Wellness Company, Inc. and Citibank, N.A., as administrative agent (incorporated by reference to Exhibit 10.2 of the Company's Quarterly Report on Form 10-Q for the quarter ended October 28, 2023)

10.31*	Second Amendment to ABL Revolving Credit Agreement, dated March 29, 2024, by and among Petco Health and Wellness Company, Inc., the Loan Parties party thereto, the several banks and financial institutions party thereto, and Citibank, N.A., as administrative agent
10.32	ABL Guaranty, dated March 4, 2021, by and among Petco Health and Wellness Company, Inc., as Borrower, the Guarantors from time to time party thereto, and Citibank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.31 of the Company's Annual Report on Form 10-K for the fiscal year ended January 31, 2021)
10.33	First Lien Guaranty, dated March 4, 2021, by and among Petco Health and Wellness Company, Inc., as Borrower, the Guarantors from time to time party thereto, and Citibank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.32 of the Company's Annual Report on Form 10-K for the fiscal year ended January 31, 2021)
10.34	ABL Security Agreement, dated March 4, 2021, by and among Petco Health and Wellness Company, Inc., as Borrower, the Grantors from time to time party thereto, and Citibank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.33 of the Company's Annual Report on Form 10-K for the fiscal year ended January 31, 2021)
10.35	First Lien Security Agreement, dated March 4, 2021, by and among Petco Health and Wellness Company, Inc., as Borrower, the Grantors from time to time party thereto, and Citibank, N.A., as Administrative Agent (incorporated by reference to Exhibit 10.34 of the Company's Annual Report on Form 10-K for the fiscal year ended January 31, 2021)
10.36	Intercreditor Agreement, dated March 4, 2021, by and among Citibank, N.A., as Revolving Credit Collateral Agent, Citibank, N.A., as Initial Term Loan Collateral Agent, as acknowledged and agreed by Petco Health and Wellness Company, Inc., and the Grantors party thereto (incorporated by reference to Exhibit 10.35 of the Company's Annual Report on Form 10-K for the fiscal year ended January 31, 2021)
21.1	List of Subsidiaries (incorporated by reference to Exhibit 21.1 of the Company's Registration Statement on Form S-1, filed on December 3, 2020)
23*	Consent of Independent Registered Public Accounting Firm
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1**	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2**	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
97*	Clawback Policy
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Filed herewith.

** Furnished herewith and not deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

† Management contract or compensatory plan or arrangement.

Item 16. Form 10-K Summary

None.

SIGNATURES

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

Petco Health and Wellness Company, Inc.

Date: April 2, 2024

By: /s/ R. Michael Mohan
R. Michael Mohan
Interim Chief Executive Officer

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

Signature	Title	Date
/s/ R. Michael Mohan R. Michael Mohan	Interim Chief Executive Officer and Director (principal executive officer)	April 2, 2024
/s/ Brian LaRose Brian LaRose	Chief Financial Officer (principal financial and accounting officer)	April 2, 2024
/s/ David Lubek David Lubek	Director	April 2, 2024
/s/ Cameron Breitner Cameron Breitner	Director	April 2, 2024
/s/ Gary Briggs Gary Briggs	Director	April 2, 2024
/s/ Nishad Chande Nishad Chande	Director	April 2, 2024
/s/ Christy Lake Christy Lake	Director	April 2, 2024
/s/ Iris Yen Iris Yen	Director	April 2, 2024
/s/ Sabrina Simmons Sabrina Simmons	Director	April 2, 2024
/s/ Christopher J. Stadler Christopher J. Stadler	Director	April 2, 2024
/s/ Mary Sullivan Mary Sullivan	Director	April 2, 2024

Exhibit 10.31

SECOND AMENDMENT TO ABL REVOLVING CREDIT AGREEMENT

This SECOND AMENDMENT to the ABL Revolving Credit Agreement referred to below, dated as of March 29, 2024 (this "Second Amendment") by and among Petco Health and Wellness Company, Inc., a Delaware corporation (the "Borrower"), the Loan Parties party hereto, the several banks and financial institutions party hereto and Citibank, N.A., as administrative agent (in such capacity, the "Administrative Agent"). Capitalized terms not otherwise defined in this Second Amendment have the same meanings as specified in the Credit Agreement, as amended by this Second Amendment (the "Amended Credit Agreement").

RECITALS

WHEREAS, the Borrower, the several banks and other financial institutions or entities parties from time to time and the Administrative Agent, entered into that certain ABL Revolving Credit Agreement, dated as of March 4, 2021 (as amended by the First Amendment, dated as of December 12, 2022 and as further amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the "Credit Agreement");

WHEREAS, pursuant to Section 2.18 of the Credit Agreement, the Borrower has requested that the existing Revolving Commitment (the "Existing Commitment") of each Revolving Lender be converted to extend the scheduled maturity date and termination date of such Existing Commitment with the terms set forth in the Amended Credit Agreement;

WEHEREAS, pursuant to Section 2.18 of the Credit Agreement, (i) each Revolving Lender with Existing Commitments who executes this Amendment has agreed to extend the scheduled maturity date and termination date of such Existing Commitment on the terms set forth in the Amended Credit Agreement, in each case, subject to the terms and conditions set forth herein (such amendments, the "Extension Amendments") (such extended Existing Commitments and Revolving Loans of each such Second Amendment Extended Lender are referred to herein as the "Second Amendment Extended Commitments" and the "Second Amendment Extended Revolving Loans", respectively), (ii) each other Revolving Lender will be deemed a Second Amendment Non-Extended Lender (and the Revolving Commitments and Revolving Loans of each such Second Amendment Non-Extended Lender are referred to herein as the "Second Amendment Non-Extended Commitments" and the "Second Amendment Non-Extended Revolving Loans", respectively) and (iii) the Second Amendment Extended Commitments and any Second Amendment Extended Revolving Loans, on the one hand, and the Second Amendment Non-Extended Commitments and any Second Amendment Non-Extended Revolving Loans, on the other hand, will constitute separate tranches under the Amended Credit Agreement. The aggregate amount of Second Amendment Non-Extended Commitments of each Non-Extended Lender as of the Second Amendment Effective Date is set forth opposite such Non-Extended Lender's name in Schedule 3 hereto.

WHEREAS, each Second Amendment Extended Lender's Existing Commitment existing immediately prior to the effectiveness hereof shall be replaced by a Second Amendment Extended Commitment upon the effectiveness of this Second Amendment in an aggregate amount as set forth on Schedule 1 hereto;

WHEREAS, on the Second Amendment Effective Date (as defined below) and immediately succeeding the Extension Amendments referenced above, (a) the Borrower has requested, pursuant to Section 2.16 of the Credit Agreement, that the Second Amendment Extended Commitments be increased with the Incremental Commitment (as defined below) in an aggregate principal amount of $81,000,000 and (b) the Borrower, each of the entities set forth in Schedule 2 hereto providing such Incremental Commitment (the "Incremental Lenders") and the Administrative Agent have agreed, upon the terms and subject to the conditions set forth herein, that each of the Incremental Lenders will provide its Incremental Commitment in an aggregate amount set forth opposite each Incremental Lender's name in Schedule 2 hereto (the "Incremental Commitment") (such amendments, the "Incremental Amendments" and together with the Extension Amendments, the "Amendments");

WHEREAS, effective as of the Second Amendment Effective Date and pursuant to Section 2.16, Section 2.18 and Section 11.01 of the Credit Agreement, (i) the Second Amendment Extended Lenders have agreed to provide the Second Amendment Extended Commitment, (ii) the Incremental Lenders have agreed to provide the Incremental Commitment and (iii) the Borrower, the Lenders party hereto and the Administrative Agent have agreed to amend the Credit Agreement (x) to reflect the Extension Amendments and the Incremental Amendments and (y) to provide for any other amendments to the Credit Agreement as they may deem necessary or appropriate as set forth in Article I hereto, in each case, on the terms and subject to the conditions set forth herein; and

WHEREAS, each Loan Party expects to realize substantial direct and indirect benefits as a result of this Second Amendment becoming effective and the consummation of the transactions contemplated hereby and agrees to reaffirm its obligations pursuant to the Credit Agreement, the Guaranty, the Collateral Documents, and the other Loan Documents to which it is a party.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

AMENDMENTS TO CREDIT AGREEMENT

SECTION 1.1 Extension Amendments.

(a) This is the Extension Amendment referred to in Section 2.18 of the Credit Agreement.

(b) Subject to the satisfaction of the conditions set forth in Section 2.1 below, each Revolving Lender that has executed and delivered a counterpart of this Amendment as a "Second Amendment Extended Lender" (each, a "Second Amendment Extended Lender") has agreed to extend the Maturity Date and Revolving Commitment Termination Date of its Revolving Commitment on the Second Amendment Effective Date at the Extension Amendments Effective Time (as defined below) and shall have its entire Existing Commitment automatically reclassified as a Second Amendment Extended Commitment and all of its Revolving Loans automatically

reclassified as Second Amendment Extended Revolving Loans, respectively, for all purposes under the Amended Credit Agreement.

(c) On the Second Amendment Effective Date at the Extension Amendments Effective Time, all of the Revolving Commitments of any Revolving Lender that is not a Second Amendment Extended Lender (each, a "Second Amendment Non-Extended Lender") shall be reclassified as and constitute "Second Amendment Non-Extended Commitments," and all of the Revolving Loans of any Second Amendment Non-Extended Lender shall be reclassified and constitute "Second Amendment Non-Extended Revolving Loans," under the Amended Credit Agreement.

SECTION 1.2Incremental Commitments

(a) This is the Incremental Amendment referred to in Section 2.16(e) of the Credit Agreement. The notice requirement set forth in Section 2.16(a) of the Credit Agreement is hereby waived by the Administrative Agent.

(b) Subject to the satisfaction of the conditions set forth in Section 2.2 below, the Incremental Lenders agree to provide the Incremental Commitment to the Borrower on the Second Amendment Effective Date at the Incremental Amendments Effective Time (as defined below). Each Incremental Lender acknowledges and agrees that upon the execution of this Second Amendment, it shall be a "Second Amendment Extended Lender", "Revolving Lender" and a "Lender" for all purposes under the Amended Credit Agreement and the other Loan Documents and perform all the obligations of, and have all the rights of, a Lender thereunder, (y) each of the Incremental Commitment of each Incremental Lender shall constitute a "Second Amendment Extended Commitment", "Revolving Commitment" and "Commitments" for all purposes under the Amended Credit Agreement and the other Loan Documents, and (z) the Loans of each Incremental Lender shall constitute "Second Amendment Extended Revolving Loan", "Revolving Loans" and "Loans" for all purposes under the Amended Credit Agreement and the other Loan Documents.

(c) The terms of the Incremental Loans and the Incremental Commitments shall have the same terms, including, without limitation, with respect to maturity (after giving effect to this Second Amendment), interest rate, margin and commitment fees, and shall be treated as the same Class as the Second Amendment Extended Loans and the Second Amendment Extended Commitments and all related terms shall be deemed to have correlative meanings.

(d) On the Second Amendment Effective Date, (i) each Revolving Lender immediately prior to giving effect to the Incremental Commitment hereunder (each an "Existing Lender") will automatically and without further act be deemed to have assigned to the Incremental Lenders, and the Incremental Lenders will automatically and without further act be deemed to have assumed a portion of such Existing Lenders' participations under the Amended Credit Agreement in outstanding Swing Line Loans, Letters of Credit and Protective Advances, if applicable, such that, after giving effect to each deemed assignment and assumption of participations, all of the Lenders' (including the Incremental Lenders) participations under the Amended Credit Agreement in Swing Line Loans, Letters of Credit and Protective Advances, if applicable, shall be held on a pro rata basis on the basis of their respective Revolving Exposure (after giving effect to any increase in the

Revolving Commitment pursuant to this Second Amendment), and (ii) for purposes of Section 2.16(i)(ii), (x) if any Revolving Loans are outstanding on such date, the Existing Lenders will automatically and without further act be deemed to have assigned such Revolving Loans to the Incremental Lenders, and the Incremental Lenders will automatically and without further act be deemed to have purchased such Revolving Loans, in each case, to the extent necessary so that all of the Revolving Lenders participate in each outstanding Borrowing of Revolving Loans pro rata on the basis of their respective Revolving Exposure (after giving effect to any increase in the Revolving Commitments pursuant to this Second Amendment); *provided* that it is understood and agreed that the minimum borrowing, pro rata borrowing and pro rata payment requirements contained elsewhere in the Credit Agreement shall not apply to the transactions effected pursuant to this clause (d), and (y) the Borrower shall pay all accrued fees and interest under the Credit Agreement to each Existing Lender with respect to such assigned Revolving Loans, together with any costs incurred by such Revolving Lender in accordance with Section 3.05 of the Credit Agreement.

SECTION 1.3Further Amendments. On the Second Amendment Effective Date, the Borrower, the Lenders party hereto and the Administrative Agent agree that, the Credit Agreement shall hereby be amended, in accordance with Sections 11.01(a) and 11.01(b)(i) and subject to the satisfaction of the conditions precedent set forth in Article II below as follows:

(a) 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; and

(b) the table setting forth the Commitments on Schedule 2.01(a) of the Credit Agreement is hereby replaced with the table setting forth the Commitments set forth on Exhibit B hereto.

ARTICLE II

CONDITIONS TO EFFECTIVENESS

The effectiveness of this Second Amendment will occur as set forth below.

SECTION 2.1Extension Amendments. The Extension Amendments contained in Article I shall become effective on the date (the "Second Amendment Effective Date") and at the time (the "Extension Amendments Effective Time") on which each of following conditions is satisfied or waived:

(a) The Administrative Agent shall have received this Second Amendment, executed and delivered by the Borrower, the other Loan Parties, the Administrative Agent and each of the Lenders on the signature pages hereto.

(b) The Administrative Agent shall have received the following:

(i) (A) certificates of good standing, or its equivalent, from the secretary of state or other applicable office of the jurisdiction of organization or formation of the

Borrower and each other Loan Party if applicable in the relevant jurisdiction, (B) resolutions or other applicable action of the Borrower and each other Loan Party and (C) an incumbency certificate and/or other certificate of Responsible Officers of the Borrower and each other Loan Party, evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Second Amendment and the other Loan Documents to which it is a party;

(ii) an opinion from the following special counsel to the Loan Parties (or certain of the Loan Parties): Gibson, Dunn & Crutcher LLP, with respect to matters of New York and certain aspects of Delaware law and California law;

(iii) a certificate from the chief financial officer or other officer with equivalent duties of the Borrower as to the Solvency (after giving effect to the Second Amendment and the transactions contemplated hereby) of the Borrower substantially in the form attached to the Credit Agreement as Exhibit I; and

(iv) a certificate from a Responsible Officer of the Borrower certifying as to the satisfaction of the conditions in clauses (c) and (d) below.

(c) The representations and warranties of each Loan Party set forth in the Loan Documents (including the representations and warranties set forth in Article III of this Second Amendment) shall be true and correct in all material respects on and as of the Second Amendment Effective Date; provided that, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof.

(d) No Event of Default shall have occurred and be continuing on the Second Amendment Effective Date both before and after giving effect to the transactions contemplated under this Amendment and the Amended Credit Agreement.

(e) The Lenders shall have received at least three Business Days prior to the Second Amendment Effective Date (i) all documentation and other information about the Loan Parties required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and (ii) to the extent the Borrower qualifies as a "legal entity customer" a Beneficial Ownership Certification, that in each case has been requested in writing at least ten Business Days prior to the Second Amendment Effective Date.

(f) All fees and expenses required to be paid hereunder or pursuant to the Credit Agreement shall have been paid in full in cash or will be paid in full in cash on the Second Amendment Effective Date, including all reasonable and documented out-of-pocket expenses (including reasonable fees, charges and disbursements of Latham & Watkins LLP) incurred by the Lenders, the Administrative Agent and their respective Affiliates in connection with the execution and delivery of this Second Amendment.

SECTION 2.2Incremental Amendments. The Incremental Amendments, including the agreements and amendments set forth in Article I and the obligation of the Incremental Lenders to make the Incremental Commitments, shall become effective on the Second Amendment Effective

Date at the time (the "Incremental Amendments Effective Time") immediately following the effectiveness of the Extension Amendment.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

To induce the other parties hereto to enter into this Second Amendment, each Loan Party represents and warrants 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, executed and delivered by such Loan Party and constitutes, and the Amended Credit Agreement constitutes, the legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law);

(b) each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of the Second Amendment Effective Date as if made on and as of the Second Amendment Effective Date, except to the extent that such representations and warranties refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and

(c) no Event of Default shall have occurred and be continuing on the Second Amendment Effective Date both before and after giving effect to the transactions contemplated hereunder.

ARTICLE IV

EFFECTS ON LOAN DOCUMENTS

Except as specifically amended herein or contemplated hereby, all Loan Documents shall continue to be in full force and effect and are hereby in all respects ratified and confirmed. Except as specifically amended herein or contemplated hereby, the execution, delivery and effectiveness of this Second Amendment shall not operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under any of the Loan Documents, nor constitute a waiver of any provision of the Loan Documents or in any way limit, impair or otherwise affect the rights and remedies of the Lenders or the Administrative Agent under the Loan Documents. Each Loan Party acknowledges and agrees that, on and after the Second Amendment Effective Date, this Second Amendment shall constitute a Loan Document for all purposes of the Amended Credit Agreement. On and after the Second Amendment Effective Date, each reference in the Amended 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 "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, and this Second Amendment and the Amended Credit Agreement shall be read together and construed as a single instrument. Nothing herein shall be deemed to entitle any Loan Party to a further consent to, or a further waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Amended Credit Agreement or any other Loan Document in similar or different circumstances.

ARTICLE V
MISCELLANEOUS

SECTION 5.1 Execution by the Administrative Agent. The Administrative Agent is entering into, and signing, this Second Amendment in respect of the amendments set forth in Article I hereof.

SECTION 5.2 Indemnification. The Borrower hereby confirms that the indemnification provisions set forth in Sections 3.05, 10.07 and 11.05 of the Amended Credit Agreement shall apply to this Second Amendment and the transactions contemplated hereby.

SECTION 5.3 Reaffirmation. Each of the Loan Parties, each as party to the Credit Agreement, the Collateral Documents and the other Loan Documents to which it is a party, in each case as amended, supplemented or otherwise modified from time to time, hereby (i) reaffirms (A) each Lien granted by it to the Collateral Agent for the benefit of the Secured Parties and (B) any guaranties made by it pursuant to the Credit Agreement, and (ii) acknowledges and agrees that the grants of security interests by the Loan Parties contained in the Collateral Documents shall remain in full force and effect after giving effect to the Second Amendment. Nothing contained in this Second Amendment shall be construed as substitution or novation of the obligations outstanding under the Credit Agreement or the other Loan Documents, which shall remain in full force and effect, except to any extent modified hereby.

SECTION 5.4 Amendments; Execution in Counterparts; Severability.

(a) This Second Amendment may not be amended nor may any provision hereof be waived except pursuant to a writing signed by each of the parties party hereto, in each case to the extent required by the Amended Credit Agreement; and

(b) Any provision of this Second Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating 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.

SECTION 5.5 Governing Law; Waiver of Jury Trial; Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS SECOND AMENDMENT, THE

AMENDED CREDIT AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN. The provisions of Sections 11.11 and 11.12 of the Amended Credit Agreement are incorporated herein by reference, *mutatis mutandis*.

SECTION 5.6Headings. Section headings in this Second Amendment are included herein 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.

SECTION 5.7Counterparts. This Second Amendment may be executed by one or more of the parties to this Second Amendment on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Second Amendment by facsimile transmission or electronic transmission (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Second Amendment. Without limitation of the foregoing, the words "execution", "executed", "signed", "signature" and words of like import shall be deemed to include electronic signatures, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transaction Act.

SECTION 5.8Treatment of Issuing Bank; Reduction of Letter of Credit Commitment.

(a) The parties hereto further agree that notwithstanding anything to the contrary in the Credit Agreement, any Second Amendment Non-Extended Lender will cease to be an Issuing Bank under the Amended Credit Agreement on the Maturity Date for the Second Amendment Non-Extended Revolving Facility and on such date shall be deemed to be a retiring Issuing Bank pursuant to Section 2.04(l) of the Amended Credit Agreement; provided however that, there shall be no requirement that a successor Issuing Bank be appointed, and any Letters of Credit issued by such Issuing Bank prior to such Maturity Date shall be replaced or cash collateralized on such Maturity Date.

(b) The parties hereto further (i) acknowledge that, notwithstanding the Letter of Credit Commitments set forth in Schedule 2.01(a) of the Amended Credit Agreement, Wells Fargo Bank, National Bank has issued (itself or through its Affiliates, branches or other financial institutions designated by it) Letters of Credit in an aggregate stated amount of $53,418,576.00 and it wishes to reduce its Letter of Credit Commitment to the amount set forth in Schedule 2.01(a) hereto and (ii) agree that, within 180 days following the Second Amendment Effective Date, the Borrower shall have replaced or backstopped such Letters of Credit in an aggregate amount such that the aggregate Letter of Credit Commitment of such Issuing Bank shall be as set forth in Schedule 2.01(a).

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be duly executed and delivered by their respective proper and duly authorized officers as of the day and year first above written.

Borrower:

PETCO HEALTH AND WELLNESS COMPANY, INC.

By: /s/ Brian LaRose
Name: Brian LaRose
Title: Chief Financial Officer

Other Loan Parties:

PETCO HOLDINGS, INC. LLC

By: /s/ Brian LaRose
Name: Brian LaRose
Title: Chief Financial Officer and Treasurer

PETCO ANIMAL SUPPLIES, INC.

By: /s/ Brian LaRose
Name: Brian LaRose
Title: Chief Financial Officer and Treasurer

PETCO ANIMAL SUPPLIES STORES, INC.

By: /s/ Brian LaRose
Name: Brian LaRose
Title: Chief Financial Officer and Treasurer

INTERNATIONAL PET SUPPLIES AND DISTRIBUTION, INC.

By: /s/ Brian LaRose
Name: Brian LaRose
Title: Chief Financial Officer and Treasurer

STORES SHIPPING SERVICES, LLC

By: /s/ Brian LaRose
Name: Brian LaRose
Title: Chief Financial Officer and Treasurer

PETCO SUPPORT SERVICES, LLC

By: /s/ Brian LaRose
Name: Brian LaRose
Title: Chief Financial Officer and Treasurer

PETCOACH, LLC

By: /s/ Brian LaRose
Name: Brian LaRose
Title: Chief Financial Officer and Treasurer

PETCO PUERTO RICO, LLC

By: /s/ Brian LaRose
Name: Brian LaRose
Title: Chief Financial Officer and Treasurer

E-PET SERVICES, LLC
by PETCO ANIMAL SUPPLIES STORES, INC., as its sole member

By: /s/ Brian LaRose
Name: Brian LaRose
Title: Chief Financial Officer and Treasurer

PETCO REAL ESTATE HOLDINGS II LLC

By: /s/ Brian LaRose
Name: Brian LaRose
Title: Chief Financial Officer and Treasurer

PETCO ASIA, LLC

By: /s/ Brian LaRose
Name: Brian LaRose
Title: Chief Financial Officer and Treasurer

CITIBANK, N.A., as Administrative Agent, Second Amendment Extended Lender and Incremental Lender

By: /s/ Michelle Pratt
Name: Michelle Pratt
Title: Vice President and Director

[Signature Page to Second Amendment to ABL Credit Agreement]

GOLDMAN SACHS BANK USA, as a Second Amendment Extended Lender

By: /s/ Ananda DeRoche
Name: Ananda DeRoche
Title: Authorized Signatory

[Signature Page to Second Amendment to ABL Credit Agreement]

Wells Fargo Bank N.A., as a Second Amendment Extended Lender and Incremental Lender

By: /s/ Nathan Keller
Name: Nathan Keller
Title: Authorized Signor

[Signature Page to Second Amendment to ABL Credit Agreement]

Bank of America, N.A., as a Second Amendment Extended Lender

By: /s/ Scott Klebanoff
Name: Scott Klebanoff
Title: Senior Vice President

CAPITAL ONE, NATIONAL ASSOCIATION, as a Second Amendment Extended Lender and an Incremental Lender

By: /s/ Anand Sekaran
Name: Anand Sekaran
Title: Duly Authorized Signatory

UBS AG, Stamford Branch, as a Second Amendment Extended Lender

By: /s/ Danielle Calo
Name: Danielle Calo
Title: Associate Director

By: /s/ Muhammad Afzal
Name: Muhammad Afzal
Title: Director

[Signature Page to Second Amendment to ABL Credit Agreement]

CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, as Lender solely to consent to the amendment with respect to the removal of the Term SOFR Adjustment and resulting interest rate applicable to the Second Amendment Non-Extended Loans as reflected in the Amended Credit Agreement

By: /s/ William O'Daly
Name: William O'Daly
Title: Authorized Signatory

By: /s/ Michael Wagner
Name: Michael Wagner
Title: Authorized Signatory

[Signature Page to Second Amendment to ABL Credit Agreement]

ING Capital LLC, as a Second Amendment Extended Lender and an Incremental Lender

By: /s/ Jean Grasso
Name: Jean Grasso
Title: Managing Director

By: /s/ Jeff Chu
Name: Jeff Chu
Title: Director

SIEMENS FINANCIAL SERVICES, INC., as a Second Amendment Extended Lender and an Incremental Lender

By: /s/ Irene Giordano
Name: Irene Giordano
Title: Risk Manager

By: /s/ Sonia Vargas
Name: Sonia Vargas
Title: Sr. Loan Closer

FIFTH THIRD BANK, NATIONAL ASSOCIATION, as a Second Amendment Extended Lender and an Incremental Lender

By: /s/ James G. Zamborsky
Name: James G. Zamborsky
Title: Vice President

[Signature Page to Second Amendment to ABL Credit Agreement]

SCHEDULE 1

Second Amendment Extended Commitments

SCHEDULE 2

Incremental Commitments

SCHEDULE 3

Second Amendment Non- Extended Commitments

SCHEDULE 4

Schedule 2.01 (a) - Commitments

EXHIBIT A

Amended Credit Agreement

[See attached.]

Exhibit A to Second Amendment

ABL REVOLVING CREDIT AGREEMENT

dated as of March 4, 2021~~,~~

(as amended by the First Amendment, dated as of December 12, 2022 and the Second Amendment, dated as of March 29, 2024)
by and among

PETCO HEALTH AND WELLNESS COMPANY, INC.,
as the Borrower

CITIBANK, N.A.,
as Administrative Agent and Collateral Agent and

THE LENDERS PARTY HERETO

CITIBANK, N.A.,
GOLDMAN SACHS BANK USA,
BOFA SECURITIES, INC.,
~~CREDIT SUISSE LOAN FUNDING LLC,~~
UBS SECURITIES LLC,
WELLS FARGO BANK, NATIONAL ASSOCIATION and
CAPITAL ONE, NATIONAL ASSOCIATION
as Joint Lead Arrangers and Joint Bookrunners

Article X.
Administrative Agent and Other Agents

Article XI.
Miscellaneous

SCHEDULES

2.01(a) Commitments
2.01(b) Permitted Inventory Locations
2.04 Existing Letters of Credit
5.06 Litigation
5.11(a) ERISA Compliance
5.11(b) ERISA Compliance
5.12 Subsidiaries
11.02 Administrative Agent's Office, Certain Addresses for Notices

EXHIBITS

Form of

A-1 Committed Loan Notice
A-2 Issuance Notice
A-3 Conversion/Continuation Notice
A-4 Swing Line Notice
B-1 Revolving Loan Note
B-2 Swing Line Note
C Compliance Certificate
D Assignment and Assumption
E Guaranty
F Security Agreement
G Non-Bank Certificate
H Global Intercompany Note
I Solvency Certificate
J Prepayment Notice
K Borrowing Base Certificate

ABL REVOLVING CREDIT AGREEMENT

This ABL REVOLVING CREDIT AGREEMENT is entered into as of March 4, 2021 (as amended by that certain First Amendment to ABL Revolving Credit Agreement, dated as of December 12, 2022 and the Second Amendment to ABL Revolving Credit Agreement, dated as of March 29, 2024), by and among PETCO HEALTH AND WELLNESS COMPANY, INC., a Delaware corporation (the "***Borrower***"), CITIBANK, N.A. ("***Citibank***"), as administrative agent (in such capacity, including any successor thereto, the "***Administrative Agent***") and as collateral agent (in such capacity, including any successor thereto, the "***Collateral Agent***") under the Loan Documents, each Issuing Bank from time to time party hereto, each financial institution listed on the signature pages hereto as an Agent, the financial institutions set forth on the cover of this Agreement as joint lead arrangers and joint bookrunners (collectively, the "***Lead Arrangers***" and "***Joint Bookrunners***"), and each lender from time to time party hereto (collectively, the "***Lenders***" and, individually, a "***Lender***"). Capitalized terms used herein are defined as set forth in **Section 1.01**.

PRELIMINARY STATEMENTS

The Borrower has requested that from time to time (including on the Closing Date substantially simultaneously with the Closing Date Refinancing and upon satisfaction (or waiver) of the conditions precedent set forth in **Article IV** below), the Revolving Lenders make Revolving Loans, the Swing Line Lender to make Swing Line Loans and the Issuing Banks issue Letters of Credit, pursuant to the terms of this Agreement.

On the Closing Date, the Borrower will enter into the Term Loan Credit Agreement pursuant to which the Term Loan Lenders will extend credit to the Borrower in the form of Initial Dollar Term Loans in an aggregate principal amount of $1,700,000,000.

On the Closing Date, the Borrower will repay (or cause to be repaid) all outstanding Indebtedness (the "***Existing Indebtedness***") under, terminate any commitments under, and cause to be released any contractual Liens securing obligations under the Existing Indebtedness Documents (such repayment, termination and release, collectively, the "***Closing Date Refinancing***").

The proceeds of the borrowings hereunder permitted on the Closing Date, together with the proceeds of the Initial Term Loans and cash on hand at the Borrower and its Subsidiaries will be used to finance the Transactions, for working capital purposes and to finance transactions not prohibited by this Agreement.

The applicable Lenders have indicated their willingness to lend, and each Issuing Bank has indicated its willingness to issue Letters of Credit, in each case on the terms and subject to the conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I.
DEFINITIONS AND ACCOUNTING TERMS

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

"***ABL Priority Collateral***" means the "***ABL Collateral***" as defined in the Closing Date ABL Intercreditor Agreement.

"***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***" has the meaning assigned to such term in the Security Agreement.

"***Account Debtor***" means any Person obligated on an Account.

"***Acquired Accounts Borrowing Base***" has the meaning specified in the definition of "***Eligible Accounts***".

"***Acquired Inventory Borrowing Base***" has the meaning specified in the definition of "***Eligible Inventory***".

"***Acquisition Transaction***" means the purchase or other acquisition (in one transaction or a series of transactions, including by merger, amalgamation or otherwise) by the Borrower or any Restricted Subsidiary of all or substantially all the property, assets or business of another Person, or assets constituting a business unit, line of business or division of, any Person, or of a majority of the outstanding Equity Interests of any Person (including any Investment which serves to increase the Borrower's or any Restricted Subsidiary's respective equity ownership in any Joint Venture (other than an Unrestricted Subsidiary) or other Person to an amount in excess (or further in excess) of the majority of the outstanding Equity Interests of such Joint Venture or other Person).

"***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.

"***Additional Lender***" means, at any time, any bank, other financial institution or institutional investor that, in any case, is not an existing Lender and that agrees to provide any portion of any Incremental Loan in accordance with **Section 2.16**; ***provided*** that each Additional Lender (other than any Person that is a Lender, an Affiliate of a Lender or an Approved Fund of a Lender at such time) shall be subject to the approval of the Administrative Agent, the Swing Line Lender and/or the Issuing Banks (such approval not to be unreasonably withheld, conditioned or delayed), in each case to the extent any such consent would be required from the Administrative Agent, the Swing Line Lender and/or the Issuing Banks under **Section 11.07(b)(iii)(B)**, **(C)**, and/or **(D)**, respectively, for an assignment of Loans to such Additional Lender.

~~"***Adjusted Term SOFR***" means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment.~~

"***Adjustment Date***" means the first day of each January, April, July and October, as applicable.

"***Administrative Agent***" has the meaning specified in the introductory paragraph to this Agreement.

"***Administrative Agent Account***" has the meaning specified in **Section 6.18(c)**.

"***Administrative Agent's Office***" means the Administrative Agent's address and, as appropriate, account as set forth on **Schedule 11.02**, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"***Administrative Questionnaire***" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"***Affected Financial Institution***" means (a) any EEA Financial Institution, or (b) any UK Financial Institution.

"***Affiliate***" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. As used in this definition, "***Control***" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise, and "***Controlled***" has the meaning correlative thereto. For the avoidance of doubt, none of the Lead Arrangers, the Agents or their respective lending affiliates shall be deemed to be an Affiliate of the Loan Parties or any of the Restricted Subsidiaries.

"***Agent Parties***" has the meaning specified in **Section 11.02(e)**.

"***Agent-Related Persons***" means the Agents, together with their respective Affiliates and branches, and the officers, directors, shareholders, employees, agents, attorney-in-fact, partners, trustees, advisors and other representatives of such Persons and of such Persons' Affiliates and branches.

"***Agents***" means, collectively, the Administrative Agent, the Collateral Agent, the Joint Bookrunners, the Supplemental Administrative Agents (if any) and the Lead Arrangers.

"***Aggregate Commitments***" means the Commitments of all the Lenders.

"***Agreement***" means this Credit Agreement, as amended, restated, modified or supplemented from time to time in accordance with the terms hereof.

"***Agreement Currency***" has the meaning specified in **Section 2.21(b)**.

"***AHYDO Catch Up Payment***" has the meaning specified in **Section 7.09(a)(viii)**.

"***Alternative Currencies***" means, in the case of Revolving Loans, Incremental Revolving Facilities, Extended Revolving Loans and Letters of Credit, any other currency agreed to by the Administrative Agent, the Borrower and each Revolving Lender providing such Revolving Loans, Incremental Revolving Facilities or Extended Revolving Loans (in its sole discretion); ***provided*** that, in each case, each such other currency is a lawful currency that is readily available, freely transferable and not restricted, able to be converted into Dollars and available in the London interbank deposit market or other applicable offshore interbank market.

"***Annual Financial Statements***" means the audited consolidated balance sheets of Petco Health and Wellness Company, Inc., a Delaware corporation, as of February 1, 2020, and the related consolidated statements of operations, changes in stockholders' equity and cash flows for Petco Health and Wellness, Company, Inc. for the fiscal year then ended.

"***Applicable Creditor***" has the meaning specified in **Section 2.21(b)**.

"***Applicable Decimal Place***" has the meaning specified in **Section 1.04**.

"***Applicable Commitment Fee***" means a percentage *per annum* that shall be equal to,

(a) for each day from the Closing Date until the last day of the first full fiscal quarter completed after the Closing Date, 0.375% *per annum*, and

(b) thereafter, for each Fiscal Quarter or portion thereof, the applicable rate *per annum* set forth below under the caption "***Applicable Commitment Fee***" based upon the Average Usage for the preceding Fiscal Quarter then-ended:

Category	Average Usage	Applicable Commitment Fee
Category 1	Less than 50%	0.375%
Category 2	Greater than or equal to 50%	0.25%

provided that the Applicable Commitment Fee shall be adjusted quarterly on a prospective basis on each Adjustment Date based upon the Average Usage in accordance with the table above.

"***Applicable Indebtedness***" has the meaning specified in the definition of "***Weighted Average Life to Maturity.***"

"***Applicable Rate***" means:

(a) for any day from the Closing Date until the last day of the first full fiscal quarter completed after the Closing Date, a percentage *per annum* equal to, (i) for Term Benchmark Loans, 1.25% and (ii) for Base Rate Loans, 0.25%;

(b) thereafter, for any day, the applicable rate *per annum* set forth below under the caption "***Base Rate Spread***" or "***Term Benchmark Rate Spread***", respectively, based upon the

Average Historical Excess Availability of the Borrower as of the most recent Adjustment Date prior to such day, expressed as a percentage of the Maximum Borrowing Amount:

Category	Average Historical Excess Availability as a Percentage of the Line Cap	Term Benchmark Rate Spread	Base Rate Spread
Category 1	Above or equal to 66 2/3%	1.25%	0.25%
Category 2	Less than 66 2/3% and above or equal to 33 1/3%	1.50%	0.50%
Category 3	Less than 33 1/3%	1.75%	0.75%

The Applicable Rate 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 a Borrowing Base Certificate is not delivered when required pursuant to **Section 6.02(d)**, the "***Applicable Rate***" shall be the applicable rate per annum set forth above in Category 3 until a Borrowing Base Certificate is delivered in compliance with **Section 6.02(f)**.

"***Appropriate Lender***" means, at any time, with respect to Loans of any Class, the Lenders of such Class.

"***Approved Fund***" means, with respect to any Lender, any Fund that is administered, advised or managed by (a) such Lender, (b) an Affiliate or branch of such Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

"***Assignment and Assumption***" means an Assignment and Assumption substantially in the form of **Exhibit D** or any other form approved by the Administrative Agent.

"***Attorney Costs***" means all reasonable and documented in reasonable detail fees, expenses, charges and disbursements of any law firm or other external legal counsel.

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

"***Auto-Renewal Letter of Credit***" has the meaning specified in **Section 2.04(b)(iii)**.

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

avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "***Interest Period***" pursuant **Section 10.01(f)(iv)**.

"***Average Historical Excess Availability***" means, at any Adjustment Date, the quotient, expressed as a percentage obtained by dividing (a) the average daily Specified Excess Availability for the Fiscal Quarter immediately preceding such Adjustment Date (with the Borrowing Base at such time for any such day used to determine "***Specified Excess Availability***", calculated by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent on or prior to such day pursuant to **Section 6.02(f)**) by (b) the average daily Line Cap for such Fiscal Quarter.

"***Average Usage***" shall mean, at any Adjustment Date, the average utilization of Revolving Commitments (expressed as a percentage) for the fiscal quarter immediately preceding such Adjustment Date.

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

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

"***Bank Products Reserves***" means, collectively, the Designated Cash Management Reserve and Designated Hedging Reserve.

"***Bankruptcy Code***" shall mean Title 11 of the United States Code (11 U.S.C. § 101, et seq.), as amended from time to time.

"***Base Rate***" means for any day a fluctuating rate *per annum* equal to the highest of (a) the Federal Funds Rate *plus* 0.50%, (b) the rate of interest in effect for such day as publicly announced from time to time by the Administrative Agent as its "prime rate", and (c) ~~the Adjusted~~ Term SOFR for Loans denominated in Dollars on such day for an Interest Period of one month *plus* 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day); ***provided*** that, notwithstanding the foregoing, the "***Base Rate***" shall in no event be less than ~~0.00~~1.00% *per annum*. The "prime rate" is a rate set by the Administrative Agent based upon various factors including the Administrative Agent's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by the Administrative Agent shall take effect at the opening of business on the day specified in the public announcement of such change.

"***Base Rate Loan***" means a Loan denominated in Dollars that bears interest based on the Base Rate.

"***Base Rate SOFR Determination Day***" has the meaning specified in the definition of "Term SOFR".

"***Benchmark***" means, initially with respect to any (i) amounts denominated in Dollars, Term SOFR Reference Rate; provided that if a Benchmark Transition has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to **Section 10.01(f)(i)** and (ii) amounts denominated in an Alternative Currency, the risk-free reference rate (RFR) applicable to such Alternative Currency as agreed to by the Administrative Agent, the Borrower and each Revolving Lender providing such Revolving Loans, Incremental Revolving Facilities or Extended Revolving Loans (in its sole discretion).

"***Benchmark Replacement***" means, with respect to any Benchmark Transition Event for any then-current Benchmark, the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for such Benchmark giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for such Benchmark for syndicated credit facilities denominated in Dollars or in any Alternative Currency, as applicable, at such time and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

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

"***Benchmark Replacement Conforming Changes***" means, with respect to either the use or administration of an initial Benchmark or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 3.05 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of

any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"***Benchmark Replacement Date***" means the earliest to occur of the following events with respect to the then-current Benchmark for any currency:

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

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

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

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

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

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, the central bank for an Alternative Currency applicable to such Benchmark, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such

Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

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

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

"***Benchmark Transition Start Date***" means, with respect to any Benchmark, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

"***Benchmark Unavailability Period***" means, with respect to any then-current Benchmark for any currency, the period (if any) (x) beginning at the time that a Benchmark Replacement Date with respect to such Benchmark has occurred if, at such time, no Benchmark Replacement has replaced such Benchmark for all purposes hereunder and under any Loan Document in accordance with **Section 10.01(f)** and (y) ending at the time that a Benchmark Replacement has replaced the such Benchmark for all purposes hereunder and under any Loan Document in accordance with **Section 10.01(f)**.

"***Beneficial Ownership Certification***" means a certification regarding beneficial ownership 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 and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"***BHC Act Affiliate***" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"***Blocked Account Agreement***" has the meaning specified in **Section 6.18(b)**.

"***Blocked Accounts***" has the meaning specified in **Section 6.18(b)**.

"***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 specified in the introductory paragraph to this Agreement.

"***Borrower Materials***" has the meaning specified in **Section 6.02**.

"***Borrowing***" means a borrowing consisting of Loans of the same Class and Type made, converted or continued on the same date and, in the case of Term Benchmark Loans, having the same Interest Period.

"***Borrowing Base***" means, at any time, an amount equal to

(a) 90% of the Eligible Accounts held by the Borrowing Base Parties, *plus*

(b) 90% of the Net Orderly Liquidation Value of Eligible Inventory held by the Borrowing Base Parties, *plus*

(c) 100% of Qualified Cash of the Borrowing Base Parties as to which the Borrowing Base Parties have no access, *minus*

(d) the amount of all Reserves in effect as of such date of determination, as the same may at any time and from time to time be established in accordance with **Section 2.22**.

The Borrowing Base at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to **Section 6.02(d)** and Reserves established pursuant to **Section 2.22**; ***provided, further,*** that the inclusion in the Borrowing Base of any assets or other property acquired in connection with a transaction described in **Section 6.11(a)** shall be subject to the Borrower's compliance with **Section 6.11(a)** within the time periods set forth therein.

Inventory or Credit Card Processor Accounts acquired after the Closing Date in connection with an acquisition permitted hereunder that would otherwise be Eligible Inventory and Eligible Accounts but for the application of **clause (n)** in the definition of "***Eligible Inventory***" and **clause (k)** in the definition of "***Eligible Accounts***" may be included in the Borrowing Base prior to Administrative Agent receiving a Report in respect of such Credit Card Processor Accounts and Inventory showing results reasonably satisfactory to it for a period of up to 90 days after the acquisition thereof; ***provided***, that until such Report is received, the contribution of such acquired Inventory and Credit Card Process Accounts shall not exceed 15% of the Borrowing Base prior to giving effect to inclusion of such Inventory and Credit Card Processor Accounts. At the request of the Borrower, the Administrative Agent may take such actions as reasonably required to obtain or prepare such a Report within 90 days of such acquisition (which Report shall be at the expense of the Borrower and shall not be considered to be any limitation on appraisals and field examinations at the expense of the borrower provided in **Section 6.10(b)**).

"***Borrowing Base Certificate***" means a certificate from the senior vice president (finance), chief financial officer, treasurer, manager of treasury activities or assistant treasurer or other officer with equivalent duties of the Borrower in substantially the form of **Exhibit K**, as such form, subject to the terms hereof, may from time to time be modified as agreed by the Borrower and the Administrative Agent or such other form which is acceptable to the Administrative Agent in its reasonable discretion, and with such changes therein as may be required by the Administrative Agent in its Permitted Discretion to reflect the components of and Reserves against the Borrowing Base as provided for hereunder from time to time, together with appropriate exhibits, schedules, supporting documentation and additional reports as reasonably requested by the Administrative Agent.

"***Borrowing Base Parties***" means, as of any date, the Borrower and each Guarantor that is a Restricted Subsidiary.

"***Business Day***" means (a) any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the jurisdiction where the Administrative Agent's Office is located (which, as of the date of this Agreement, is New York, New York) and if such day relates to any interest rate settings as to a Term Benchmark Loan, any fundings, disbursements, settlements and payments in respect of any such Term Benchmark Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such Term Benchmark Loan, means any such day that is also a U.S. Government Securities Business Day and (b) if such day relates to any interest rate settings as to a Term Benchmark Loan or Letter of Credit denominated in an Alternative Currency, any fundings, settlements, payments and disbursements in such Alternative Currency, or any other dealings in such Alternative Currency to be carried out pursuant to this Agreement in respect of any such Term Benchmark Loan or Letter of Credit, means any such day described in **clause (a)** above which is also a day on which dealings in deposits in such Alternative Currency are conducted by and between banks in the London interbank market and (other than any date that relates to any interest rate setting in respect of such Alternative Currency) any such day on which banks are open for foreign exchange business in the principal financial center of the country of such Alternative Currency.

"***Capital Expenditures***" means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Leases) by the Borrower and the Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of the Borrower and the Restricted Subsidiaries; ***provided*** that Capital Expenditures will not include:

(a) expenditures to the extent they are made with proceeds of the issuance of Equity Interests of, or a cash capital contribution to, the Borrower after the Closing Date;

(b) 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;

(c) interest capitalized during such period;

(d) 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 (d)**);

(e) 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;

(f) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (i) used or surplus equipment traded in at the time of such purchase or (ii) the proceeds of a concurrent sale of used or surplus equipment, in each case, in the ordinary course of business;

(g) Investments in respect of a Permitted Acquisition;

(h) the purchase of property, plant or equipment to the extent purchased with the proceeds of Dispositions that are not applied to prepay Term Loans pursuant to **Section 2.04(b)**; or

(i) expenditures used for acquisitions of fee-owned real property, up to the greater of (A) 5.00% of Closing Date EBITDA and (B) 5.00% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination during any fiscal year, so long as (i) the Borrower demonstrates to the satisfaction of the Administrative Agent a viable plan that provides for a Sale Leaseback Transaction within one year of acquisition and (ii) 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 Leaseback 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.

"***Capitalized Lease Obligation***" means, at the time any determination thereof is to be made, the amount of the liability in respect of a Capitalized Lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

"***Capitalized Leases***" means all financing leases that have been or are required to be, in accordance with GAAP as in effect on the Closing Date (including the Borrower's adoption of Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842)), recorded as financing leases; ***provided*** that

(a) for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP as in effect on the Closing Date (including the Borrower's adoption of Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842)) and

(b) in no event shall an operating lease or a lease that would have been an operating lease prior to the adoption of Accounting Standards Update (ASU) No. 2016-02, Leases (Topic 842) be considered a Capitalized Lease.

"***Captive Insurance Subsidiary***" means any Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

"***Cash Collateral Account***" means an account held at, and subject to the sole dominion and control of, the Collateral Agent.

"***Cash Collateralize***" means, in respect of an Obligation, to provide and pledge (as a first priority perfected security interest) cash collateral in Dollars, at a location and pursuant to documentation in form and substance satisfactory to the Administrative Agent, the Swing Line Lender or an Issuing Bank, as applicable (and "***Cash Collateralization***" has a corresponding meaning). "***Cash Collateral***" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"***Cash Dominion Period***" means

(a) each period beginning on the occurrence of a Specified ABL Event of Default until such Specified ABL Event of Default has been cured or waived and

(b) each period beginning on the date that Specified Excess Availability shall have been less than the greater of (x) 10.0% of the Line Cap and (y) $~~31,250,000~~37,500,000 for five consecutive Business Days and ending on the date that Specified Excess Availability shall have been at least the greater of (x) 10.0% of the Line Cap and (y) $~~31,250,000~~37,500,000 for 20 consecutive calendar days (this **clause (b)**, a "***Liquidity Condition***"). Notwithstanding anything to the contrary herein or in any other Loan Document, the Credit Extensions made on the Closing Date shall not be deemed to give rise to a Liquidity Condition unless and until a Credit Extension is made after the Closing Date and a Liquidity Condition subsequently occurs.

"***Cash Equivalents***" means any of the following types of Investments (including for the avoidance of doubt, cash), to the extent owned by the Borrower or any Restricted Subsidiary:

(a) Dollars and each Alternative Currency;

(b) local currencies held by the Borrower or any Restricted Subsidiary from time to time in the ordinary course of business and not for speculation;

(c) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the United States government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and

credit obligation of such government with maturities of 12 months or less from the date of acquisition;

(d) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, demand deposits, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than $500,000,000 (or the foreign currency equivalent thereof as of the date of such investment);

(e) repurchase obligations for underlying securities of the types described in **clauses (c)** and **(d)** above or **clause (h)** below entered into with any financial institution meeting the qualifications specified in **clause (d)** above;

(f) commercial paper rated at least P-2 by Moody's or at least A-2 by S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) and in each case maturing within 12 months after the date of creation thereof;

(g) marketable short-term money market and similar highly liquid funds having a rating of at least P-2 or A-2 from Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency);

(h) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof, in each case having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency) with maturities of 12 months or less from the date of acquisition;

(i) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency);

(j) investment funds investing substantially all of their assets in securities of the types described in **clauses (a)** through **(i)** above; and

(k) solely with respect to any Captive Insurance Subsidiary, any investment that a Captive Insurance Subsidiary is not prohibited to make in accordance with applicable Law.

In the case of Investments by any Foreign Subsidiary that is a Restricted Subsidiary or Investments made in a jurisdiction outside the United States of America, Cash Equivalents shall also include (i) investments of the type and maturity described in **clauses (a)** through **(k)** above in foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments in accordance with normal investment practices for cash management

in investments analogous to the foregoing investments in **clauses (a)** through **(k)** above and in this paragraph. Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than those set forth in **clause (a)** or **(b)** above; ***provided*** that such amounts, except amounts used to pay obligations of the Borrower or any Restricted Subsidiary denominated in any currency other than Dollars or an Alternative Currency in the ordinary course of business, are converted into Dollars or an Alternative Currency as promptly as practicable and in any event within ten Business Days following the receipt of such amounts.

"***Cash Management Bank***" means any Person that is a Lender or Agent or an Affiliate or branch of a Lender or Agent (a) on the Closing Date (with respect to any Cash Management Services entered into prior to the Closing Date), (b) at the time it initially provides any Cash Management Services to the Borrower or any Restricted Subsidiary, or (c) at the time that the Person to whom the Cash Management Services are provided is merged or amalgamated with the Borrower or becomes or is merged or amalgamated with a Restricted Subsidiary (with respect to any Cash Management Services entered into prior to the date of such merger or amalgamation or such Person becoming a Restricted Subsidiary), in each case whether or not such Person subsequently ceases to be a Lender or Agent or an Affiliate or branch of a Lender or Agent.

"***Cash Management Obligations***" means obligations owed by the Borrower or any Restricted Subsidiary to any Cash Management Bank in respect of or in connection with any Cash Management Services and designated by the Cash Management Bank and the Borrower in writing to the Administrative Agent as "***Cash Management Obligations***" (but only if such Cash Management Services have not been designated as "***Cash Management Obligations***" under the Term Loan Credit Agreement).

"***Cash Management Services***" means any agreement or arrangement to provide cash management services, including treasury, depository, overdraft, credit card processing, credit or debit card, purchase card, electronic funds transfer, supply chain financing programs and other cash management arrangements.

"***Casualty Event***" means any event that gives rise to the receipt by a Loan Party of any property or casualty insurance proceeds or any condemnation or expropriation awards, in each case, in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

"***CFC***" means a "controlled foreign corporation" within the meaning of Section 957(a) of the Code.

"***Change in Law***" means the occurrence, after the date of this Agreement, of any of the following:

(a) the adoption or taking effect of any law, rule, regulation or treaty (excluding the taking effect after the date of this Agreement of a law, rule, regulation or treaty adopted prior to the date of this Agreement),

(b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or

(c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

It is understood and agreed that (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173), all Laws relating thereto, all interpretations and applications thereof and any compliance by a Lender with any and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof or relating thereto and (ii) all requests, rules, guidelines, requirements or directives issued by any United States or foreign regulatory authority in connection with the implementation of the recommendations of the Bank for International Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) in each case pursuant to Basel III, shall, for the purposes of this Agreement, be deemed to be adopted subsequent to the date hereof and a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented. Notwithstanding the foregoing, FATCA (as defined below) shall not be considered a "***Change in Law.***"

"***Change of Control***" means the earliest to occur of:

(a) any Person (other than a Permitted Holder) or Persons (other than one or more Permitted Holders) constituting a "group" (as such term is used in Section 13(d) and Section 14(d) of the Exchange Act, but excluding any employee benefit plan of such Person and its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), becoming the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under such Act), directly or indirectly, of Equity Interests representing more than forty percent (40.00%) of the aggregate ordinary voting power represented by the then issued and outstanding Equity Interests of the Borrower (or Successor Borrower, if applicable) and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of the Borrower (or Successor Borrower, if applicable) beneficially owned (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, in the aggregate by the Permitted Holders, unless the Permitted Holders have, at such time, the right or the ability by voting power, contract or otherwise to elect or designate for election 50% or more of the Board of Directors of the Borrower (or Successor Borrower, if applicable); and

(b) a Change of Control or similar event occurring under the Term Loan Credit Agreement.

"***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.

"***Class***" when used in reference to (a) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Second Amendment Extended Revolving Loans, Second Amendment Non-Extended Revolving Loans, Swing Line Loans, Protective Advances or Extended Revolving Loans, (b) any Commitment, refers to whether such Commitment is a Commitment in respect of Revolving Loans, Second Amendment Extended Revolving Loans, Second Amendment Non-Extended Revolving Loans, Swing Line Loans or a Commitment in respect of a Class of Loans to be made pursuant to an Extension Amendment and (c) any Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments.

"***Closing Date***" means the first date on which all of the conditions precedent in **Section 4.01** are satisfied or waived in accordance with **Section 11.01**.

"***Closing Date ABL Intercreditor Agreement***" means that certain Intercreditor Agreement, dated as of the Closing Date, by and among the Collateral Agent, each Debt Representative under the Term Loan Credit Agreement, and each additional representative from time to time party thereto, as acknowledged by the Loan Parties, as amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof.

"***Closing Date EBITDA***" means $543,000,000.

"***Closing Date First Lien Net Leverage Ratio***" means 3.00 to 1.00.

"***Closing Date Refinancing***" has the meaning specified in the preliminary statements to this Agreement.

"***Closing Date Secured Net Leverage Ratio***" means 3.00 to 1.00.

"***Closing Date Total Net Leverage Ratio***" means 3.00 to 1.00.

"***Co-Borrower***" has the meaning specified in **Section 1.10**.

"***Co-Borrower Effective Date***" has the meaning specified in **Section 1.10**.

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

"***Collateral***" means all the "***Collateral***" (or equivalent term, including "hypothecated property") as defined in any Collateral Document and all other property that is subject or purported to be subject to any Lien in favor of the Collateral Agent for the benefit of the Secured Parties pursuant to any Collateral Document, but in any event excluding all Excluded Assets.

"***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***" has the meaning specified in the introductory paragraph to this Agreement.

"***Collateral Documents***" means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Security Agreement Supplements, security agreements or other similar agreements delivered to the Agents and the Lenders pursuant to **Sections 4.01(a)**, **6.11**, **6.12** or **6.15**, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

"***Commitments***" means the Revolving Commitments.

"***Committed Loan Notice***" means a notice of a Borrowing pursuant to **Article II**, which, if in writing, shall be substantially in the form of **Exhibit A-1** or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent).

"***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 Person***" means any future, current or former officer, director, manager, member, member of management, employee, consultant or independent contractor of the Borrower or any Subsidiary.

"***Compliance Certificate***" means a certificate substantially in the form of **Exhibit C**.

"***Concentration Account***" has the meaning specified in **Section 6.18(b)**.

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

"***Consolidated Adjusted EBITDA***" means, with respect to any Person for any Test Period, the Consolidated Net Income of such Person for such Test Period:

(a) increased, without duplication, by the following items (solely to the extent deducted (and not excluded) in calculating Consolidated Net Income, other than in respect of the proviso in **clause (i)** below and **clauses (ii)(B)**, **(xi)**, **(xix)** and **(xx)** below) of such Person and its Restricted Subsidiaries for such Test Period determined on a consolidated basis in accordance with GAAP:

(i) interest expense, including (A) imputed interest on Capitalized Lease Obligations and Attributable Indebtedness (which, in each case, 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 Capitalized Lease Obligations or Attributable Indebtedness), (B) commissions, discounts and other fees, charges and expenses owed with respect to letters of credit, bankers' acceptance financing, surety and performance bonds and receivables financings, (C) amortization and write-offs of deferred financing fees, debt issuance costs, debt discounts, commissions, fees, premium and other expenses, as well as expensing of bridge,

commitment or financing fees, (D) payments made in respect of hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, (E) cash contributions to any employee stock ownership plan or similar trust to the extent such contributions are used by such plan or trust to pay interest or fees to any Person (other than such Person or a wholly-owned Restricted Subsidiary) in connection with Indebtedness incurred by such plan or trust, (F) all interest paid or payable with respect to discontinued operations, (G) the interest portion of any deferred payment obligations, and (H) all interest on any Indebtedness that is (x) Indebtedness of others secured by any Lien on property owned or acquired by such Person or its Restricted Subsidiaries, whether or not the obligations secured thereby have been assumed, but limited to the fair market value of such property, (y) contingent obligations in respect of Indebtedness; ***provided*** that such interest expense shall be calculated after giving effect to Hedge Agreements related to interest rates (including associated costs), but excluding unrealized gains and losses with respect to such Hedge Agreements or (z) fee and expenses paid to the Administrative Agent (in its capacity as such and for its own account) pursuant to the Loan Documents and fees and expenses paid to the administrative agent, the collateral agent, trustee or other similar Persons for any other Indebtedness permitted by **Section 7.03**; ~~***provided further*** that, when determining such interest expense in respect of any Test Period ending prior to the first anniversary of the Closing Date, such interest expense will be calculated by multiplying the aggregate amount of such 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 Test Period;~~ *plus*

(ii) taxes based on gross receipts, income, profits or revenue or capital, franchise, excise, property, commercial activity, sales, use, unitary or similar taxes, and foreign withholding taxes, including penalties and interest; *plus*

(iii) depreciation expense and amortization expense (including amortization and similar charges related to goodwill, customer relationships, trade names, databases, technology, software, internal labor costs, deferred financing fees or costs and other intangible assets); *plus*

(iv) non-cash items (***provided*** that if any such non-cash item represents an accrual or reserve for potential cash items in any future period, (x) the Borrower may determine not to add back such non-cash item in the current Test Period, (y) to the extent the Borrower decides to add back such non-cash expense or charge, the cash payment in respect thereof in such future period will be subtracted from Consolidated Adjusted EBITDA in such future period), including the following: (A) non-cash expenses 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, (B) non-cash currency translation losses related to changes in currency exchange rates (including re-measurements of Indebtedness (including intercompany Indebtedness) and any

net non-cash loss resulting from hedge agreements for currency exchange risk), (C) non-cash losses, expenses, charges or negative adjustments attributable to the movement in the mark-to-market valuation of hedge agreements or other derivative instruments, including the effect of FASB Accounting Standards Codification 815 and International Accounting Standard No. 9 and their respective related pronouncements and interpretations, (D) non-cash charges for deferred tax asset valuation allowances, (E) any non-cash impairment charge or asset write-off or write-down related to intangible assets (including goodwill), long-lived assets, and Investments in debt and equity securities, (F) any non-cash charges or losses resulting from any purchase accounting adjustment or any step-ups with respect to re-valuing assets and liabilities in connection with the Transactions or any Investments either existing or arising after the Closing Date, (G) all non-cash losses from Investments either existing or arising after the Closing Date recorded using the equity method and (H) the excess of GAAP rent expense over actual cash rent paid during such period due to the use of straight line rent for GAAP purposes and (z) any non-cash interest expense; *plus*

(v) unusual, extraordinary, infrequent, or non-recurring items, whether or not classified as such under GAAP; *plus*

(vi) charges, costs, losses, expenses or reserves related to:

(A) restructuring (including restructuring charges or reserves, whether or not classified as such under GAAP), severance, relocation, consolidation, integration or other similar items,

(B) strategic and/or business initiatives, business optimization (including costs and expenses relating to business optimization programs, which, for the avoidance of doubt, shall include, without limitation, implementation of operational and reporting systems and technology initiatives; strategic initiatives; retention; severance; systems establishment costs; systems conversion and integration costs; contract termination costs; recruiting and relocation costs and expenses; costs, expenses and charges incurred in connection with curtailments or modifications to pension and post-retirement employee benefits plans; costs to start-up, pre-opening, opening, closure, transition and/or consolidation of distribution centers, operations, officers, stores, pet care centers and other facilities) including in connection with the any Permitted Investment, any acquisition or other investment consummated prior to or after the Closing Date and new systems design and implementation, as well as consulting fees and any one-time expense relating to enhanced accounting function,

(C) business or facilities (including greenfield facilities) start-up, opening, transition, consolidation, shut-down and closing,

(D) signing, retention and completion bonuses,

(E) severance, relocation or recruiting,

(F) public company registration, listing, compliance, reporting and related expenses,

(G) charges and expenses incurred in connection with litigation (including threatened litigation), any investigation or proceeding (or any threatened investigation or proceeding) by a regulatory, governmental or law enforcement body (including any attorney general), and

(H) expenses incurred in connection with casualty events or asset sales outside the ordinary course of business; *plus*

(vii) all

(A) costs, fees and expenses relating to the Transactions,

(B) costs, fees and expenses (including diligence and integration costs) incurred in connection with

(x) investments in any Person, acquisitions of the Equity Interests of any Person, acquisitions of all or a material portion of the assets of any Person or constituting a line of business of any Person, and financings related to any of the foregoing or to the capitalization of any Loan Party or any Restricted Subsidiary or

(y) other transactions that are out of the ordinary course of business of such Person and its Restricted Subsidiaries (in each case of **clause (x)** and **(y)**, including transactions considered or proposed but not consummated), including Permitted Equity Issuances, Investments, acquisitions, dispositions, recapitalizations, mergers, amalgamations, option buyouts and the incurrence, modification or repayment of Indebtedness (including all consent fees, premium and other amounts payable in connection therewith) and

(C) non-operating professional fees, costs and expenses; *plus*

(viii) items reducing Consolidated Net Income to the extent

(A) covered by a binding indemnification or refunding obligation or insurance to the extent actually paid or reasonably expected to be paid,

(B) paid or payable (directly or indirectly) by a third party that is not a Loan Party or a Restricted Subsidiary (except to the extent such payment gives rise to reimbursement obligations) or with the proceeds of a contribution to equity capital of such Person by a third party that is not a Loan Party or a Restricted Subsidiary or

(C) such Person is, directly or indirectly, reimbursed for such item by a third party; *plus*

(ix) the amount of management, monitoring, consulting, transaction and advisory fees (including termination fees) and related indemnities and expenses paid, payable or accrued in such Test Period (including any termination fees payable in connection with the early termination of management and monitoring agreements); *plus*

(x) the effects of purchase accounting, fair value accounting or recapitalization accounting (including the effects of adjustments pushed down to such Person and its Subsidiaries) and the amortization, write-down or write-off of any such amount; *plus*

(xi) proceeds of business interruption insurance actually received (to the extent not counted in any prior period in anticipation of such receipt) or, to the extent not counted in any prior period, reasonably expected to be received; *plus*

(xii) minority interest expense consisting of income attributable to Equity Interests held by third parties in any non-wholly-owned Restricted Subsidiary; *plus*

(xiii) all charges, costs, expenses, accruals or reserves in connection with the rollover, acceleration or payout of Equity Interests held by officers or employees and all losses, charges and expenses related to payments made to holders of options or other derivative Equity Interests of such Person or any direct or indirect parent thereof in connection with, or as a result of, any distribution being made to equity holders of such Person or any direct or indirect parent thereof, including (A) payments made to compensate such holders as though they were equity holders at the time of, and entitled to share in, such distribution, and (B) all dividend equivalent rights owed pursuant to any compensation or equity arrangement; *plus*

(xiv) expenses, charges and losses resulting from the payment or accrual of indemnification or refunding provisions, earn-outs and contingent consideration obligations; bonuses and other compensation paid to employees, directors or consultants; and payments in respect of dissenting shares and purchase price adjustments; in each case, made in connection with a Permitted Investment or other transactions disclosed in the documents referred to in **clause ((xix))** below; *plus*

(xv) any losses from abandoned, closed, disposed or discontinued operations or operations that are anticipated to become abandoned, closed, disposed or discontinued; *plus*

(xvi) (A) any costs or expenses (including any payroll taxes) incurred by the Borrower or any Restricted Subsidiary in such Test Period as a result of, in connection with or pursuant to any management equity plan, profits interest or stock option plan or any other management or employee benefit plan or agreement, any pension plan (including (1) any post-employment benefit scheme to which the relevant pension trustee has agreed, (2) as a result of curtailments or modifications

to pension and post-retirement employee benefit plans and (3) without limitation, compensation arrangements with holders of unvested options entered into in connection with a permitted Restricted Payment), any stock subscription, stockholders or partnership agreement, any payments in the nature of compensation or expense reimbursement made to independent board members, any employee benefit trust, any employee benefit scheme or any similar equity plan or agreement (including any deferred compensation arrangement), including any payment made to option holders in connection with, or as a result of, any distribution being made to, or share repurchase from, a shareholder, which payments are being made to compensate option holders as though they were shareholders at the time of, and entitled to share in, such distribution or share repurchase and

(B) any costs or expenses incurred in connection with the rollover, acceleration or payout of Equity Interests held by management of the Borrower (and/or any Restricted Subsidiary); *plus*

(xvii) the amount of loss or discount on sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Financing; *plus*

(xviii) the cumulative effect of a change in accounting principles; *plus*

(xix) addbacks of the type reflected in (A) the lender presentation used in connection with the syndication of the Facility or (B) any quality of earnings report prepared by a nationally recognized accounting firm and furnished to the Administrative Agent, in connection with any Permitted Investment or other Investment consummated after the Closing Date; *plus*

(xx) at the Borrower's option, in each case, the amount of "run rate" cost savings, operating expense reductions and other cost synergies that are projected by the Borrower in good faith to result from actions taken, committed to be taken or expected to be taken no later than 24 months after the end of such Test Period (which amounts will be determined by the Borrower in good faith and calculated on a pro forma basis as though such amounts had been realized on the first day of the Test Period for which Consolidated Adjusted EBITDA is being determined), net of the amount of actual benefits realized during such Test Period from such actions; ***provided*** that, in the good faith judgment of the Borrower such cost savings are reasonably identifiable, reasonably anticipated to be realized and factually supportable (it being agreed such determinations need not be made in compliance with Regulation S-X or other applicable securities law); *plus*

(xxi) to the extent not included in Consolidated Net Income for such period, cash actually received (or any netting arrangement resulting in reduced cash expenditures) during such period so long as the non-cash gain relating to the relevant cash receipt or netting arrangement was deducted in the calculation of Consolidated Adjusted EBITDA for any previous period and not added back; *plus*

(xxii) 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*

(xxiii) the amount of any contingent payments in connection with the licensing of intellectual property or other assets; *plus*

(xxiv) [reserved]; *plus*

(xxv) [reserved]; *plus*

(xxvi) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization or such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of FASB Accounting Standards Codification 715, and any other items of a similar nature; *plus*

(xxvii) payments made pursuant to Earnouts and Unfunded Holdbacks; and

(b) decreased, without duplication, by the following items of such Person and its Restricted Subsidiaries for such Test Period determined on a consolidated basis in accordance with GAAP (solely to the extent increasing Consolidated Net Income):

(i) any amount which, in the determination of Consolidated Net Income for such period, has been included for any non-cash income or non-cash gain, all as determined in accordance with GAAP (***provided*** that if any non-cash income or non-cash gain represents an accrual or deferred income in respect of potential cash items in any future period, such Person may determine not to deduct the relevant non-cash gain or income in the then-current period); *plus*

(ii) the amount of any cash payment made during such period in respect of any non-cash accrual, reserve or other non-cash charge that is accounted for in a prior period and that was added to Consolidated Net Income to determine Consolidated Adjusted EBITDA for such prior period and that does not otherwise reduce Consolidated Net Income for the current period; *plus*

(iii) the excess of actual cash rent paid over rent expense during such period due to the use of straight-line rent for GAAP purposes; plus

(iv) the amount of any income or gain associated with any Restricted Subsidiary that is attributable to any non-controlling interest and/or minority interest of any third party; plus

(v) any net income from disposed or discontinued operations; plus

(vi) any unusual, extraordinary, infrequent or non-recurring gains.

"***Consolidated Interest Expense***" means, for any Test Period, the sum of:

(a) cash interest expense (including that attributable to Capitalized Leases), net of cash interest income, of the Borrower and the Restricted Subsidiaries with respect to all outstanding Indebtedness of the Borrower and the Restricted Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing and net costs under hedging agreements, *plus*

(b) non-cash interest expense resulting solely from the amortization of OID from the issuance of Indebtedness of the Borrower and the Restricted Subsidiaries (excluding Indebtedness incurred under this Agreement or the Term Loan Credit Agreement in connection with and to finance the Transactions) at less than par, *plus*

(c) pay-in-kind interest expense of the Borrower and the Restricted Subsidiaries payable pursuant to the terms of the agreements governing such debt for borrowed money;

but excluding, for the avoidance of doubt,

(i) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses and any other amounts of non-cash interest other than referred to in **clause (b)** above (including as a result of the effects of acquisition method accounting or pushdown accounting),

(ii) non-cash interest expense attributable to the movement of the mark-to-market valuation of obligations under hedging agreements or other derivative instruments pursuant to FASB Accounting Standards Codification No. 815-Derivatives and Hedging,

(iii) any one-time cash costs associated with breakage in respect of hedging agreements for interest rates,

(iv) commissions, discounts, yield, make whole premium and other fees and charges (including any interest expense) incurred in connection with any receivables financing (including any Qualified Securitization Financing),

(v) any "additional interest" owing pursuant to a registration rights agreement with respect to any securities,

(vi) any payments with respect to make-whole premiums or other breakage costs of any Indebtedness, including any Indebtedness issued in connection with the Transactions,

(vii) penalties and interest relating to taxes,

(viii) accretion or accrual of discounted liabilities not constituting Indebtedness,

(ix) [reserved],

(x) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization or purchase accounting and

(xi) any interest expense attributable to the exercise of appraisal rights and the settlement of any claims or actic (whether actual, contingent or potential) with respect thereto and with respect to any Acquisition Transaction or other Investment, all as calculated on a consolidated basis in accordance with GAAP.

For the avoidance of doubt, interest expense shall be determined after giving effect to any net payments made or received by the Borrower and its Restricted Subsidiaries in respect of Swap Contracts relating to interest rate protection.

"***Consolidated Net Debt***" means, as of any date of determination, (a) Consolidated Total Debt *minus* (b) the aggregate amount of cash and Cash Equivalents of the Borrower and the Restricted Subsidiaries as of such date that is not Restricted.

"***Consolidated Net Income***" means, with respect to any Person for any Test Period, the Net Income of such Person and its Restricted Subsidiaries determined on a consolidated basis in accordance with GAAP; ***provided***, that there shall be excluded from such consolidated net income (to the extent otherwise included therein), without duplication:

(a) the Net Income for such Test Period of any Person that is not a Subsidiary, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting; ***provided*** that (i) the Borrower's or any Restricted Subsidiary's equity in the Net Income of such Person shall be included in the Consolidated Net Income of the Borrower for such Test Period up to the aggregate amount of dividends or distributions or other payments in respect of such equity that are actually distributed or could have been distributed, in each case, in cash (or to the extent converted into cash), by such Person to the Borrower or a Restricted Subsidiary, in each case, in such Test Period, to the extent not already included therein (subject in the case of dividends, distributions or other payments in respect of such equity made to a Restricted Subsidiary to the limitations contained in **clause (b)** below) and (ii) without duplication, the Borrower's or any Restricted Subsidiary's equity in the Net Income of such Person that is a Joint Venture shall be included in the Consolidated Net Income of the Borrower for such Test Period up to the ownership percentage of the Borrower or any Restricted Subsidiary in such Joint Venture;

(b) [reserved];

(c) any gain (or loss), together with any related provisions for taxes on any such gain (or the tax effect of any such loss), realized by such Person or any of its Restricted Subsidiaries during such Test Period upon any asset sale or other disposition of any Equity Interests of any Person (other than any dispositions in the ordinary course of business) by such Person or any of its Restricted Subsidiaries;

(d) gains and losses due solely to fluctuations in currency values and the related tax effects determined in accordance with GAAP for such Test Period;

(e) earnings (or losses), including any impairment charge, resulting from any reappraisal, revaluation or write-up (or write-down) of assets during such Test Period;

(f) (i) unrealized gains and losses with respect to Hedge Agreements for such Test Period and the application of Accounting Standards Codification 815 (Derivatives and Hedging),

(ii) unrealized gains and losses resulting from mark-to-market adjustments for Investments in marketable securities for such Test Period and (iii) any after-tax effect of income (or losses) for such Test Period that result from the early extinguishment of (A) Indebtedness, (B) obligations under any Hedge Agreements or (C) other derivative instruments;

(g) any extraordinary, infrequent, non-recurring or unusual gain (or extraordinary, infrequent, non-recurring or unusual loss), together with any related provision for taxes on any such gain (or the tax effect of any such loss), recorded or recognized by such Person or any of its Restricted Subsidiaries during such Test Period;

(h) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such Test Period;

(i) after-tax gains (or losses) on disposal of disposed, abandoned or discontinued operations for such Test Period;

(j) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) in the inventory, property and equipment, software, goodwill, other intangible assets, in-process research and development, deferred revenue, debt and unfavorable or favorable lease line items in such Person's consolidated financial statements pursuant to GAAP for such Test Period resulting from the application of purchase accounting in relation to the Transactions or any acquisition consummated prior to the Closing Date and any Permitted Acquisition or other Investment or the amortization or write-off of any amounts thereof, net of taxes, for such Test Period;

(k) any non-cash compensation charge or expense for such Test Period, including any such charge or expense arising from the grants of stock appreciation or similar rights, stock options, restricted stock or other rights and any cash charges or expenses associated with the rollover, acceleration or payout of Equity Interests by, or to, management of such Person or any of its Restricted Subsidiaries in connection with the Transactions;

(l) (i) Transaction Expenses incurred during such Test Period and (ii) any fees and expenses incurred during such Test Period, or any amortization thereof for such Test Period, in connection with any acquisition, Investment, disposition, issuance or repayment of Indebtedness, issuance of Equity Interests (including the Borrower's initial public offering and any follow-on offering of its Equity Interests), refinancing transaction or amendment or modification of any debt or equity instrument (in each case, including any such transaction whether consummated on, after or prior to the Closing Date and any such transaction undertaken but not completed) and any charges or non-recurring costs incurred during such Test Period as a result of any such transaction;

(m) any expenses, charges or losses for such Test Period that are covered by indemnification or other reimbursement provisions in connection with any Investment, Permitted Acquisition or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement, to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and 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); and

(n) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days), expenses, charges or losses for such Test Period with respect to liability or casualty events or business interruption.

"***Consolidated Secured Net Debt***" means, as of any date of determination, Consolidated Net Debt that is secured by a Lien on the Collateral outstanding as of such date, other than Capitalized Lease Obligations.

"***Consolidated Total Debt***" means, as of any date of determination, the aggregate principal amount of third party Indebtedness of the Borrower and the Restricted Subsidiaries outstanding on such date, determined on a consolidated basis and as reflected on the face of a balance sheet prepared in accordance with GAAP (but excluding the effects of the application of purchase accounting in connection with the Transactions, any Permitted Acquisition or any other Investment permitted hereunder), consisting of Indebtedness for borrowed money, unreimbursed obligations in respect of drawn letters of credit (to the extent not cash collateralized), and obligations in respect of Capitalized Leases and purchase money obligations and debt obligations evidenced by promissory notes or debentures; ***provided*** that Consolidated Total Debt will not include Indebtedness in respect of (a) any Qualified Securitization Financing, (b) any letter of credit, except to the extent of unreimbursed obligations in respect of drawn letters of credit (***provided***, that any unreimbursed amount under commercial letters of credit will not be counted as Consolidated Total Debt until three Business Days after such amount is drawn (it being understood that any borrowing, whether automatic or otherwise, to fund such reimbursement will be counted)), (c) obligations under Hedge Agreements, (d) obligations in respect of cash management obligations, (e) purchase money obligations incurred in the ordinary course, trade payable and earn outs and similar obligations, (f) Indebtedness to the extent it has been cash collateralized, and (g) any lease obligations other than in respect of Capitalized Leases.

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

"***Contribution Indebtedness***" means Indebtedness in an aggregate principal amount at the time of the incurrence thereof not to exceed an amount equal to 100.00% of the amount of any Permitted Equity Issuances during the period from and including the Business Day immediately following the Closing Date through and including the reference date that are Not Otherwise Applied.

"***Control***" has the meaning specified in the definition of "***Affiliate.***"

"***Conversion/Continuation Notice***" means a notice of (a) a conversion of Loans from one Type to another or (b) a continuation of Term Benchmark Loans, pursuant to **Article II**, which, if in writing, shall be substantially in the form of **Exhibit A-3**.

"***Corresponding Tenor***" with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding Business Day adjustment) as such Available Tenor.

"***Cost***" means the calculated cost of purchases, based upon the Borrower's accounting practices as reflected in the most recent financial statements delivered pursuant to **Section 6.01(a)**, 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 any date after the last day of the first full fiscal quarter ended after the Closing Date on which Specified Excess Availability shall be less than the greater of (a) 10% of the Line Cap and (b) ~~$31,250,000~~37,500,000 at any time and continuing until Specified Excess Availability is equal to or exceeds the greater of (a) 10% of the Line Cap and (b) ~~$31,250,000~~37,500,000 for twenty (20) consecutive calendar days; ***provided*** that such ~~$31,250,000~~37,500,000 level shall automatically increase in proportion to the amount of any increase in the aggregate Revolving Commitments hereunder in connection with any Incremental Facility.

"***Covered Entity***" means any of the following:

(a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R § 47.3(b); or

(c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"***Covered Party***" has the meaning specified in **Section 11.26(b)**.

"***Credit Agreement Refinancing Indebtedness***" has the meaning assigned to such term in the Term Loan Credit Agreement (as in effect on the date hereof).

"***Credit Card Notification***" has the meaning assigned to such term in **Section 6.18(b)**.

"***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 or PayPal, 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 Extension***" means each of (i) the making of a Revolving Loan, Swing Line Loan or Protective Advance and (ii) the issuance, amendment, modification, renewal or extension of any Letter of Credit (other than any such amendment, modification, renewal or extension that does not increase the stated amount of the relevant Letter of Credit).

"***Cure Expiration Date***" has the meaning specified in **Section 8.02**.

"***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.

"***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.

"***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 Advisors (U.S.) Inc., CVC Capital Partners SICAV-FIS S.A. or any of their respective Affiliates or direct or indirect Subsidiaries or any investors in such funds as of the Closing Date or limited partnerships excluding, in each case, any portfolio companies in which such funds or limited partnerships hold an investment other than those through which such funds or limited partnership hold their investment in the Borrower and excluding, in each case, any funds or entities managed or advised by CVC Credit Partners Group Holding Foundation (or any of its direct or indirect Subsidiaries engaged in the same or a similar business to CVC Credit Partners Group Holding Foundation) who are investors in such funds or limited partnerships as of the Closing Date, investing directly or indirectly in the Borrower.

"***Daily Simple SOFR***" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining "***Daily Simple SOFR***" for syndicated business loans; ***provided***, that if the Administrative Agent decides that any such convention is not administratively feasible for the

Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

"***DDA***" means any checking, demand deposit or other account maintained by the Loan Parties and used to receive or deposit payments, checks and other funds from customers and other payors.

"***Debt Representative***" means, with respect to any series of Indebtedness secured by a Lien that is subject to an Intercreditor Agreement, or is subordinated in right of payment to all or any part of the Obligations, 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.

"***Debtor Relief Laws***" means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, arrangement, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally, including any applicable corporations legislation to the extent the relief sought under such corporations legislation relates to or involves the compromise, settlement, adjustment or arrangement of debt.

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

"***Default Rate***" means an interest rate equal to (a) the Base Rate *plus* (b) the Applicable Rate applicable to Base Rate Loans *plus* (c) 2.00% *per annum*; ***provided*** that with respect to the outstanding principal amount of any Loan not paid when due, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan (giving effect to **Section 2.05(c)**) *plus* 2.00% *per annum*, in each case, to the fullest extent permitted by applicable Laws.

"***Default Right***" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"***Defaulting Lender***" means, subject to **Section 2.19(b)**, any Lender that,

(a) has failed to (i) fund all or any portion of its Loans, including participations in respect of Letters of Credit, Swing Line Loans or Protective Advances within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (which conditions precedent, together with the applicable default, if any, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Swing Line Lender, the Issuing Banks or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit, Swing Line Loans or Protective Advances) within two Business Days of the date when due,

(b) has notified the Borrower, the Administrative Agent, the Swing Line Lender or the Issuing Banks in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lenders' obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with the applicable default, if any, shall be specifically identified in such writing or public statement) cannot be satisfied),

(c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (***provided*** that such Lender shall cease to be a Defaulting Lender pursuant to this **clause (c)** upon receipt of such written confirmation by the Administrative Agent and the Borrower), or

(d) the Administrative Agent or the Borrower has received notification that such Lender is, or has a direct or indirect parent entity that is, (i) insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors, (ii) other than via an Undisclosed Administration, the subject of a bankruptcy, insolvency, reorganization, liquidation or similar proceeding, or a receiver, trustee, conservator, intervenor or sequestrator, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other Federal or state regulatory authority acting in such a capacity or the like has been appointed for such Lender or its direct or indirect parent entity, or such Lender or its direct or indirect parent entity has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment or (iii) become the subject of a Bail-In Action; ***provided*** that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent entity thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

Any determination by the Administrative Agent or the Borrower that a Lender is a Defaulting Lender under any one or more of **clauses (a)** through **(d)** above shall be conclusive absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to **Section 2.19**) upon delivery of written notice of such determination to the Borrower, the Swing Line Lender, the Issuing Banks and each Lender.

"***Designated Cash Management Reserve***" means, as of any date, such reserves as the Administrative Agent determines in its Permitted Discretion 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 Secured Hedge Agreements that are designated by the Hedge Bank and the Borrower in writing to the Administrative Agent as a "***Designated***

Hedging Agreement" and the Hedge Bank 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 establishes 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 Hedge Banks under all Designated Hedging Agreements. Such exposure shall be the sum of the positive aggregate MTM values to each Hedge Bank of all Designated Hedging Agreements with such Hedge Bank outstanding at the time of the relevant calculation, in each case, as reflected on the most recent calculation provided to the Administrative Agent. The aggregate MTM value to a Hedge Bank of all Designated Hedging Agreements with such Hedge Bank 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 Hedge Bank and

(ii) if applicable, by taking into account any master netting agreement or arrangement in place among such Hedge Bank, 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 Hedge Bank 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

(A) 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

(B) upon request, provides to the Administrative Agent a copy of the master netting agreement.

In calculating the positive aggregate MTM value to a Hedge Bank, the value of collateral posted to such Hedge Bank 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 Hedge Bank 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 Hedge Bank is a negative amount to such Hedge Bank (i.e., if all such Designated Hedging Agreements with such Hedge Bank 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 all Designated Hedging Agreement with a Hedge Bank for this purpose shall be calculated and provided by such Hedge Bank 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 Hedge Bank fails to provide the MTM value of a Designated Hedging Agreement within the relevant timeframe specified above, then the Borrower may (but is not obligated to) provide, together with all of the information reasonably determined by the Administrative Agent as being necessary or appropriate to determine the MTM value of the relevant Designated Hedging Agreement, a proposed MTM value of the relevant Designated Hedging Agreement to the Administrative Agent and applicable Hedge Bank. If the applicable Hedge Bank 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 may use the Borrower's MTM value in calculating the relevant portion of the Designated Hedging Reserves.

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 hereof relating to a Designated Hedging Reserve (or the calculation of MTM).

"***Designated Jurisdiction***" means any country or territory to the extent that such country or territory is the subject of any Sanctions.

"***Designated Non-Cash Consideration***" means the fair market value of any non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with a Disposition pursuant to the General Asset Sale Basket that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer (which amount will be reduced by the fair market value of the portion of the non-cash consideration converted to cash within one hundred eighty days following the consummation of the applicable Disposition).

"***Disposition***" or "***Dispose***" means the sale, transfer, license, lease or other disposition (excluding Liens and any sale of Equity Interests in, or issuance of Equity Interests by, a Restricted Subsidiary, but including, for the avoidance of doubt, any Division) of any property by any Person.

"***Disqualified Equity Interests***" means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition,

(a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale as long as any rights of the holders thereof upon the occurrence of a change

of control or asset sale event is 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 and Cash Collateralization of all Letters of Credit),

(b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part,

(c) provides for the scheduled payments of dividends that are required to be made only in cash, or

(d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests,

in each case, prior to the Latest Maturity Date of the Loans at the time of issuance; ***provided*** that if such Equity Interests are issued pursuant to a plan for the benefit of one or more Company Persons or by any such plan to one or more Company Persons, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or the Restricted Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of a Company Person's termination, death or disability.

"***Disqualified Lender***" means,

(a) the competitors of the Borrower and its Subsidiaries identified in writing by or on behalf of the Borrower (i) to the Lead Arrangers on or prior to the Closing Date, or (ii) to the Administrative Agent, from time to time on or after the Closing Date;

(b) (i) any Persons that are engaged as principals primarily in private equity or venture capital (other than a *bona fide* debt fund affiliate of any of the Lead Arrangers) and (ii) those particular banks, financial institutions, other institutional lenders and other Persons, in the case of each of **clauses (i)** and **(ii)**, to the extent identified in writing by or on behalf of the Borrower to the Lead Arrangers on or prior to the Closing Date; and

(c) any Affiliate of a Person described in the preceding **clauses (a)** or **(b)** that (in each case with respect to **clause (a)** above, other than any Affiliates that are banks, financial institutions, bona fide debt funds or investment vehicles that are engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course), in each case, is either reasonably identifiable as such on the basis of its name or is identified as such in writing by or on behalf of the Borrower (i) to the Lead Arrangers on or prior to the Closing Date, or (ii) to the Administrative Agent from time to time on or after the Closing Date.

The Borrower may, in its discretion, make the list of Disqualified Lenders available to any Lender, Participant, or any prospective Lender or Participant, upon request by such Lender, Participant or prospective Lender or Participant, as applicable. The Borrower shall, upon request of any Lender, identify whether any Person identified by such Lender as a proposed assignee or Participant is a Disqualified Lender. To the extent Persons are identified as Disqualified Lenders after the Closing Date pursuant to **clauses (a)** or **(c)** above, the inclusion of such Persons as Disqualified Lenders shall not retroactively apply to prior assignments or participations made in

compliance with **Section 11.07** hereof. Notwithstanding the foregoing, if the list of Disqualified Lenders has not been made available to such Lender and, after such Lender's written request, the Borrower refuses to identify (or declines to identify after two Business Days) whether such proposed assignee or participant is on the list of Disqualified Lenders, then the list of Disqualified Lenders shall not apply to such assignment or participation to be entered into at such time; ***provided*** that in no event will the Borrower be required to identify to any Lender whether such proposed assignee or participant is on the list of Disqualified Lenders more than once (the "**Disqualified Lender Provisions**").

"***Division***" has the meaning specified in **Section 1.02(d)**.

"***Document***" has the meaning set forth in Article 9 of the UCC.

"***Dollar***" and "**$**"mean lawful money of the United States.

"***Dollar Amount***" means, at any time:

(a) with respect to any Loan denominated in Dollars, the principal amount thereof then outstanding (or in which such participation is held);

(b) with respect to any Loan denominated in any Alternative Currency, the principal amount thereof then outstanding in the relevant Alternative Currency converted to Dollars in accordance with **Section 1.09**;

(c) with respect to any Letter of Credit Obligation (or any risk participation therein), (i) if denominated in Dollars, the amount thereof and (ii) if denominated in any Alternative Currency other than Dollars, the amount thereof converted to Dollars in accordance with **Section 1.09**; and

(d) with respect to any other amount (i) if denominated in Dollars, the amount thereof and (ii) if denominated in any currency other than Dollars, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the applicable Issuing Banks, as applicable, on the basis of the Exchange Rate (determined in respect of the most recent relevant date of determination) for the purchase of Dollars with such currency.

"***Domestic Subsidiary***" means any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

"***Earnouts***" means (a) all earnout payments or other contingent payments in connection with any Permitted Investment and (b) Existing Earnouts and Unfunded Holdbacks.

"***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:

(a) such Credit Card Processor Account has been outstanding for more than five Business Days from the date of sale;

(b) such Credit Card Processor Account is

(i) not subject to the first priority, valid and perfected Lien of the Collateral Agent as to such Credit Card Processor Account or

(ii) is subject to any other Lien, other than

(A) a Lien permitted under **Section 7.01(u)(i)**, **7.01(v)** or **7.01(aa)(i)**, or other Permitted Lien arising by operation of law or

(B) a Lien securing Indebtedness permitted under **Section 7.01(b)**, **(h)**, **(i)**, **(j)** or **(l)**

(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 (b)**);

(c) 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 Collateral Documents, (ii) a junior priority Lien permitted under **Section 7.01(u)(i)**, **7.01(v)** or **7.01(aa)(i)** or other Permitted Lien arising by operation of law or (iii) a lien securing Indebtedness permitted under **Section 7.01(b)**, **(h)**, **(i)**, **(j)** or **(l)**);

(d) 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;

(e) 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);

(f) 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 9.01(f)** or that is liquidating, dissolving or winding up its affairs or otherwise deemed not creditworthy by the Administrative Agent in its Permitted Discretion;

(g) such Credit Card Processor Account does not conform with a covenant or representation contained herein as to such Credit Card Processor Account;

(h) unless otherwise agreed by the Administrative Agent, the Credit Card Processor is organized or has its principal offices or assets outside the United States;

(i) such Credit Card Processor Account is evidenced by Chattel Paper or an Instrument (each as defined in the Security Agreement) of any kind, or has been reduced to judgment;

(j) such Credit Card Processor Account includes a billing for interest, fees or late charges, but ineligibility will be limited to the extent thereof; or

(k) subject to the last paragraph in the definition of "***Borrowing Base,***" is acquired in connection with a transaction permitted hereunder, the Administrative Agent shall not have received or prepared a Report in respect of such Credit Card Processor Account, which Report shows results reasonably satisfactory to the Administrative Agent.

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, subject to the last paragraph in the definition of "***Borrowing Base***" 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 Permitted Discretion (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 11.01** 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 Assignee***" means any Person that meets the requirements to be an assignee under **Section 11.07(b)(v)**; ***provided*** that the following Persons shall not be Eligible Assignees: (a) any Defaulting Lender and (b) any Person that is a Disqualified Lender.

"***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:

(a) is not subject to a first priority (subject to a Lien permitted under **Section 7.01(v)** or **7.02(aa)(i)**) perfected Lien in favor of the Administrative Agent;

(b) is subject to any Lien other than

(i) a Lien in favor of the Collateral Agent, for its own benefit and the benefit of the other Secured Parties pursuant to the Collateral Documents

(ii) a Lien permitted under **Section 7.01(v)** or **7.01(aa)** or other Permitted Lien arising by operation of law or

(iii) a Lien securing Indebtedness permitted under **Section 7.01(b)**, **(h)**, **(i)**, **(j)** or **(l)** (in each case, on a junior priority basis);

(c) 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;

(d) does not conform in all material respects to the representations and warranties contained in this Agreement or the Security Agreement;

(e) is not owned only by one or more Borrowing Base Parties;

(f) 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;

(g) is not located in the United States;

(h) (i) 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 Permitted Discretion or

(ii) 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 Permitted Discretion;

(i) 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 Permitted Discretion;

(j) 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;

(k) is the subject of a consignment by any Borrower as consignor;

(l) 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 (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) 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;

(m) is not reflected in a current retail stock ledger report of the Borrower or the respective Borrowing Base Party (except as to goods received but not recorded in the retail stock ledger);

(n) subject to the last paragraph in the definition of "***Borrowing Base***", is acquired in connection with an acquisition permitted hereunder to the extent Administrative Agent has not received a Report in respect of such Inventory showing results reasonably satisfactory to the Administrative Agent;

(o) is in transit, except that Inventory in transit will not be deemed ineligible if:

(i) it has been shipped

(A) 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

(B) 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,

(ii) it has been paid for in advance of shipment, is not being shipped by a carrier owned by or affiliated with the vendor;

(iii) 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;

(iv) 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

(v) it is insured to the reasonable satisfaction of the Administrative Agent;

(p) 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;

(q) 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);

(r) is not located in a Permitted Inventory Location; or

(s) 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 Permitted Discretion (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 11.01** 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.

"***EMU***" means the Economic and Monetary Union as contemplated in the EU Treaty.

"***EMU Legislation***" means the legislative measures of the EMU for the introduction of, changeover to, or operation of the Euro in one or more member states.

"***Environmental Claim***" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations by any Governmental Authority, or proceedings with respect to any Environmental Liability or pursuant to Environmental Law, including those (a) by any Governmental Authority for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law and (b) by any Person seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

"***Environmental Laws***" means any and all Laws relating to the protection of the environment or, to the extent relating to exposure to Hazardous Materials, human health.

"***Environmental Liability***" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities) of any Loan Party or any of the Restricted Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"***Environmental Permit***" means any permit, approval, identification number, license or other authorization required under or issued pursuant to any Environmental Law.

"***Equity Interests***" means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in, including any limited or general partnership interest and any limited liability company membership interest) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (but excluding any debt convertible into Equity Interests).

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

"***ERISA Affiliate***" means any trade or business (whether or not incorporated) that together with any Loan Party is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA. For the avoidance of doubt, when any provision of this Agreement relates to a past event or period of time, the term "***ERISA Affiliate***" includes any Person who was, as to the time of such past event or period of time, an ERISA Affiliate within the meaning of the preceding sentence.

"***ERISA Event***" means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan

Party or any of their respective ERISA Affiliates from a Multiemployer Plan, written notification of any Loan Party or any of their respective ERISA Affiliates concerning the imposition of Withdrawal Liability or written notification that a Multiemployer Plan is insolvent within the meaning of Title IV of ERISA; (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the imposition of any liability under Title IV of ERISA, other than for the payment of plan contributions or PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any of their respective ERISA Affiliates; (f) the failure to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) with respect to any Pension Plan; (g) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Pension Plan; (h) the imposition of a lien under Section 303(k) of ERISA with respect to any Pension Plan or (i) a determination that any Pension Plan is in "at risk" status (within the meaning of Section 303 of ERISA).

"***Erroneous Payment***" has the meaning assigned to it in **Section 10.17(a)**.

"***Erroneous Payment Deficiency Schedule***" has the meaning assigned to it in **Section 10.17(d)(i)**.

"***Erroneous Payment Impacted Class***" has the meaning assigned to it in **Section 10.17(d)(i)**.

"***Erroneous Payment Return Deficiency***" has the meaning assigned to it in **Section 10.17(d)(i)**.

"***Erroneous Payment Subrogation Rights***" has the meaning assigned to it in **Section 10.17(e)**.

"***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.

"***EU Treaty***" means the Treaty on European Union.

"***Euro***" and "**€**" mean the single currency of the Participating Member States introduced in accordance with the provisions of Article 109(i)4 of the EU Treaty.

"***Event of Default***" has the meaning specified in **Section 9.01**.

"***Excess Availability***" shall mean, at any time without duplication, the remainder of:

(a) the Line Cap at such time, *minus*

(b) the sum of the Total Utilization of Revolving Commitments of all Lenders at such time.

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

"***Exchange Rate***" means, on any date with respect to any currency, the rate at which such currency may be exchanged into any other currency, as set forth at approximately 11:00 a.m., London time, on such date on the applicable Bloomberg page for such currency. In the event that such rate does not appear on any Bloomberg page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying the exchange rates as may be selected by the Administrative Agent, or, in the event no such service is selected, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 10:00 a.m., local time, on such date for the purchase of the relevant currency for delivery two Business Days later; ***provided*** that, if at the time of any such determination, for any reason no such spot rate is being quoted, the Administrative Agent, after consultation with the Borrower, may use any reasonable method that it deems appropriate to determine such rate, and such determination shall be presumed correct absent manifest error.

"***Excluded Accounts***" means deposit accounts (a) established (or otherwise maintained) by the Loan Parties that do not have cash balances at any time exceeding $5,000,000 in the aggregate for all such accounts and $500,000 per account, (b) solely containing cash allocated as proceeds of the sale of Term Priority Collateral pursuant to the Closing Date ABL Intercreditor Agreement, (c) any Trust Fund Account, (d) used by the Loan Parties exclusively for disbursements and payments (including payroll) in the ordinary course of business, (e) that are zero balance accounts, (f) subject to a Lien permitted under **Section 7.01(oo)** or **(g)** that are located outside of the United States (other than any such deposit account containing the proceeds of a sale of ABL Priority Collateral).

"***Excluded Asset***" has the meaning specified in the Security Agreement.

"***Excluded Equity Interests***" has the meaning specified in the Security Agreement.

"***Excluded Subsidiary***" means:

(a) any Subsidiary that is not a wholly owned Subsidiary of a Loan Party;

(b) any Foreign Subsidiary of the Borrower or of any direct or indirect Domestic Subsidiary or Foreign Subsidiary;

(c) any FSHCO;

(d) any Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC;

(e) any Subsidiary that is prohibited or restricted by applicable Law from providing a Guaranty or by a binding contractual obligation existing on the Closing Date or at the time of the acquisition of such Subsidiary (and not incurred in contemplation of such acquisition) from providing a Guaranty (***provided*** that such contractual obligation is not entered into by the Borrower or its Restricted Subsidiaries principally for the purpose of qualifying as an "***Excluded Subsidiary***" under this definition) or if such Guaranty would require governmental (including regulatory) or third party (other than the Borrower or a Restricted Subsidiary) consent, approval, license or authorization, unless such consent, approval, license or authorization has been obtained;

(f) any special purpose securitization vehicle (or similar entity) including any Securitization Subsidiary created pursuant to a transaction permitted under this Agreement;

(g) any Subsidiary that is a not-for-profit organization;

(h) any Captive Insurance Subsidiary;

(i) any other Subsidiary with respect to which, as reasonably determined by the Borrower in good faith and in consultation with the Administrative Agent, the cost or other consequences (including any material adverse tax consequences) of providing the Guaranty shall be excessive in view of the benefits to be obtained by the Lenders therefrom;

(j) any other Subsidiary to the extent the provision of a Guaranty by such Subsidiary would result in material adverse tax consequences to the Borrower, the Borrower or any of the Restricted Subsidiaries as reasonably determined by the Borrower in good faith in consultation with the Administrative Agent;

(k) any Unrestricted Subsidiary; and

(l) any Immaterial Subsidiary;

provided that the Borrower, in its sole discretion, may cause any Restricted Subsidiary that is a Domestic Subsidiary that qualifies as an Excluded Subsidiary under **clauses (a)** through **(l)** above to become a Guarantor in accordance with the definition thereof (subject to completion of any requested "know your customer" and similar requirements of the Administrative Agent) and thereafter such Subsidiary shall not constitute an "***Excluded Subsidiary***" (unless and until the Borrower elects, in its sole discretion, to designate such Persons as an Excluded Subsidiary); ***provided, further***, that the Borrower may designate such Subsidiary as an Excluded Subsidiary so long as such Subsidiary otherwise qualifies as an Excluded Subsidiary at the time of such designation.

"***Excluded Swap Obligation***" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Guarantor and any and all guarantees of such Guarantor's Swap Obligations by other Loan Parties) at the time the Guaranty of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

"***Excluded Taxes***" has the meaning specified in **Section 3.01(a)**.

"***Existing Earnouts and Unfunded Holdbacks***" means those earnouts and unfunded holdbacks existing on the Closing Date.

"***Existing Indebtedness***" has the meaning specified in the Recitals.

"***Existing Indebtedness Documents***" means

(a) that certain Term Loan Credit Agreement, dated as of January 26, 2016 among Petco Animal Supplies, Inc. (f/k/a Pet Acquisition Merger Sub LLC, a Delaware limited liability company) as successor borrower, the lenders party thereto from time to time and Citibank, N.A., as administrative agent and as collateral agent (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, the "***Existing First Lien Credit Agreement***") and

(b) that certain Revolving Credit Agreement, dated as of January 26, 2016, among Petco Animal Supplies, the lenders party thereto and Citibank, N.A., as administrative agent and collateral agent (as may be amended, restated, supplemented or otherwise modified from time to time, the "***Existing ABL Credit Agreement***").

"***Existing Letter of Credit***" has the meaning specified in **Section 2.04(j)**.

"***Existing Revolving Commitments***" means the "Revolving Commitments" immediately prior to the Second Amendment Effective Date.

"***Existing Revolving Lender***" means a Lender holding an Existing Revolving Commitment immediately prior to the Second Amendment Effective Date.

"***Existing Revolving Loans***" means the "Revolving Loans" outstanding immediately prior to the Second Amendment Effective Date.

"***Extended Commitments***" means Extended Revolving Commitments.

"***Extended Loans***" means Extended Revolving Loans.

"***Extended Revolving Commitments***" means the Revolving Commitments held by an Extending Lender.

"***Extended Revolving Loans***" means the Revolving Loans made pursuant to Extended Revolving Commitments.

"***Extending Lender***" means each Lender accepting an Extension Offer.

"***Extension***" has the meaning specified in **Section 2.18(a)**.

"***Extension Amendment***" has the meaning specified in **Section 2.18(b)**.

"***Extension Offer***" has the meaning specified in **Section 2.18(a)**.

"***Facility***" means the Revolving Loans, the Swing Line Loans, Extended Revolving Commitments, Second Amendment Extended Revolving Loans, Second Amendment Non-Extended Revolving Loans or any Extended Revolving Loans, as the context may require.

"***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 intergovernmental agreements entered into in connection with the foregoing, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities implementing such Sections of the Code.

"***FCPA***" means the United States Foreign Corrupt Practices Act of 1977, as amended or modified from time to time.

"***Federal Funds Rate***" means, for any day, the rate calculated by the Federal Reserve Bank of New York based on such day's federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; ***provided*** that if the Federal Funds Rate for any day is less than zero, the Federal Funds Rate for such day will be deemed to be zero.

"***Financial Covenant Event of Default***" has the meaning specified in **Section 9.01(b)**.

"***First Amendment***" means that certain First Amendment, dated as of December 12, 2022, by and among the Borrower and the Administrative Agent.

"***First Lien Net Leverage Ratio***" means, with respect to any Test Period, the ratio of (a) Consolidated Secured Net Debt under (i) this Agreement, (ii) any Pari Passu Lien Debt, (iii) the Term Loan Facility and (iv) Indebtedness secured on a pari passu basis with the Obligations on the ABL Priority Collateral, in each case, outstanding as of the last day of such Test Period to (b) Consolidated Adjusted EBITDA of the Borrower for such Test Period.

"***Fixed Charge Consolidated Interest Expenses***" means, with respect to any Person for any period, the sum, without duplication, of:

(a) 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

(b) consolidated capitalized interest of the referent Person and its Restricted Subsidiaries for such period, whether paid or accrued; plus

(c) 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

(d) interest income of the referent Person and its Restricted Subsidiaries for such period;

provided that when determining Fixed Charge Consolidated Interest Expense in respect of any four-quarter period ending prior to the first anniversary of the Closing Date, Fixed Charge Consolidated Interest Expense will be calculated by multiplying the aggregate Fixed Charge 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.

"***Fixed Charge Coverage Ratio***" means, as of any date, the ratio of:

(a) (i) Consolidated Adjusted EBITDA for the Test Period ended as of such date or, as applicable, most recently ended prior to such date, less

(ii) non-financed Maintenance Capital Expenditures of the Borrower for such period that were paid in cash for the Test 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 (ii)**), less

(iii) Taxes based on income of the Borrower and the Restricted Subsidiaries that were paid or required to be paid in cash for the Test Period ended as of such date or, as applicable, most recently ended prior to such date, to

(b) Fixed Charges for the Test Period as of such date.

"***Fixed Charges***" means, with respect to any Test Period, without duplication, the sum of

(a) Fixed Charge Consolidated Interest Expense of the Borrower that was paid or required to be paid in cash in such Test period, *plus*

(b) 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 Capitalized Lease Obligations, but excluding payments with respect to intercompany Indebtedness, *plus*

(c) all cash dividend payments (excluding items eliminated in consolidation) on any series of Disqualified Equity Interests of the Borrower or preferred stock of any Restricted Subsidiary made during such period.

"***Floor***" means ~~the benchmark rate floor, if any, provided in this Agreement initially (as of the date of execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to any applicable Benchmark.~~a rate of interest equal to 0.00%.

"***Foreign Lender***" has the meaning specified in **Section 3.01(b)**.

"***Foreign Plan***" means any material employee benefit plan, program or agreement maintained or contributed to by, or entered into with, the Borrower or any Restricted Subsidiary of the Borrower with respect to employees employed outside the United States (other than benefit plans, programs or agreements that are mandated by applicable Laws).

"***Foreign Subsidiary***" means any direct or indirect Subsidiary of the Borrower that is not a Domestic Subsidiary.

"***FRB***" means the Board of Governors of the Federal Reserve System of the United States.

"***Fronting Exposure***" means, at any time there is a Defaulting Lender, (a) with respect to the Issuing Banks, such Defaulting Lender's Pro Rata Share of the outstanding Letters of Credit Obligations other than such Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof and (b) with respect to the Swing Line Lender, such Defaulting Lender's Pro Rata Share of the outstanding Obligations with respect to Swing Line Loans extended by the Swing Line Lender other than such Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

"***FSHCO***" means any direct or indirect Subsidiary of the Borrower (including a disregarded entity) substantially all of the assets of which consist of equity Interests and/or Indebtedness (including any debt or other instrument treated as equity for U.S. federal income tax purposes) of one or more Foreign Subsidiaries that are CFCs or other FSHCOs.

"***Fund***" means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

"***GAAP***" means generally accepted accounting principles in the United States, as in effect from time to time; ***provided however*** that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision of a Loan Document to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof (including through the adoption of IFRS (any such change, an "***Accounting Change***")) on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof (including

through the adoption of IFRS), then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

"***General Asset Sale Basket***" has the meaning specified in **Section 7.05(j)**.

"***Global Intercompany Note***" means a promissory note substantially in the form of **Exhibit H** executed by the Borrower and each wholly owned Restricted Subsidiary.

"***Governmental Authority***" means the government of the United States or any other nation, or of any political subdivision thereof, whether state, provincial, territorial, municipal or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"***Grant Event***" means the occurrence of any of the following:

(a) the formation or acquisition by a Loan Party of a new wholly owned Subsidiary (other than an Excluded Subsidiary);

(b) the designation in accordance with **Section 6.13** of a wholly owned Subsidiary (other than an Excluded Subsidiary) of any Loan Party as a Restricted Subsidiary;

(c) any Person (other than an Excluded Subsidiary) becoming a wholly owned Subsidiary of a Loan Party;

(d) any wholly owned Restricted Subsidiary of a Loan Party ceasing to be an Excluded Subsidiary; or

(e) the designation of any Restricted Subsidiary as a Guarantor pursuant to the proviso in the definition of "***Excluded Subsidiary***".

"***Granting Lender***" has the meaning specified in **Section 11.07(g)**.

"***Guarantee***" means, as to any Person, without duplication,

(a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the "**primary obligor**") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect,

(i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation,

(ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation,

(iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, or

(iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or

(b) any Lien (other than a Permitted Lien) on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); ***provided*** that the term "***Guarantee***" shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary, Permitted Liens and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness).

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

"***Guarantors***" means each Restricted Subsidiary of the Borrower that executed a counterpart to the Guaranty (or a joinder thereto) on the Closing Date or thereafter pursuant to **Section 6.11**, in each case, other than any Excluded Subsidiaries.

"***Guaranty***" means (a) the guaranty made by the Guarantors in favor of the Administrative Agent on behalf of the Secured Parties substantially in the form of **Exhibit E** and (b) each other guaranty and guaranty supplement delivered pursuant to **Section 6.11**.

"***Guaranty Release Event***" has the meaning specified in **Section 10.11(b)(i)(H)**.

"***Guaranty Supplement***" means the "***ABL Guarantee Supplement***" as defined in the Guaranty.

"***Hazardous Materials***" means any hazardous or toxic chemicals, materials, substances or waste which is listed, classified or regulated by any Governmental Authority as "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic wastes," "contaminants" or "pollutants," or words of similar import, under any Environmental Law, including petroleum or petroleum products (including gasoline, crude oil or any fraction thereof), asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas and urea formaldehyde.

"***Hedge Agreement***" means any agreement with respect to

(a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and

(b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "***Master Agreement***"), including any such obligations or liabilities under any Master Agreement.

"***Hedge Bank***" means any Person that is an Agent, a Lender, a Lead Arranger or an Affiliate or branch of any of the foregoing on the Closing Date (with respect to any Secured Hedge Agreement entered into on or prior to the Closing Date) or at the time it enters into a Secured Hedge Agreement, in its capacity as a party thereto, whether or not such Person subsequently ceases to be an Agent, a Lender, a Lead Arranger or an Affiliate or branch of any of the foregoing.

"***HMT***" means Her Majesty's Treasury of the United Kingdom.

"***Identified Transaction***" has the meaning specified in **Section 10.11(c)**.

"***IFRS***" means International Financial Reporting Standards and applicable accounting requirements set by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants, or any successor to either such Board, or the SEC, as the case may be), as in effect from time to time.

"***Immaterial Subsidiary***" means any Subsidiary of the Borrower other than a Material Subsidiary or any Co-Borrower.

"***Incremental Amendment***" has the meaning specified in **Section 2.16(e)**.

"***Incremental Amount***" means the greater of (i) $~~215,000,000~~134,000,000 and (ii) the Borrowing Base then in effect at the time of the effectiveness of such Incremental Amendment.

"***Incremental Equivalent Debt***" has the meaning assigned to such term in the Term Loan Credit Agreement (as in effect on the date hereof).

"***Incremental Facility***" has the meaning specified in **Section 2.16(a)**.

"***Incremental Revolving Facilities***" has the meaning specified in **Section 2.16(a)**.

"***Incremental Revolving Facility Lender***" has the meaning specified in **Section 2.16(i)**.

"***Incremental Revolving Loans***" has the meaning specified in **Section 2.16(a)**.

"***Indebtedness***" means, with respect to any Person, without duplication,

(a) any indebtedness (including principal or premium) of such Person in respect of borrowed money; any indebtedness evidenced by bonds, notes, debentures, loan agreements or similar instruments; letters of credit or bankers' acceptances (or, without double counting, reimbursement agreements in respect thereof), and Capitalized Lease Obligations or the balance deferred and unpaid of the purchase price of any property to the extent that the same would be required to be shown as a long-term liability on the balance sheet for such Person prepared in accordance with GAAP;

(b) (i) to the extent not otherwise included, any guarantee obligation by such Person of the obligations of the type referred to in **clause (a)** of another Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business and (ii) to the extent not otherwise included, the obligations of the type referred to in **clause (a)** of another Person secured by a Lien (other than a Permitted Lien) on any property owned by such Person, whether or not such obligations are assumed by such Person and whether or not such obligations would appear upon the balance sheet of such Person; ***provided*** that the amount of such Indebtedness for purposes of this **clause (ii)** will be the lesser of the fair market value of such property at such date of determination and the amount of Indebtedness so secured;

(c) net obligations of such Person under any Hedge Agreement to the extent such obligations would appear as a net liability on a balance sheet of such Person (other than in the footnotes) prepared in accordance with GAAP; and

(d) all obligations of such Person in respect of Disqualified Equity Interests;

provided that, notwithstanding the foregoing, Indebtedness will be deemed not to include (1) contingent obligations incurred in the ordinary course of business unless and until such obligations are non-contingent, (2) trade payables, (3) customary purchase money obligations incurred in the ordinary course, (4) earn-outs, purchase price holdbacks or similar obligations, (5) intercompany liabilities in the ordinary course of business, (6) Permitted Liens, (7) loans and advances made by Loan Parties having a term not exceeding 364 days (inclusive of any roll over or extension of terms (such loans and advances, "***Short Term Advances***")), (8) Indebtedness of any direct or indirect parent company appearing on the balance sheet of such Person solely by reason of push down accounting under GAAP and (9) lease obligations other than in respect of a Capitalized Lease. The amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date.

"***Indemnified Liabilities***" has the meaning specified in **Section 11.05(e)**.

"***Indemnitees***" has the meaning specified in **Section 11.05**.

"***Independent Financial Advisor***" means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the Borrower, qualified to perform the task for which it has been engaged and that is independent of the Borrower and its Affiliates.

"***Information***" has the meaning specified in **Section 11.08**.

"***Initial Term Loans***" has the meaning assigned to such term in the Term Loan Credit Agreement.

"***Intellectual Property***" has the meaning specified in the Security Agreement.

"***Intellectual Property Security Agreements***" has the meaning specified in the Security Agreement.

"***Intercreditor Agreements***" means the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement governing lien priority, in each case reasonably acceptable to the Collateral Agent and executed from time to time pursuant to the terms hereof.

"***Interest Coverage Ratio***" means, as of any date, the ratio of (a) Consolidated Adjusted EBITDA to (b) Consolidated Interest Expense, in each case for the Test Period as of such date.

"***Interest Payment Date***" means, (a) as to any Term Benchmark Loan, the last day of each Interest Period applicable to such Term Benchmark Loan and the applicable Maturity Date; ***provided*** that if any Interest Period for a Term Benchmark Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates, and (b) as to any Base Rate Loan (including a Swing Line Loan), the last day of each calendar quarter and the applicable Maturity Date.

"***Interest Period***" means, as to each Term Benchmark Loan, the period commencing on the date such Term Benchmark Loan is disbursed or converted to or continued as a Term Benchmark Loan and ending on the date one, three or six months thereafter, or to the extent consented to by each applicable Lender, twelve months (or such period of less than one month as may be consented to by each applicable Lender), as selected by the Borrower in its Committed Loan Notice; ***provided*** that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(b) any Interest Period (other than an Interest Period having a duration of less than one month) that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the applicable Maturity Date.

"***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.

"***Investment***" means, as to any Person, any direct or indirect acquisition or investment by such Person, by means of:

(a) the purchase or other acquisition (including by merger, amalgamation or otherwise) of Equity Interests or debt or other securities of another Person;

(b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, but excluding any Short Term Advances; or

(c) the purchase or other acquisition (in one transaction or a series of transactions, including by merger, amalgamation or otherwise) of all or substantially all of the property and assets or business of another Person or assets constituting a business unit, line of business or division of another Person.

provided that none of the following shall constitute an Investment (i) intercompany advances between and among the Borrower and its Restricted Subsidiaries relating to their cash management, tax and accounting operations in the ordinary course of business and (ii) intercompany loans, advances or Indebtedness between and among the Borrower and its Restricted Subsidiaries having a term not exceeding 364 days and made in the ordinary course of business.

"***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 an equivalent rating by any other nationally recognized statistical rating agency selected by the Borrower.

"***IRS***" means Internal Revenue Service of the United States.

"***ISDA Definitions***" means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

"***Issuance Notice***" means an Issuance Notice in respect of letters of credit substantially in the form of **Exhibit A-2**.

"***Issuing Bank***" means as the context may require, each of means each of Citibank, Goldman Sachs Bank USA, Bank of America, N.A., Credit Suisse AG, Cayman Islands Branch,

UBS AG, Stamford Branch, Wells Fargo Bank, National Association, Capital One, National Association and any other Lender that, at the request of the Borrower and with the consent of the Administrative Agent (not to be unreasonably withheld), agrees to become an Issuing Bank in accordance with **Section 2.04(k)** or **(m)** and (i) solely with respect to any Existing Letter of Credit (and any amendment, renewal or extension thereof in accordance with this Agreement), the Lender or Affiliate or branch of a Lender that issued such Existing Letter of Credit. Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates or branches of such Issuing Bank (or other financial institution), in which case the term "***Issuing Bank***" shall include any such Affiliate or branch (or other financial institution) with respect to Letters of Credit issued by such Affiliate or branch (or other financial institution).

"***Joint Bookrunners***" has the meaning specified in the introductory paragraph to this Agreement.

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

"***Joint Venture Investments***" means Investments in any Joint Venture (other than an Unrestricted Subsidiary) in an aggregate amount not to exceed the greater of (a) 25.00% of Closing Date EBITDA and (b) 25.00 % of TTM Consolidated Adjusted EBITDA as of the applicable date of determination ***provided*** that, in the case of any Investment, no Specified Event of Default has occurred or is continuing or would result therefrom.

"***Judgment Currency***" has the meaning specified in **Section 2.21(b)**.

"***Junior Debt Repayment***" has the meaning specified in **Section 7.09(a)**.

"***Junior Financing***" means any Material Indebtedness that is contractually subordinated in right of payment to the Obligations expressly by its terms.

"***Junior Financing Documentation***" means any documentation governing any Junior Financing.

"***Junior Lien Debt***" means any Indebtedness that is intended by the Borrower to be secured by a Lien on all or any portion of the Collateral that has a priority that is contractually (or otherwise) junior in priority to the Lien on such Collateral that secure the Term Loan Obligations.

"***L/C Credit Extension***" means, with respect to any Letter of Credit, the issuance thereof or the extension of the expiry date thereof, or the renewal or increase of the amount thereof.

"***Landlord Lien Reserve***" means any reserve established by the Collateral Agent pursuant to **clause (h)** 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, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity or expiration date of any Extended Revolving Commitment, in each case as extended in accordance with this Agreement from time to time.

"***Laws***" means, collectively, all international, foreign, federal, state, provincial, territorial, municipal and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"***LCA Election***" has the meaning specified in **Section 1.08(f)**.

"***LCA Test Date***" has the meaning specified in **Section 1.08(f)**.

"***Lead Arrangers***" has the meaning specified in the introductory paragraph to this Agreement.

"***Lender***" has the meaning specified in the introductory paragraph to this Agreement (and, for the avoidance of doubt, includes each Revolving Lender), and their respective successors and assigns as permitted hereunder, each of which is referred to herein as a "***Lender.***" Each Additional Lender shall be a Lender to the extent any such Person has executed and delivered an Incremental Amendment, as the case may be, and to the extent such Incremental Amendment shall have become effective in accordance with the terms hereof and thereof, and each Extending Lender shall continue to be a Lender. As of the Closing Date, **Schedule 2.01** sets forth the name of each Lender. Unless the context otherwise requires, the term "***Lenders***" includes the Issuing Banks and the Swing Line Lender. Notwithstanding the foregoing, no Disqualified Lender that purports to become a Lender hereunder (notwithstanding the provisions of this Agreement that prohibit Disqualified Lenders from becoming Lenders) shall be entitled to any of the rights or privileges enjoyed by the other Lenders (including with respect to voting, information and lender meetings) and shall be deemed for all purposes to be, at most, a Defaulting Lender (except for purposes of **Section 2.19(d)**) until such time as such Disqualified Lender no longer owns any Loans or Commitments.

"***Lending Office***" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"***Letter of Credit***" means a letter of credit issued or to be issued by any Issuing Bank pursuant to this Agreement, including Existing Letters of Credit, which letter of credit shall be (a) a standby letter of credit or (b) solely to the extent agreed by the applicable Issuing Bank in its sole discretion, a commercial or "trade" letter of credit.

"***Letter of Credit Advance***" means, as to any Revolving Lender, such Lender's funding of its participation in any Letter of Credit Borrowing in accordance with its Pro Rata Share.

"***Letter of Credit Application***" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable Issuing Bank, together with an Issuance Notice.

"***Letter of Credit Borrowing***" means an extension of credit resulting from a drawing under any Letter of Credit that has not been reimbursed by the Borrower on the date when made or refinanced as a Revolving Loan Borrowing.

"***Letter of Credit Commitment***" means the commitment of each Issuing Bank set forth in **Schedule 2.01(a)** (in each case, as may be reduced to reflect any amount allocated to another Issuing Bank pursuant to the immediately succeeding **clause (b)**) and (b) from time to time after the Closing Date with respect to any other Issuing Bank, subject to **Section 11.01**, an amount to be agreed between the Borrower and such Issuing Bank.

"***Letter of Credit Documents***" means, as to any Letter of Credit, each Letter of Credit Application and any other document, agreement and instrument entered into by the applicable Issuing Bank and the Borrower or in favor of such Issuing Bank and relating to such Letter of Credit.

"***Letter of Credit Sublimit Expiration Date***" means the day that is five Business Days prior to the applicable Revolving Commitment Maturity Date or such other day as the Administrative Agent, the applicable Issuing Bank and the Borrower may agree (or, if such day is not a Business Day, the immediately preceding Business Day).

~~"***Letter of Credit Extension***" means, with respect to any Letter of Credit, the issuance thereof or the extension of the expiry date thereof, or the renewal or increase of the amount thereof.~~

"***Letter of Credit Obligations***" means, at any time, the aggregate of all liabilities at such time of any Loan Party to each Issuing Bank with respect to Letters of Credit, whether or not any such liability is contingent, including, without duplication, the sum of (a) the Reimbursement Obligations at such time and (b) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Letters of Credit then outstanding.

~~"***Letter of Credit Percentage***" means, (a) initially with respect to (i) Citibank, Goldman Sachs Bank USA, Bank of America, N.A., Credit Suisse AG, Cayman Islands Branch, UBS AG, Stamford Branch, Wells Fargo Bank, National Association, Capital One, National Association as set forth in **Schedule 2.01(a)** (in each case, as may be reduced to reflect any percentage allocated to another Issuing Bank pursuant to the immediately succeeding **clause (b)**) and (b) from time to time after the Closing Date with respect to any other Issuing Bank, subject to **Section 11.01**, a percentage to be agreed between the Borrower and such Issuing Bank.~~

"***Letter of Credit Sublimit***" means the greater of (a) $150,000,000 and (b) such higher amount as the Borrower, the Required Lenders and the applicable Issuing Bank(s) may from time to time agree.

"***Letter of Credit Usage***" means, as of any date of determination, the sum of (a) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing

under all Letters of Credit then outstanding and (b) the aggregate amount of all Reimbursement Obligations outstanding at such time.

"***Lien***" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory, deemed or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing); ***provided*** that in no event shall an operating lease in and of itself be deemed a Lien.

"***Lien Release Event***" has the meaning specified in **Section 10.11(a)(i)**.

"***Limited Condition Acquisition***" means any Acquisition Transaction or other Investment by the Borrower or one or more of its Restricted Subsidiaries whose consummation is not conditioned on the availability of, or on obtaining, third party financing.

"***Line Cap***" shall mean the lesser of (a) the aggregate amount of the Commitments at such time and (b) the Borrowing Base then in effect.

"***Liquidity Condition***" has the meaning set forth in the definition of "***Cash Dominion Period***".

"***Loan***" means any of a Revolving Loan, a Swing Line Loan and a Protective Advance made by a Lender to the Borrower under **Article II** (including **Section 2.16**).

"***Loan Documents***" means, collectively, (a) this Agreement, (b) the Notes, (c) any Refinancing Amendment, Incremental Amendment or Extension Amendment, (d) the Guaranty, (e) the Collateral Documents, (f) the Intercreditor Agreements, and (g) the Global Intercompany Note.

"***Loan Parties***" means, collectively, the Borrower and the Guarantors.

"***L/C Fee***" has the meaning specified in **Section 2.11(b)(ii)**.

"***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 Stockholders***" means (a) any Company Person who is an investor in the Borrower, (b) family members of any of the individuals identified in the foregoing **clause (a)**, (c) trusts, partnerships or limited liability companies for the benefit of any of the individuals identified in the foregoing **clause (a)** or **(b)**, and (d) heirs, executors, estates, successors and legal representatives of the individuals identified in the foregoing **clause (a)** or **(b)**.

"***Margin Stock***" has the meaning set forth in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"***Market Capitalization***" means an amount equal to (i) the total number of issued and outstanding shares of Equity Interests of the Borrower (or any successor of the Borrower) on the date of the declaration or making of the relevant Restricted Payment multiplied by (ii) the arithmetic mean of the closing prices per share of such Equity Interests for the 30 consecutive trading days immediately preceding the date of declaration or making of such Restricted Payment.

"***Master Agreement***" has the meaning specified in the definition of "***Hedge Agreement.***"

"***Material Adverse Effect***" means any event, circumstance or condition that has had a materially adverse effect on (a) the business, operations, assets, liabilities (actual or contingent) or financial condition of the Borrower and its Restricted Subsidiaries, taken as a whole, and (b) the ability of the Loan Parties (taken as a whole) to perform their respective payment obligations under the Loan Documents.

"***Material Indebtedness***" means, as of any date, Indebtedness for borrowed money on such date of any Loan Party in an aggregate principal amount exceeding the Threshold Amount; ***provided*** that in no event shall any of the following be Material Indebtedness (a) Indebtedness under a Loan Document, (b) obligations in respect of a Qualified Securitization Financing, (c) Capitalized Lease Obligations, (d) Indebtedness held by a Loan Party or any Indebtedness held by an Affiliate of a Loan Party and (e) Indebtedness under Hedge Agreements.

"***Material Subsidiary***" means, as of the Closing Date and thereafter at any date of determination, each of the Borrower's Domestic Subsidiaries (a) whose total assets at the last day of the most recent Test Period (when taken together with the total assets of the Restricted Subsidiaries of such Domestic Subsidiary at the last day of the most recent Test Period) were equal to or greater than 5.00% of the consolidated total assets of the Borrower and the Restricted Subsidiaries as of the last day of such Test Period, in each case determined in accordance with GAAP or (b) whose revenues for such Test Period (when taken together with the revenues of the Restricted Subsidiaries of such Domestic Subsidiary for such Test Period) were equal to or greater than 5.00% of the consolidated revenues of the Borrower and the Restricted Subsidiaries for such Test Period, in each case determined in accordance with GAAP; ***provided*** that if, at any time and from time to time after the date which is 30 days after the Closing Date (or such longer period as the Administrative Agent may agree in its sole discretion), Domestic Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in **clause (a)** or **(b)** comprise in the aggregate more than (when taken together with the total assets of the Restricted Subsidiaries of such Domestic Subsidiaries at the last day of the most recent Test Period) 10.00% of the total consolidated assets of the Borrower and the Restricted Subsidiaries that are Domestic Subsidiaries as of the end of the most recently ended Test Period or more than (when taken together with the revenues of the Restricted Subsidiaries of such Domestic Subsidiaries for such Test Period) 10.00% of the consolidated revenues of the Borrower and the Restricted Subsidiaries that are Domestic Subsidiaries for such Test Period (or, in each case, on any date when re-designated as an Excluded Subsidiary pursuant to the definition of "***Excluded Subsidiary***"), then the Borrower shall, not later than sixty days after the date by which financial statements for such Test Period were required to be delivered pursuant to this Agreement or on the date of such re-designation, as applicable (or, in each case, such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more of such Domestic Subsidiaries as "***Material Subsidiaries***" to the extent required such that the foregoing

condition ceases to be true and (ii) comply with the provisions of **Section 6.11** with respect to any such Subsidiaries.

"***Materiality Threshold Amount***" means an amount equal to the greater of (A) 5.00% of Closing Date EBITDA and (B) 5.00% of TTM Consolidated Adjusted EBITDA.

"***Maturing Indebtedness Reserve***" means, as of any date of determination, with respect to any installment(s) of principal of Indebtedness described in the definition of "***Inside Maturity Exception***" (as defined in the Term Loan Credit Agreement as in effect on the date hereof) which has a scheduled date of payment or scheduled maturity date that is due to occur less than 91 days after such date, a reserve equal to the outstanding principal amount of such installment(s) that are so due. For the avoidance of doubt, a Maturing Indebtedness Reserve shall not be established with respect to any principal installment of Indebtedness prior to the 91st day preceding the scheduled date of payment or a scheduled maturity date of such installment.

"***Maturity Date***" means:

(a) (i) with respect to the Second Amendment Extended Revolving Loans, the date that is the earlier of (~~i~~A) five years after the ~~Closing~~Second Amendment Effective Date and (~~ii~~B) the date such Revolving Loans are declared due and payable pursuant to **Section 9.02**, and (ii) with respect to the Second Amendment Non-Extended Revolving Loans, the date that is the earlier of (A) five years after the Closing Date and (B) the date such Revolving Loans are declared due and payable pursuant to **Section 9.02**, and

(b) with respect to any tranche of Extended Revolving Commitments, the earlier of (i) the final maturity date as specified in the applicable Extension Amendment and (ii) the date such tranche of Extended Revolving Commitments are terminated and/or declared due and payable pursuant to **Section 9.02**.

provided, in each case, that if such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately preceding such day~~.~~; ***provided further*** that, with respect to the Second Amendment Extended Revolving Loans, in the event there is (i) any Indebtedness outstanding under the Term Loan Credit Agreement (or any Permitted Refinancing thereof) or (ii) any other Indebtedness outstanding in respect of borrowed money (or guarantees thereof) of the Borrower or any of its Subsidiaries in an aggregate principal amount in excess of $100,000,000, in each case, that has a stated termination or maturity date earlier than the Maturity Date set forth above (such date, the "***Springing Termination Date***"), the Maturity Date for purposes of clause (a)(i)(A) above, shall be the date that is 91 days prior to the Springing Termination Date.

"***Maximum Rate***" has the meaning specified in **Section 11.10**.

"***Minimum Collateral Amount***" means, at any time,

(a) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% (or if not denominated in Dollars, 110%) of the Fronting Exposure of the Issuing Banks with respect to Letters of Credit issued and outstanding at such time,

(b) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of the Fronting Exposure of the Swing Line Lender with respect to Swing Line Loans outstanding at such time and

(c) otherwise, an amount determined by the Administrative Agent and the Issuing Banks or the Swing Line Lender, as the case may be, in their sole discretion.

"***Moody's***" means Moody's Investors Service, Inc. and any successor thereto.

"***MTM***" has the meaning assigned such term in the definition of "***Designated Hedging Reserves.***"

"***Multiemployer Plan***" means any multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which any Loan Party or any of their respective ERISA Affiliates makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"***Net Income***" means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP (determined, for the avoidance of doubt, on an unconsolidated basis) and before any reduction in respect of preferred stock dividends.

"***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 6.10**.

"***Non-Bank Certificate***" has the meaning specified in **Section 3.01(b)**.

"***Non-Consenting Lender***" has the meaning specified in **Section 3.07**.

"***Non-Defaulting Lender***" means, at any time, each Lender that is not a Defaulting Lender at such time.

"***Non-Hardwired Currencies***" means all Alternative Currencies other than Dollars.

"***Non-Loan Party***" means any Restricted Subsidiary of the Borrower that is not a Loan Party.

"***Nonrenewal Notice Date***" has the meaning specified in **Section 2.04(b)(iii)**.

"***Not Otherwise Applied***" means, with reference to the amount of any Permitted Equity Issuances that is proposed to be applied to a particular use or transaction, that such amount was not previously applied in determining the permissibility of a transaction under the Loan Documents (including, for the avoidance of doubt, any use of such amount to fund a Specified Equity Contribution or to incur Contribution Indebtedness) where such permissibility was (or may have been) contingent on the receipt or availability of such amount, it being agreed that the incurrence of secured debt shall be deemed one use transaction for purposes of this definition.

"***Note***" means each of the Revolving Loan Notes and the Swing Line Note.

"***Notice of Intent to Cure***" has the meaning specified in **Section 6.02(a)**.

"***Obligations***" means all (a) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit (including in respect of any Revolving Exposure relating thereto), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees and expenses that accrue after the commencement by or against any Loan Party of any case or proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees and expenses are allowed or allowable claims in such case or proceeding, including, without limitation, obligations to pay, discharge and satisfy the Erroneous Payment Subrogation Rights, (b) obligations of any Loan Party arising under any Secured Hedge Agreement and (c) Cash Management Obligations; ***provided*** that "***Obligations***" of any Guarantor shall exclude any Excluded Swap Obligations. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and any of their Subsidiaries to the extent they have obligations under the Loan Documents) include the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party and to provide Cash Collateral under any Loan Document.

"***OFAC***" means the Office of Foreign Assets Control of the U.S. Treasury Department.

"***OID***" means original issue discount.

"***Organization Documents***" means,

(a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction);

(b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and

(c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"***Other 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 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***" has the meaning specified in **Section 3.01(f)**.

"***Overadvance***" shall mean a Loan or issuance of a Letter of Credit to the extent that, immediately after the making of such Loan or issuance, the aggregate amount of Credit Extensions then outstanding would exceed the Line Cap.

"***Overnight Rate***" means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent in accordance with bank industry rules on interbank compensation and (b) with respect to any amount denominated in any Alternative Currency, the rate of interest per annum reasonably determined by the Administrative Agent to be its cost of funding such amount.

"***Pari Passu Lien Debt***" means any Indebtedness that is intended by the Borrower to be secured by Liens on all or any portion of the Collateral that are *pari passu* in priority with the Liens on Collateral that secure the Term Loan Obligations. For the avoidance of doubt, "***Pari Passu Lien Debt***" includes the Initial Term Loans as of the Closing Date.

"***Participant***" has the meaning specified in **Section 11.07(d)**.

"***Participant Register***" has the meaning specified in **Section 11.07(e)**.

"***Participating Member State***" means each state as described in any EMU Legislation.

"***Participation***" has the meaning specified in **Section 11.07(d)**.

"***Payment Conditions***" means with respect to any transaction

(a) no Event of Default has occurred and is continuing or would arise after giving effect to such transaction and

(b) either

(i) the Fixed Charge Coverage Ratio would be at least 1.00:1.00 on a Pro Forma Basis and the Borrower would have Excess Availability of at least the greater of (x) $~~40,000,000~~48,000,000 and (y) 12.5% of the Line Cap (but with respect to Restricted Payments only, $~~45,000,000~~54,000,000 and 15.0%, respectively) on a Pro Forma Basis immediately after giving effect to such transaction and over the 20 consecutive calendar days immediately prior to such transaction, or

(ii) the Borrower would have Excess Availability on a Pro Forma Basis of at least the greater of (x) $~~55,000,000~~66,000,000 and (y) 17.5% of the Line Cap (but with respect to Restricted Payments only, $~~62,500,000~~75,000,000 and 20.0%) on a Pro Forma Basis immediately after giving effect to such transaction and over the 20 consecutive calendar days immediately prior to such transaction.

"***Payment Recipient***" has the meaning assigned to it in **Section 10.17(a)**.

"***PBGC***" means the Pension Benefit Guaranty Corporation or any successor thereto.

"***Pension Plan***" means any "employee pension benefit plan" (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA, and is sponsored or maintained by any Loan Party or any of their respective ERISA Affiliates or to which any Loan Party or any of their respective ERISA Affiliates contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made or has had an obligation to make contributions at any time in the preceding five plan years.

"***Perfection Certificate***" means a certificate substantially in the form of Exhibit II to the Security Agreement, completed and supplemented with the schedules and attachments contemplated thereby, and duly executed by a Responsible Officer of the Borrower.

"***Periodic Term SOFR Determination Day***" has the meaning specified in the definition of "Term SOFR".

"***Permitted Acquisition***" means an Acquisition Transaction together with other Investments undertaken to consummate such Acquisition Transaction; ***provided*** that:

(a) after giving Pro Forma Effect to any such Acquisition Transaction or Investment, at the applicable time determined in accordance with **Section 1.08(f)**, no Event of Default shall have occurred and be continuing;

(b) the business of such Person, or such assets, as the case may be, constitute a business permitted by the Loan Documents; and

(c) with respect to each such purchase or other acquisition, all actions required to be taken with respect to any such newly created or acquired Subsidiary (including each Subsidiary thereof that constitutes a Restricted Subsidiary) or assets in order to satisfy the requirements set forth in **Section 6.11** to the extent applicable shall have been taken (or shall be taken), to the extent required by such section (or arrangements for the taking of such actions after the consummation of the Permitted Acquisition shall have been made) (unless such newly created or acquired Subsidiary constitutes an Excluded Subsidiary or is designated as an Unrestricted Subsidiary).

"***Permitted Discretion***" 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 categories of Reserves after the Closing Date (other than Reserves that are expressly included in the definition of "***Reserves***" or the adjustment or imposition of exclusionary criteria in the definition of "***Eligible Account***", "***Eligible Inventory***" and "***Qualified Cash***"), Permitted Discretion will require that

(a) such establishment, adjustment or imposition of Reserves after the Closing Date be based on the analysis of facts or events first occurring or first discovered by the Administrative Agent after the Closing Date or that are materially different from facts or events known to the Administrative Agent on the Closing Date; ***provided***, this **clause (a)** shall not apply to the Administrative Agent's establishment of a Royalty Reserve in respect of any Royalties in existence on the Closing Date,

(b) the amount of any such Reserve so established or the effect of any adjustment or imposition of exclusionary criteria in the definition of each of "***Eligible Account***", "***Eligible Inventory***" and "***Qualified Cash***" be a reasonable quantification of changes in the ability of the Administrative Agent to realize upon the ABL Priority Collateral included in the Borrowing Base and

(c) no Reserves or changes to eligibility criteria will be duplicative of Reserves or changes already accounted for through eligibility criteria in the definition of "***Eligible Account***", "***Eligible Inventory***" or "***Qualified Cash***", as applicable.

"***Permitted Equity Issuance***" means any,

(a) public or private sale or issuance of any Qualified Equity Interests of the Borrower (other than a Specified Equity Contribution);

(b) contribution to the equity capital of the Borrower or any other Loan Party (other than (i) a Specified Equity Contribution or (ii) in exchange for Disqualified Equity Interests); or

(c) sale or issuance of Indebtedness of the Borrower or a Restricted Subsidiary (other than intercompany Indebtedness) that have been converted into or exchanged for Qualified Equity Interests of the Borrower or a Restricted Subsidiary;

provided that the amount of any Permitted Equity Issuance will be the amount of cash and Cash Equivalents received by a Loan Party or Restricted Subsidiary in connection with such sale, issuances or contribution, and the fair market value of any other property received in connection with such sale, issuance or contribution, (measured at the time made), without adjustment for subsequent changes in the value.

"***Permitted Holders***" means:

(a) the Sponsors;

(b) the Management Stockholders; and

(c) any group (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of which the Persons described in **clauses (a)** or **(b)** above are members; ***provided*** that, without giving effect to the existence of such group or any other group, the Persons described in **clauses (a)** and **(b)** above, collectively, beneficially own (as defined in Rules 13(d) and 14(d) of the Exchange Act) Equity Interests representing at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interest of the Borrower then held by such group.

"***Permitted Inventory Locations***" means each location listed on **Schedule 2.01(b)**, 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***" means (a) any Permitted Acquisition, (b) any Acquisition Transaction and/or (c) any other Investment or acquisition permitted hereunder.

"***Permitted Investors***" means (a) a Sponsor, (b) each of the Affiliates and investment managers of a Sponsor, (c) any fund or account managed by any of the persons described in **clause (a)** or **(b)** of this definition, (d) any employee benefit plan of the Borrower or any of its subsidiaries and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, and (e) investment vehicles of members of management of the Borrower and its Subsidiaries.

"***Permitted Junior Secured Refinancing Debt***" means any Credit Agreement Refinancing Indebtedness that is Junior Lien Debt.

"***Permitted Lien***" means any Lien not prohibited by **Section 7.01**.

"***Permitted Pari Passu Secured Refinancing Debt***" means any Credit Agreement Refinancing Indebtedness that is Pari Passu Lien Debt.

"***Permitted Ratio Debt***" means Indebtedness; ***provided*** that, at the time of incurrence thereof:

(a) immediately after giving effect to the issuance, incurrence, or assumption of such Indebtedness:

(i) in the case of any Pari Passu Lien Debt, the First Lien Net Leverage Ratio for the applicable Test Period is equal to or less than (A) the Closing Date First Lien Net Leverage Ratio or (B) with respect to Indebtedness that is incurred in connection with a Permitted Investment, the First Lien Net Leverage Ratio immediately prior to such incurrence;

(ii) in the case of any Junior Lien Debt, the Secured Net Leverage Ratio for the applicable Test Period is equal to or less than (A) the Closing Date Secured Net Leverage Ratio or (B) with respect to Indebtedness that is incurred in connection with a Permitted Investment, the Secured Net Leverage Ratio immediately prior to such incurrence; and

(iii) in the case of any Indebtedness that is not secured by a Lien on any Collateral, either:

(A) the Total Net Leverage Ratio for the applicable Test Period is equal to or less than (y) the Closing Date Total Net Leverage Ratio or (y) with respect to Indebtedness that is incurred in connection with a Permitted Investment, the Total Net Leverage Ratio immediately prior to such incurrence, or

(B) the Interest Coverage Ratio for the applicable Test Period is equal to or greater than (x) 2.00 to 1.00 or (y) with respect to Indebtedness that is incurred in connection with a Permitted Investment, the Interest Coverage Ratio immediately prior to such incurrence;

in each case, after giving Pro Forma Effect to the incurrence of such Indebtedness and any use of proceeds thereof and measured as of and for the Test Period immediately preceding the issuance, incurrence or assumption of such Indebtedness for which internal financial statements are available; ***provided***, that the aggregate principal amount of Permitted Ratio Debt incurred by Non-Loan Parties, together with the aggregate principal amount of Incremental Equivalent Debt incurred by Non-Loan Parties, shall not exceed, in the aggregate, the greater of (I) 50.00% of Closing Date EBITDA and (II) 50.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination;

(b) to the extent such Permitted Ratio Debt is required to be subject to the provisions of the Closing Date ABL Intercreditor Agreement, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to, or is otherwise subject to the provisions of the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent;

(c) if such Indebtedness is intended to be Pari Passu Lien Debt or Junior Lien Debt, a Debt Representative acting on behalf of the holders of such Permitted Ratio Debt has become party to, or is otherwise subject to intercreditor arrangements set forth in the penultimate paragraph of **Section 7.01**; and

(d) Permitted Ratio Debt (i) that is Pari Passu Lien Debt shall not mature prior to the latest maturity date of, and shall not have a Weighted Life to Maturity shorter than the remaining Weighted Average Life to Maturity of, the Initial Term Loans (without giving effect to any amortization payments or prepayments on the Initial Term Loans actually made) or (ii) that is Junior Lien Debt or unsecured Indebtedness shall not mature, or have scheduled amortization, prior to the latest maturity date of the Initial Term Loans; ***provided*** that this **clause (d)** shall not apply to the incurrence of any such Indebtedness pursuant to the Inside Maturity Exception (as defined in the Term Loan Credit Agreement as in effect on the date hereof).

Permitted Ratio Debt will be deemed to include any Registered Equivalent Notes issued in exchange therefor.

"***Permitted Refinancing***" means, with respect to any Person, any modification, refinancing, refunding, replacement, renewal or extension of any Indebtedness of such Person; ***provided*** that

(a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, replaced, renewed or extended except by an amount equal to unpaid accrued interest and premium (including tender premiums) thereon, *plus* OID and upfront fees *plus* other fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, replacement, renewal or extension and by an amount equal to any existing commitments unutilized thereunder,

(b) other than with respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to **Section 7.03(c)** or **Section 7.03(d)**, such modification, refinancing, refunding, replacement, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the remaining Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, replaced, renewed or extended,

(c) such Indebtedness shall not be incurred or guaranteed by any Loan Party or Restricted Subsidiary other than a Loan Party or Restricted Subsidiary that was an obligor of the Indebtedness being exchanged, extended, renewed, replaced or refinanced and no additional Loan Parties or Restricted Subsidiaries shall become liable for such Indebtedness;

(d) if such Indebtedness being modified, refinanced, refunded, replaced, renewed, or extended is Junior Financing or Junior Lien Debt,

(i) to the extent such Indebtedness being modified, refinanced, refunded, replaced, renewed, or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, replacement, renewal, or extension is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, replaced, renewed or extended,

(ii) to the extent such Indebtedness being modified, refinanced, refunded, replaced, renewed, or extended is unsecured, such modification, refinancing, refunding, replacement, renewal or extension is either (A) unsecured or (B) secured only by Permitted Liens (***provided*** that such incurrence will thereafter count in the calculation of any remaining basket capacity thereunder, while such Indebtedness remains outstanding); and

(iii) to the extent such Indebtedness being modified, refinanced, refunded, replaced, renewed, or extended is secured by Liens, (A) such modification, refinancing, refunding, replacement, renewal or extension is either (1) unsecured or (2) secured only by Permitted Liens, ***provided*** that if such Indebtedness is Pari Passu Lien Debt or Junior Lien Debt, (x) to the extent such Indebtedness being modified, refinanced, refunded, replaced, renewed, or extended is required to be subject to the provisions of the Closing Date ABL Intercreditor Agreement, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to, or is otherwise subject to the provisions of the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent and (y) (y) such Indebtedness shall not be secured on a pari passu basis by the ABL Priority Collateral and (B) to the extent that such Liens are subordinated to the Liens securing the Obligations, such modification, refinancing, refunding, replacement, renewal or extension is secured by Liens that are subordinated to the Liens securing the Obligations on terms at least as favorable to the Lenders as those contained in the documentation (including any intercreditor or similar agreements) governing

the Indebtedness being modified, refinanced, replaced, refunded, replaced, renewed or extended;

(e) if such Indebtedness is secured by assets of the Borrower or any Restricted Subsidiary:

(i) such Indebtedness shall not be secured by Liens on any assets of the Borrower or any Restricted Subsidiary that are not also subject to, or would be required to be subject to pursuant to the Loan Documents, a Lien securing the Obligations (except (1) Liens on property or assets applicable only to periods after the Latest Maturity Date at the time of incurrence, (2) any Liens on property or assets to the extent that a Lien on such property or asset is also added for the benefit of the Lenders, and (3) any Liens on property or assets under the Indebtedness being exchanged, extended, renewed, replaced or refinanced and (4) with respect to Indebtedness of Non-Loan Parties, Liens on assets of any Non-Loan Party); and

(ii) if such Indebtedness is Pari Passu Lien Debt or Junior Lien Debt, (x) a Debt Representative acting on behalf of the holders of such Indebtedness has become party to, or is otherwise subject to the provisions of the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent and (y) such Indebtedness shall not be secured on a pari passu basis by the ABL Priority Collateral.

Permitted Refinancing will be deemed to include any Registered Equivalent Notes issued in exchange therefor.

"***Permitted Reorganization***" means any transaction (a) undertaken to effect a corporate reorganization (or similar transaction or event) for operational or efficiency purposes or (b) related to tax planning or tax reorganization, in each case, as determined in good faith by the Borrower and entered into after the Closing Date; ***provided*** that, (i) no Event of Default is continuing immediately prior to such transaction and immediately after giving effect thereto and (ii) after giving effect to such transactions, the security interests of the Lenders in the Collateral (taken as a whole) and the Guarantees of the Obligations (taken as a whole), in each case, would not be materially impaired as a result thereof, and such transaction will not materially adversely affect the Borrower's ability to make anticipated payments with respect to the Obligations as and when they become due (as determined in good faith by the Borrower).

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

"***Petco Animal Supplies***" has the meaning specified in the Recitals.

"***Plan***" means any material "employee benefit plan" (as such term is defined in Section 3(3) of ERISA), other than a Foreign Plan, established or maintained by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of their respective ERISA Affiliates.

"***Platform***" has the meaning specified in **Section 6.02**.

"***Pledged Debt***" has the meaning specified in the Security Agreement.

"***Pledged Equity***" has the meaning specified in the Security Agreement.

"***Post-Acquisition Accounts Borrowing Base***" has the meaning specified in the definition of "***Eligible Account.***"

"***Pre-Acquisition Accounts Borrowing Base***" has the meaning specified in the definition of "***Eligible Account.***"

"***Post-Acquisition Inventory Borrowing Base***" has the meaning specified in the definition of "***Eligible Inventory.***"

"***Pre-Acquisition Inventory Borrowing Base***" has the meaning specified in the definition of "***Eligible Inventory.***"

"***Prepayment Notice***" means a written notice made pursuant to **Section 2.07(a)(i)** substantially in the form of **Exhibit J**.

"***Private-Side Information***" means any information with respect to the Borrower and its Subsidiaries that is not Public-Side Information.

"***Pro Forma Basis***" and "***Pro Forma Effect***" mean, with respect to compliance with any test or covenant or calculation hereunder, the determination or calculation of such test, covenant or ratio (including in connection with Specified Transactions) in accordance with **Section 1.08**.

"***Pro Rata Share***" means with respect to all payments, computations and other matters relating to the Revolving Commitment or Revolving Loans of any Lender and any Letters of Credit issued or participations purchased therein by any Lender or any participation in any Swing Line Loans purchased by any Lender at any time a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Revolving Exposure of that Lender at such time and the denominator of which is the aggregate Revolving Exposure of all Lenders at such time.

"***Protective Advance***" has the meaning specified in **Section 2.02(a)**.

"***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 Lenders***" means Lenders that do not wish to receive Private-Side Information.

"***Public-Side Information***" means information that does not constitute material non-public information (within the meaning of United States federal, state or other applicable securities laws) with respect to the Borrower or any of its Subsidiaries or any of their respective securities.

"***QFC***" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"***QFC Credit Support***" has the meaning specified in **Section 11.26(a)**.

"***Qualified Cash***" means cash and Cash Equivalents of the Loan Parties in DDAs (including any DDA maintained with the Administrative Agent) that are subject to Blocked Account Agreements; ***provided*** that the Administrative Agent shall be entitled, pursuant to the terms thereof, to reasonably request cash reporting (i) on a daily basis with respect to any such accounts, (ii) with the delivery of a Borrowing Base Certificate, (iii) upon any request for a credit extension and (iv) in connection with any action incurred in reliance on the Payment Conditions.

"***Qualified Equity Interests***" means any Equity Interests that are not Disqualified Equity Interests.

"***Qualified Professional Asset Manager***" has the meaning specified in **Section 10.16(a)**.

"***Qualified Securitization Financing***" means any Securitization Financing of a Securitization Subsidiary that meets the following conditions:

(a) such Qualified Securitization Financing (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and the Securitization Subsidiary, as determined by the Borrower in good faith;

(b) all sales, transfers and/or contributions of Securitization Assets and related assets to the Securitization Subsidiary are made at fair market value; and

(c) the financing terms, covenants, termination events and other provisions thereof, including any Standard Securitization Undertakings, shall be market terms, as determined by the Borrower in good faith; and

(d) the aggregate principal amount of all Securitization Financings that may be Qualified Securitization Financings shall not exceed $75,000,000 at any time.

"***Recipient***" means (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, as applicable.

"***Refunded Swing Line Loans***" has the meaning specified in **Section 2.03(c)(i)**.

"***Refunding Equity Interests***" has the meaning specified in **Section 7.06 (o)**.

"***Register***" has the meaning specified in **Section 11.07(c)**.

"***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) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

"***Reimbursement Obligations***" has the meaning specified in **Section 2.04(c)(i)**.

"***Related Indemnified Person***" of an Indemnitee means (a) any controlling person or controlled affiliate of such Indemnitee, (b) the respective directors, officers, or employees of such Indemnitee or any of its controlling persons or controlled affiliates and (c) the respective agents of such Indemnitee or any of its controlling persons or controlled affiliates, in the case of this **clause (c)**, acting at the instructions of such Indemnitee, controlling person or such controlled affiliate; ***provided*** that each reference to a controlled affiliate or controlling person in this definition shall pertain to a controlled affiliate or controlling person involved in the negotiation or syndication of the Facility.

"***Release Actions***" has the meaning specified in **Section 10.11(b)**.

"***Release Certificate***" has the meaning specified in **Section 10.11(b)**.

"***Release Date***" has the meaning specified in **Section 10.11 (c)**.

"***Release/Subordination Event*** " has the meaning specified in **Section 10.11(a)(i)(G)**.

"***Relevant Four Fiscal Quarter Period***" means, with respect to any requested Specified Equity Contribution, the four-fiscal quarter period ending on (and including) the fiscal quarter in which Consolidated Adjusted EBITDA will be increased as a result of such Specified Equity Contribution.

"***Relevant Governmental Body***" means

(a) with respect to a Benchmark or Benchmark Replacement in respect of any Benchmark applicable to Dollars, the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto, and

(b) with respect to a Benchmark Replacement for any Benchmark applicable to a currency other than Dollars,

(i) the central bank for the applicable currency or any central bank or other supervisor which is responsible for supervising (A) such Benchmark or Benchmark Replacement for such currency or (B) the administrator of such Benchmark or Benchmark Replacement for such currency or

(ii) any working group or committee officially endorsed or convened by: (A) the central bank for such currency, (B) any central bank or other supervisor that is responsible for supervising either (x) such Benchmark or Benchmark Replacement for such currency or (y) the administrator of such Benchmark or Benchmark Replacement for such currency, or (C) the Financial Stability Board, or a committee officially endorsed or convened by the Financial Stability Board, or any successor thereto.

"***Report***" means reports prepared by the Administrative 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 has exercised its rights of inspection pursuant to **Section 6.10(b)**, which Reports shall be distributed to the Lenders by the Administrative Agent, subject to the provisions of **Section 11.08**.

"***Reportable Event***" means, with respect to any Pension Plan, any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty day notice period has been waived.

"***Required Facility Lenders***" means, with respect to any Facility on any date of determination, Lenders having or holding more than 50.00% of the sum of (a) the aggregate principal amount of outstanding Loans under such Facility and (b) the aggregate unused Commitments under such Facility; ***provided*** that the portion of outstanding Loans and the unused Commitments of such Facility, as applicable, held or deemed held by a Defaulting Lender shall be excluded for purposes of making a determination of Required Facility Lenders.

"***Required Lenders***" means, as of any date of determination, Lenders having or holding more than 50% of the sum of the aggregate Revolving Exposure of all Lenders; ***provided*** that the aggregate Revolving Exposure of or held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"***Required Minimum Balances***" has the meaning specified in **Section 6.18(c)**.

"***Resolution Authority***" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"***Reserved Secured Cash Management Obligations***" means any Obligations in respect of any Secured Cash Management Services, up to the maximum amount owing thereunder as specified by the applicable Cash Management Bank in writing to Administrative Agent, which amount may be increased with respect to any existing Secured Cash Management Services by further written notice from such Cash Management Bank to Administrative Agent from time to time; ***provided*** that in each case (a) establishment of Bank Products Reserves for such amount and all other Reserved Secured Hedge Obligations and Reserved Secured Cash Management Obligations would not result in an Overadvance and (b) the Borrower has been notified of and given a least three Business Days to review any error in the calculation of such maximum amount and increased amount.

"***Reserved Secured Hedge Obligations***" means any Obligations in respect of any Hedge Agreement owing to a Hedge Bank, up to the maximum amount owing thereunder as specified by the applicable Hedge Bank in writing to Administrative Agent, which amount may be increased with respect to any existing Secured Hedge Agreement at any time by further written notice from such Hedge Bank to Administrative Agent; ***provided*** that the Borrower has been notified of and given a least three Business Days to review any error in the calculation of such maximum amount and increased amount.

"***Reserves***" means the Ad Valorem Tax Reserves, Charitable Reserves, Customer Credit Liability Reserves, Customer Deposits Reserves, Designated Cash Management Reserves,

Designated Hedging Reserves, Maturity Indebtedness Reserve, Shrink Reserves, Landlord Lien Reserves, reserves against Eligible Accounts, Eligible Inventory and Qualified Cash and any and all other reserves established in accordance with and subject to **Section 2.22** that reflect risks or contingencies that are reasonably likely to

(a) (i) affect the collectability of Eligible Accounts and (ii) otherwise realize upon the Collateral included in the Borrowing Base in accordance with the Loan Documents;

(b) (i) impair the value of the Eligible Accounts, Eligible Inventory or Qualified Cash or the Collateral Agent's Lien thereon or

(ii) 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, or

(c) result in the payment of unanticipated liabilities of any Loan Party.

Without limiting the generality of the foregoing but subject to **Section 2.22**, the Administrative Agent may establish dilution reserves, reserves for unpaid and accrued sales taxes, reserves for banker's liens, rights of setoff or similar rights and remedies as to deposit or investment accounts, reserves for contingent liabilities of any Loan Party, reserves for uninsured or underinsured losses or litigation of any Loan Party, reserves for customs charges, reserves for fees, assessments, and other governmental charges with respect to the Eligible Accounts, reserves for self-insurance and insurance premiums and reserves for other 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.

"***Responsible Officer***" means the executive chairman, chief executive officer, president, senior vice president, senior vice president (finance), vice president, chief financial officer, chief operating officer, treasurer, manager of treasury activities or assistant treasurer, secretary, assistant secretary or other similar officer or Person performing similar functions of a Loan Party and, solely for purposes of notices given pursuant to **Article II**, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a "***Responsible Officer***" shall refer to a Responsible Officer of the Borrower.

"***Restricted***" means, when referring to cash or Cash Equivalents of the Borrower or any of the Restricted Subsidiaries, that such cash or Cash Equivalents appear (or would be required to appear) as "restricted" on a consolidated balance sheet of the Borrower or such Restricted Subsidiary (unless such appearance is related to a restriction in favor of the Administrative Agent or the Collateral Agent or any other Lender).

"***Restricted Payment***" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of the Borrower or any of the Restricted Subsidiaries (in each case, solely to a holder of Equity Interests in such Person's capacity as a holder of such Equity Interests other than dividends or distributions payable solely in Equity Interests (other than Disqualified Equity Interests) of the Borrower), or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such Equity Interest, or on account of any return of capital to the Borrower's stockholders, partners or members (or the equivalent Persons thereof). For the avoidance of doubt, the payment of any Contractual Obligation that is based on, or measured with respect to the value of an Equity Interest, including any such Contractual Obligations constituting compensation arrangements, shall not be considered a Restricted Payment. The amount of any Restricted Payment not made in cash or Cash Equivalents shall be the fair market value of the securities or other property distributed by dividend or other otherwise.

"***Restricted Subsidiary***" means any Subsidiary of the Borrower other than an Unrestricted Subsidiary.

"***Revolving Commitment***" ~~means the commitment of a Lender to make or otherwise fund any Revolving Loan and to acquire participations in Letters of Credit and Swing Line Loans hereunder and "***Revolving Commitments***" means such commitments of all Lenders in the aggregate. The amount of each Lender's Revolving Commitment, if any, is set forth on **Schedule 2.01** under the caption "***Revolving Commitment***" or in the applicable Assignment and Assumption, subject to any increase, adjustment or reduction pursuant to the terms and conditions hereof including **Section 2.16**. The aggregate amount of the Revolving Commitments as of the Closing Date is $500,000,000.~~mean the Second Amendment Extended Commitments or the Second Amendment Non-Extended Commitments, as applicable.

"***Revolving Commitment Period***" means the period from the ~~Closing~~Second Amendment Effective Date to but excluding the applicable Revolving Commitment Termination Date.

"***Revolving Commitment Termination Date***" means the earliest to occur of (a)(i) with respect to the Second Amendment Extended Commitments, the fifth anniversary of the Second Amendment Effective Date; ***provided*** that, in the event there is (i) any Indebtedness outstanding under the Term Loan Credit Agreement (or any Permitted Refinancing thereof) or (ii) any other Indebtedness outstanding in respect of borrowed money (or guarantees thereof) of the Borrower or any of its Subsidiaries in an aggregate principal amount in excess of $100,000,000, in each case, that has Springing Termination Date, the Revolving Commitment Termination Date for purposes of this clause (a)(i), shall be the date that is 91 days prior to the Springing Termination Date and (ii) with respect to the Second Amendment Non-Extended Commitments, the fifth anniversary of the Closing Date, (b) the date the Revolving Commitments, including Revolving Commitments in respect of Letters of Credit and Swing Line Loans, are permanently reduced to zero pursuant to **Section 2.08**, and (c) the date of the termination of the Revolving Commitments pursuant to **Section 9.02**.

"***Revolving Exposure***" means, with respect to any Lender as of any date of determination, (a) prior to the termination of the Revolving Commitments, that Lender's Revolving Commitment;

and (b) after the termination of the Revolving Commitments, the sum of (i) the aggregate outstanding principal amount of the Revolving Loans of that Lender, (ii) in the case of each Issuing Bank, the aggregate Letter of Credit Usage in respect of all Letters of Credit issued by that Lender (net of any participations by Lenders in such Letters of Credit), (iii) the aggregate amount of all participations by that Lender in any outstanding Letters of Credit or any unreimbursed drawing under any Letter of Credit, (iv) in the case of the Swing Line Lender, the aggregate outstanding principal amount of all Swing Line Loans (net of any participations therein by other Lenders) and (v) the aggregate amount of all participations therein by that Lender in any outstanding Swing Line Loans.

"***Revolving Facility***" means the applicable Facility comprised of the Revolving Commitments, Revolving Loans, Swing Line Loans and Letters of Credit hereunder.

"***Revolving Lender***" means a Lender having a Revolving Commitment or other Revolving Exposure.

"***Revolving Loan Note***" means a promissory note in the form of **Exhibit B-1**, as it may be amended, restated, supplemented or otherwise modified from time to time.

"***Revolving Loans***" has the meaning specified in **Section 2.01(a)**.

"***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, a division of S&P Global Inc., and any successor thereto.

"***Sale Leaseback Transaction***" means a sale leaseback transaction with respect to all or any portion of any real property, equipment or capital assets owned by a Loan Party or other property customarily included in such transactions.

"***Same Day Funds***" means disbursements and payments in immediately available funds.

"***Sanctions***" means any sanction administered or enforced by the United States government (including OFAC), the United Nations Security Council, the European Union or HMT.

"***SEC***" means the Securities and Exchange Commission, or any Governmental Authority succeeding to, or exercising jurisdiction outside of the United States, any of its principal functions.

"***Second Amendment***" means that certain Second Amendment, dated as of March 29, 2024, by and among the Borrower, the Loan Parties party thereto, the several banks and other financial institutions party thereto and the Administrative Agent.

"***Second Amendment Effective Date***" means March 29, 2024.

"***Second Amendment Extended Commitments***" means, the commitment of a Second Amendment Extended Lender to make or otherwise fund any Second Amendment Extended Revolving Loan and to acquire participations in Letters of Credit and Swing Line Loans hereunder and "***Second Amendment Extended Commitments***" means such commitments of all Second Amendment Extended Lenders in the aggregate. The amount of each Second Amendment Extended Lender's Second Amendment Extended Commitment, if any, is set forth on **Schedule 2.01** or in the applicable Assignment and Assumption, subject to any increase, adjustment or reduction pursuant to the terms and conditions hereof including **Section 2.16**. The aggregate amount of the Second Amendment Extended Commitments as of the Second Amendment Effective Date is $546,000,000.

"***Second Amendment Extended Lender***" means, at any time, any Lender that has a Second Amendment Extended Commitment or that holds Second Amendment Extended Revolving Loans at such time.

"***Second Amendment Extended Revolving Loan***" means a Revolving Loan made pursuant to the Second Amendment Extended Commitment.

"***Second Amendment Non-Extended Commitments***" means, the commitment of a Lender to make or otherwise fund any Second Amendment Non-Extended Revolving Loan and to acquire participations in Letters of Credit and Swing Line Loans hereunder and "***Second Amendment Non-Extended Commitments***" means such commitments of all Second Amendment Non-Extended Lenders in the aggregate. The amount of each Second Amendment Non-Extended Lender's Second Amendment Non-Extended Commitment, if any, is set forth on **Schedule 2.01** or in the applicable Assignment and Assumption, subject to any increase, adjustment or reduction pursuant to the terms and conditions hereof including **Section 2.16**. The aggregate amount of the Second Amendment Non-Extended Commitments as of the Second Amendment Effective Date is $35,000,000.

"***Second Amendment Non-Extended Lender***" means, at any time, any Lender that has a Second Amendment Non-Extended Commitments or that holds Second Amendment Non-Extended Revolving Loans at such time.

"***Second Amendment Non-Extended Revolving Loan***" means a Revolving Loan made pursuant to the Second Amendment Extended Commitment.

"***Secured Cash Management Services***" means any Cash Management Services entered into by and among the Borrower or any Restricted Subsidiary and any Cash Management Bank.

"***Secured Hedge Agreement***" means any Hedge Agreement that is entered into by and between any Loan Party and any Hedge Bank and designated in writing by the Hedge Bank and the Borrower to the Administrative Agent as a "***Secured Hedge Agreement***" (but only if such Hedge Agreement has not been designated as a "***Secured Hedge Agreement***" under the Term Loan Credit Agreement).

"***Secured Net Leverage Ratio***" means, with respect to any Test Period, the ratio of (a) Consolidated Secured Net Debt outstanding as of the last day of such Test Period to (b) Consolidated Adjusted EBITDA of the Borrower for such Test Period.

"***Secured Obligations***" has the meaning given to such term in the Security Agreement.

"***Secured Parties***" means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, each Issuing Bank, each Hedge Bank party to a Secured Hedge Agreement, each Cash Management Bank party to an agreement governing Cash Management Obligations, the Supplemental Administrative Agent and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to **Section 10.05** and **Section 10.12**.

"***Securities Act***" means the U.S. Securities Act of 1933, as amended.

"***Securitization Assets***" means the accounts receivable, royalty or other revenue streams, other rights to payment (including with respect to rights of payment pursuant to the terms of Joint Ventures) subject to a Qualified Securitization Financing and the proceeds thereof.

"***Securitization Fees***" means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees paid to a Person that is not a Securitization Subsidiary in connection with any Qualified Securitization Financing.

"***Securitization Financing***" means any transaction or series of transactions that may be entered into by the Borrower or any of its Subsidiaries pursuant to which the Borrower or any of its Subsidiaries may sell, convey or otherwise transfer to (a) a Securitization Subsidiary (in the case of a transfer by the Borrower or any of its Subsidiaries) or (b) any other Person (in the case of a transfer by a Securitization Subsidiary), or may grant a security interest or Lien in or on, any Securitization Assets of the Borrower or any of its Subsidiaries, and any assets related thereto, including all collateral securing such Securitization Assets, all contracts and all guarantees or other obligations in respect of such Securitization Assets, proceeds of such Securitization Assets and other assets that are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving Securitization Assets as determined by the Borrower in good faith.

"***Securitization Repurchase Obligation***" means any obligation of a seller or transferor of Securitization Assets in a Qualified Securitization Financing to repurchase Securitization Assets arising as a result of a breach of a Standard Securitization Undertaking, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, offset 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.

"***Securitization Subsidiary***" means a wholly owned Subsidiary of the Borrower (or another Person formed for the purposes of engaging in a Qualified Securitization Financing in which the Borrower or any Subsidiary of the Borrower makes an Investment and to which the Borrower or any Subsidiary of the Borrower transfers Securitization Assets and related assets) that engages in no activities other than in connection with the financing of Securitization Assets of the Borrower or its Subsidiaries, all proceeds thereof and all rights (contingent and 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 or such other Person (as provided below) as a Securitization Subsidiary, and

(a) no portion of the Indebtedness or any other obligation (contingent or otherwise) of which (i) is guaranteed by the Borrower or any Subsidiary of the Borrower, other than another Securitization Subsidiary (excluding guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (ii) is recourse to or obligates the Borrower or any Subsidiary of the Borrower, other than another Securitization Subsidiary, in any way other than pursuant to Standard Securitization Undertakings or (iii) subjects any property or asset of the Borrower or any Subsidiary of the Borrower, other than another Securitization Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;

(b) with which none of the Borrower or any Subsidiary of the Borrower, other than another Securitization 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 Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Borrower; and

(c) to which none of the Borrower or any Subsidiary of the Borrower, other than another Securitization Subsidiary, has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results;

it being agreed that a Securitization Asset consisting of an obligation of or to any Affiliate of a Loan Party (other than another Loan Party or Restricted Subsidiary, unless otherwise permitted by **Section 7.05**) shall not result non-compliance with any of the foregoing provisions.

"***Security Agreement***" means, collectively, the Security Agreement executed by the Loan Parties, substantially in the form of **Exhibit F**, together with each Security Agreement Supplement executed and delivered pursuant to **Section 6.11**.

"***Security Agreement Supplement***" has the meaning specified in the Security Agreement.

"***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).

"***Short Term Advances***" has the meaning specified in the definition of "***Indebtedness.***"

"***Similar Business***" means any business, the majority of whose revenues are derived from (i) business or activities conducted by the Borrower and its Restricted Subsidiaries on the Closing Date, (ii) any business that is a natural outgrowth or reasonable extension, development or expansion of any such business or any business similar, reasonably related, incidental, complementary or ancillary to any of the foregoing or (iii) any business that in the Borrower's

good faith business judgment constitutes a reasonable diversification of businesses conducted by the Borrower and its Restricted Subsidiaries.

"***SOFR***" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"***SOFR Administrator***" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"***Solvent***" and "***Solvency***" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the assets of such Person, on a consolidated basis with its Subsidiaries, exceeds its debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, (b) the present fair saleable value of the property of such Person, on a consolidated basis with its Subsidiaries, is greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such debts and other liabilities become absolute and matured, (c) such Person, on a consolidated basis with its Subsidiaries, is able to pay its debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such liabilities become absolute and matured and (d) such Person, on a consolidated basis with its Subsidiaries, is not engaged in, and is not about to engage in, business for which it has unreasonably small capital. 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.

"***SPC***" has the meaning specified in **Section 11.07(g)**.

"***Specified ABL Event of Default***" means an Event of Default pursuant to **Section 9.01(a)**, **Section 9.01(b)(i)(A)**, **Section 9.01(b)(ii)**, **Section 9.01(b)(iii)**, **Section 9.01(d)** (solely with respect to the representation and warranty made in **Section 5.20**) and **Section 9.01(f)**.

"***Specified DDA***" means any DDA maintained with a Lender.

"***Specified Equity Contribution***" has the meaning specified in **Section 8.02**.

"***Specified Event of Default***" means an Event of Default pursuant to **Section 9.01(a)** or an Event of Default pursuant to **Section 9.01(f)** with respect to the Borrower.

"***Specified Excess Availability***" means the sum of (a) Excess Availability at such time *plus* (b) Suppressed Availability (which shall not be less than zero) at such time; ***provided*** that Suppressed Availability shall not exceed 2.5% of the Aggregate Commitments at any time.

"***Specified Representations***" means those representations and warranties made by the Borrower in **Sections 5.01(a)** (with respect to organizational existence only), **5.01(b)(ii)**, **5.02(a)**, **5.02(b)(i)**, **5.04**, **5.13**, **5.16**, **5.17** and **5.18**.

"***Specified Transaction***" means any of the following identified by the Borrower as a "***Specified Transaction***" in the Borrower's sole discretion: (a) transaction or series of related transactions, including Investments and Acquisition Transactions, that results in a Person becoming a Restricted Subsidiary, (b) any designation of a Subsidiary as a Restricted Subsidiary

or an Unrestricted Subsidiary, (c) any transaction or series of related transactions, including Dispositions, that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower, (d) any acquisition or disposition of assets constituting a business unit, line of business or division of another Person or a facility, (e) any material acquisition or disposition, (f) any restructuring of the business of the Borrower, whether by merger, consolidation, amalgamation or otherwise, (g) any incurrence or repayment of Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), (h) any Restricted Payment and (i) transactions of the type given pro forma effect in any quality of earnings report prepared by a nationally recognized accounting firm and furnished to the Administrative Agent in connection with the Transactions or an Acquisition Transaction or other Investment consummated after the Closing Date.

"***Specified Transaction Adjustments***" has the meaning specified in **Section 1.08(c)**.

"***Sponsor***" means,

(a) (x) any funds, limited partnerships or co-investment vehicles managed or advised by CVC, (y) Canada Pension Plan Investment Board (or any funds, limited partnerships or co-investment vehicles managed or advised by Canada Pension Plan Investment Board) or any Affiliates of any of the foregoing Person(s) or (z) any direct or indirect Subsidiaries of any of the foregoing Person(s) (or jointly managed by any such Person(s) or over which any such Person(s) exercise governance rights) and

(b) any investors (including limited partners) in the Persons identified in **clause (a)** who are investors (including limited partners) in such Persons as of the Closing Date, and from time to time, invest directly or indirectly in the Borrower (but, in each case, excluding any portfolio companies of any of the foregoing).

"***Springing Termination Date***" has the meaning specified in the definition of "***Maturity Date***."

"***Standard Securitization Undertakings***" means representations, warranties, covenants and indemnities entered into by the Borrower or any Subsidiary of the Borrower that are customary in a Securitization Financing.

"***Stated Amount***" means, with respect to any Letter of Credit at any time, the aggregate amount available to be drawn thereunder at such time (regardless of whether any conditions for drawing could then be met).

"***Subsidiary***" means, with respect to any Person, any corporation, partnership, limited liability company, unlimited liability company or other entity of which (a) the 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, unlimited liability company or other entity are at the time owned by such Person or (b) more than 50.00% 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. No Person shall be considered a Subsidiary of the Borrower unless the Borrower has the ability to Control such Subsidiary.

"***Subsidiary Guarantor***" or "***Subsidiary Loan Party***" means any Subsidiary (other than an Excluded Subsidiary) that is required to be a Guarantor pursuant to the terms of the Loan Documents.

"***Successor Borrower***" has the meaning specified in **Section 7.04(e)**.

"***Super Majority Lenders***" means, as of any date of determination, Lenders having or holding more than 66-2/3% of the aggregate Revolving Exposure of all Lenders; ***provided*** that the aggregate Revolving Exposure of or held by any Defaulting Lender or Disqualified Lender shall be excluded for purposes of making a determination of Super Majority Lenders at any time.

"***Supplemental Administrative Agent***" and "***Supplemental Administrative Agents***" have the meanings specified in **Section 10.12(a)**.

"***Supported QFC***" has the meaning specified in **Section 11.26(a)**.

"***Suppressed Availability***" means, the amount, if positive, by which the Borrowing Base exceeds the Aggregate Commitments.

"***Swap Obligations***" means with respect to any Guarantor any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"***Swap Termination Value***" means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in **clause (a)**, the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

"***Swing Line Lender***" means Citibank, in its capacity as the Swing Line Lender hereunder, together with its permitted successors and assigns in such capacity.

"***Swing Line Loan***" means the swing line loan made by the Swing Line Lender to the Borrower pursuant to **Section 2.03**.

"***Swing Line Loan Request***" means a Swing Line Loan Request substantially in the form of **Exhibit A-4**, or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

"***Swing Line Note***" means a promissory note in the form of **Exhibit B-2**, as it may be amended, restated, supplemented or otherwise modified from time to time.

"***Swing Line Sublimit***" means $45,000,000.

"***Taxes***" has the meaning specified in **Section 3.01(a)**.

"***Term Benchmark***" means when used in connection with any Loan, refers to whether such Loan bears interest at a rate determined by reference to:

(a) if such Loan is denominated in Dollars, ~~Adjusted~~ Term SOFR, and

(b) if such Loan is denominated in an Alternative Currency, the risk-free reference rate (**RFR**) applicable to such Alternative Currency as agreed to by the Administrative Agent, the Borrower and each Revolving Lender providing such Revolving Loans, Incremental Revolving Facilities or Extended Revolving Loans (in its sole discretion);

provided, that notwithstanding the foregoing, Term Benchmark shall in no event be less than 0.00% per annum with respect to (a) Revolving Loans made to the Borrower pursuant to Section 2.01(a), and (b) all other Revolving Loans, unless an alternate Floor is specifically noted in the documentation with respect to such other Revolving Loans or such documentation with respect to such other Revolving Loans specifically provides that there shall be no Floor.

"***Term Benchmark Loan***" means a Loan that bears interest at a rate based upon the applicable Term Benchmark.

"***Term Loan***" has the meaning assigned to such term in the Term Loan Credit Agreement (as in effect on the date hereof).

"***Term Loan Agent***" means Citibank, in its capacity as administrative agent and collateral agent in respect of the Term Loan Credit Agreement, together with its successors and assigns in such capacity.

"***Term Loan Credit Agreement***" means the (i) term loan credit agreement, to be entered into as of the Closing Date, among the Borrower, the lenders party thereto and the Term Loan Agent, as such document may be amended, restated, supplemented or otherwise modified from time to time (ii) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any Indebtedness or other financial accommodation that has been incurred to refinance (subject to the limitations set forth herein (including by reference to the Closing Date ABL Intercreditor Agreement)) in whole or in part the Indebtedness and other obligations outstanding under (x) the credit agreement referred to in **clause (i)** or (y) any subsequent Term Loan Credit Agreement, unless such agreement or instrument expressly provides that it is not intended to be and is not a Term Loan Credit Agreement hereunder. Any reference to the Term Loan Credit Agreement hereunder shall be deemed a reference to any Term Loan Credit Agreement then in existence.

"***Term Loan Documents***" means the Term Loan Credit Agreement and the other "***Loan Documents***" as defined in the Term Loan Credit Agreement, as each such document may be amended, restated, supplemented or otherwise modified.

"***Term Loan Facility***" means any "***Facility***" as defined in the Term Loan Credit Agreement (as in effect on the date hereof).

"***Term Loan Obligations***" means the "***Obligations***" as defined in the Term Loan Credit Agreement (as in effect on the date hereof).

"***Term Priority Collateral***" means the "***Fixed Asset Collateral***" as defined in the Closing Date ABL Intercreditor Agreement.

"***Term SOFR***" means,

(a) for any calculation with respect to a Term Benchmark Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "***Periodic Term SOFR Determination Day***") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; ***provided***, ***however***, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "***Base Rate Term SOFR Determination Day***") that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; ***provided***, ***however***, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate SOFR Determination Day.

~~"***Term SOFR Adjustment***" means, for any calculation with respect to a Base Rate Loan or a Term Benchmark Loan denominated in Dollars, a percentage per annum as set forth below for the applicable Type of such Loan and Interest Period therefor:~~

~~Base Rate Loan:~~

~~0.11448%~~

~~Term Benchmark Loan:~~

~~**Interest Period**~~	~~**Percentage**~~

~~One month~~	~~0.11448 %~~
~~Three months~~	~~0.26161%~~
~~Six months~~	~~0.42826%~~

"***Term SOFR Administrator***" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

"***Term SOFR Reference Rate***" means the forward-looking term rate based on SOFR.

"***Termination Conditions***" means, collectively, (a) the payment in full in cash of the Obligations (other than (i) contingent indemnification obligations as to which no claim has been asserted, (ii) Obligations under Secured Hedge Agreements as to which alternative arrangements acceptable to the Hedge Bank thereunder have been made and (iii) Cash Management Obligations) and (b) the termination of the Commitments and the termination or expiration of all Letters of Credit under this Agreement (unless backstopped or Cash Collateralized in an amount equal to 103% of the maximum drawable amount of any such Letter of Credit or otherwise in an amount and/or in a manner reasonably acceptable to the Issuing Banks).

"***Test Period***" in effect at any time means the most recent period of four consecutive fiscal quarters of the Borrower ended on or prior to such time (taken as one accounting period) in respect of which financial statements for each quarter or fiscal year in such period are available (which may be internal financial statements except to the extent this Agreement otherwise expressly states that the Test Period is specified in a Compliance Certificate, in which case such financial statements shall have been delivered pursuant to **Section 6.01(a)** or **(b)** for the Test Period set forth in such Compliance Certificate). A Test Period may be designated by reference to the last day thereof (*i.e.*, the 'January 31**st** Test Period**'** of a particular year refers to the period of four consecutive fiscal quarters of the Borrower ended on or about January 31st of such year), and a Test Period shall be deemed to end on the last day thereof.

"***Threshold Amount***" means the greater of (a) 25.00% of Closing Date EBITDA and (b) 25.00% of TTM Consolidated Adjusted EBITDA.

"***Total Net Leverage Ratio***" means, with respect to any Test Period, the ratio of (a) Consolidated Net Debt as of the last day of such Test Period to (b) Consolidated Adjusted EBITDA of the Borrower for such Test Period.

"***Total Utilization of Revolving Commitments***" means, as of any date of determination, the sum of (i) the aggregate principal amount of all outstanding Revolving Loans other than Revolving Loans made for the purpose of repaying any Refunded Swing Line Loans or reimbursing the Issuing Banks for any amount drawn under any Letter of Credit, but not yet so applied, (ii) the aggregate principal amount of all outstanding Swing Line Loans and (iii) the Letter of Credit Usage.

"***Transaction Expenses***" means any fees or expenses incurred or paid by the Borrower or any of its Subsidiaries in connection with the Transactions, this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby, including any amortization thereof in any period, including any amortization thereof in any period.

"***Transactions***" means, collectively, the funding of the initial Term Loans under the Term Loan Credit Facility, the receipt of the Revolving Commitments and funding of the Revolving Loans on the Closing Date, the Closing Date Refinancing and the payment of the Transaction Expenses.

"***Treasury Equity Interests***" has the meaning specified in **Section 7.06(o)**.

"***Trust Fund Account***" means any account containing cash consisting solely of Trust Funds.

"***Trust Fund Certificate***" means a certificate of a Responsible Officer of the Borrower certifying (a) the type and amount of any Trust Funds (other than payroll and employee benefit payments, in each case, in the nature of discretionary contributions) contained or held in a Blocked Account, (b) that the failure to remit such Trust Funds to the Person entitled thereto could reasonably be expected to result in personal, criminal or civil liability to any director, officer or employee of any Loan Party or any Subsidiary of any Loan Party under any applicable Law and (c) that (x) the obligation requiring such Trust Funds is due and payable within 10 Business Days of delivery of such certificate and (y) amounts on deposit in any applicable Trust Fund Account are insufficient to make such payment.

"***Trust Funds***" means any cash or Cash Equivalents or other investment property comprised of (a) funds used or to be used for payroll and payroll taxes and other employee benefit payments to or for the benefit of any Loan Party's employees, (b) funds used or to be used to pay all Taxes required to be collected, remitted or withheld (including, without limitation, federal, state, provincial and other withholding Taxes (including the employer's share thereof)) and (c) any other funds which any Loan Party (i) holds on behalf of another Person (other than the Borrower or any of its Subsidiaries) or (ii) holds as an escrow or fiduciary for another Person (other than the Borrower or any of its Subsidiaries).

"***TTM Consolidated Adjusted EBITDA***" means, as of any date of determination, the Consolidated Adjusted EBITDA of the Borrower and the Restricted Subsidiaries, determined on a Pro Forma Basis, for the most recent Test Period.

"***Type***" means, with respect to a Loan, its character as a Base Rate Loan or Term Benchmark Loan.

"***UK Financial Institution***" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"***UK Resolution Authority***" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"***Unadjusted Benchmark Replacement***" means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment

"***Undisclosed Administration***" means, in relation to a Lender or its direct or indirect parent entity, the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian, or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or such parent entity is subject to home jurisdiction supervision, if applicable Law requires that such appointment not be disclosed.

"***Unfunded Advances/Participations***" means (a) with respect to the Administrative Agent, the aggregate amount, if any (i) made available to the Borrower on the assumption that each Lender has made available to the Administrative Agent such Lender's share of the applicable Borrowing available to the Administrative Agent as contemplated by **Sections 2.01(b)(ii)** and (ii) with respect to which a corresponding amount shall not in fact have been returned to the Administrative Agent by the Borrower or made available to the Administrative Agent by any such Lender, (b) with respect to the Swing Line Lender, the aggregate amount, if any, of outstanding Swing Line Loans in respect of which any Revolving Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to **Section 2.03(c)** and (c) with respect to the Issuing Banks, the aggregate amount, if any, of amounts drawn under Letters of Credit in respect of which a Revolving Lender shall have failed to make amounts available to the applicable Issuing Banks pursuant to **Section 2.04(c)**.

"***Uniform Commercial Code***" means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

"***United States***" and "***U.S.***" mean the United States of America.

"***Unrestricted Subsidiary***" means (a) each Securitization Subsidiary and (b) any Subsidiary of the Borrower designated by the Board of Directors of the Borrower as an Unrestricted Subsidiary pursuant to **Section 6.13** subsequent to the date hereof and each Subsidiary of such Subsidiary, in each case, until such Person ceases to be an Unrestricted Subsidiary of the Borrower in accordance with **Section 6.13** or ceases to be a Subsidiary of the Borrower.

"***U.S. Government Securities Business Day***" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"***U.S. Lender***" has the meaning specified in **Section 3.01(e)**.

"***U.S. Special Resolution Regimes***" has the meaning specified in **Section 10.26(a)**.

"***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 Public Law No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

"***Weighted Average Life to Maturity***" means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment, by

(b) the then outstanding principal amount of such Indebtedness;

provided that for purposes of determining the Weighted Average Life to Maturity of (i) any Permitted Refinancing, (ii) any Indebtedness that is being modified, refinanced, refunded, renewed, replaced or extended, or (iii) any term loans for purposes of incurring any other Indebtedness (in any such case, the "***Applicable Indebtedness***"), the effects of any amortization payments or other prepayments made on such Applicable Indebtedness (including the effect of any prepayment on remaining scheduled amortization) prior to the date of the applicable modification, refinancing, refunding, renewal, replacement, extension or incurrence shall be disregarded.

"~~**wholly-owned**~~***wholly-owned***" means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which (other than (a) director's qualifying shares and (b) nominal shares issued to foreign nationals to the extent required by applicable Law) are owned by such Person and/or by one or more wholly owned Subsidiaries of such Person.

"***Withdrawal Liability***" means the 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.

"***Withholding Agent***" means the Borrower, any Guarantor or the Administrative Agent.

"***Write-Down and Conversion Powers***" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

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

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

(b) (A) The words "herein," "hereto," "hereof" and "hereunder" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(ii) references in this Agreement to an Exhibit, Schedule, Article, Section, clause or sub-clause refer (A) to the appropriate Exhibit or Schedule to, or Article, Section, clause or sub-clause in this Agreement or (B) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears.

(iii) the term "including" is by way of example and not limitation.

(iv) the term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(v) the phrase "permitted by" and the phrase "not prohibited by" shall be synonymous, and any transaction not specifically prohibited by the terms of the Loan Documents shall be deemed to be permitted by the Loan Documents;

(vi) the phrase "commercially reasonable efforts" shall not require the payment of a fee or other amount to any third party or the incurrence of any expense or liability by a Loan Party (or Affiliate) outside its ordinary course of its business;

(vii) the phrase "in good faith" when used with respect to a determination made by a Loan Party shall mean that such determination was made in the prudent exercise of its commercial judgment and shall be deemed to be conclusive if fully disclosed in writing (in reasonable detail) to the Administrative Agent and the Lenders and neither the Administrative Agent nor the Required Lenders have objected to such determination within ten (10) Business Days of such disclosure to the Administrative Agent and the Lenders;

(viii) 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"; and

(ix) the term "continuing" means, with respect to a Default or Event of Default, that it has not been cured (including through performance) or waived.

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

(d) For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws) (a "***Division***"), if (a) any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred

from the original Person to the subsequent Person, and (b) any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.03 Accounting and Finance Terms; Accounting Periods; Unrestricted Subsidiaries; Determination of Fair Market Value. All accounting terms, financial terms or components of such terms not specifically or completely defined herein shall be construed in conformity with GAAP to the extent GAAP defines such term or a component of such term. To the extent GAAP does not define any such term or a component of any such term, such term shall be calculated by the Borrower in good faith. For purposes of calculating any consolidated amounts necessary to determine compliance by any Person and, if applicable, its Restricted Subsidiaries with any ratio or other financial covenant in this Agreement, Unrestricted Subsidiaries shall be excluded. Unless the context indicates otherwise, any reference to a "fiscal year" shall refer to a fiscal year of the Borrower ending on or about January 31 and any reference to a "fiscal quarter" shall refer to a fiscal quarter of the Borrower ending on or about April 30, July 31, October 31 or January 31. All determinations of fair market value under a Loan Document shall be made by the Borrower in good faith and if such determination is consistent with a valuation or opinion of an Independent Financial Advisor, such determination shall be conclusive for all purposes under the Loan Documents or related to the Obligations.

Section 1.04 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted under this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one decimal place more than the number of decimal places by which such ratio is expressed herein (the "***Applicable Decimal Place***") and rounding the result up or down to the Applicable Decimal Place.

Section 1.05 References to Agreements, Laws, Etc. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are permitted by this Agreement (including by way of amendment and/or waiver); and (b) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

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

Section 1.07 [Reserved].

Section 1.08 Pro Forma Calculations; Limited Condition Transactions; Basket and Ratio Compliance.

(a) Notwithstanding anything to the contrary herein, the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio and the Fixed Charge Coverage Ratio shall be calculated in the manner prescribed by this **Section 1.08**; ***provided***, that notwithstanding anything to the contrary in **clauses (b)**, **(c)** or **(d)** of this **Section**

1.08, when calculating the Fixed Charge Coverage Ratio for purposes of **Section 8.01**, the events described in this **Section 1.08** that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect.

(b) For purposes of calculating the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio and the Fixed Charge Coverage Ratio, Specified Transactions identified by the Borrower that have been made (i) during the applicable Test Period or (ii) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated Adjusted EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period. If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any of its Restricted Subsidiaries since the beginning of such Test Period shall have consummated any Specified Transaction identified by the Borrower that would have required adjustment pursuant to this **Section 1.08**, then the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio and the Fixed Charge Coverage Ratio shall be calculated to give *pro forma* effect thereto in accordance with this **Section 1.08**.

(c) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a Responsible Officer and may include, for the avoidance of doubt, the amount of cost savings, operating expense reductions; synergies, material changes to amounts to be paid by or received by Loan Parties projected by the Borrower in good faith to be realized as a result of specified actions taken, committed to be taken or expected to be taken (calculated on a *pro forma* basis as though amounts had been realized on the first day of such Test Period and as if any such cost savings, operating expense reductions and synergies were realized during the entirety of such period) relating to such Specified Transaction, net of the amount of actual benefits realized during such period from such actions (such amounts, "***Specified Transaction Adjustments***"); ***provided*** that (i) such Specified Transaction Adjustments are reasonably identifiable and quantifiable in the good faith judgment of the Borrower, (ii) such actions are taken, committed to be taken or expected to be taken no later than twenty-four months after the date of such Specified Transaction, and (iii) no amounts shall be included pursuant to this **clause (c)** to the extent duplicative of any amounts that are otherwise included in calculating Consolidated Adjusted EBITDA, whether through a *pro forma* adjustment or otherwise, with respect to any Test Period.

(d) In the event that the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement or extinguishment) any Indebtedness included in the calculations of the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio and the Fixed Charge Coverage Ratio, as the case may be (in each case, other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio and the Fixed Charge Coverage Ratio

shall be calculated giving *pro forma* effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable Test Period with respect to leverage ratios or the first day of such Test Period with respect to the Interest Coverage Ratio and the Fixed Charge Coverage Ratio.

(e) Notwithstanding anything in this Agreement or any Loan Document to the contrary

(i) the Borrower may rely on more than one basket or exception within any Section (including both ratio-based and non-ratio based baskets and exceptions, and including partial reliance on different baskets that, collectively, permit the entire proposed transaction) at the time of any proposed transaction, and the Borrower may, in its sole discretion, at any later time divide, classify or reclassify such transaction (or any portion thereof) in any manner that complies with the available baskets and exceptions under such Section at such later time (***provided*** that with respect to reclassification of Indebtedness and Liens, any such reclassification shall be subject to the parameters of **Sections 7.01** and **7.03**, as applicable);

(ii) unless the Borrower elects otherwise, if the Borrower or its Restricted Subsidiaries in connection with any transaction or series of such related transaction (A) incurs Indebtedness, creates Liens, makes Dispositions, makes Investments, designates any Subsidiary as restricted or unrestricted or repays any Indebtedness or takes any other action under or as permitted by a ratio-based basket and (B) incurs Indebtedness, creates Liens, makes Dispositions, makes Investments, designates any Subsidiary as restricted or unrestricted or repays any Indebtedness or takes any other action under a non-ratio-based basket (which shall occur within five Business Days of the events in **clause (A)** above), then the applicable ratio will be calculated with respect to any such action under the applicable ratio-based basket without regard to any such action under such non-ratio-based basket made in connection with such transaction or series of related transactions;

(iii) if the Borrower or its Restricted Subsidiaries enters into any revolving, delayed draw or other committed debt facility, the Borrower may elect to determine compliance of such debt facility (including the incurrence of Indebtedness and Liens from time to time in connection therewith) with this Agreement and each other Loan Document on the date commitments with respect thereto are first received, assuming the full amount of such facility is incurred (and any applicable Liens are granted) on such date, in which case such committed amount may thereafter be borrowed or reborrowed, in whole or in part, from time to time, without further compliance with the Loan Documents, in lieu of determining such compliance on any subsequent date (including any date on which Indebtedness is incurred pursuant to such facility); ***provided*** that, in each case, any future calculation of any such ratio based basket shall only include amounts borrowed and outstanding as of such date of determination; and

(iv) if the Borrower or any Restricted Subsidiary incurs Indebtedness under a ratio-based basket, such ratio-based basket (together with any other ratio-based basket utilized in connection therewith, including in respect of other Indebtedness, Liens, Dispositions, Investments, Restricted Payments or payments in respect of Junior Financing) will be calculated excluding the cash proceeds of such Indebtedness for netting

purposes (i.e., such cash proceeds shall not reduce the Borrower's Consolidated Net Debt or Consolidated Secured Net Debt pursuant to **clause (b)** of the definition of such terms), ***provided*** that the actual application of such proceeds may reduce Indebtedness for purposes of determining compliance with any applicable ratio.

(f) Notwithstanding anything in this Agreement or any Loan Document to the contrary, when

(i) calculating any applicable ratio in connection with the incurrence of Indebtedness, the creation of Liens, the making of any Disposition, the making of an Investment, the making of a Restricted Payment, the designation of a Subsidiary as restricted or unrestricted, the repayment of Indebtedness or for any other purpose,

(ii) determining the accuracy of any representation or warranty,

(iii) determining whether any Default or Event of Default has occurred, is continuing or would result from any action, or

(iv) determining compliance with any other condition precedent to any action or transaction;

in each case of **clauses (i)** through **(iv)** in connection with a Limited Condition Acquisition, the date of determination of such ratio, the accuracy of such representation or warranty (but taking into account any earlier date specified therein), whether any Default or Event of Default has occurred, is continuing or would result therefrom, or the satisfaction of any other condition precedent 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***"). If on a Pro Forma Basis after giving effect to such Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) such ratios, representations and warranties, absence of defaults, satisfaction of conditions precedent and other provisions are calculated as if such Limited Condition Acquisition or other transactions had occurred at the beginning of the most recent Test Period ending prior to the LCA Test Date for which financial statements are available, the Borrower could have taken such action on the relevant LCA Test Date in compliance with the applicable ratios or other provisions, such provisions shall be deemed to have been complied with, unless a Specified Event of Default is continuing on the date on which such Limited Condition Acquisition is consummated. For the avoidance of doubt,

(i) if any of such ratios, representations and warranties, absence of defaults, satisfaction of conditions precedent or other provisions are exceeded or breached as a result of fluctuations in such ratio (including due to fluctuations in Consolidated Adjusted EBITDA), a change in facts and circumstances or other provisions at or prior to the consummation of the relevant Limited Condition Acquisition, such ratios, representations and warranties, absence of defaults, satisfaction of conditions precedent and other provisions will not be deemed to have been exceeded, breached, or otherwise failed as a result of such fluctuations or changed circumstances solely for purposes of determining

whether the Limited Condition Acquisition and any related transactions is permitted hereunder and

(ii) such ratios and compliance with such conditions 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 or otherwise 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. For purposes of any calculation pursuant to this **clause (f)** of the Interest Coverage Ratio, Consolidated Interest Expense may be calculated using an assumed interest rate for the Indebtedness to be incurred in connection with such Limited Condition Acquisition based on the indicative interest margin contained in any financing commitment documentation with respect to such Indebtedness or, if no such indicative interest margin exists, as reasonably determined by the Borrower in good faith.

Notwithstanding the forgoing,

(i) in connection with any transaction permitted hereunder that requires satisfaction of the Payment Conditions, the Borrower will be required to comply as of the date of such transaction with the Excess Availability requirements (but not, for the avoidance of doubt, **clause (b)(i)** of the definition of "***Payment Conditions***" or any requirements relating to the Fixed Charge Coverage that are satisfied on the LCA Test Date to the extent the Borrower shall have made an LCA Election in connection with such transaction) set forth in the definition of "***Payment Conditions***", regardless of whether the Borrower shall have made an LCA Election in connection with such transaction and

(ii) in connection with any Credit Extension, the Total Utilization of Revolving Commitments shall not exceed the Line Cap on the date of such Credit Extension (other than as provided under **Section 2.02**).

(g) For purposes of calculating the Permitted Ratio Debt and **Section 7.01(i)** (including for purposes of **Section 7.03(l)(ii)**), the phrase "immediately prior to such incurrence" shall be construed to apply only if, at the time of such determination, on a Pro Forma Basis for such incurrence of Indebtedness and/or Liens (and for any related Permitted Investment, if applicable), (i) the First Lien Net Leverage Ratio would be greater than the Closing Date First Lien Net Leverage Ratio, (ii) the Secured Net Leverage Ratio would be greater than the Closing Date Secured Net Leverage Ratio, (iii) the Total Net Leverage Ratio would be greater than the Closing Date Total Net Leverage Ratio or (iv) the Interest Coverage Ratio would be less than 2.00 to 1.00.

(h) For purposes of determining the maturity date of any Indebtedness, bridge loans that are subject to customary conditions (as determined by the Borrower in good faith, including conditions requiring no payment or bankruptcy event of default) that would either automatically be extended as, converted into or required to be exchanged for permanent refinancing shall be deemed to have the maturity date as so extended, converted or exchanged.

Section 1.09 Currency Equivalents Generally.

(a) No Default or Event of Default shall be deemed to have occurred under a Loan Document solely as a result of changes in rates of currency exchange occurring after the time any applicable action (including any incurrence of a Lien or Indebtedness or the making of an Investment) so long as such action (including any incurrence of a Lien or Indebtedness or the making of an Investment) was permitted hereunder when made.

(b) For purposes of this Agreement and the other Loan Documents, where the permissibility of a transaction or determinations of required actions or circumstances depend upon compliance with, or are determined by reference to, amounts stated in Dollars, any requisite currency translation shall be based on the rate of exchange between the applicable currency and Dollars as reasonably determined by the Borrower, in each case in effect on the Business Day immediately preceding the date of such transaction or determination (subject to **clauses (c)** and **(d)** below) and shall not be affected by subsequent fluctuations in exchange rates; ***provided***, that the determination of any Dollar Amount shall be made in accordance with **Section 2.23**.

(c) 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 Exchange Rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed, in the case of revolving credit debt (or, in the case of an LCA Election, on the date of the applicable LCA Test Date); ***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 Exchange Rate in effect on the date of such refinancing, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such Indebtedness so refinanced does not exceed the principal amount of such Indebtedness being refinanced; ***provided***, ***further*** that the determination of any Dollar Amount shall be made in accordance with **Section 2.23**. Notwithstanding the foregoing, the principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the Exchange Rate that is in effect on the date of such refinancing.

(d) For purposes of determining the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio, the Interest Coverage Ratio and the Fixed Charge Coverage Ratio, including Consolidated Adjusted EBITDA when calculating such ratios, all amounts denominated in a currency other than Dollars will be converted to Dollars for any purpose (including testing the any financial maintenance covenant) at the effective rate of exchange in respect thereof reflected in the consolidated financial statements of the Borrower for the applicable Test Period for which such measurement is being made, and will reflect the currency translation effects, determined in accordance with GAAP, of Hedge Agreements permitted hereunder for

currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar equivalent of such Indebtedness.

(e) All references in the Loan Documents to Loans, Letters of Credit, Obligations, Borrowing Base components and other amounts shall be denominated in Dollars, unless expressly provided otherwise. The Dollar Amount of any amounts denominated or reported under a Loan Document in a currency other than Dollars shall be determined by the Administrative Agent on a daily basis based on the current Exchange Rate. The Borrower shall report Borrowing Base components to the Administrative Agent in the currency invoiced by the Loan Parties or shown in the Loan Parties' financial records, and unless expressly provided otherwise, the Borrower shall deliver financial statements and calculate financial covenants in Dollars. Notwithstanding anything herein to the contrary, if any Obligation is funded and expressly denominated in a currency other than Dollars, the Borrower shall repay such Obligation in such other currency.

Section 1.10 Co-Borrowers. Notwithstanding anything herein to the contrary, the Borrower, upon 15 Business Days' prior written notice to the Administrative Agent (or such shorter period as reasonably agreed by the Administrative Agent), may cause any Loan Party on or after the Closing Date by written election to the Administrative Agent to become a borrower (each such Loan Party, a "***Co-Borrower***", and, together with the Borrower, the "***Co-Borrowers***") under each of the Facilities hereunder on a joint and several basis (such date, the "***Co-Borrower Effective Date***"); ***provided*** that such Loan Party shall

(i) execute a joinder to this Agreement in form and substance reasonably satisfactory to the Administrative Agent assuming all obligations of a Co-Borrower hereunder,

(ii) at least three Business Days prior to such Co-Borrower Effective Date, provide to the Administrative Agent and the Lenders all documentation and other information required by United States regulatory authorities under applicable "know your customer" and anti-money laundering Laws, including without limitation Title III of the USA Patriot Act, that shall be reasonably requested by the Administrative Agent in writing at least 10 Business Days prior to the consummation of such joinder,

(iii) provide to the Administrative Agent and the Lenders, if such Loan Party qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, a Beneficial Ownership Certification,

(iv) be a domestic Subsidiary Guarantor wholly owned by the Borrower and

(v) not cause any Lender to be in violation of Law as a result of becoming a Co-Borrower.

The Lenders hereby irrevocably authorize the Administrative Agent to enter into any amendment to this Agreement or to any other Loan Document as may be necessary or appropriate in order to establish any additional Borrower pursuant to this **Section 1.10** and such technical amendments, and other customary amendments with respect to provisions of this Agreement relating to taxes for borrowers, in each case as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection therewith.

Upon the later of execution and delivery of a joinder to this Agreement by a Co-Borrower and the countersignature of the Administrative Agent thereto, each Co-Borrower agrees that it is jointly and severally liable for the obligations of each other Co-Borrower hereunder with respect to any Class of Loans on an individual tranche basis, including with respect to the payment of principal of and interest on all Loans on an individual tranche basis, the payment of amounts owing in respect of Letters of Credit and the payment of fees and indemnities and reimbursement of costs and expenses. Each Co-Borrower is accepting joint and several liability hereunder in consideration of the financial accommodations to be provided by the Administrative Agent, the Collateral Agent and the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each of the Co-Borrowers and in consideration of the undertakings of each of the Co-Borrowers to accept joint and several liability for the obligations of each of them. Each Co-Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, as a co-debtor, joint and several liability with each other Co-Borrower, with respect to the payment and performance of all of the Obligations, it being the intention of the parties hereto that all Obligations shall be the joint and several obligations of all of the Co-Borrowers without preferences or distinction among them. If and to the extent that any of the Co-Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of such Obligations in accordance with the terms thereof, then in each such event each other Borrower will make such payment with respect to, or perform, such Obligations. Each Co-Borrower further agrees that the Borrower will be such Co-Borrower's agent for administrative, mechanical, and notice provisions in this Agreement and any other Loan Document and the Lenders and the Administrative Agent hereby agree that each Co-Borrower will have the same rights under the Loan Documents as if it is the Borrower and for any other purposes under the provisions of this Agreement, including the affirmative and negative covenants, each such Co-Borrower will be treated as a Restricted Subsidiary that is a Subsidiary Guarantor.

ARTICLE II.
THE COMMITMENTS AND BORROWINGS

Section 2.01 Revolving Loans.

(a) **Revolving Loan Commitment**. During the applicable Revolving Commitment Period, subject to the terms and conditions hereof, each Lender severally agrees to make revolving loans to the Borrower from time to time on any Business Day in Dollars and/or any Alternative Currency ("***Revolving Loans***") in an aggregate amount (expressed in the Dollar Amount thereof in the case of an Alternative Currency) up to but not exceeding such Lender's Revolving Commitment; ***provided***, that after giving effect to the making of any Revolving Loans in no event shall the Total Utilization of Revolving Commitments exceed the Line Cap. Within the foregoing limits and subject to the terms and conditions set forth herein (including the Administrative Agent's authority, in its sole discretion, to make Protective Advances pursuant to the terms of **Section 2.02**), amounts borrowed pursuant to this **Section 2.01(a)** may be repaid and reborrowed during the Revolving Commitment Period. Each Lender's Revolving Commitment shall expire on the Revolving Commitment Termination Date, and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Commitments shall be paid in full no later than such date.

(b) Notwithstanding anything to the contrary in the Loan Documents,

(i) on the Second Amendment Effective Date, in accordance with, and upon the terms and conditions set forth in, Second Amendment, (x) the Existing Revolving Commitment and any Existing Revolving Loans of each Second Amendment Non-Extended Revolving Lender outstanding on such date shall continue hereunder and be reclassified as an Second Amendment Non-Extended Revolving Commitment and Second Amendment Non-Extended Revolving Loans, respectively, on such date and (y) the Existing Revolving Commitment and any Existing Revolving Loans of each Second Amendment Extended Revolving Lender outstanding on such date shall continue hereunder and be reclassified as an Second Amendment Extended Revolving Commitment and Second Amendment Extended Revolving Loans, respectively, on such date;

(ii) from the Second Amendment Effective Date until the Maturity Date with respect to the Second Amendment Non-Extended Commitments, all Revolving Loans shall be made on a pro rata basis between the Second Amendment Extended Commitments and the Second Amendment Non-Extended Commitments;

(iii) any Existing Revolving Loans outstanding on the Second Amendment Effective Date shall be continued as Revolving Loans hereunder; provided that (x) the Existing Revolving Loans of each Second Amendment Extended Revolving Lender will be reclassified as "Second Amendment Extended Revolving Loans" and (y) the Existing Revolving Loans of each Second Amendment 2 Non-Extended Revolving Lender will be reclassified as "Second Amendment Non-Extended Revolving Loans;"

(a) (A) on the Second Amendment Effective Date, (x) Second Amendment Non-Extended Revolving Loans and Second Amendment Extended Revolving Loans shall be deemed made as Term Benchmark Loans in a principal amount equal to the principal amount of the Existing Revolving Loans reclassified as Second Amendment Non-Extended Revolving Loans and Second Amendment Extended Revolving Loans, as applicable, pursuant to Section 2.01 that were outstanding as Term Benchmark Loans at the time of reclassification (such Second Amendment Non-Extended Revolving Loans and Second Amendment Extended Revolving Loans to correspond in principal amount to the Existing Revolving Loans so converted of a given Interest Period), (y) Interest Periods for the Second Amendment Non-Extended Revolving Loans and the Second Amendment Extended Revolving Loans described in clause (x) above shall end on the same dates as the Interest Periods applicable to the corresponding Existing Revolving Loans described in clause (x) above, and the Term SOFR applicable to such Second Amendment Non-Extended Revolving Loans and Second Amendment Extended Revolving Loans during such Interest Periods shall be the same as those applicable to the Existing Revolving Loans so reclassified, and (z) Second Amendment Non-Extended Revolving Loans and Second Amendment Extended Revolving Loans shall be deemed made as Base Rate Loans in a principal amount equal to the principal amount of Existing Revolving Loans reclassified into Second Amendment Non-Extended Revolving Loans and Second Amendment Extended Revolving Loans, respectively, pursuant to Section 2.01 that were outstanding as Base Rate Loans at the time of reclassification; and (B) each Second Amendment Non-Extended Revolving Loan and Second Amendment Extended Revolving Loan shall continue to be entitled to all accrued and unpaid interest with respect to the Existing Revolving Loan from which such Second Amendment Non-Extended Revolving Loan and

Second Amendment Extended Revolving Loan, as applicable, was reclassified up to but excluding the Second Amendment Effective Date; it being understood that such accrued and unpaid interest with respect to the Existing Revolving Loans shall be paid on the Second Amendment Effective Date, pursuant to the Second Amendment.

(~~b~~c) **Borrowing Mechanics for Revolving Loans**.

(i) Subject to **Section 4.01(a)(i)** in the case of Borrowings of Revolving Loans on the Closing Date only and **Section 4.02(c)** in the case of each other Borrowing of Revolving Loans, each Borrowing of Revolving Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may only be given in writing (each request for a Swing Line Loan Borrowing shall be made in accordance with **Section 2.03**). Each such notice must be received by the Administrative Agent not later than (A) 1:30 p.m. (New York City time) three Business Days prior to the requested date of any Borrowing of Term Benchmark Loans, and (B) 1:00 p.m. (New York City time) on the requested date of any Borrowing of Base Rate Loans; ***provided***, that such notices may be conditioned on the occurrence of the Closing Date, the commercially reasonable efforts of the Borrower to deliver a Borrowing Base Certificate or, with respect to any Incremental Facility, the occurrence of any transaction anticipated to occur in connection with such Incremental Facility; ***provided***, ***further***, that if the Borrower wishes to request Term Benchmark Loans denominated in Dollars having an Interest Period other than one, three or six months in duration as provided in the definition of "***Interest Period,***" the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four Business Days prior to the requested date of such Borrowing, conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the Appropriate Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 11:00 a.m., three Business Days before the requested date of such Borrowing, conversion or continuation, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each notice by the Borrower pursuant to this **Section 2.01(b)** must be delivered to the Administrative Agent in the form of a Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of Term Benchmark Loans shall be in a principal amount of (A) $500,000 or a whole multiple of $100,000 in excess thereof in the case of Term Benchmark Loans denominated in Dollars, (B) [reserved] and (C) a Dollar Amount of $500,000 or a whole multiple of $100,000 in excess thereof in the case of Term Benchmark Loans denominated in any Alternative Currency. Each Borrowing of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Committed Loan Notice shall specify (1) that the Borrower is requesting a Revolving Loan Borrowing, (2) the requested date of the Borrowing (which shall be a Business Day), (3) the principal amount of Revolving Loans to be borrowed, (4) the Type of Revolving Loans to be borrowed, (5) with respect to any Term Benchmark Loan, the currency of the Revolving Loan, which shall be Dollars or an Alternative Currency; ***provided*** that the Borrower shall deliver to the Administrative Agent any request for designation of an Alternative Currency in accordance with **Section 11.02**, to be received by the Administrative Agent no later than 11:00 a.m. (New York City time) at least 15 Business Days in advance of the date of any Borrowing hereunder proposed to be made in such Alternative Currency (or such other

time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the applicable Issuing Bank(s), in its or their sole discretion) and (6) if applicable, the duration of the Interest Period with respect thereto. Each Swing Line Loan shall be a Base Rate Loan. If the Borrower fails to specify a Type of Revolving Loan in a Committed Loan Notice, then (x) in the case of Revolving Loans denominated in Dollars, the applicable Revolving Loans shall be made as Base Rate Loans and (y) in the case of Revolving Loans denominated in an Alternative Currency, the applicable Revolving Loans shall be made as Term Benchmark Loans with an Interest Period of one month. If the Borrower requests a Borrowing of Term Benchmark Loans in any such Committed Loan Notice, but fails to specify an Interest Period for such Term Benchmark Loans, the Borrower will be deemed to have specified an Interest Period of one month.

(ii) Borrowings of more than one Type may be outstanding at the same time: ***provided*** that the total number of Interest Periods for Term Benchmark Loans outstanding under this Agreement at any time shall comply with **Section 2.10(g)**.

(iii) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share of the applicable Revolving Loans. In the case of each Borrowing, each Appropriate Lender shall make the amount of its Revolving Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than (x) for Borrowings of Term Benchmark Loans, 12:00 p.m. (New York City time), on the Business Day specified in the applicable Committed Loan Notice and (y) for Borrowings of Base Rate Loans, 3:00 p.m. (New York City time), on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in **Section 4.02** (or if such Borrowing is on the Closing Date, **Section 4.01**), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (A) crediting the account of the Borrower on the books of the Administrative Agent with the amount of such funds or (B) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; ***provided***, ***however***, that if, on the date the Committed Loan Notice with respect to such Borrowing is given by the Borrower, there are Swing Line Loans outstanding or Reimbursement Obligations outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such Reimbursement Obligations, second, to the payment in full of any such Swing Line Loans and third, to the Borrower as provided above.

(iv) The failure of any Lender to make the Revolving Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Revolving Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Revolving Loan to be made by such other Lender on the date of any Borrowing.

Section 2.02 Protective Advances.

(a) Subject to the limitations set forth below (and notwithstanding anything to the contrary in **Section 4.02**), the Administrative Agent is authorized by the Borrower and the Lenders, from time to time in the Administrative Agent's sole discretion in the exercise of its commercially reasonable judgment (but shall not have any obligation) to make Revolving Loans denominated in Dollars to the Borrower, on behalf of all Lenders at any time that any condition precedent set forth in **Section 4.02** has not been satisfied or waived, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Revolving Loans and other Obligations or (iii) to pay any other amount chargeable to or required to be paid by the Borrower pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses as described in **Section 11.04**) and other sums, in each case to the extent due and payable (and not in dispute by the Borrower (acting in good faith)) under the Loan Documents (each such Revolving Loan, a "***Protective Advance***"). Any Protective Advance may be made in a principal amount that would cause the Total Utilization of Revolving Commitments to exceed the Borrowing Base; ***provided*** that no Protective Advance may be made to the extent that, after giving effect to such Protective Advance (together with the outstanding principal amount of any outstanding Protective Advances), the aggregate principal amount of Protective Advances outstanding hereunder would exceed 10.0% of the Borrowing Base as determined on the date of such proposed Protective Advance; ***provided***, ***further***, that the total Revolving Exposure shall not exceed the aggregate amount of the Revolving Commitments then in effect. Each Protective Advance shall be secured by the Liens in favor of the Administrative Agent in and to the Collateral and shall constitute Obligations hereunder. The Agent's authorization to make Protective Advances may be revoked by the Required Lenders at any time. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof. The making of a Protective Advance on any one occasion shall not obligate the Administrative Agent to make any Protective Advance on any other occasion. At any time (and in any event no less than weekly) that the conditions precedent set forth in **Section 4.02** have been satisfied or waived, the Administrative Agent may request the Lenders to make a Revolving Loan to repay a Protective Advance. At any other time, the Administrative Agent may require the Lenders to fund their risk participations described in **Section 2.02(b)**. Each Protective Advance shall be a Base Rate Loan.

(b) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default or Event of Default), each Lender shall be deemed, without further action by any party hereto, unconditionally and irrevocably to have purchased from the Administrative Agent without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Pro Rata Share. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Pro Rata Share of all payments of principal and interest and all proceeds of Collateral (if any) received by the Administrative Agent in respect of such Protective Advance.

Section 2.03 Swing Line Loans.

(a) **Swing Line Loan**. Subject to the terms and conditions set forth herein, the Swing Line Lender, in reliance on the agreements of the Revolving Lenders set forth in this **Section 2.03**, agrees to make Swing Line Loans denominated in Dollars to the Borrower from time to time on any Business Day during the Revolving Commitment Period, in an aggregate principal amount not to exceed at any time outstanding the amount of the Swing Line Sublimit; ***provided*** that, after giving effect to any Swing Line Loan, (i) the Total Utilization of Revolving Commitments shall not exceed the Line Cap, (ii) the Total Utilization of Revolving Commitments of any Revolving Lender shall not exceed such Lender's Revolving Commitment and (iii) the aggregate principal amount outstanding of all Swing Line Loans shall not exceed the Swing Line Sublimit; ***provided***, ***further***, that the Swing Line Lender shall not be required to make a Swing Line Loan to refinance an outstanding Swing Line Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swing Line Loans. Immediately upon the making of a Swing Line Loan by the Swing Line Lender, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a participation in such Swing Line Loan in an amount equal to such Revolving Lender's Pro Rata Share of the amount of such Swing Line Loan.

(b) **Borrowing Mechanics for Swing Line Loans**. Each Swing Line Loan Borrowing shall be made upon the Borrower's irrevocable notice to the Swing Line Lender. Each such notice may be given by: (A) telephone, or (B) a Swing Line Loan Request; ***provided*** that any telephonic notice by the Borrower must be confirmed immediately by delivery to the Swing Line Lender and the Administrative Agent of a Swing Line Loan Request. Each such Swing Line Loan Request must be received by the Swing Line Lender and the Administrative Agent not later than 2:00 p.m. (New York City time) on the date of the requested Swing Line Loan Borrowing, and such notice shall specify (i) the amount to be borrowed, which shall be in a minimum principal amount of $100,000 or a whole multiple of $25,000 in excess thereof, and (ii) the date of such Swing Line Loan Borrowing (which shall be a Business Day). Promptly after receipt by the Swing Line Lender of such notice, the Swing Line Lender will confirm with the Administrative Agent that the Administrative Agent has also received such notice and, if not, the Swing Line Lender will notify the Administrative Agent of the contents thereof. Unless the Swing Line Lender has received notice from the Administrative Agent (including at the request of the Required Lenders) prior to 2:00 p.m. (New York City time) on such requested borrowing date (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first sentence of **Section 2.03(a)** or (B) that one or more of the applicable conditions set forth in **Section 4.02** is not then satisfied, then, subject to the terms and conditions set forth herein, the Swing Line Lender shall make each Swing Line Loan available to the Borrower, by wire transfer thereof in accordance with instructions provided to (and reasonably acceptable to) the Swing Line Lender, not later than 5:00 p.m. (New York City time) on the requested date of such Swing Line Loan (which instructions may include standing payment instructions, which may be updated from time to time by the Borrower, ***provided*** that, unless the Swing Line Lender shall otherwise agree, any such update shall not take effect until the Business Day immediately following the date on which such update is provided to the Swing Line Lender).

(c) **Refinancing of Swing Line Loans**.

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Lender make a Revolving Loan that is a Base Rate Loan in an amount equal to such Lender's Pro Rata Share of the amount of Swing Line Loans made by then Swing Line Lender then outstanding (the "***Refunded Swing Line Loans***"). Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance (including with respect to prior notice requirements) with the requirements of **Section 2.03(b)**, without regard to the minimum and multiples specified therein, but subject to the aggregate unused Revolving Commitments and the conditions set forth in **Section 4.02**. The Swing Line Lender shall furnish the Borrower with a copy of such Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Lender shall make an amount equal to its Pro Rata Share of the amount specified in such Committed Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. (New York City time) on the day specified in such Committed Loan Notice, whereupon, subject to **Section 2.03(c)(ii)**, each Revolving Lender that so makes funds available shall be deemed to have made a Revolving Loan that is a Base Rate Loan to the Borrower in such amount.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Loan Borrowing in accordance with **Section 2.03(c)(i)**, the request for Revolving Loans that are Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving Lenders fund its participation in the relevant Swing Line Loan and each Revolving Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to **Section 2.03(c)(i)** shall be deemed payment in respect of such participation. The Administrative Agent shall notify the Borrower on the last Business Day of each week of any participations in any Swing Line Loan funded during such week pursuant to this **clause (ii)**, and thereafter payments in respect of such Swing Line Loan (to the extent of such funded participations) shall be made to the Administrative Agent for the benefit of the Lenders and not to the Swing Line Lender.

(iii) If any Revolving Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Revolving Lender pursuant to the foregoing provisions of this **Section 2.03(c)** by the time specified in **Section 2.03(c)(i),** the Swing Line Lender (acting through the Administrative Agent) shall be entitled to recover from such Revolving Lender, on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate from time to time in effect and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, *plus* any reasonable administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Revolving Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Revolving

Loan Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted (through the Administrative Agent) to any Revolving Lender with respect to any amounts owing under this **clause (iii)** shall be conclusive absent manifest error.

(iv) Each Revolving Lender's obligation to make Revolving Loans or to purchase and fund participations in Swing Line Loans pursuant to this **Section 2.03(c)** shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; ***provided*** that each Revolving Lender's obligation to make Revolving Loans pursuant to this **Section 2.03(c)** is subject to the conditions set forth in **Section 4.02**; ***provided, further,*** that for the avoidance of doubt, the conditions set forth in **Section 4.02** shall not apply to the purchase or funding of participations pursuant to this **Section 2.03(c)**. No such funding of participations shall relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) **Repayment of Participations**.

(i) At any time after any Revolving Lender has purchased and funded a participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will promptly remit such Revolving Lender's Pro Rata Share of such payment to the Administrative Agent (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Lender's participation was funded) in like funds as received by the Swing Line Lender, and any such amounts received by the Administrative Agent will be remitted by the Administrative Agent to the Revolving Lenders that shall have funded their participations pursuant to **Section 2.03(c)(ii)** to the extent of their interests therein.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in **Section 11.06** (including pursuant to any settlement entered into by the Swing Line Lender in its reasonable discretion), each Revolving Lender shall pay to such Swing Line Lender its Pro Rata Share thereof on demand of the Administrative Agent, *plus* interest thereon from the date of such demand to the date such amount is returned at a rate per annum equal to the Federal Funds Rate from time to time in effect. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Revolving Lenders under this **clause (ii)** shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) **Interest for Account of Swing Line Lender**. The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans made by the Swing Line Lender. Until each Revolving Lender funds its Revolving Loan that is a Base Rate Loan or participation pursuant to this **Section 2.03** to refinance such Lender's Pro Rata Share of any Swing

Line Loan made by the Swing Line Lender, interest in respect of such Lender's share thereof shall be solely for the account of the Swing Line Lender.

(f) **Payments Directly to Swing Line Lender**. Except as otherwise expressly provided herein, the Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

Section 2.04 Issuance of Letters of Credit and Purchase of Participations Therein.

(a) **Letter of Credit Commitment**.

(i) Subject to the terms and conditions set forth herein, (A) each Issuing Bank agrees, in reliance upon the agreements of the Revolving Lenders set forth in this **Section 2.04**, (1) from time to time on any Business Day during the Revolving Commitment Period on or prior to the fifth Business Day prior to the Revolving Commitment Termination Date, to issue Letters of Credit for the account of the Borrower or a Restricted Subsidiary (***provided*** that any Letter of Credit issued for the benefit of any Restricted Subsidiary shall be issued for the account of the Borrower but such Letter of Credit shall indicate that it is being issued for the benefit of such Restricted Subsidiary) and to amend, renew or extend Letters of Credit previously issued by it, in accordance with **Section 2.04(b)** and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Lenders severally agree to participate in such Letters of Credit and any drawings thereunder; ***provided*** that the Issuing Banks shall not be obligated to make any ~~Letter of~~L/C Credit Extension if, as of the date of such ~~Letter of~~L/C Credit Extension, (1) the Total Utilization of Revolving Commitments would exceed the Line Cap, (2) the Total Utilization of Revolving Commitments of any Revolving Lender, would exceed such Lender's Revolving Commitment, (3) the Letter of Credit Usage would exceed the Letter of Credit Sublimit or (4) the Letter of Credit Usage with respect to Letters of Credit issued by such Issuing Bank would exceed the amount of such Issuing Bank's Letter of Credit ~~Percentage of the Letter of Credit Sublimit~~Commitment. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) An Issuing Bank shall not be under any obligation to issue any Letter of Credit if:

(a) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any Law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing

Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such Issuing Bank in good faith deems material to it (for which such Issuing Bank is not otherwise compensated hereunder);

(b) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally;

(c) except as otherwise agreed by the Administrative Agent and such Issuing Bank, such Letter of Credit is in an initial stated amount less than $10,000;

(d) such Letter of Credit is to be denominated in a currency other than Dollars or, if agreed by such Issuing Bank, an Alternative Currency;

(e) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; and

(f) any Revolving Lender is at such time a Defaulting Lender, unless such Issuing Bank has entered into arrangements, including reallocation of such Lender's Pro Rata Share of the outstanding Letter of Credit Obligations pursuant to **Section 2.19(a)(iii)** or the delivery of Cash Collateral, satisfactory to such Issuing Bank (in its sole discretion) with the Borrower or such Lender to eliminate such Issuing Bank's actual or potential Fronting Exposure (after giving effect to **Section 2.19(a)(iii)**) with respect to such Lender arising from either the Letter of Credit then proposed to be issued or such Letter of Credit and all other Letter of Credit Obligations as to which such Issuing Bank has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iii) No Issuing Bank shall be under any obligation to amend or extend any Letter of Credit if (A) such Issuing Bank would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment thereto.

(iv) Unless Cash Collateralized or backstopped pursuant to arrangements reasonably acceptable to the applicable Issuing Bank, each standby Letter of Credit shall expire at or prior to the close of business on the earlier of (A) the date twelve months after the date of issuance of such Letter of Credit (or, in the case of any Auto-Renewal Letter of Credit, twelve months after the then current expiration date of such Letter of Credit) and (B) the applicable Letter of Credit Sublimit Expiration Date (unless arrangements reasonably satisfactory to the Issuing Banks have been entered into).

(b) **Procedures for Issuance and Amendment of Letters of Credit; Auto Renewal Letters of Credit**.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the irrevocable request of the Borrower delivered to the applicable Issuing Bank (with a

copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the applicable Issuing Bank and the Administrative Agent not later than 2:00 p.m. (New York City time) at least five Business Days (or such shorter period as the applicable Issuing Bank and the Administrative Agent may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable Issuing Bank

(a) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day);

(b) the amount thereof;

(c) the expiry date thereof;

(d) the name and address of the beneficiary thereof;

(e) the documents to be presented by such beneficiary in case of any drawing thereunder;

(f) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder;

(g) the currency in which the requested Letter of Credit will be denominated (which must be Dollars or, if approved by such Issuing Bank, an Alternative Currency) and

(h) such other matters as the applicable Issuing Bank may reasonably request.

In the case of a request for an amendment of any outstanding Letter of Credit, the Letter of Credit Application shall specify in form and detail reasonably satisfactory to the applicable Issuing Bank

(1) the Letter of Credit to be amended;

(2) the proposed date of amendment thereof (which shall be a Business Day); and

(3) the nature of the proposed amendment.

Additionally, the Borrower shall furnish to the applicable Issuing Bank and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Letter of Credit Documents, as the applicable Issuing Bank or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable Issuing Bank will confirm with the Administrative Agent that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the applicable Issuing Bank will provide the Administrative Agent with a copy thereof. Upon receipt by the applicable Issuing Bank of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions set forth herein, such Issuing Bank shall, on the requested date, issue a Letter of Credit for the account of the Borrower or enter into the applicable amendment, as the case may be. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the applicable Issuing Bank a participation in such Letter of Credit in an amount equal to such Lender's Pro Rata Share of the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application for a standby Letter of Credit, the applicable Issuing Bank may, in its reasonable discretion, agree to issue a standby Letter of Credit that has automatic renewal provisions (each, an "***Auto-Renewal Letter of Credit***"); ***provided*** that any such Auto-Renewal Letter of Credit shall permit such Issuing Bank to prevent any such renewal at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "***Nonrenewal Notice Date***") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the applicable Issuing Bank, the Borrower shall not be required to make a specific request to such Issuing Bank for any such renewal. Once an Auto-Renewal Letter of Credit has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the applicable Issuing Bank to permit the renewal of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Sublimit Expiration Date; ***provided***, ***however***, that no Issuing Bank shall

(A) permit any such renewal if (1) such Issuing Bank has determined that it would not be permitted at such time to issue such Letter of Credit in its renewed form under the terms hereof (by reason of the provisions of **clause (ii)** or **(iii)** of **Section 2.04(a)** or otherwise) or (2) it has received written notice on or before the day that is thirty (30) days before the Nonrenewal Notice Date from the Administrative Agent that the Required Lenders have elected not to permit such renewal or

(B) be obligated to permit such renewal if it has received written notice on or before the day that is thirty (30) days before the Nonrenewal Notice Date from the Administrative Agent, any Revolving Lender or the Borrower that one or more of the applicable conditions set forth in **Section 4.02** is not then satisfied, and in each such case directing the applicable Issuing Bank not to permit such renewal.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the applicable Issuing Bank will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) **Drawings and Reimbursement; Funding of Participations**.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable Issuing Bank shall notify the Borrower and the Administrative Agent thereof, and such Issuing Bank shall, within a reasonable time following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. If an Issuing Bank notifies the Borrower of any payment by such Issuing Bank under a Letter of Credit, then the Borrower shall reimburse such Issuing Bank in an amount equal to the amount of such drawing not later than 3:00 p.m. (New York City time, in the case of drawings in Dollars, or London time, in the case of drawings in an Alternative Currency) on the next succeeding Business Day. If the Borrower fails to so reimburse such Issuing Bank by such time, such Issuing Bank shall promptly notify the Administrative Agent of such failure and the Administrative Agent shall promptly thereafter notify each Revolving Lender of such payment date, the amount of the unreimbursed drawing (expressed in the Dollar Amount thereof in the case of an Alternative Currency) (the "***Reimbursement Obligations***") and the amount of such Lender's Pro Rata Share thereof. In such event, (x) the Borrower shall be deemed to have requested a Revolving Loan Borrowing of Base Rate Loans to be disbursed on such date in an amount equal to such Reimbursement Obligation, without regard to the minimum and multiples specified in **Section 2.02(b)** for the principal amount of Base Rate Loans and (y) in the case of Reimbursement Obligations denominated in an Alternative Currency (but expressed in its Dollar Amount), the Borrower shall be deemed to have requested on behalf of the applicable Revolving Lender Revolving Loans that are Term Benchmark Loans denominated in Dollars, in each case, to be disbursed on such date in an amount equal to (A) the Dollar Amount of such Reimbursement Obligation, plus (B) in the case of any Reimbursement Obligation denominated in any Alternative Currency (but expressed in its Dollar Amount), an additional amount equal to the amount required to convert Dollars into the currency of the unreimbursed drawing, without regard to the minimum and multiples specified in **Section 2.03(b)** for the principal amount of Base Rate Loans, but subject to the Line Cap and the conditions set forth in **Section 4.02** (other than delivery of a Committed Loan Notice). Any notice given by an Issuing Bank or the Administrative Agent pursuant to this **clause (i)** shall be given in writing.

(ii) Each Revolving Lender (including each Revolving Lender acting as an Issuing Bank) shall upon any notice pursuant to **Section 2.04(c)(i)** make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the applicable Issuing Bank, in Dollars or the applicable Alternative Currency, at the Administrative Agent's Office in an amount equal to its Pro Rata Share of the relevant Reimbursement Obligation not later than 3:00 p.m. (New York City time) on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of **Section 2.04(c)(iii)**, each Revolving Lender that so makes funds available shall be deemed to have made a Revolving Loan that is (A) in the case of Letters of Credit denominated in Dollars, a Base Rate Loan and (B) in the case of Letters of Credit denominated in an Alternative Currency, a Term Benchmark Loan in such Alternative Currency with an Interest Period of one month, in each case to the Borrower in such amount *plus*, in the case of any Reimbursement Obligation denominated in any Alternative Currency (but expressed in its Dollar Amount), an additional amount equal to the amount

required to convert Dollars into the currency of the unreimbursed drawing. The Administrative Agent shall remit the funds so received to the applicable Issuing Bank in accordance with the instructions provided to the Administrative Agent by such Issuing Bank (which instructions may include standing payment instructions, which may be updated from time to time by such Issuing Bank, ***provided*** that, unless the Administrative Agent shall otherwise agree, any such update shall not take effect until the Business Day immediately following the date on which such update is provided to the Administrative Agent).

(iii) With respect to any Reimbursement Obligation that is not fully refinanced by a Revolving Loan Borrowing of Base Rate Loans for Letters of Credit denominated in Dollars or Term Benchmark Loans for Letters of Credit denominated in an Alternative Currency, as the case may be, because the conditions set forth in **Section 4.02** cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the applicable Issuing Bank a Letter of Credit Borrowing in the amount of the Reimbursement Obligation that is not so refinanced *plus*, in the case of any Reimbursement Obligation denominated in an Alternative Currency (but expressed in its Dollar Amount), an additional amount equal to the amount required to convert Dollars into the currency of the unreimbursed drawing, which Letter of Credit Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate then applicable to Revolving Loans that are Base Rate Loans. In such event, each Revolving Lender's payment to the Administrative Agent for the account of such Issuing Bank pursuant to **Section 2.04(c)(i)** shall be deemed payment in respect of its participation in such Letter of Credit Borrowing and shall constitute a Letter of Credit Advance from such Lender in satisfaction of its participation obligation under this Section.

(iv) Until each Revolving Lender funds its Revolving Loan or Letter of Credit Advance to reimburse the applicable Issuing Bank for any amount drawn under any Letter of Credit, interest in respect of such Lender's Pro Rata Share of such amount shall be solely for the account of such Issuing Bank.

(v) Each Revolving Lender's obligations to make Revolving Loans or Letter of Credit Advances to reimburse an Issuing Bank for amounts drawn under Letters of Credit, as contemplated by this **Section 2.04(c)**, shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against such Issuing Bank, the Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default; or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; ***provided*** that each Revolving Lender's obligation to make Revolving Loans pursuant to this paragraph (c) is subject to the conditions set forth in **Section 4.02**. No such funding of a participation in any Letter of Credit shall relieve or otherwise impair the obligation of the Borrower to reimburse an Issuing Bank for the amount of any payment made by such Issuing Bank under such Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Lender fails to make available to the Administrative Agent for the account of the applicable Issuing Bank any amount required to be paid by such

Lender pursuant to the foregoing provisions of this paragraph (c) by the time specified in **Section 2.04(c)(ii)**, then, without limiting the other provisions of this Agreement, such Issuing Bank shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Bank at a rate *per annum* equal to the greater of the Federal Funds Rate from time to time in effect and a rate determined by such Issuing Bank in accordance with banking industry rules on interbank compensation, *plus* any reasonable administrative, processing or similar fees customarily charged by such Issuing Bank in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Loan included in the relevant Borrowing or Letter of Credit Advance in respect of the relevant Letter of Credit Borrowing, as the case may be. A certificate of the applicable Issuing Bank submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this **clause (vi)** shall be conclusive absent manifest error.

(d) **Repayment of Participations**.

(i) If, at any time after the applicable Issuing Bank has made payment in respect of any drawing under any Letter of Credit issued by it and has received from any Revolving Lender its Letter of Credit Advance in respect of such payment in accordance with **Section 2.04(c)**, if the Administrative Agent receives for the account of such Issuing Bank any payment in respect of the related Reimbursement Obligation or, in the case of any Reimbursement Obligation denominated in any Alternative Currency (but expressed in its Dollar Amount), an additional amount equal to the amount required to convert Dollars into the currency of the unreimbursed drawing or, in each case, interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Pro Rata Share thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's Letter of Credit Advance was outstanding) in like funds as received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the applicable Issuing Bank pursuant to **Section 2.04(c)(i)** is required to be returned under any of the circumstances described in **Section 11.06** (including pursuant to any settlement entered into by such Issuing Bank in its discretion), each Revolving Lender shall pay to the Administrative Agent for the account of such Issuing Bank its Pro Rata Share thereof on demand of the Administrative Agent, *plus* interest thereon from the date of such demand to the date such amount is returned by such Lender at a rate *per annum* equal to the Federal Funds Rate from time to time in effect. The obligations of the Revolving Lenders under this **clause (ii)** shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) **Obligations Absolute**. The obligation of the Borrower to reimburse the Issuing Banks for each drawing under each Letter of Credit and to repay each Letter of Credit Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit or any term or provision thereof, any Loan Document, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Issuing Banks or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by an Issuing Bank under such Letter of Credit against presentation of documents that do not comply strictly with the terms of such Letter of Credit; or any payment made by an Issuing Bank under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor in possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including arising in connection with any case or proceeding under any Debtor Relief Law;

(v) any exchange, release or non-perfection of any collateral, or any release or amendment or waiver of or consent to departure from any guarantee, for all or any of the Obligations of the Borrower in respect of such Letter of Credit; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will promptly notify the applicable Issuing Bank. The Borrower shall be conclusively deemed to have waived any such claim against any Issuing Bank and its correspondents unless such notice is given as aforesaid.

(f) **Role of Issuing Banks**. Each Revolving Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, the Issuing Banks shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by such Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any document or the authority of the Person executing or delivering any document. None of any Issuing Bank, any Agent Affiliate nor any of the respective correspondents, participants or assignees of any Issuing Bank shall be liable to any Revolving Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the requisite Revolving Lenders; (ii)

any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Letter of Credit Application. The Borrower hereby assumes all risks of the acts of omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; ***provided*** that this assumption is not intended to, and shall not, preclude the Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Issuing Banks, any Agent Affiliate nor any of the respective correspondents, participants or assignees of the Issuing Banks shall be liable or responsible for any of the matters described in **Section 2.04(e)**; ***provided*** that, notwithstanding anything in such clauses to the contrary, the Borrower may have a claim against an Issuing Bank, and an Issuing Bank may be liable to the Borrower, to the extent, but only to the extent, of any direct (as opposed to indirect, special, punitive, consequential or exemplary) damages suffered by the Borrower which a court of competent jurisdiction determines in a final non-appealable judgment were caused by such Issuing Bank's gross negligence or willful misconduct or such Issuing Bank's willful or grossly negligent failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a document(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the applicable 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, and the Issuing Banks shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The Issuing Banks may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication (SWIFT) message or overnight courier, or any other commercially reasonable means of communication with a beneficiary.

(g) **Applicability of ISP**. Unless otherwise expressly agreed by the applicable Issuing Bank and the Borrower when a standby Letter of Credit is issued, the rules of the "***International Standby Practices 1998***" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to such standby Letter of Credit.

(h) **Conflict with Letter of Credit Application**. In the event of any conflict between the terms of this Agreement and the terms of any Letter of Credit Application, the terms hereof shall control.

(i) **Reporting**. Each day (or at such other intervals as the Administrative Agent and the applicable Issuing Bank shall agree), the applicable Issuing Bank shall provide to the Administrative Agent a schedule of the Letters of Credit issued by it, in form and substance reasonably satisfactory to the Administrative Agent, showing the date of issuance of each Letter of Credit, the account party, the original face amount (if any), the expiration date, and the reference number of any Letter of Credit outstanding at any time during such month, and showing the aggregate amount (if any) payable by the Borrower to such Issuing Bank during such month.

(j) **Existing Letters of Credit**. Subject to the terms and conditions hereof, (i) Letters of Credit may be issued on the Closing Date to backstop or replace letters of credit outstanding on

the Closing Date or (ii) all letters of credit issued for the account of the Borrower or any Restricted Subsidiary and outstanding on the Closing Date and issued by an entity that is an Issuing Bank under this Agreement, which, by its execution of this Agreement, has agreed to act as an Issuing Bank hereunder and listed on **Schedule 2.04** (each, an "***Existing Letter of Credit***") shall automatically be continued hereunder on the Closing Date by such Issuing Bank, and as of the Closing Date the Lenders shall acquire a participation therein as if such Existing Letter of Credit were issued hereunder, and each such Existing Letter of Credit shall be deemed a Letter of Credit for all purposes of this Agreement as of the Closing Date without any further action by the Borrower.

(k) **Resignation and Removal of an Issuing Bank**. Any Issuing Bank may resign as an Issuing Bank upon ~~sixty~~thirty (~~60~~30) days' prior written notice to the Administrative Agent, the Lenders and the Borrower. Any Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the Issuing Bank being replaced (***provided*** that no consent will be required if the Issuing Bank being replaced has no Letters of Credit or Reimbursement Obligations with respect thereto outstanding) and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of an Issuing Bank. At the time any such replacement or resignation shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank. From and after the effective date of any such replacement or resignation, (i) any successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "***Issuing Bank***" shall 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 shall require. After the replacement or resignation of an Issuing Bank hereunder, the replaced or resigning Issuing Bank shall remain a party hereto to the extent that Letters of Credit issued by it remain outstanding and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement or resignation, but shall not be required to issue additional Letters of Credit. Any Second Amendment Non-Extended Lender shall cease to be an Issuing Bank as per Section 5.8(a) of Second Amendment on the Maturity Date for the Second Amendment Non-Extended Revolving Facility.

(l) **Cash Collateral Account**. At any time and from time to time (i) after the occurrence and during the continuance of an Event of Default, the Administrative Agent, at the direction or with the consent of the Required Lenders, may require the Borrower, to deliver to the Administrative Agent such amount of cash as is equal to 103% (or if not denominated in Dollars, 110%) of the aggregate Stated Amount of all Letters of Credit at any time outstanding (whether or not any beneficiary under any Letter of Credit shall have drawn or be entitled at such time to draw thereunder) and (ii) to the extent any amount of a required prepayment under **Section 2.07(b)(i)** remains after prepayment of all outstanding Loans and Letter of Credit Obligations and termination of the Commitments, as contemplated by **Section 2.07(d)**, the Administrative Agent will retain such amount as may then be required to be retained, such amounts in each case under **clauses (i)** and **(ii)** above to be held by the Administrative Agent in a Cash Collateral Account. The Borrower hereby grants (or, if registration thereof is required in any applicable jurisdiction, shall grant) to the Administrative Agent, for the benefit of the Issuing Banks and the Lenders, a Lien upon and security interest in the Cash Collateral Account and all amounts held therein from time to time as security for Letter of Credit Usage, and for application to the Borrower's Letter of Credit

Obligations as and when the same shall arise. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest on the investment of such amounts in Cash Equivalents, which investments shall be made at the direction of the Borrower (unless an Event of Default shall have occurred and be continuing, in which case the determination as to investments shall be made at the option and in the discretion of the Administrative Agent), amounts in the Cash Collateral Account shall not bear interest. Interest and profits, if any, on such investments shall accumulate in such account. In the event of a drawing, and subsequent payment by the applicable Issuing Bank, under any Letter of Credit at any time during which any amounts are held in the Cash Collateral Account, the Administrative Agent will deliver to such Issuing Bank an amount equal to the Reimbursement Obligation created as a result of such payment plus any additional amount payable hereunder in respect of any Reimbursement Obligation denominated in an Alternative Currency (or, if the amounts so held are less than such Reimbursement Obligation, all of such amounts) to reimburse such Issuing Bank therefor. Any amounts remaining in the Cash Collateral Account after the expiration of all Letters of Credit and reimbursement in full of each Issuing Bank for all of its obligations thereunder shall be held by the Administrative Agent, for the benefit of the Borrower, to be applied against the Obligations in such order and manner as the Administrative Agent may direct. If the Borrower is required to provide Cash Collateral pursuant to this **Section 2.04(l)**, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower on demand, ***provided*** that after giving effect to such return (A) the sum of (1) the aggregate principal dollar amount of all Revolving Loans outstanding at such time and (2) the aggregate Letter of Credit Usage at such time would not exceed the aggregate Revolving Commitments at such time and (B) no Event of Default shall have occurred and be continuing at such time. If the Borrower is required to provide Cash Collateral pursuant to **Section 2.07(b)**, as contemplated by **Section 2.07(d)**, such amount shall be returned to the Borrower on demand; ***provided*** that, after giving effect to such return, all outstanding Letters of Credit shall have expired and each Issuing Bank shall have been reimbursed in full for all of its obligations thereunder. If the Borrower is required to provide Cash Collateral as a result of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(m) **Addition of an Issuing Bank**. One or more Revolving Lenders (other than a Defaulting Lender) selected by the Borrower that agrees to act in such capacity and reasonably acceptable to the Administrative Agent may become an additional Issuing Bank hereunder pursuant to a written agreement in form and substance reasonably satisfactory to the Administrative Agent among the Borrower, the Administrative Agent and such Revolving Lender. The Administrative Agent shall notify the Revolving Lenders of any such additional Issuing Bank.

(n) Notwithstanding anything to the contrary herein, on the Second Amendment Effective Date, the participations in any outstanding Letters of Credit shall be reallocated so that after giving effect thereto, the Second Amendment Non-Extended Revolving Lenders and the Second Amendment Extended Revolving Lenders shall share ratably in the Letter of Credit Commitment in accordance with their respective pro rata share of the aggregate Revolving Commitments (including both the Second Amendment Non-Extended Revolving Commitments and the Second Amendment Extended Revolving Commitments from time to time in effect). Thereafter, until the Maturity Date with respect to the Second Amendment Non-Extended Revolving Facility, the participations in any new Letters of Credit shall be allocated ratably in

accordance with the Revolving Lenders' respective pro rata share of the aggregate Revolving Commitments (including both the Second Amendment Non-Extended Revolving Commitments and the Second Amendment Extended Revolving Commitments). On the Maturity Date with respect to the Second Amendment Non-Extended Revolving Facility, the participations in the outstanding Letters of Credit of the Second Amendment Non-Extended Revolving Lenders shall be reallocated to the Second Amendment Extended Revolving Lenders ratably in accordance with their pro rata share of the Second Amendment Extended Revolving Commitments but in any case, only to the extent (i) the sum of the participations in the outstanding Letters of Credit of the Second Amendment Non-Extended Revolving Lenders and Second Amendment Extended Revolving Lenders does not exceed the lesser of (x) the Letter of Credit Commitment and (y) the total unutilized Second Amendment Extended Revolving Commitments at such time and (ii) the conditions set forth in **Section 4.02** are satisfied as of such date. If the reallocation described in this clause (n) cannot, or can only partially, be effected as a result of the limitations set forth herein, the Borrower shall Cash Collateralize any such Letter of Credit in accordance with **Section 2.04**.

(o) **Reduction of Wells Fargo Letter of Credit Commitment**. In accordance with Section 5.8(b) of the Second Amendment, within 180 days following the Second Amendment Effective Date, the Borrower shall have replaced or backstopped Letters of Credit issued by Wells Fargo Bank, National Association (or any of its Affiliates and branches (or other financial institution) designated by it) in an aggregate amount such that the aggregate Letter of Credit Commitment of such Issuing Bank shall be as set forth in Schedule 2.01(a).

Section 2.05 Conversion/Continuation.

(a) Each conversion of Loans from one Type to another, and each continuation of Term Benchmark Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may only be given in writing; ***provided*** that Revolving Loans denominated in an Alternative Currency may not be converted into Base Rate Loans. Each such notice must be received by the Administrative Agent not later than 1:00 p.m. (New York City time, in the case of Loans denominated in Dollars, or London time, in the case of Loans denominated in an Alternative Currency) on the requested date of any conversion of Term Benchmark Loans to Base Rate Loans and not later than 1:00 p.m. (New York City time) three Business Days prior to the requested date of continuation of any Term Benchmark Loans or any conversion of Base Rate Loans to Term Benchmark Loans. Each notice by the Borrower pursuant to this **Section 2.05(a)** must be delivered to the Administrative Agent in the form of a Conversion/Continuation Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each conversion to or continuation of (x) Term Benchmark Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof, if denominated in Dollars, (y) [reserved] or (z) a Dollar Amount of $500,000 or a whole multiple of a Dollar Amount of $100,000 in excess thereof if denominated in an Alternative Currency. Each conversion to Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Conversion/Continuation Notice shall specify (i) whether the Borrower is requesting a conversion of Loans from one Type to the other, or a continuation of Term Benchmark Loans, (ii) the requested date of the conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be converted or continued, (iv) the Class of Loans to be converted or continued, (v) the Type of Loans to which such existing Loans are to be converted, if applicable, and (vi) if applicable, the duration of the Interest Period with respect thereto. If (x)

with respect to any Term Benchmark Loans denominated in Dollars, the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be converted to Base Rate Loans, and (y) with respect to any Term Benchmark Loans denominated in any Alternative Currency, the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable tranche of Revolving Loans shall be converted to a Term Benchmark Loan with an Interest Period of one month. Any such automatic conversion or continuation pursuant to the immediately preceding sentence shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Term Benchmark Loans. If the Borrower requests a conversion to, or continuation of Term Benchmark Loans in any such Conversion/Continuation Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. No Loan may be converted into or continued as a Loan denominated in a different currency, but instead must be prepaid in the original currency of such Loan and reborrowed in the other currency.

(b) Following receipt of a Conversion/Continuation Notice, the Administrative Agent shall promptly notify each applicable Lender of its Pro Rata Share of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation of Loans described in **Section 2.05(a)**.

(c) Except as otherwise provided herein, a Term Benchmark Loan may be continued or converted only on the last day of an Interest Period for such Term Benchmark Loan. Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent or the Required Lenders may require by notice to the Borrower that no Loans denominated in Dollars may be converted to or continued as Term Benchmark Loans. This Section shall not apply to Swing Line Loans or Protective Advances, which may not be converted or continued.

Section 2.06 Availability. Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's Pro Rata Share of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share available to the Administrative Agent on the date of such Borrowing, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, each of such Lender and the Borrower severally agrees to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent at (a) in the case of the Borrower, the interest rate applicable at the time to the applicable Loans comprising such Borrowing and (b) in the case of such Lender, the Overnight Rate *plus* any administrative, processing, or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this **Section 2.06** shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall

constitute such Lender's applicable Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this **subsection (b)** shall be conclusive, absent manifest error.

Section 2.07 Prepayments.

(a) **Optional**.

(i) The Borrower may, upon notice to the Administrative Agent in the form of a Prepayment Notice, at any time or from time to time, voluntarily prepay the Loans in whole or in part without premium or penalty; ***provided*** that:

(a) such Prepayment Notice must be received by the Administrative Agent (1) not later than 2:00 p.m. (New York City time, in the case of Loans denominated in Dollars, or London time, in the case of Loans denominated in an Alternative Currency) three Business Days prior to any date of prepayment of Term Benchmark Loans, (2) not later than 1:00 p.m. (New York City time) one Business Day prior to any date of prepayment of Base Rate Loans and (3) not later than 5:00 p.m. (New York City time) one Business Day prior to any date of prepayment of Swing Line Loans or Protective Advances;

(b) any prepayment of Term Benchmark Loans (x) denominated in Dollars shall be in a principal amount of $1,000,000 or a whole multiple of $100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding, (y) [reserved] and (z) denominated in an Alternative Currency, shall be in a principal Dollar Amount of $1,000,000 or a whole multiple of the Dollar Amount of $100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding; and

(c) any prepayment of Base Rate Loans shall be in a principal amount of $1,000,000 or a whole multiple of $100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding (it being understood that Base Rate Loans shall be denominated in Dollars only).

Each Prepayment Notice shall specify the date and amount of such prepayment and the Class(es) (***provided*** that all prepayments shall be made on a pro rata basis between the Second Amendment Extended Revolving Loans and the Second Amendment Non-Extended Revolving until the repayment of the Second Amendment Non-Extended Revolving Loans on the relevant Maturity Date) and Type(s) of Loans to be prepaid, and the payment amount specified in each Prepayment Notice shall be due and payable on the date specified therein. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of a Prepayment Notice and of the amount of such Lender's Pro Rata Share of such prepayment; ***provided***, "non-consenting" Lenders may be repaid on a non-pro rata basis in connection with an Extension Offer and Disqualified Lenders may be repaid on a non-pro rata basis in accordance with **Section 11.27**. Any prepayment of Loans

shall be subject to **Section 2.07(c)**. Revolving Loans, Incremental Revolving Loans and Swing Line Loans prepaid pursuant to this **subsection (a)** may be reborrowed, subject to the terms and conditions of this Agreement.

(ii) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind, in whole or in part, any notice of prepayment under **Section 2.07(a)(i)**, if such prepayment would have resulted from a refinancing of all or a portion of the applicable Facility which refinancing shall not be consummated or shall otherwise be delayed.

(b) **Mandatory**.

(i) If at any time the Total Utilization of Revolving Commitments exceeds the Line Cap, then within one Business Day thereof, the Borrower shall prepay

first, the Swing Line Loans and

second, the Revolving Loans to the extent necessary so that the Total Utilization of Revolving Commitments shall no longer exceed the Line Cap;

provided that, to the extent such excess amount is greater than the aggregate principal dollar amount of Swing Line Loans and Revolving Loans outstanding immediately prior to the application of such prepayment, the amount so prepaid shall be retained by the Administrative Agent and held in the Cash Collateral Account as cover for Letter of Credit Usage, as more particularly described in Section 2.04(l), and thereupon such cash shall be deemed to reduce the aggregate Letter of Credit Usage by an equivalent amount; ***provided***, ***further***, that

(1) if the circumstances described in this **Section 2.07(b)** are the result of the imposition of or increase in a Reserve, the Borrower shall not be required to make the initial prepayment or deposit until the fifth Business Day following the date on which Administrative Agent notifies the Borrower of such imposition or increase and

(2) the Letter of Credit Usage may not be reduced to less than zero.

(ii) At all times after the occurrence and during the continuance of a Cash Dominion Period and notification thereof by the Administrative Agent to the Borrower (subject to the provisions of **Sections 2.19**, **9.03** and to the terms of the Security Agreement), on each Business Day, at or before 11:00 a.m., New York City time, the Administrative Agent shall apply all immediately available funds credited to the Administrative Agent Account or otherwise received by Administrative Agent for application to the Obligations or Secured Obligations (in the case of **clause sixth** and **clause eighth** below),

first, to payment of any fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under

Section 11.04 and amounts payable under **Article III**) payable to the Administrative Agent and Collateral Agent in their capacity as such;

second, to payment in full of Unfunded Advances/Participations (the amounts so applied to be distributed between or among, as applicable, the Administrative Agent and the Issuing Banks pro rata in accordance with the amounts of Unfunded Advances/Participations owed to them on the date of any such distribution);

third, to payment of fees, indemnities and other amounts (other than principal and interest and Letter of Credit fees) payable to the Lenders and the Issuing Banks (including Attorney Costs payable under **Section 11.04** and amounts payable under **Article III**), ratably among them in proportion to the amounts described in this **clause *third*** payable to them;

fourth, to payment of accrued and unpaid Letter of Credit fees and interest on the Loans and Letter of Credit Usage, ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this **clause *fourth*** held by them;

fifth, to pay the principal of Protective Advances;

sixth, ratably,

(a) to payment of unpaid principal of the Loans (other than Protective Advances) and the Letter of Credit Usage,

(b) to the extent a Bank Products Reserve has been established therefor by the Administrative Agent in accordance with the terms hereof in respect of a Hedge Bank, to pay the unpaid Reserved Secured Hedge Obligations of such Hedge Bank, including the cash collateralization of such Reserved Secured Hedge Obligations,

(c) to the extent a Bank Products Reserve has been established therefor by the Administrative Agent in accordance the terms hereof, to pay the unpaid Reserved Secured Cash Management Obligations,

(d) to Cash Collateralize Letters of Credit (to the extent not otherwise Cash Collateralized pursuant to the terms of this Agreement) (in an amount equal to 103% (or if not denominated in Dollars, 110%) of the maximum face amount of all outstanding Letters of Credit) and to further permanently reduce the Revolving Commitments by the amount of such Cash Collateralization, ratably among the Secured Parties in proportion to the respective amounts described in this **clause *sixth*** held by them; ***provided*** that

(i) any such amounts applied pursuant to the foregoing **subclause (d)** shall be paid to the Administrative Agent for the

ratable account of the Issuing Banks to Cash Collateralize such Letters of Credit,

(ii) subject to **Section 2.04** and **Section 2.19**, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to this **clause *sixth*** shall be applied to satisfy drawings under such Letters of Credit as they occur and

(iii) upon the expiration of any Letter of Credit, the pro rata share of Cash Collateral attributable to such expired Letter of Credit shall be applied by the Administrative Agent in accordance with the priority of payments set forth in this **Section 2.07(b)(ii)**;

seventh, ratably to pay other Obligations then due (other than Obligations in respect of Secured Cash Management Services and Secured Hedge Agreements), until paid in full;

eighth, ratably to pay other Obligations in respect of the Secured Cash Management Services and Secured Hedge Agreements, until paid in full;

ninth, to the payment of all other Obligations of the Loan Parties (other than contingent indemnification obligations for which no claim has yet been made) that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

last, as the Borrower may direct.

(c) **Interest, Funding Losses, Etc**. All prepayments under this **Section 2.07** shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a Term Benchmark Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such Term Benchmark Loan pursuant to **Section 3.05**.

(d) **Application of Prepayment Amounts**. In the event that the obligation of the Borrower to prepay the Loans shall arise pursuant to **subsection (b)(i)** above,

(i) ***first***, the Borrower shall prepay the outstanding principal amount of the Swing Line Loans, without a corresponding permanent reduction to the Revolving Commitments,

(ii) ***second***, to the extent of any excess remaining after the prepayment as provided in **clause (i)** above, the Borrower shall pay any outstanding Reimbursement Obligations in respect of Letters of Credit,

(iii) ***third***, to the extent of any excess remaining after application as provided in **clauses (i)** and **(ii)** above, the Borrower shall prepay the outstanding principal amount of

the Revolving Loans, without a corresponding permanent reduction to the Revolving Commitments, and

(iv) ***fourth***, to the extent of any excess remaining after application as provided in **clauses (i)**, **(ii)** and **(iii)** above, thereafter the Borrower shall Cash Collateralize the Letter of Credit Usage pursuant to **Section 2.04(l)**.

Each payment or prepayment pursuant to the provisions of **Section 2.07(b)** shall be applied ratably among the Lenders of each Class holding the Loans being prepaid (***provided*** that all payments and prepayments shall be made on a pro rata basis between the Second Amendment Extended Revolving Loans and the Second Amendment Non-Extended Revolving until the repayment of the Second Amendment Non-Extended Revolving Loans on the relevant Maturity Date), in proportion to the principal amount held by each, and shall be applied as among the Revolving Loans being prepaid,

(A) ***first***, to prepay all Base Rate Loans and

(B) ***second***, to the extent of any excess remaining after application as provided in **clause (A)** above, to prepay all Term Benchmark Loans (and as among Term Benchmark Loans,

(1) first to prepay those Term Benchmark Loans, if any, having Interest Periods ending on the date of such prepayment, and

(2) thereafter, to the extent of any excess remaining after application as provided in **clause (1)** above, to prepay any Term Benchmark Loans in the order of the expiration dates of the Interest Periods applicable thereto).

Section 2.08 Termination or Reduction of Commitments.

(a) **Optional**. The Borrower may, upon written notice to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class, in each case without premium or penalty; ***provided*** that

(i) any such notice shall be received by the Administrative Agent one Business Day prior to the date of termination or reduction,

(ii) any such partial reduction shall be in an aggregate amount of $1,000,000 or any whole multiple of $1,000,000 in excess thereof or, if less, the entire amount thereof and

(iii) the Borrower shall not terminate or reduce

(a) the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with **Section 2.07**, the Total Utilization of Revolving Commitments would exceed the Line Cap,

(b) the Letter of Credit Sublimit if, after giving effect thereto,

(1) the Letter of Credit Usage not fully Cash Collateralized hereunder at 103% (or if not denominated in Dollars, 110%) of the maximum face amount of any such Letters of Credit would exceed the Letter of Credit Sublimit or

(2) the Letter of Credit Usage with respect to Letters of Credit issued by an applicable Issuing Bank not fully Cash Collateralized hereunder at 103% (or if not denominated Dollars, 110%) of the maximum face amount of any such Letters of Credit would exceed the amount of such Issuing Bank's Letter of Credit ~~Percentage~~Commitment of the Letter of Credit Sublimit ~~or~~

(c) the Swing Line Sublimit, if after giving effect to any concurrent payment of Swing Line Loans in accordance with **Section 2.07**, the Total Utilization of Revolving Commitments with respect to Swing Line Loans would exceed the Swing Line Sublimit~~.~~ or

(d) in no event shall any termination or reduction of the total Second Amendment Non-Extended Commitments be on less than a pro rata basis (but may be on a greater than pro rata basis) with any termination or reduction of the total Second Amendment Extended Commitments.

Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of termination of the Commitments if such termination would have resulted from a refinancing of all or a portion of the applicable Facility, which refinancing shall not be consummated or otherwise shall be delayed.

(b) **Mandatory**.

(i) the Revolving Commitments shall terminate on the applicable Revolving Commitment Termination Date.

(ii) If after giving effect to any reduction or termination of Revolving Commitments under this **Section 2.08**, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Revolving Commitments at such time, the Letter of Credit Sublimit or the Swing Line Sublimit, as the case may be, shall be automatically reduced by the amount of such excess.

(c) **Effect of Termination or Reduction**. Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Pro Rata Share of Commitments of such Class.

Section 2.09 Repayment of Loans.

(a) The Borrower shall repay to the Administrative Agent (i) for the ratable account of the Appropriate Lenders the outstanding principal amount of Revolving Loans on the applicable Revolving Commitment Termination Date and (ii) the then unpaid amount of each Protective

Advance on the earliest of (A) the Revolving Commitment Termination Date or, if applicable, the Latest Maturity Date, and (B) 45 days (or such longer period as may be consented to by the Administrative Agent) after such Protective Advance is made; ***provided*** that on each date that a Revolving Loan is made while any Protective Advance is outstanding, the Borrower shall repay all Protective Advances with the proceeds of such Revolving Loan.

(b) The Borrower shall repay to the Swing Line Lender (or, to the extent required by **Section 2.03(c)**, to the Administrative Agent for the account of the Revolving Lenders) each Swing Line Loan made by the Swing Line Lender on the earlier to occur of (i) the date seven (7) Business Days after such Swing Line Loan is made and (ii) the applicable Maturity Date of the Revolving Loans; ***provided***, on each date that a Revolving Loan is made, the Borrower shall repay all Swing Line Loans then outstanding. At any time there shall exist a Defaulting Lender that is a Revolving Lender, immediately upon the request of the Swing Line Lender, the Borrower shall repay the outstanding Swing Line Loans made by the Swing Line Lender to the Borrower in an amount sufficient to eliminate any Fronting Exposure in respect of the Swing Line Loans.

Section 2.10 Interest.

(a) Subject to the provisions of **Section 2.10(b)**, (i) each Term Benchmark Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate *per annum* equal to the applicable Term Benchmark for such Interest Period *plus* the Applicable Rate, (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate *per annum* equal to the Base Rate *plus* the Applicable Rate, and (iii) each Swing Line Loan and each Protective Advance shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate *per annum* equal to the Base Rate *plus* the Applicable Rate.

(b) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate *per annum* at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(c) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code or any other Debtor Relief Law, automatically and without further action by the Administrative Agent or any Lender) such amount shall thereafter bear interest at a fluctuating interest rate *per annum* at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(d) Accrued and unpaid interest on the principal amount of all outstanding past due Obligations (including interest on past due interest) shall be due and payable upon demand (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code or any other Debtor Relief Law, automatically and without further action by the Administrative Agent or any Lender).

(e) Interest on each Loan shall be due and payable (i) with respect to Base Rate Loans, in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein and (ii) with respect to Term Benchmark Loans, on each Interest Payment Date, and, in any event, every three months. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any case or proceeding under the Bankruptcy Code or any other Debtor Relief Law.

(f) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for any Term Benchmark Loans upon determination of such interest rate. The determination of Term Benchmark by the Administrative Agent shall be conclusive in the absence of manifest error. At any time when Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the "prime rate" used in determining the Base Rate promptly following the public announcement of such change.

(g) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent; ***provided*** that after the establishment of any new Class of Loans pursuant to an Extension, the number of Interest Periods otherwise permitted by this **Section 2.10(g)** shall increase by three Interest Periods for each applicable Class so established.

Section 2.11 Fees.

(a) The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing (including pursuant to any fee letter executed with the Agents in connection with the Facilities) in the amounts and at the times so specified. Such fees shall be fully earned when due and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

(b) The Borrower agrees to pay to Lenders having Revolving Exposure:

(i) commitment fees for the period from and including the Closing Date to and including the applicable Revolving Commitment Termination Date equal to (A) the daily difference between (1) the Revolving Commitments and (2) the sum of (I) the aggregate principal amount of all outstanding Revolving Loans *plus* (II) the Letter of Credit Usage, *times* (B) the Applicable Commitment Fee; and

(ii) letter of credit fees with respect to all Letters of Credit (other than trade Letters of Credit) (the "***L/C Fee***") equal to the (A) Applicable Rate for Revolving Loans that are Term Benchmark Loans (or, with respect to trade Letters of Credit, 50% of the Applicable Rate for Revolving Loans that are Term Benchmark Loans), *times* (B) the maximum amount available to be drawn under all Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination and whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit).

All fees referred to in this **Section 2.11(b)** shall be paid to the Administrative Agent at the Administrative Agent's Office and upon receipt, the Administrative Agent shall promptly distribute to each Lender its Pro Rata Share thereof. In addition, for purposes of calculating the commitment fees referred to in **clause (b)(i)** only, no portion of the Revolving Commitments shall be deemed utilized as a result of outstanding Swing Line Loans.

(c) The Borrower agrees to pay directly to the applicable Issuing Bank, for its own account, the following fees:

(i) a fronting fee to be agreed by the Borrower and the applicable Issuing Bank (not to exceed 0.125% *per annum*) *times* the maximum Dollar Amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases periodically pursuant to the terms of such Letter of Credit) determined as of the close of business on any date of determination; and

(ii) such documentary and processing charges for any issuance, amendment, transfer or payment of a Letter of Credit as are in accordance with such Issuing Bank's standard schedule for such charges and as in effect at the time of such issuance, amendment, transfer or payment, as the case may be, which fees, costs and charges shall be payable to such Issuing Bank within three Business Days after its demand therefor and are nonrefundable.

Each payment of fees required above under this **clause (c)** on any Letters of Credit, whether denominated in Dollars or an Alternative Currency, shall be made in Dollars.

(d) All fees referred to in **Sections 2.11(b)** and **2.11(c)(i)** shall be payable quarterly in arrears on the first day following the last day of each calendar quarter of each year during the Revolving Commitment Period, commencing with the first day following the first full calendar quarter ending after the Closing Date, and on the applicable Revolving Commitment Termination Date; ***provided*** that any such fees accruing after the applicable Revolving Commitment Termination Date shall be payable on demand.

(e) The Borrower agrees to pay to the Administrative Agent for its own account the fees payable in the amounts and at the times separately agreed upon.

Section 2.12 Computation of Interest and Fees. All computations of interest for Base Rate Loans calculated by reference to the "prime rate" or Federal Funds Rate shall be made on the basis of a year of 365 days or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; ***provided*** that any Loan that is repaid on the same day on which it is made shall, subject to **Section 2.10(a)**, bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.13 Evidence of Indebtedness.

(a) The Borrowings made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c) or Proposed Treasury Regulation Section 1.163-5(b) (or, in each case, any amended or successor version), as non-fiduciary agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Borrowings made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the entries in the Register, the entries in the Register shall control in the absence of manifest error.

(b) Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence the relevant Class of such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(c) Entries made in good faith by the Administrative Agent in the Register pursuant to **Section 2.13(a)**, and by each Lender in its account or accounts pursuant to **Section 2.13(a)**, shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; provided that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

Section 2.14 Payments Generally.

(a) All payments to be made by the Borrower shall be made on the date when due, in immediately available funds without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office for payment and in Same Day Funds not later than 1:00 p.m. (New York City time, in the case of any payment in Dollars, or London time, in the case of any payment in an Alternative Currency) on the date specified herein. If, for any reason, the Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency, the Borrower shall make such payment in Dollars in the Dollar Amount of the Alternative Currency payment amount. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office; ***provided*** that the proceeds of any borrowing of Revolving Loans to finance the reimbursement of a drawn Letter of Credit as provided in **Section**

2.04(c) shall be remitted by the Administrative Agent to the applicable Issuing Bank. All payments received by the Administrative Agent after 1:00 p.m. (New York City time, in the case of any payment in Dollars, or London time, in the case of any payment in an Alternative Currency) shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. At all times during which a Cash Dominion Period exists, solely for purposes of determining the Total Utilization of Revolving Commitments, checks and cash or other immediately available funds from collections of items of payment and proceeds of any Collateral shall be applied in whole or in part against the Obligations, on the day of receipt, subject to actual collection.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(c) Unless the Borrower has notified the Administrative Agent, prior to the date any payment is required to be made by it to the Administrative Agent hereunder for the account of any Lender or any Issuing Bank, as applicable, that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to such Lender or such Issuing Bank. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then such Lender or such Issuing Bank, as applicable, shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender or such Issuing Bank in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender or such Issuing Bank, as applicable, to the date such amount is repaid to the Administrative Agent in Same Day Funds at the applicable Overnight Rate from time to time in effect. A notice of the Administrative Agent to any Lender with respect to any amount owing under this **subsection (c)** shall be conclusive, absent manifest error.

(d) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this **Article II**, and such funds are not made available to the Borrower by the Administrative Agent because the applicable conditions to the Borrowing set forth in **Article IV** are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(e) The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit, Swing Line Loans and Protective Advances and to make payments pursuant to **Section 10.07** are several and not joint. The failure of any Lender to make any Loan on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

(f) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(g) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in **Section 9.03**. If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender's Pro Rata Share of such of the outstanding Loans or other Obligations then owing to such Lender. Notwithstanding anything to the contrary, to the extent the Administrative Agent receives a payment or other amount after the date such payment or other amount is due, the Administrative Agent, in its sole discretion, may distribute such payment or other amount to the relevant Lender of record (or other Person of record entitled to such payment) as of the date such payment or other amount is received by the Administrative Agent.

(h) If any Lender shall fail to make any payment required to be made by it pursuant to **Section 2.03(c)**, **2.04(c)**, **2.06**, **2.15** or **10.07**, then the Administrative Agent may, in its discretion and notwithstanding any contrary provision hereof, (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender for the benefit of the Administrative Agent, the Swing Line Lender or the Issuing Banks, as applicable, to satisfy such Lender's obligations to the Administrative Agent, the Swing Line Lender and the Issuing Banks until all such unsatisfied obligations are fully paid and/or (ii) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender under any such Section, in the case of each of **clauses (i)** and **(ii)** above, in any order as determined by the Administrative Agent in its discretion.

(i) If a payment is made by the Administrative Agent (or its Affiliates) in error (whether known to the recipient or not) or if a Lender or another recipient of funds is not otherwise entitled to receive such funds under the provisions of this agreement at such time, in such amount or from the Administrative Agent (or its Affiliates) (as determined by the Administrative Agent in its sole discretion), then such Lender or recipient shall forthwith on demand repay to the Administrative Agent the portion of such payment that was made in error (or otherwise not intended to be received) (as determined by the Administrative Agent in its sole discretion) in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent (or its Affiliate) to such Lender or recipient to the date such amount is repaid to the Administrative Agent (or its Affiliate) in Same Day Funds at the applicable Overnight Rate from time to time in effect. Each Lender and other Person party hereto waives any claim of discharge for value or any other claim of entitlement to any portion of a payment that the Administrative Agent, in its sole discretion, determines was made in error.

Section 2.15 Sharing of Payments, Etc. If, other than as expressly provided elsewhere herein, any Lender shall obtain payment in respect of any principal of or interest on account of the Loans of a particular Class made by it (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder)

thereof, such Lender shall immediately (a) notify the Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in L/C obligations, Swing Line Loans or Protective Advances held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such Loans or such participations, as the case may be, pro rata with each of them; ***provided*** that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in **Section 11.06** (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each relevant Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. The provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time (including **Section 11.07**), (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder or (C) any payment received by such Lender not in its capacity as a Lender. The Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to **Section 11.09**) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this **Section 2.15** and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this **Section 2.15** shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

Section 2.16 Incremental Borrowings.

(a) **Notice**. At any time and from time to time, on one or more occasions, the Borrower may, by notice to the Administrative Agent, increase the aggregate principal amount of the Revolving Commitments (the "***Incremental Revolving Facilities***" and the revolving loans and other extensions of credit made thereunder, the "***Incremental Revolving Loans***"; each such increase, an "***Incremental Facility***" and the loans or other extensions of credit made thereunder, the "***Incremental Loans***").

(b) **Ranking**. Incremental Facilities will rank *pari passu* in right of payment with the Revolving Commitments and will be secured by the Collateral by Liens on a *pari passu* basis to the Liens that secure the Revolving Commitments.

(c) **Size and Currency**. The aggregate principal amount of Incremental Facilities on any date commitments with respect thereto are first received, assuming such commitments are fully drawn only on the date of receipt thereof, will not exceed, an amount equal to, the Incremental Amount. Each Incremental Facility will be in an integral multiple of $1,000,000 and in an

aggregate principal amount that is not less than $5,000,000 (or such lesser minimum amount approved by the Administrative Agent in its reasonable discretion); ***provided*** that such amount may be less than such minimum amount or integral multiple amount if such amount represents all the remaining availability under the Incremental Amount at such time. Any Incremental Facility shall be denominated in Dollars but may be borrowed in Alternative Currencies in accordance with the terms of the Revolving Facility.

(d) **Incremental Lenders**. Incremental Facilities may be provided by any existing Lender (it being understood that no existing Lender shall have an obligation to make, or provide commitments with respect to, an Incremental Loan) or by any Additional Lender. While existing Lenders may (but are not obligated to unless invited to and so elect) participate in any syndication of an Incremental Facility and may (but are not obligated to unless invited to and so elect) become lenders with respect thereto, the existing Lenders will not have any right to participate in any syndication of, and will not have any right of first refusal or other right to provide all or any portion of, any Incremental Facility or Incremental Loan except to the extent the Borrower and the arrangers thereof, if any, in their discretion, choose to invite or include any such existing Lender (which may or may not apply to all existing Lenders and may or may not be pro rata among existing Lenders). Final allocations in respect of Incremental Facilities will be made by the Borrower together with the arrangers thereof, if any, in their discretion, on the terms permitted by this **Section 2.16**; ***provided*** that the lenders providing the Incremental Facilities will be reasonably acceptable to the (i) Borrower, (ii) the Administrative Agent, (iii) each Issuing Bank and (iv) the Swing Line Lender (except that, in the case of **clauses (ii)**, **(iii)** and **(iv)** only to the extent such Person otherwise would have a consent right to an assignment of such loans or commitments to such lender, such consent not to be unreasonably withheld, conditioned or delayed).

(e) **Incremental Facility Amendments; Use of Proceeds**. Each Incremental Facility will become effective pursuant to an amendment (each, an "***Incremental Amendment***") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower and each Person providing such Incremental Facility and the Administrative Agent. Incremental Amendments may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary, advisable or appropriate, in the reasonable opinion of the Borrower in consultation with the Administrative Agent, to effect the provisions of this **Section 2.16.** The Administrative Agent will promptly notify each Lender as to the effectiveness of each Incremental Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Incremental Amendment, this Agreement and the other Loan Documents, as applicable, will be amended to the extent necessary to reflect the existence and terms of the Incremental Facility and the Incremental Loans evidenced thereby. This **Section 2.16** shall supersede any provisions in **Section 2.15** or **11.01** to the contrary. The Borrower may use the proceeds of the Incremental Loans for any purpose not prohibited by this Agreement.

(f) **Conditions**. The availability of Incremental Facilities under this Agreement will be subject solely to the following conditions, subject, for the avoidance of doubt, to any condition expressly set forth in **Section 1.08**, and measured on the date of the receipt of commitments under (assuming such commitments are fully drawn only on the date of receipt) such Incremental Facility:

(i) no Event of Default shall have occurred and be continuing or would result therefrom; ***provided*** that the condition set forth in this **clause (i)** may be waived or not required (other than with respect to Specified Events of Default) by the Persons providing such Incremental Facilities if the proceeds of the initial Borrowings under such Incremental Facilities will be used to finance, in whole or in part, any Permitted Investment or other Acquisition Transaction;

(ii) the representations and warranties in the Loan Documents will be true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be true and correct in all respects) immediately prior to, and after giving effect to, the incurrence of such Incremental Facility; ***provided*** that the condition set forth in this **clause (ii)** may be waived or not required (other than with respect to (A) the Specified Representations and (B) the representation and warranty contained in **Section 5.20**) by the Persons providing such Incremental Facilities if the proceeds of the initial Borrowings under such Incremental Facilities will be used to finance, in whole or in part, a Permitted Investment; and

(iii) if the Additional Lenders providing such Incremental Facility require such information as a condition to providing such Incremental Facility, the Lenders shall have received at least three Business Days prior to the closing date of such Incremental Facility all documentation and other information about the Loan Parties reasonably requested in writing by them at least ten Business Days prior to the closing date of such Incremental Facility required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(g) **Terms**. Each Incremental Amendment will set forth the amount and terms of the relevant Incremental Facility. Each Incremental Facility will be documented as an increase to the Revolving Commitments and shall be on terms identical to those applicable to the Revolving Facility except with respect to any commitment, arrangement, upfront or similar fees that may be agreed to among the Borrower and the lenders providing such Incremental Revolving Facility.

(h) [Reserved].

(i) **Adjustments to Revolving Loans**. Upon each increase in the Revolving Commitments pursuant to this **Section 2.16**, unless an Event of Default shall have occurred and be continuing,

(i) each Revolving Lender immediately prior to such increase will automatically and without further act be deemed to have assigned to each lender providing a portion of such increase (each an "***Incremental Revolving Facility Lender***"), and each such Incremental Revolving Facility Lender will automatically and without further act be deemed to have assumed, a portion of such Revolving Lender's participations hereunder in outstanding Letters of Credit, Swing Line Loans and Protective Advances such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding (1) participations hereunder in Letters of Credit, (2) participations hereunder in Swing Line Loans and (3) participations hereunder in Protective Advances, in each case held by each Revolving Lender will equal the percentage

of the aggregate Revolving Commitments of all Lenders represented by such Revolving Lender's Revolving Commitments; and

(ii) if, on the date of such increase, there are any Revolving Loans outstanding, such Revolving Loans shall on or prior to the effectiveness of such Incremental Revolving Facility be prepaid from the proceeds of Incremental Revolving Loans made hereunder (reflecting such increase in Revolving Commitments), which prepayment shall be accompanied by accrued interest on the Revolving Loans being prepaid and any costs incurred by any Revolving Lender in accordance with **Section 3.05**.

Section 2.17 [Reserved].

Section 2.18 Extensions of Loans.

(a) **Extension Offers**. Pursuant to one or more offers (each, an "***Extension Offer***") made from time to time by the Borrower to all Lenders holding Loans and/or Commitments of a particular Class with a like Maturity Date, the Borrower may extend such Maturity Date and otherwise modify the terms of such Loans and/or Commitments pursuant to the terms set forth in an Extension Offer (each, an "***Extension***"). Each Extension Offer will specify the minimum amount of Loans and/or Commitments with respect to which an Extension Offer may be accepted, which (x) with respect to Loans and/or Commitments denominated in Dollars, will be an integral multiple of $1,000,000 and an aggregate principal amount that is not less than $5,000,000, (y) [reserved] or (z) with respect to Loans and/or Commitments denominated in any Alternative Currency, will be an integral multiple of the Dollar Amount of $1,000,000 and an aggregate principal amount that is not less than the Dollar Amount of $5,000,000 or, in each case, if less, (i) the aggregate principal amount of such Class of Loans outstanding or (ii) such lesser minimum amount as is approved by the Administrative Agent, such consent not to be unreasonably withheld, conditioned or delayed. Extension Offers will be made on a *pro rata* basis to all Lenders holding Loans and/or Commitments of a particular Class with a like Maturity Date. If the aggregate outstanding principal amount of such Loans (calculated on the face amount thereof) and/or Commitments in respect of which Lenders have accepted an Extension Offer exceeds the maximum aggregate principal amount of Loans and/or Commitments offered to be extended pursuant to such Extension Offer, then the Loans and/or Commitments 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. The terms of an Extension Offer shall be determined by the Borrower, and Extension Offers may contain one or more conditions to their effectiveness as determined by the Borrower, including a condition that a minimum amount of Loans and/or Commitments of any or all applicable tranches be tendered.

(b) **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***") as may be necessary, advisable or appropriate in order to establish new tranches in respect of Extended Loans and Extended Commitments and such amendments as permitted by **clause (c)** below as may be necessary, advisable or appropriate in the reasonable opinion of the Borrower, in consultation with the Administrative Agent, in connection with the

establishment of such new tranches of Loans or Commitments. This **Section 2.18** shall supersede any provisions in **Section 2.15** or **11.01** 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.

(c) **Terms of Extension Offers and Extension Amendments**. The terms of any Extended Loans and Extended Commitments will be set forth in an Extension Offer and as agreed between the Borrower and the Extending Lenders accepting such Extension Offer; ***provided*** that:

(i) the final maturity date of such Extended Loans and Extended Commitments will be no earlier than the Latest Maturity Date applicable to the Loans and/or Commitments subject to such Extension Offer;

(ii) [reserved];

(iii) [reserved]; and

(iv) except as to (x) maturity, interest, fees (including any commitment, arrangement, upfront or similar fees) and (y) other terms applicable after the Latest Maturity Date of the Loans that are not Extended Revolving Loans, all terms of any Extended Revolving Loans or Extended Revolving Commitments shall be on terms and pursuant to documentation applicable to the Revolving Facility.

Any Extended Loans will constitute a separate tranche of Revolving Loans from the Revolving Loans held by Lenders that did not accept the applicable Extension Offer.

(d) **Extension of Revolving Commitments**. In the case of any Extension of Revolving Commitments and/or Revolving Loans, the following shall apply:

(i) all borrowings and all prepayments of Revolving Loans shall continue to be made on a ratable basis among all Revolving Lenders, based on the relative amounts of their Revolving Commitments, until the repayment of the Revolving Loans attributable to the non-extended Revolving Commitments on the relevant Maturity Date;

(ii) the allocation of the participation exposure with respect to any then-existing or subsequently issued or made Letter of Credit, Swing Line Loan or Protective Advance as between the Revolving Commitments of such extended tranche and the remaining non-extended Revolving Commitments shall be made on a ratable basis in accordance with the relative amounts thereof until the Maturity Date relating to such non-extended Revolving Commitments has occurred, it being understood that the obligations of any Issuing Bank or Swing Line Lender may not be extended beyond the Maturity Date relating to the non-extended Revolving Commitments pursuant to this **Section 2.18** without the consent of such Issuing Bank or Swing Line Lender;

(iii) no termination of extended Revolving Commitments and no repayment of extended Revolving Loans accompanied by a corresponding permanent reduction in extended Revolving Commitments shall be permitted unless such termination or repayment

(and corresponding reduction) is accompanied by at least a *pro rata* termination or permanent repayment (and corresponding *pro rata* permanent reduction), as applicable, of each other tranche of Revolving Loans and Revolving Commitments (or each other tranche of Revolving Commitments and Revolving Loans shall have otherwise been terminated and repaid in full);

(iv) at no time shall there be more than five different tranches of Revolving Commitments.

If the Total Utilization of Revolving Commitments exceeds the Line Cap as a result of the occurrence of the applicable Maturity Date with respect to any tranche of Revolving Commitments while an extended tranche of Revolving Commitments remains outstanding, the Borrower shall make such payments as are necessary in order to eliminate such excess on such Maturity Date.

(e) **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 the applicable Extending Lender. The transactions contemplated by this **Section 2.18** (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended 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 or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this **Section 2.18** will not apply to any of the transactions effected pursuant to this **Section 2.18**.

Section 2.19 Defaulting Lenders.

(a) **Defaulting Lender 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:

(i) ***Defaulting Lender Waterfall***. 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 IX** or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to **Section 11.09** shall be applied at such time or times as may be determined by the Administrative Agent as follows:

first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder;

second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to each Issuing Bank and the Swing Line Lender hereunder;

third, to Cash Collateralize each Issuing Bank's Fronting Exposure with respect to such Defaulting Lender with respect to outstanding Letters of Credit (in an amount equal to 103% (or if not denominated in Dollars, 110%) of the maximum face amount of all outstanding Letters of Credit) or the Swing Line Lender's

Fronting Exposure with respect to such Defaulting Lender in accordance with **Section 2.19(d)**;

fourth, as the Borrower may request (so long as no Event of Default shall have occurred and be continuing), to the funding of any 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;

fifth, if so determined by the Administrative Agent and the Borrower, to be held in a Cash Collateral Account and released *pro rata* in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (B) Cash Collateralize each Issuing Bank's (in an amount equal to 103% (or if not denominated in Dollars, 110%) of the maximum face amount of all outstanding Letters of Credit) or the Swing Line Lender's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit or Swing Line Loans, as applicable, issued under this Agreement, in accordance with **Section 2.19(d)**;

sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks or the Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Bank or the Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement;

seventh, so long as no Event of Default shall have occurred and be continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and

eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction;

provided that if

(1) such payment is a payment of the principal amount of any Loans or Reimbursement Obligations in respect of which such Defaulting Lender has not fully funded its appropriate share, and

(2) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in **Section 4.02** were satisfied or waived, such payment shall be applied solely to pay the Loans of, and Reimbursement Obligations owed to,

all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or Reimbursement Obligations owed to, such Defaulting Lender until such time as all Loans funded and unfunded participations in Letters of Credit, Swing Line Loans and Protective Advances are held by the Lenders pro rata in accordance with the

applicable Commitments without giving effect to **Section 2.19(a)(iii)**. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this **Section 2.19(a)(i)** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(ii) ***Certain Fees***.

(a) No Defaulting Lender shall be entitled to receive any fee pursuant to **Section 2.11(b)** for any period during which that Lender is a Defaulting Lender; ***provided*** such Defaulting Lender shall be entitled to receive fees pursuant to **Section 2.11(b)(ii)** for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Pro Rata Share of the Stated Amount of Letters of Credit for which it has provided Cash Collateral pursuant to **Section 2.04**.

(b) With respect to any fees not required to be paid to any Defaulting Lender pursuant to **clause (A)** above, the Borrower shall

(i) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letters of Credit, Swing Line Loans and Protective Advances that has been reallocated to such Non-Defaulting Lender pursuant to **clause (iii)** below,

(ii) pay to each Issuing Bank the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's Fronting Exposure to such Defaulting Lender, and

(iii) not be required to pay the remaining amount of any such fee.

(iii) ***Reallocation of Participations to Reduce Fronting Exposure***. All or any part of such Defaulting Lender's participation in Letters of Credit, Swing Line Loans and Protective Advances shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that

(a) the conditions set forth in **Section 4.02** are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and

(b) such reallocation does not cause the aggregate Revolving Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Commitment.

Subject to **Section 11.25**, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender

having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(iv) ***Cash Collateral***. If the reallocation described in **clause (iii)** above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, provide Cash Collateral pursuant to the requirements set forth in **Section 2.19(d)**.

(b) **Defaulting Lender Cure**. If the Borrower, the Administrative Agent and the Swing Line Lender and each Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit, Swing Line Loans and Protective Advances to be held pro rata by the Lenders in accordance with the applicable Commitments (without giving effect to **Section 2.04**) 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 that Lender was a Defaulting Lender; ***provided***, ***further***, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

(c) **New Swing Line Loans/Letters of Credit**. So long as any Revolving Lender is a Defaulting Lender, (i) the Swing Line Lender shall not be required to fund any Swing Line Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swing Line Loan and (ii) no Issuing Bank shall be required to issue, extend or amend any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

(d) **Cash Collateral**. At any time that there shall exist a Defaulting Lender and **Section 2.19(a)(iv)** is applicable, within one Business Day following the written request of the Administrative Agent, any Issuing Bank (with a copy to the Administrative Agent) or the Swing Line Lender (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the applicable Issuing Bank's Fronting Exposure, the Swing Line Lender's Fronting Exposure and any outstanding Protective Advance, as the case may be, with respect to such Defaulting Lender (determined after giving effect to **Section 2.04** and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(i) ***Grant of Security Interest***. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Banks and the Lenders (including the Swing Line Lender), and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of Letters of Credit, Swing Line Loans and Protective Advances, to be applied pursuant to **clause (ii)** below. If at any time the Administrative Agent determines that the Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent, the Issuing

Banks or the Lenders as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(ii) ***Application***. Notwithstanding anything to the contrary contained in this Agreement,

(a) Cash Collateral provided under this **Section 2.19** in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein,

(b) Cash Collateral provided under this **Section 2.19** in respect of Swing Line Loans shall be applied to the satisfaction of the Defaulting Lender's obligations to fund participations in respect of Swing Line Loans (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein and

(c) Cash Collateral provided under this **Section 2.19** in respect of Protective Advances shall be applied to the satisfaction of the Defaulting Lender's obligations to fund participations in respect of Protective Advances (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(iii) ***Termination of Requirement***. Cash Collateral (or the appropriate portion thereof) provided to reduce any Issuing Bank's or the Swing Line Lender's Fronting Exposure or applied to any such Defaulting Lender's obligations to fund participations in respect of Protective Advances shall no longer be required to be held as Cash Collateral pursuant to this **Section 2.19** following

(a) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender),

(b) (I) the repayment in full of all Protective Advances by the Borrower or (II) the payment by such Defaulting Lender of its obligations to fund participations in respect of Protective Advances (including at the time of the termination of Defaulting Lender status of the applicable Lender) or

(c) the determination by the Administrative Agent, the applicable Issuing Bank or the Swing Line Lender, as the case may be, that there exists excess Cash Collateral;

provided that, subject to the other provisions of this **Section 2.19**, the Person providing Cash Collateral and the applicable Issuing Bank, the Swing Line Lender or, with respect to Protective Advances, the Administrative Agent, as the case may be, may agree that the Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations (including obligations to fund Protective Advances); ***provided further*** that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

Section 2.20 [Reserved].

Section 2.21 Judgment Currency.

(a) If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum owing hereunder or under any other Loan Document in one currency into another currency, each party hereto and each Loan Party (and by its acceptance of its appointment in such capacity, each Lead Arranger) agrees, to the fullest extent that it may effectively do so, that the rate of exchange used shall be that at which, in accordance with normal banking procedures in the relevant jurisdiction, the first currency could be purchased with such other currency on the Business Day immediately preceding the day on which final judgment is given.

(b) The obligations of the Loan Parties in respect of any sum due to any party hereto or under any other Loan Document or any holder of the obligations owing hereunder or under any other Loan Document (the "***Applicable Creditor***") shall, notwithstanding any judgment in a currency (the "***Judgment Currency***") other than the currency in which such sum is stated to be due hereunder (the "***Agreement Currency***"), be discharged only to the extent that, on the Business Day following receipt by the Applicable Creditor of any sum adjudged to be so due in the Judgment Currency, the Applicable Creditor may in accordance with normal banking procedures in the relevant jurisdiction purchase the Agreement Currency with the Judgment Currency; if the amount of the Agreement Currency so purchased is less than the sum originally due to the Applicable Creditor in the Agreement Currency, the Borrower and each other Loan Party as a separate obligation and notwithstanding any such judgment, agrees to indemnify the Applicable Creditor against such loss. The obligations of the Loan Parties contained in this Section shall survive the termination of this Agreement and the payment of all other amounts owing hereunder.

Section 2.22 Reserves; Changes to Eligibility Criteria.

The Administrative Agent may at any time and from time to time and only in the exercise of its Permitted Discretion establish new categories of Reserves or change eligibility criteria set forth in the definition of "***Eligible Account***", "***Eligible Inventory***" and/or "***Qualified Cash***" upon five Business Days' prior written notice to the Borrower (which notice shall not be required at any time an Event of Default has occurred and is continuing), which notice shall include a reasonably detailed description of such new category of Reserve being established or change to any eligibility criteria set forth in the definition of "***Eligible Account***" "***Eligible Inventory***" and/or "***Qualified Cash***" (during which five Business Day period (x) the Administrative Agent shall, if requested, discuss any such Reserve or change with the Borrower and (y) the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such Reserve or change thereto no longer exists or exists in a manner that would result in the establishment of a lower

Reserve or result in a lesser change thereto, in a manner and to the extent reasonably satisfactory to the Administrative Agent), establish and increase or decrease Reserves in accordance with the terms hereof; ***provided*** that, pending the expiration of such five Business Day period, no Borrowings may be made if such Borrowings would result in the Total Utilization of Revolving Commitments to exceed the Line Cap, calculated as if such proposed Reserve had been implemented; ***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.

Notwithstanding any other provision of this Agreement to the contrary,

(a) the establishment or increase of any Reserves or changes in any eligibility criteria shall be limited to such Reserves and changes as the Administrative Agent determines, in its Permitted Discretion, are appropriate based on the analysis of facts or events first occurring or first discovered by the Administrative Agent after the Closing Date or that differ materially from facts or events occurring and known to the Administrative Agent on the Closing Date,

(b) in no event shall Reserves or changes in eligibility criteria with respect to any component of the Borrowing Base duplicate any other Reserves currently established or maintained or eligibility criteria to the extent addressed thereby, and

(c) the amount of any such Reserve or change in eligibility criteria shall be a reasonable quantification of the incremental dilution of the Borrowing Base attributable to the relevant contributing factors and have a reasonable relationship to the event, condition or other matter that is the basis for such Reserve or change.

Section 2.23 Currency Equivalents.

(a) The Administrative Agent shall determine the Dollar Amount of each Loan denominated in an Alternative Currency and Letter of Credit Obligation in respect of Letters of Credit denominated in an Alternative Currency (i) for Loans, as of the first day of each Interest Period applicable thereof, and (ii) for Letters of Credit, as of the end of each fiscal quarter of the Borrower, and in each case shall promptly notify the Borrower of each Dollar Amount so determined by it. Each such calculation shall be on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this **Section 2.23**, the "***Spot Rate***" for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date of such determination; ***provided*** that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

(b) If after giving effect to any such determination of a Dollar Amount, the sum of the aggregate outstanding amount of the Revolving Loans denominated in Alternative Currencies and the Letter of Credit Obligations denominated in Alternative Currencies exceeds the aggregate Dollar Amount of Revolving Commitments then in effect, the Borrower shall, within five Business

Days of receipt of notice thereof from the Administrative Agent setting forth such calculation in reasonable detail, prepay the applicable Revolving Loans denominated in Alternative Currencies under the Revolving Facility or take other action as the Administrative Agent, in its discretion, may direct (including to Cash Collateralize the applicable Letter of Credit Obligations) to the extent necessary to eliminate any such excess.

ARTICLE III.
TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

Section 3.01 Taxes.

(a) Except as required by applicable Law, any and all payments by the Borrower or any Guarantor to or for the account of any Agent, any Lender or Issuing Bank under any Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges imposed by any Governmental Authority, and all liabilities (including additions to tax, penalties and interest) with respect thereto ("***Taxes***"). The following shall be "***Excluded Taxes***": in the case of each Agent, each Lender and Issuing Bank,

(i) Taxes imposed on or measured by net income (however denominated, and including branch profits and similar Taxes), and franchise or similar Taxes, in each case, that are (A) imposed by the jurisdiction (or political subdivision thereof) under the laws of which it is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, or (B) Other Connection Taxes;

(ii) any U.S. federal Tax that is (or would be) required to be withheld with respect to amounts payable hereunder in respect of an Eligible Assignee (pursuant to an assignment under **Section 10.07**) on the date it becomes an assignee to the extent such Tax is in excess of the Tax that would have been applicable had such assigning Lender not assigned its interest arising under any Loan Document (unless such assignment is at the express written request of the Borrower);

(iii) U.S. federal withholding Taxes imposed on amounts payable to or for the account of a Lender, Agent or Issuing Bank with respect to an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date on which

(a) such Lender, Agent or Issuing Bank acquires such interest in the applicable Commitment or, to the extent a Lender acquires an interest in a Loan not funded pursuant to a prior Commitment, acquires such interest in such Loan (other than pursuant to an assignment request by the Borrower under **Section 3.07**) or

(b) such Lender, changes its Lending Office (other than at the written request of the Borrower to change such Lending Office), except in each case to the extent that pursuant to **Section 3.01**, amounts with respect to such Taxes were payable to such Lender's, Agent's or Issuing Bank's assignor immediately before such Lender, Agent or Issuing Bank became a party hereto, or to such Lender immediately before it changed its Lending Office;

(iv) any Taxes imposed as a result of the failure of any Agent, Lender or Issuing Bank to comply with the provisions of **Sections 3.01(b)**, **3.01(c)** and **3.01(d)** (in the case of any Foreign Lender, as defined below) or the provisions of **Section 3.01(e)** (in the case of any U.S. Lender, as defined below);

(v) [reserved] and

(vi) any withholding Taxes imposed under FATCA.

If the Borrower, a Guarantor or other applicable Withholding Agent is required to withhold or deduct any Taxes or Other Taxes (as defined below) from or in respect of any sum payable under any Loan Document to any Agent, any Lender or Issuing Bank,

(i) except in the case of Excluded Taxes, the sum payable shall be increased as necessary so that after making all required withholding or deductions (including withholding or deductions applicable to additional sums payable under this **Section 3.01(a)**), each of such Agent, such Lender or Issuing Bank receives an amount equal to the sum it would have received had no such withholding or deductions been made,

(ii) the applicable Withholding Agent shall make such withholding or deductions,

(iii) the applicable Withholding Agent shall pay the full amount withheld or deducted to the relevant taxi authority, and

(iv) within thirty days after the date of such payment by the Borrower or any Guarantor (or, if receipts evidence are not available within thirty days, as soon as practicable thereafter), the Borrower or applicable Guarantor shall furnish to such Agent, Lender or Issuing Bank (as the case may be) the original or a facsimile copy of a receipt evidencing payment thereof to the extent such a receipt has been made available to the Borrower or applicable Guarantor (or other evidence of payment reasonably satisfactory to the Administrative Agent).

If the Borrower or applicable Guarantor fails to pay any Taxes or Other Taxes when due to the appropriate taxing authority then the Borrower or applicable Guarantor shall indemnify such Agent, such Lender and such Issuing Bank for any incremental Taxes that may become payable by such Agent, such Lender or such Issuing Bank arising out of such failure.

(b) To the extent it is legally able to do so, each Agent, Lender or Issuing Bank (including an Eligible Assignee to which a Lender assigns its interest in accordance with **Section 11.07**, unless such Eligible Assignee is already a Lender hereunder) that is not a "***United States person***" within the meaning of Section 7701(a)(30) of the Code (each, a "***Foreign Lender***") agrees to complete and deliver to the Borrower and the Administrative Agent on or prior to the date on which the Foreign Lender becomes a party hereto (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), two (2) accurate, complete and signed copies of whichever of the following is applicable:

(i) IRS Form W-8BEN or Form W-8BEN-E certifying that it is entitled to benefits under an income tax treaty to which the United States is a party;

(ii) IRS Form W-8ECI certifying that the income receivable pursuant to any Loan Document is effectively connected with the conduct of a trade or business in the United States;

(iii) if the Foreign Lender is not (A) a bank described in Section 881(c)(3)(A) of the Code, (B) a 10-percent shareholder of the Borrower described in Section 871(h)(3)(B) of the Code, or (C) a controlled foreign corporation related to the Borrower within the meaning of Section 864(d) of the Code, a certificate to that effect in substantially the form attached hereto as **Exhibit G** (a "***Non-Bank Certificate***") and an IRS Form W-8BEN or Form W-8BEN-E, certifying that the Foreign Lender is not a United States person;

(iv) to the extent a Foreign Lender is not the beneficial owner for U.S. federal income tax purposes, an IRS Form W-8IMY (or any successor forms) of the Foreign Lender, accompanied by, as and to the extent applicable, an IRS Form W-8BEN, Form W-8BEN-E, Form W-8ECI, Non-Bank Certificate, Form W-9, Form W-8IMY (or other successor forms) and any other required supporting information from each beneficial owner (it being understood that a Foreign Lender need not provide certificates or supporting documentation from beneficial owners if (A) the Foreign Lender is a "qualified intermediary" or "withholding foreign partnership" for U.S. federal income tax purposes and (B) such Foreign Lender is as a result able to establish, and does establish, that payments to such Foreign Lender are, to the extent applicable, entitled to an exemption from or, if an exemption is not available, a reduction in the rate of, U.S. federal withholding Taxes without providing such certificates or supporting documentation); or

(v) any other form prescribed by applicable requirements of U.S. federal income tax law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable requirements of law to permit the Borrower and the Administrative Agent to determine the withholding or deduction required to be made.

(c) In addition, each such Foreign Lender shall, to the extent it is legally entitled to do so,

(i) promptly submit to the Borrower and the Administrative Agent two (2) accurate, complete and signed copies of such other or additional forms or certificates (or such successor forms or certificates as shall be adopted from time to time by the relevant taxing authorities) as may then be applicable or available to secure an exemption from or reduction in the rate of U.S. federal withholding Tax (1) on or before the date that such Foreign Lender's most recently delivered form, certificate or other evidence expires or becomes obsolete or inaccurate in any material respect, (2) after the occurrence of a change in the Foreign Lender's circumstances requiring a change in the most recent form, certificate or evidence previously delivered by it to the Borrower and the Administrative Agent, and (3) from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent, and

(ii) promptly notify the Borrower and the Administrative Agent of any change in the Foreign Lender's circumstances that would modify or render invalid any claimed exemption or reduction. This **Section 3.01(c)** shall not apply to any reporting requirements under FATCA.

(d) If a payment made to a Lender under any Loan Document would be subject to Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by 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 whether such Foreign Lender has complied with such Foreign Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this **Section 3.01(d)**, "***FATCA***" shall include any amendments made to FATCA after the date of this Agreement.

(e) Each Agent, Lender or Issuing Bank that is a "***United States person***" (within the meaning of Section 7701(a)(30) of the Code) (each, a "***U.S. Lender***") agrees to complete and deliver to the Borrower and the Administrative Agent two (2) copies of accurate, complete and signed IRS Form W-9 or successor form certifying that such U.S. Lender is not subject to U.S. federal backup withholding Tax

(i) on or prior to the Closing Date (or on or prior to the date it becomes a party to this Agreement),

(ii) on or before the date that such form expires or becomes obsolete or inaccurate in any material respect,

(iii) after the occurrence of a change in the U.S. Lender's circumstances requiring a change in the most recent form previously delivered by it to the Borrower and the Administrative Agent, and

(iv) from time to time thereafter if reasonably requested by the Borrower or the Administrative Agent.

(f) The Borrower agrees to pay, without duplication of its obligations under **Section 3.01(a)**, any and all present or future stamp, court or documentary Taxes and any other excise (in the nature of a documentary or similar Tax), property, intangible, filing or mortgage recording Taxes or charges or similar levies imposed by any Governmental Authority that arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (including additions to Tax, penalties and interest related thereto) excluding, in each case, such amounts that are Other Connection Taxes imposed in connection with an Assignment and Assumption, grant of a participation, transfer or assignment to or designation of a new applicable Lending Office or

other office for receiving payments under any Loan Document, except to the extent that any such change is requested in writing by the Borrower (all such non-excluded Taxes described in this **Section 3.01(f)** being hereinafter referred to as "***Other Taxes***").

(g) If any Taxes or Other Taxes are directly asserted against any Agent, Lender or Issuing Bank with respect to any payment received by such Agent or Lender in respect of any Loan Document, such Agent, Lender or Issuing Bank may pay such Taxes or Other Taxes and, without duplication of its obligations under **Section 3.01(a)**, the Borrower will promptly indemnify and hold harmless such Agent, Lender or Issuing Bank for the full amount of such Taxes (other than Excluded Taxes) and Other Taxes (and any Taxes (other than Excluded Taxes) and Other Taxes imposed on amounts payable under this **Section 3.01**), and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted. Payments under this **Section 3.01(g)** shall be made within ten days after the date the Borrower receives written demand for payment from such Agent, Lender or Issuing Bank.

(h) Except as provided in **Section 11.07(e)**, a Participant shall not be entitled to receive any greater payment under this **Section 3.01** than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.

(i) If any Agent, any Lender or Issuing Bank determines, in its sole discretion, exercised in good faith, that it has received a refund in respect of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or any Guarantor, as the case may be, or with respect to which the Borrower or any Guarantor, as the case may be, has paid additional amounts pursuant to this **Section 3.01**, it shall promptly pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower or any Guarantor under this **Section 3.01** with respect to the Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) incurred by such Agent, such Lender or Issuing Bank and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), ***provided*** that the Borrower or applicable Guarantor, as the case may be, upon the request of such Agent, such Lender or Issuing Bank, agrees to repay the amount paid over to the Borrower or applicable Guarantor, as the case may be (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Agent, such Lender or Issuing Bank in the event such Agent, such Lender or Issuing Bank is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **paragraph (i)**, in no event will such Agent, Lender or Issuing Bank be required to pay any amount to the Borrower or applicable Guarantor pursuant to this **paragraph (i)** the payment of which would place such Agent, Lender or Issuing Bank in a less favorable net after-Tax position than the indemnified party would have been in if the Tax or Other Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax or Other Tax had never been paid. Such Agent, such Lender or Issuing Bank, as the case may be, shall provide the Borrower upon request with a copy of any notice of assessment or other evidence reasonably available of the requirement to repay such refund received from the relevant Governmental Authority (***provided*** that such Lender, such Agent or Issuing Bank may delete any information therein that such Lender, such Agent or Issuing Bank deems confidential or not relevant to such refund in its reasonable discretion). This subsection shall not be construed to

require any Agent, any Lender or Issuing Bank to make available its tax returns (or any other information relating to its Taxes that it reasonably deems confidential) to the Borrower, any Guarantor or any other Person.

(j) Each Lender agrees that, upon the occurrence of any event giving rise to the operation of **Section 3.01(a)** or **(g)** with respect to such Lender, it will, if requested by the Borrower in writing, use commercially reasonable efforts (subject to legal and regulatory restrictions) to mitigate the effect of any such event, including by designating another Lending Office for any Loan affected by such event and by completing and delivering or filing any Tax-related forms that such Lender is legally able to deliver and that would reduce or eliminate any amount of Taxes or Other Taxes required to be deducted or withheld or paid by the Borrower; ***provided*** that such efforts are made at the Borrower's expense and are on terms that, in the reasonable judgment of such Lender, do not cause such Lender or any of its Lending Offices to suffer any economic, legal or regulatory disadvantage, and ***provided further*** that nothing in this **Section 3.01(j)** shall affect or postpone any of the Obligations of the Borrower or the rights of such Lender pursuant to **Section 3.01(a)** or **(g)**.

(k) Notwithstanding any other provision of this Agreement, the Borrower and the Administrative Agent may deduct and withhold any Taxes required by any Laws (including, for the avoidance of doubt, FATCA) to be deducted and withheld from any payment under any of the Loan Documents, subject to the provisions of this **Section 3.01**.

(l) Each Agent or Lender, as applicable, shall severally indemnify the Administrative Agent, within ten days after demand therefor, for

(i) any Taxes attributable to such Agent or Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Taxes and without limiting the obligation of the Borrower to do so),

(ii) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 11.07(e)** relating to the maintenance of a Participant Register and

(iii) any Excluded Taxes attributable to such Agent or Lender,

in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such 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 any Agent or Lender by the Administrative Agent shall be conclusive absent manifest error. Each Agent and Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Agent or Lender under any Loan Document or otherwise payable by the Administrative Agent to such Agent or Lender from any other source against any amount due to the Administrative Agent under this **Section 3.01(l)**.

(m) Each Lender authorizes the Administrative Agent to deliver to the Borrower and to any successor Administrative Agent any documentation provided by the Lender to the Administrative Agent pursuant to paragraph (b), (c), (d), or (e) of this **Section 3.01**.

(n) The agreements in this **Section 3.01** shall survive the resignation or replacement of the Administrative Agent, termination of this Agreement and the payment of the Loans and all other amounts payable hereunder and any assignment of rights by, or replacement of, any Lender.

Section 3.02 Illegality. If any Lender reasonably determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to Term Benchmark, or to determine or charge interest rates based upon the Term Benchmark, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars or any Alternative Currency in the London interbank market or any other applicable offshore interbank market, as applicable, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Term Benchmark Loans or to convert Base Rate Loans to Term Benchmark Loans, shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to ~~the Adjusted~~ Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~Adjusted~~ Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice,

(A) with respect to Borrowings denominated in Dollars, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Term Benchmark Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Term Benchmark Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~Adjusted~~ Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term Benchmark Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Term Benchmark Loans and

(B) with respect to Borrowings denominated in an Alternative Currency, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of such Term Benchmark Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Term Benchmark Loans of such Lender to a Loan bearing interest at an alternative rate mutually acceptable to the Borrower and the applicable Lenders, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Term Benchmark Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Term Benchmark Loans; ***provided, however***, that if the Borrower and the applicable Lenders cannot agree within a reasonable time on an alternative rate for such Loans, the Borrower may, at its discretion, either (x) prepay such Loans or (y) maintain such Loans outstanding, in which case, the interest rate payable to the applicable Lender on such Loans will be the rate determined by the Administrative Agent as its cost of funds to fund a Borrowing of such Loans with maturities comparable to the Interest Period applicable thereto plus the Applicable Rate or

(C) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the ~~Adjusted~~ Term SOFR component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to ~~the Adjusted~~ Term SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon ~~Adjusted~~ Term SOFR.

Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

Section 3.03 Inability to Determine Rates. If the Administrative Agent or the Required Lenders reasonably determine that for any reason in connection with any request for a Term Benchmark Loan or a conversion to or continuation thereof that (a) deposits are not being offered to banks in the relevant market for the applicable amount and Interest Period of such Term Benchmark Loan, (b) adequate and reasonable means do not exist for determining the Term Benchmark for any requested Interest Period with respect to a proposed Term Benchmark Loan or in connection with an existing or proposed Base Rate Loan or (c) the Term Benchmark for any requested Interest Period with respect to a proposed Term Benchmark Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain such Term Benchmark Loans shall be suspended, and (ii) in the event of a determination described in the preceding sentence with respect to the ~~Adjusted~~ Term SOFR component of the Base Rate, the utilization of the ~~Adjusted~~ Term SOFR component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (i) with respect to Borrowings denominated in Dollars, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Term Benchmark Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein or (ii) with respect to Borrowings denominated in an Alternative Currency, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Term Benchmark Loans and shall convert all such Term Benchmark Loans of such Lender to a Loan bearing interest at an alternative rate mutually acceptable to the Borrower and the applicable Lenders; ***provided however***, that if the Borrower and the applicable Lenders cannot agree within a reasonable time on an alternative rate for such Loans, the Borrower may, at its discretion, either (A) prepay such Loans or (B) maintain such Loans outstanding, in which case, the interest rate payable to the applicable Lender on such Loans will be the rate determined by the Administrative Agent as its cost of funds to fund a Borrowing of such Loans with maturities comparable to the Interest Period applicable thereto *plus* the Applicable Rate.

Notwithstanding the foregoing, if the Administrative Agent has made the determination described in **clause (a)** or **(b)** of the foregoing paragraph, the Administrative Agent, in consultation with the Borrower, may establish an alternative interest rate for such Loans, in which case, such alternative rate of interest shall apply with respect to such Loans until (i) the Administrative Agent revokes the notice delivered with respect to such Loans under **clauses (a)** or **(b)** of the first sentence of the foregoing paragraph, (ii) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and

fairly reflect the cost to such Lenders of funding the Impacted Loans or (iii) any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

Section 3.04 Increased Cost and Reduced Return; Capital Adequacy.

(a) **Increased Costs Generally**. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender, any Issuing Bank or the Swing Line Lender;

(ii) subject any Lender or Agent, any Issuing Bank or the Swing Line Lender to any Tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Loans or Commitments made by it, or change the basis of taxation of payments to such Lender, Agent, Issuing Bank, or Swing Line Lender, as applicable, in respect thereof (except, in each case, for (A) Taxes with respect to which the Borrower is obligated to pay additional amounts or indemnity payments pursuant to **Section 3.01**, (B) any Taxes and other amounts described in **clauses (ii)** through **(iv)** of the second sentence of **Section 3.01(a)** that are imposed with respect to payments to or for the account of any Agent, any Lender, any Issuing Bank or the Swing Line Lender under any Loan Document, (C) Connection Income Taxes, and (D) Other Taxes); or

(iii) impose on any Lender, any Issuing Bank or the Swing Line Lender or any other applicable offshore interbank market any other condition, cost or expense affecting this Agreement, any Letter of Credit, any participation in a Letter of Credit or Term Benchmark Loans (other than with respect to Taxes) made by such Lender or any Issuing Bank or the Swing Line Lender that is not otherwise accounted for in the definition of the "***Term Benchmark***" or this **clause (a)**;

and the result of any of the foregoing shall be to increase the cost to such Lender, such Issuing Bank, the Agent or the Swing Line Lender of making or maintaining any Loan the interest on which is determined by reference to Term Benchmark or, in the case of a Change in Law with respect to Taxes, making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender or Agent (whether of principal, interest, or any other amount), or to increase the cost to such Lender, such Issuing Bank, the Agent or such other Lender of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit, or to reduce the amount of any sum received or receivable by such Lender, the Agent or such Issuing Bank (whether of principal, interest or any other amount)), then, from time to time within ten days after demand by such Lender or such Issuing Bank setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent) (***provided*** that such calculation

will not in any way require disclosure of confidential or price-sensitive information or any other information the disclosure of which is prohibited by law), the Borrower will pay to such Lender or such Issuing Bank such additional amount or amounts as will compensate such Lender or such Issuing Bank for such additional costs incurred or reduction suffered. No Lender, Issuing Bank or Swing Line Lender shall request that the Borrower pay any additional amount pursuant to this **Section 3.04(a)** unless it shall concurrently make similar requests to other borrowers similarly situated and affected by such Change in Law and from whom such Lender, Issuing Bank or Swing Line Lender is entitled to seek similar amounts.

(b) **Capital Requirements**. If any Lender or any Issuing Bank reasonably determines that any Change in Law affecting such Lender or such Issuing Bank or any Lending Office of such Lender or such Issuing Bank or such Lender's or Issuing Bank's holding company, if any, regarding liquidity or capital 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, the Commitments of such Lender or such Issuing Bank or the Loans made by or Letters of Credit issued by it to a level below that which such Lender or such Issuing Bank or such Lender's or 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 Issuing Bank's holding company with respect to liquidity or capital adequacy), then from time to time upon demand of such Lender or such Issuing Bank setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent) (***provided*** that such calculation will not in any way require disclosure of confidential or price-sensitive information or any other information the disclosure of which is prohibited by law), the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender, such Issuing Bank or such Lender's or Issuing Bank's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement**. A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or such Issuing Bank or their respective holding company, as the case may be, as specified in **subsection (a)** or **(b)** of this **Section 3.04** and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within ten days after receipt thereof.

(d) **Delay in Requests**. Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to the foregoing provisions of this **Section 3.04** shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation, ***provided*** that the Borrower shall not be required to compensate a Lender or an Issuing Bank pursuant to the foregoing provisions of this **Section 3.04** for any increased costs incurred or reductions suffered more than one hundred and eighty days prior to the date that such Lender or such Issuing Bank notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

(e) [Reserved].

Section 3.05 Funding Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount (***provided*** that such calculation will not in any way require disclosure of confidential or price-sensitive information or any other information the disclosure of which is prohibited by law), the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost, liability or expense (excluding loss of anticipated profits or margin) actually incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day prior to the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Term Benchmark Loan on a day prior to the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to **Section 3.07**;

including any loss or expense (excluding loss of anticipated profits or margin) actually incurred by reason of the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. Notwithstanding the foregoing, no Lender may make any demand under this **Section 3.05 (i)** with respect to the Floor or (ii) in connection with any prepayment of interest on Loans.

Section 3.06 Matters Applicable to All Requests for Compensation.

(a) **Designation of a Different Lending Office**. If any Lender requests compensation under **Section 3.04**, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 3.01**, or if any Lender gives a notice pursuant to **Section 3.02**, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Section 3.01** or **3.04**, as the case may be, in the future, or eliminate the need for the notice pursuant to **Section 3.02**, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect.

(b) **Suspension of Lender Obligations**. If any Lender requests compensation by the Borrower or under **Section 3.04**, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue Term Benchmark Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into Term Benchmark Loans, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of **Section 3.06(c)** shall be applicable); ***provided*** that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(c) **Conversion of Term Benchmark Loans**. If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in **Section 3.02**, **3.03** or **3.04** hereof that gave rise to the conversion of such Lender's Term Benchmark Loans no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Term Benchmark Loans made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding Term Benchmark Loans, to the extent necessary so that, after giving effect thereto, all Loans of a given Class held by the Lenders of such Class holding Term Benchmark Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Pro Rata Shares.

Section 3.07 Replacement of Lenders Under Certain Circumstances

If (i) any Lender requests compensation under **Section 3.04** or ceases to make Term Benchmark Loans as a result of any condition described in **Section 3.02** or **Section 3.04**, (ii) the Borrower is required to pay any Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 3.01** and such Lender has declined or is unable to designate a different Lending Office in accordance with **Section 3.01(i)**, (iii) any Lender is a Non-Consenting Lender, (iv) any Lender does not accept an Extension Offer, (v) (A) any Lender shall become and continue to be a Defaulting Lender and (B) such Defaulting Lender shall fail to cure the default pursuant to **Section 2.19(b)** within five Business Days after the Borrower's request that it cure such default or (vi) any other circumstance exists hereunder that gives the Borrower the right to replace a Lender (other than a Disqualified Lender) as a party hereto, 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, and consents required by, **Section 11.07**), all of its interests, rights and obligations under this Agreement and the related Loan Documents (other than its existing rights to payments pursuant to **Section 3.01** or **Section 3.04**) to one or more Eligible Assignees that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), ***provided*** that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in **Section 11.07(b)(iv)**;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in Letters of Credit, Swing Line Loans and Protective Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts payable under **Section 3.05**) 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);

(c) such Lender being replaced pursuant to this **Section 3.07** shall (i) execute and deliver an Assignment and Assumption with respect to such Lender's Commitment and outstanding Loans and participations in Letters of Credit, Swing Line Loans and Protective Advances, and (ii) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); ***provided*** that the failure of any such Lender to execute an Assignment and Assumption or deliver such Notes shall not render such sale

and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register and the Notes shall be deemed to be canceled upon such failure;

(d) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification provisions under this Agreement, which shall survive as to such assigning Lender;

(e) in the case of any such assignment resulting from a claim for compensation under **Section 3.04** or payments required to be made pursuant to **Section 3.01**, such assignment will result in a reduction in such compensation or payments thereafter;

(f) in the case of any such assignment resulting from a Lender being a Non-Consenting Lender or failing to accept an Extension Offer, the Eligible Assignee shall consent, at the time of such assignment, to each matter in respect of which such Lender being replaced was a Non-Consenting Lender or accept such Extension Offer, as the case may be; and

(g) such assignment does not conflict with applicable Laws.

Notwithstanding anything to the contrary contained above, any Lender that acts as an Issuing Bank may not be replaced hereunder at any time that it has any Letter of Credit outstanding hereunder unless arrangements reasonably satisfactory to such Issuing Bank (including the furnishing of a back-up standby letter of credit in form and substance, and issued by an issuer reasonably satisfactory to such Issuing Bank or the depositing of cash collateral into a cash collateral account in amounts and pursuant to arrangements reasonably satisfactory to such Issuing Bank) have been made with respect to each such outstanding Letter of Credit and the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of **Section 10.09**.

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, all affected Lenders or all the Lenders or all affected Lenders with respect to a certain Class or Classes of the Loans and (iii) the Required Lenders or Required Facility Lenders, as applicable, have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a "***Non-Consenting Lender.***"

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 3.08 Survival. All of the Borrower's obligations under this **Article III** shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent or the Collateral Agent.

ARTICLE IV.
CONDITIONS PRECEDENT TO BORROWINGS

Section 4.01 Conditions to Initial Borrowing.

The obligation of each Lender to extend credit to the Borrower and of each Issuing Bank to issue Letters of Credit hereunder on the Closing Date is subject only to the satisfaction, or waiver in accordance with **Section 11.01** of each of the following conditions precedent, except as otherwise agreed between the Borrower and the Required Lenders:

(a) The Administrative Agent's receipt of the following, each of which may be originals, facsimiles or copies in .pdf format unless otherwise specified:

(i) a Committed Loan Notice duly executed by the Borrower delivered as set forth in **Section 2.01(b)**, which (if delivered prior to the Closing Date) shall be deemed to be conditioned on the consummation of the Transactions;

(ii) this Agreement duly executed by each Loan Party;

(iii) the Guaranty and the Security Agreement, in each case, duly executed by each applicable Loan Party;

(iv) delivery to the Collateral Agent or the Term Loan Agent (as bailee for the Collateral Agent pursuant to the terms of the Closing Date ABL Intercreditor Agreement) of certificates, if any, representing the Pledged Equity of the Borrower and the Restricted Subsidiaries that constitute Collateral, in each case, (A) to the extent the issuer of such certificate is a corporation or has "opted into" Article 8 of the UCC and (B) accompanied by undated stock powers executed in blank and evidence that all other actions required under the terms of the Security Agreement to perfect the security interests created by the Security Agreement have been taken except as specified in **Section 6.15** hereof and the Security Agreement; ***provided***, ***however***, that, each of the foregoing requirements, including the delivery of documents and instruments required pursuant to the terms of the Collateral Documents (other than to the extent that a Lien on such Collateral may be perfected (x) by the filing of a financing statement or financing change statement, as applicable, under the Uniform Commercial Code or (y) by the delivery of stock certificates of the Borrower and its Subsidiaries to the Collateral Agent or the Term Loan Agent (as bailee for the Collateral Agent pursuant to the terms of the Closing Date ABL Intercreditor Agreement)), shall not constitute conditions precedent to the Borrowing on the Closing Date after the Borrower's use of commercially reasonable efforts to provide such items on or prior to the Closing Date if the Borrower agrees to deliver, or cause to be delivered, such documents and instruments, or take or cause to be taken such other actions as may be required to perfect such security interests within ninety (90) days after the Closing Date (subject to extensions approved by the Administrative Agent in its reasonable discretion or as provided in **Section 6.15**);

(v) (A) certificates of good standing, or its equivalent, from the secretary of state or other applicable office of the jurisdiction of organization or formation of the Borrower and each other Loan Party if applicable in the relevant jurisdiction, (B)

resolutions or other applicable action of the Borrower and each other Loan Party and (C) an incumbency certificate and/or other certificate of Responsible Officers of the Borrower and each other Loan Party, evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which it is a party or is to be a party on the Closing Date;

(vi) an opinion from the following special counsel to the Loan Parties (or certain of the Loan Parties): Gibson, Dunn & Crutcher LLP, with respect to matters of New York and certain aspects of Delaware law and California law;

(vii) a certificate from the chief financial officer or other officer with equivalent duties of the Borrower as to the Solvency (after giving effect to the Transactions on the Closing Date) of the Borrower substantially in the form attached hereto as **Exhibit I**; and

(viii) a certificate from a Responsible Officer of the Borrower certifying as to the satisfaction of the conditions in **clauses (f)**, **(g)** and **(h)** below;

(b) all fees and expenses required to be paid hereunder on the Closing Date and, with respect to expenses and legal fees, to the extent invoiced in reasonable detail at least two Business Days before the Closing Date (except as otherwise reasonably agreed to by the Borrower) shall have been paid in full, it being agreed that such fees and expenses may be paid with the proceeds of the initial funding of one or more of the Facilities.

(c) the (i) Term Loan Documents and (ii) the Loan Documents required to be executed on the Closing Date shall have been duly executed and delivered by each Loan Party thereto.

(d) the Lenders shall have received at least three Business Days prior to the Closing Date (i) all documentation and other information about the Loan Parties required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and (ii) to the extent the Borrower qualifies as a "legal entity customer" a Beneficial Ownership Certification, that in each case has been requested in writing at least ten Business Days prior to the Closing Date.

(e) confirmation from the Borrower (in the form of an officer's certificate) that prior to or substantially simultaneously with the initial Borrowing on the Closing Date, the Closing Date Refinancing shall have been or will be consummated.

(f) on the Closing Date, no Default or Event of Default shall exist, or would result from the proposed Borrowing or from the application of the proceeds therefrom on the Closing Date.

(g) since February 1, 2020, there has been no event or circumstance, either individually or in the aggregate, that has resulted in, or is reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect;

(h) the representations and warranties of the Loan Parties contained in **Article V** or any other Loan Document shall be true and correct in all material respects on and as of the Closing Date*; **provided*** that to the extent that such representations and warranties specifically refer to an

earlier date, they shall be true and correct in all material respects as of such earlier date; ***provided further*** that any representation and warranty that is qualified as to "materiality," "***Material Adverse Effect***" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates;

(i) the Lead Arrangers shall have received the Annual Financial Statements; ***provided*** that the Lead Arrangers hereby acknowledge receipt of the foregoing Annual Financial Statements; and

(j) the Borrower shall have delivered a Borrowing Base Certificate to the Administrative Agent which calculates the Borrowing Base as of January 30, 2021; ***provided*** that Administrative Agent hereby acknowledges receipt of the borrowing base certificate delivered by Petco Animal Supplies, Inc. under the Existing ABL Credit Agreement, which delivery satisfies the condition in this clause (j).

Without limiting the generality of the provisions of the last paragraph of **Section 11.03**, for purposes of determining compliance with the conditions specified in this **Section 4.01**, each Lender that has signed this Agreement or funded Loans hereunder shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required under this **Section 4.01** to be consented to or approved by or acceptable or satisfactory to a Lender, unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.02 Conditions to All Borrowings After the Closing Date. Except as set forth in **Section 2.16(f)** with respect to Incremental Loans and subject to **Section 1.08**, the obligation of each Lender to honor a Committed Loan Notice, of each Issuing Bank to issue, amend, renew or extend any Letter of Credit and of the Swing Line Lender to make Swing Line Loans, in each case, after the Closing Date, is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in **Article V** or any other Loan Document shall be true and correct in all material respects on and as of the date of such Borrowing or issuance, amendment, renewal or extension of any Letter of Credit; ***provided*** that, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; ***provided***, ***further***, that any representation and warranty that is qualified as to "materiality," "***Material Adverse Effect***" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(b) As of the date of such Borrowing or the date of any issuance, amendment, renewal or extension of any Letter of Credit, no Default or Event of Default shall have occurred and be continuing on such date (immediately prior to giving effect to the extensions of credit requested to be made) or would result after giving effect to the extensions of credit requested to be made on such date.

(c) As of the date of such Borrowing and after giving effect thereto, the Total Utilization of Revolving Commitments shall not exceed the Line Cap.

(d) If applicable, the Administrative Agent shall have received a Committed Loan Notice in accordance with the requirements hereof and, if applicable, the applicable Issuing Bank shall have received an Issuance Notice in accordance with the requirements hereof or the Swing Line Lender shall have received a Swing Line Loan Request in accordance with the requirements hereof.

(e) For purposes of this **Section 4.02**, the representations and warranties contained in **Section 5.05(a)** shall be deemed to refer to the most recent financial statements furnished pursuant to **Sections 6.01(a)** and **(b)**, respectively.

Subject to **Section 1.08(f)**, each Committed Loan Notice (other than a Committed Loan Notice requesting only a conversion of Loans to another Type or a continuation of Term Benchmark Loans) and each Issuance Notice submitted by the Borrower shall be deemed to be a representation and warranty that the condition specified in **Sections 4.02(a), (b)** and **(c)** has been satisfied on and as of the date of the applicable Borrowing or issuance, amendment, renewal or extension of a Letter of Credit.

Without limiting the generality of the provisions of the last paragraph of **Section 11.02**, for purposes of determining compliance with the conditions specified in this **Section 4.02**, each Lender that has signed this Agreement (and/or Assignment and Assumption) shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the date of the proposed borrowing, specifying its objection thereto in writing.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants each of the following to the Lenders, the Issuing Banks, the Administrative Agent and the Collateral Agent, in each case, to the extent and, unless otherwise specifically agreed by the Borrower, only on the dates required by **Section 2.16**, or **Article IV**, as applicable.

Section 5.01 Existence, Qualification and Power; Compliance with Laws . Each Loan Party and each Restricted Subsidiary that is a Material Subsidiary,

(a) is duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concepts exist in such jurisdiction);

(b) has all corporate or other organizational power and authority to (i) own its assets and carry on its business as currently conducted and (ii) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party and consummate the Transactions;

(c) is duly qualified and in good standing (to the extent such concepts exist in such jurisdiction) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification;

(d) is in compliance with all applicable Laws; and

(e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted;

except in each case referred to in **clauses (c)**, **(d)** or **(e)**, to the extent that failure to do so has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.02 Authorization; No Contravention.

(a) The execution, delivery and performance by each Loan Party of each Loan Document to which it is a party has been duly authorized by all necessary corporate or other organizational action.

(b) None of the execution, delivery or performance by each Loan Party of each Loan Document to which it is a party nor the consummation of the Transactions will,

(i) contravene the terms of any of its Organization Documents;

(ii) result in any breach or contravention of, or the creation of any Lien (other than a Permitted Lien) upon any assets of such Loan Party or any Restricted Subsidiary, under (A) any Contractual Obligation relating to Material Indebtedness or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject;

(iii) violate any applicable Law; or

(iv) require any approval of stockholders, members or partners or any approval or consent of any Person under any Contractual Obligation relating to Material Indebtedness, except for such approvals or consents which will be obtained on or before the Closing Date;

except with respect to any breach, contravention or violation (but not creation of Liens) referred to in **clauses (ii), (iii)** and **(iv)** above, to the extent that such breach, contravention or violation has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.03 Governmental Authorization. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by any Loan Party of this Agreement or any other Loan Document, except for,

(a) filings necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties;

(b) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect (except to the extent

not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral Documents); and

(c) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.04 Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party hereto and thereto. This Agreement and each other Loan Document constitutes a legal, valid and binding obligation of each Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except as such enforceability may be limited by applicable Debtor Relief Laws and by general principles of equity and principles of good faith and fair dealing.

Section 5.05 Financial Statements; No Material Adverse Effect.

(a) The Annual Financial Statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the dates thereof and their results of operations for the period covered thereby in accordance with GAAP (as in effect on the Closing Date (or the date of preparation)) consistently applied throughout the periods covered thereby, except as otherwise expressly noted therein.

(b) Since February 1, 2020, there has been no event or circumstance, either individually or in the aggregate, that has resulted in, and is reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

(c) The forecasts of consolidated balance sheets and statements of comprehensive income (loss) of the Borrower and its Subsidiaries which have been furnished to the Administrative Agent prior to the Closing Date, when taken as a whole, have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made and at the time the forecasts are delivered, it being understood that (i) no forecasts are to be viewed as facts, (ii) any forecasts are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties or any Sponsor, (iii) no assurance can be given that any particular forecasts will be realized and (iv) actual results may differ and such differences may be material.

Section 5.06 Litigation. Except as set forth in **Schedule 5.06**, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of the Restricted Subsidiaries that has resulted in, or is reasonably expected, individually or in the aggregate, to result in Material Adverse Effect.

Section 5.07 [Reserved].

Section 5.08 Ownership of Property; Liens. Each Loan Party and each Restricted Subsidiary has good and valid record title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for Permitted Liens and except where the failure

to have such title or other interest has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect. The properties of each Loan Party and each Restricted Subsidiary are insured with financially sound and reputable insurance companies that are not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Borrower or the applicable Restricted Subsidiary operates.

Section 5.09 Environmental Matters.

(a) Except as has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, (i) the Loan Parties and the Restricted Subsidiaries are in compliance with all applicable Environmental Laws (including having obtained all Environmental Permits) and (ii) none of the Loan Parties or any of the Restricted Subsidiaries is subject to any pending, or to the knowledge of the Loan Parties, threatened Environmental Claim or any other Environmental Liability or is aware of any basis for any Environmental Liability.

(b) None of the Loan Parties or any of the Restricted Subsidiaries has used, released, treated, stored, transported or disposed of Hazardous Materials, at or from any currently or formerly owned or operated real estate or facility relating to its business, in a manner that has resulted in, or is reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.10 Taxes. Except as has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, the Borrower and its Subsidiaries have (i) timely filed all foreign, U.S. federal and state and other tax returns and reports required to be filed and (ii) timely paid all foreign, U.S. federal and state and other Taxes, assessments, fees and other governmental charges (including satisfying their withholding Tax obligations) levied or imposed on their properties, income or assets or otherwise due and payable, except those which are being contested in good faith by appropriate actions diligently conducted and for which adequate reserves have been provided in accordance with GAAP.

Section 5.11 ERISA Compliance; Pension Plans.

(a) Except as set forth in **Schedule 5.11(a)** or has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state, provincial, territorial and foreign Laws.

(b) Except, as set forth in **Schedule 5.11(b)** or, with respect to each of the below clauses of this **Section 5.11(b)**, as has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in Material Adverse Effect,

(i) no ERISA Event has occurred or is reasonably expected to occur;

(ii) neither the Borrower, nor any Subsidiary Guarantor nor any of their respective ERISA Affiliates has engaged in a transaction that is subject to Sections 4069 or 4212(c) of ERISA; and

(iii) neither the Borrower, nor any Subsidiary Guarantor nor any ERISA Affiliate has been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent (within the meaning of Section 4245 of ERISA) or has been determined to be in "endangered" or "critical" status (within the meaning of Section 432 of the Code or Section 305 of ERISA) and no such Multiemployer Plan is expected to be insolvent or in endangered or critical status.

Section 5.12 Subsidiaries. As of the Closing Date, all of the outstanding Equity Interests in the Borrower and each Material Subsidiary have been validly issued and are fully paid and (if applicable) non-assessable, and all Equity Interests owned by the Borrower or any Subsidiary Guarantor in any of their respective direct Material Subsidiaries are owned free and clear of all Liens (other than Permitted Liens) of any Person. As of the Closing Date, **Schedule 5.12** (i) sets forth the name and jurisdiction of each Subsidiary, (ii) sets forth the ownership interest of the Borrower and each Subsidiary in each Subsidiary, including the percentage of such ownership and (iii) identifies each Subsidiary that is a Subsidiary the Equity Interests of which are required to be pledged on the Closing Date pursuant to the Collateral Documents.

Section 5.13 Margin Regulations; Investment Company Act.

(a) As of the Closing Date, none of the Collateral is Margin Stock. No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings or issuance of, or drawings under, any Letter of Credit will be used for any purpose that violates Regulation U.

(b) Neither the Borrower nor any Guarantor is an "investment company" under the Investment Company Act of 1940.

Section 5.14 Disclosure. As of the Closing Date, none of the written information and written data heretofore or contemporaneously furnished by or on behalf of any Loan Party or a Sponsor to any Agent or any Lender on or prior to the Closing Date in connection with the Transactions and the negotiation of this Agreement or delivered hereunder or any other Loan Document on or prior to the Closing Date, when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make such written information and written data taken as a whole, in the light of the circumstances under which it was delivered, not materially misleading (after giving effect to all modifications and supplements to such written information and written data, in each case, furnished after the date on which such written information or such written data was originally delivered and prior to the Closing Date); it being understood that for purposes of this **Section 5.14**, such written information and written data shall not include projections, *pro forma* financial information, financial estimates, forecasts or other forward-looking information or information of a general economic or general industry nature or prepared by the Lead Arrangers.

Section 5.15 Intellectual Property; Licenses, Etc. The Borrower and the Restricted Subsidiaries own or have a valid right to use, all the Intellectual Property necessary for the operation of their respective businesses as currently conducted, except where the failure to have

any such rights, has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower and the Restricted Subsidiaries as currently conducted does not infringe upon, misappropriate or violate any Intellectual Property rights held by any Person except for such infringements, misappropriations or violations that have not resulted in, or are not reasonably expected, individually or in the aggregate, to result in, a Material Adverse Effect. No claim or litigation regarding any Intellectual Property owned by the Borrower or any of the Restricted Subsidiaries is pending or, to the knowledge of the Borrower, threatened against the Borrower or any Restricted Subsidiary, that, has resulted in, or is reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 5.16 Solvency. On the Closing Date after giving effect to the Transactions, the Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

Section 5.17 USA Patriot Act, FCPA and OFAC.

(a) To the extent applicable, each of the Loan Parties and the Restricted Subsidiaries is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the USA PATRIOT Act and other similar anti-money laundering rules and regulations.

(b) Each of the Loan Parties and the Restricted Subsidiaries, and their respective officers, directors and employees, and to the Borrower's knowledge, their respective agents, affiliates and representatives, have conducted their businesses in compliance in all material respects with the FCPA, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions. The Borrower will not directly, or to its knowledge indirectly, use the proceeds of the Loans or Letters of Credit in violation of the FCPA, the UK Bribery Act 2010 or other similar anti-corruption legislation in other jurisdictions.

(c) None of the Loan Parties or any of the Restricted Subsidiaries, nor, to the knowledge of the Borrower, any director, officer, agent, employee or Affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is, (i) the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets, the Investment Ban List or any other Sanctions list, or (iii) located, organized or resident in a Designated Jurisdiction.

(d) The Borrower will not directly, or to its knowledge indirectly, use the proceeds of the Loans or Letters of Credit or otherwise knowingly make available such proceeds (x) to any Person, for the purpose of financing the activities of any Person that, at the time of such financing, is (i) the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets, the Investment Ban List or any other Sanctions list, or (iii) located, organized or resident in a Designated Jurisdiction or (y) in any manner that would result in a violation of Sanctions by any Person.

Section 5.18 Collateral Documents. Except as otherwise contemplated hereby or under any other Loan Documents, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents or contemplated by the Collateral Documents (including the delivery to Collateral Agent of any Pledged Debt and any Pledged Equity required to be delivered pursuant to the applicable Collateral Documents), are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid and enforceable perfected Lien (subject to Permitted Liens) on all right, title and interest of the Borrower and the applicable Subsidiary Guarantors, respectively, in the Collateral described therein.

Section 5.19 Use of Proceeds. The Borrower has used the proceeds of the Loans (including the Swing Line Loans) and the Letters of Credit issued hereunder only in compliance with (and not in contravention of) applicable Laws and each Loan Document, and not in a manner that would result in a violation of Sanctions by any Peron.

Section 5.20 Borrowing Base Certificate. The information set forth in each Borrowing Base Certificate is true and correct in all material respects and has been prepared in all material respects in the accordance with the requirements of this Agreement. The Accounts, Inventory and cash and Cash Equivalents that are identified by the Borrower as Eligible Accounts, Eligible Inventory and Qualified Cash, as applicable, in each Borrowing Base Certificate submitted to the Administrative Agent, as of the date to which such Borrowing Base Certificate relates, comply in all material respects with the criteria (other than any Administrative Agent-discretionary criteria established in accordance with this Agreement) set forth in the definition of "***Eligible Accounts***", "***Eligible Inventory***" and "***Qualified Cash***".

ARTICLE VI.
AFFIRMATIVE COVENANTS

So long as the Termination Conditions have not been satisfied, the Borrower shall, and shall (except in the case of the covenants set forth in **Sections 6.01**, **6.02** and **6.03**) cause each of the Restricted Subsidiaries to:

Section 6.01 Financial Statements. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender each of the following:

(a) **Audited Annual Financial Statements**. Within the time period required by the SEC (or, in the event that the Borrower is no longer a public filer with the SEC, within one hundred and twenty (120) days after the end of each fiscal year of the Borrower), a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of each fiscal year, and the related consolidated statements of comprehensive income (loss), stockholders' equity and cash flows for such fiscal year together with related notes thereto, setting forth in each case in comparative form the figures for the previous fiscal year (if ending after the Closing Date), prepared in accordance with GAAP, audited and accompanied by a report and opinion of the Borrower's auditor on the Closing Date or any other accounting firm of nationally or regionally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any explanatory statement as to the Borrower's ability to continue as a "going

concern" or like qualification or exception (excluding any "emphasis of matter" paragraph), other than any such statement, qualification or exception resulting from or relating to (i) an actual or anticipated breach of a Financial Covenant, (ii) an upcoming maturity date, (iii) activities, operations, financial results or liabilities of any Person other than the Loan Parties and the Restricted Subsidiaries or (iv) changes in accounting principles or practices.

(b) **Quarterly Financial Statements**. Within the time period required by the SEC (or, in the event that the Borrower is no longer a public filer with the SEC, as soon as available, but in any event within sixty (60) days after the end of each of the first three fiscal quarter of each fiscal year of the Borrower) (i) a condensed consolidated balance sheet of the Borrower and its Subsidiaries as at the end of each of the first three fiscal quarters of each fiscal year, (ii) the related condensed consolidated statements of comprehensive income (loss) for such fiscal quarter and for the portion of the fiscal year then ended and (iii) the related condensed consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth, in each case of **clauses (ii)** and **(iii)**, in comparative form, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, in each case if ended after the Closing Date, certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in material compliance with GAAP, subject to year-end adjustments and the absence of footnotes.

(c) **Lender Calls**. The Borrower shall conduct quarterly conference calls with management of the Borrower (which conference calls may be combined with any conference calls for the holders of the Borrower's securities) and the Lenders, and in each case, subject to the requirements of this covenant, to discuss the financial performance of the Borrower and its Restricted Subsidiaries for the most recently ended fiscal year or fiscal quarter, as the case may be, for which financial statements have been delivered pursuant to **clauses (a)** or **(b)** above.

(d) **Unrestricted Subsidiaries**. Simultaneously with the delivery of each set of consolidated financial statements referred to in **Section 6.01(a)** and **Section 6.01(b)** above, such information (which need not be audited or reviewed by the auditors) reasonably sufficient to identify the Indebtedness and Consolidated Adjusted EBITDA attributable to all Unrestricted Subsidiaries (if any).

Notwithstanding the foregoing, the obligations in **paragraphs (a)** and **(b)** of this **Section 6.01** may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing the Borrower's Form 10-K or 10-Q, as applicable, filed with the SEC; ***provided*** that, to the extent such information is in lieu of information required to be provided under **Section 6.01(a)**, so long as a report and opinion of the Borrower's auditor is not included therein, such materials are accompanied by a report and opinion of the Borrower's auditor on the Closing Date, any other accounting firm of nationally or regionally recognized standing or another accounting firm reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any explanatory statement as to the Borrower's ability to continue as a "going concern" or like qualification or exception (excluding any "emphasis of matter" paragraph), other than any such statement, qualification or exception resulting from or relating to (i) an actual or anticipated breach of a Financial Covenant, (ii) an upcoming maturity date, (iii) activities, operations, financial results or

liabilities of any Person other than the Loan Parties and the Restricted Subsidiaries or (iv) changes in accounting principles or practices. Any financial statements required to be delivered pursuant to this **Section 6.01** shall not be required to contain purchase accounting adjustments to the extent it is not practicable to include any such adjustments in such financial statements.

Section 6.02 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender each of the following:

(a) **Compliance Certificate**. No later than five Business Days after the delivery of the financial statements referred to in **Section 6.01(a)** and **Section 6.01(b)**, a duly completed Compliance Certificate which will (among other things), with respect to the Compliance Certificate delivered in connection with the Financial Statements referred to in **Section 6.01(a)**, contain a list of Unrestricted Subsidiaries and updates to certain provisions set forth in the Perfection Certificate on the Closing Date; ***provided*** that, if such Compliance Certificate demonstrates a Financial Covenant Event of Default, a notice of an intent to cure (a "***Notice of Intent to Cure***") pursuant to **Section 8.02** may be delivered along with or prior to delivery of such Compliance Certificate to the extent permitted thereunder.

(b) **SEC Filings**. Promptly after the same are publicly available, copies of all annual, regular, periodic and special reports, proxy statements and registration statements which the Borrower or any Restricted Subsidiary files with the SEC (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this **Section 6.02**; ***provided*** that notwithstanding the foregoing, the obligations in this **Section 6.02(b)** may be satisfied by causing such information to be publicly available on the SEC's EDGAR website or another publicly available reporting service.

(c) **Information Regarding Collateral**. The Borrower agrees to notify the Collateral Agent within forty-five calendar days of such event of any change (or such later date as the Collateral Agent may agree in its reasonable discretion),

(i) in the legal name of any Loan Party or any Person required to be a Loan Party;

(ii) in the identity or type of organization of any Loan Party or any Person required to be a Loan Party;

(iii) in the jurisdiction of organization of any Loan Party or any Person required to be a Loan Party;

(iv) in the location (within the meaning of Section 9-307 of the UCC) of any Loan Party or any Person required to be a Loan Party under the UCC;

(v) in the location of any Collateral that are of a type that are normally used in more than one jurisdiction.

(d) **Other Information**. Such additional information as may be reasonably requested by the Administrative Agent or any Lender through the Administrative Agent (i) for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, and the Beneficial Ownership Regulation and (ii) regarding the business, financial, legal or corporate affairs of the Borrower or any of its Restricted Subsidiaries.

(e) [reserved]

(f) **Borrowing Base Certificate**. On or prior to the 15th Business Day after the last day of each fiscal ~~month~~quarter of the Borrower (which, if such day is not a Business Day, shall be delivered on the following Business Day) commencing with the fiscal ~~month ending February 27, 2021 (the period ending on each such date, a "*Fiscal Month*")~~quarter ending May 4, 2024, a Borrowing Base Certificate as of the close of business on the last day of the immediately preceding ~~Fiscal Month~~fiscal quarter, together with such supporting information in connection therewith as the Administrative Agent may reasonably request, which may include, (A) a reasonably detailed calculation of Eligible Account, Net Orderly Liquidation Value of Eligible Inventory and Qualified Cash and (B) a reasonably detailed aging of the Loan Parties' Accounts and Inventory; ***provided*** that

(1) during the continuance of a period beginning on the date that the Total Utilization of Revolving Commitments exceeds $75,000,000 (a "***Monthly Borrowing Base Delivery Event***") and ending on the date that the Total Utilization of Revolving Commitments shall have been less than $75,000,000 for 20 consecutive calendar days, the Borrower shall deliver a Borrowing Base Certificate and such supporting information as is reasonably practicable to provide on a monthly basis by the 15th Business Day after the last day of each fiscal month of the Borrower (which, if such day is not a Business Day, shall be delivered on the following Business Day), as of the close of business on the last day of the immediately preceding fiscal month of the Borrower; provided that, the occurrence of a Monthly Borrowing Base Delivery Event shall be deemed continuing until the end of the first full fiscal month after the fiscal month in which the Total Utilization of Revolving Commitments again is less than $75,000,000,

(~~1~~2) during the continuance of a period beginning on the date that Specified Excess Availability shall have been less than the greater of (x) 10.0% of the Line Cap and (y) $~~31,250,000~~37,500,000 for five consecutive Business Days and ending on the date that Specified Excess Availability shall have been at least the greater of (x) 10.0% of the Line Cap and (y) $~~31,250,000~~37,500,000 for 20 consecutive calendar days, the Borrower shall deliver a Borrowing Base Certificate and such supporting information as is reasonably practicable to provide on a weekly basis by the close of business on Thursday of each week (or if Thursday is not a Business Day, on the next succeeding Business Day), as of the close of business on the immediately preceding Friday,

(~~2~~3) during the continuance of a Specified ABL Event of Default and only for so long as a Specified ABL Event of Default is continuing, the Borrower will be required to compute the Borrowing Base and deliver a Borrowing Base Certificate as frequently as

reasonably requested by the Administrative Agent (but not more frequently than as required in the preceding **clause (~~1~~2)**),

(~~3~~4) any Borrowing Base Certificate delivered other than with respect to a ~~Fiscal Month's~~fiscal quarter's end or fiscal month's end, as applicable, may be based on such estimates by the Borrower as the Borrower may deem necessary and

(~~4~~5) any Borrowing Base Certificate which the Borrower elects to deliver more frequently than with respect to a ~~Fiscal Month's end~~fiscal quarter's end or fiscal month's end, as applicable, will be delivered at such increased frequency for at least 60 consecutive calendar days following the initial delivery thereof;

provided, ***further***, that a revised Borrowing Base Certificate based on the Borrowing Base Certificate most recently delivered shall be delivered upon the consummation of a sale or other disposition (including, without limitation, any Disposition) (or merger, consolidation or amalgamation that constitutes a sale or disposition) of any ABL Priority Collateral of a Loan Party to any Person other than a Loan Party outside the ordinary course of business with an aggregate value in excess of 10% of the Borrowing Base at such time, together with such supporting information as may be reasonably requested by the Administrative Agent.

Documents required to be delivered pursuant to **Section 6.01** or **Section 6.02** (other than **Section 6.02(a)**) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto, on the Borrower's website on the Internet at the website addresses listed on **Schedule 11.02**, or (ii) on which such documents are posted on the Borrower's behalf on Merrill Datasite One, IntraLinks/IntraAgency, Syndtrak or another relevant 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: other than with respect to documents that are filed with the SEC, the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent 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. Each Lender shall be solely responsible for timely accessing posted documents and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Lead Arrangers will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "***Borrower Materials***") by posting the Borrower Materials on Merrill Datasite One, IntraLinks/IntraAgency, Syndtrak or another similar electronic system (the "***Platform***") and (b) certain of the Lenders may have personnel who do not wish to receive any information with respect to the Borrower or its Subsidiaries, or the respective securities of any of the foregoing, that is not Public-Side Information, and who may be engaged in investment and other market-related activities with respect to such Person's securities. The Borrower hereby agrees that

(i) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "***PUBLIC***" which, at a minimum, shall mean that the word "***PUBLIC***" shall appear prominently on the first page thereof (and by doing so shall

be deemed to have represented that such information contains only Public-Side Information);

(ii) by marking Borrower Materials " ***PUBLIC,***" the Borrower shall be deemed to have authorized the Administrative Agent, the Lead Arrangers and the Lenders to treat such Borrower Materials as containing only Public-Side Information (***provided however***, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in **Section 11.08**);

(iii) all Borrower Materials marked "***PUBLIC***" are permitted to be made available through a portion of the Platform designated "***Public-Side Information***"; and

(iv) the Administrative Agent and/or the Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked "***PUBLIC***" as being suitable only for posting on a portion of the Platform not designated "***Public-Side Information.***"

For the avoidance of doubt, the foregoing shall be subject to the provisions of **Section 11.08**.

Section 6.03 Notices. Promptly after a Responsible Officer obtains actual knowledge thereof, notify the Administrative Agent for prompt further notification by the Administrative Agent to each Lender of:

(a) the occurrence of any (i) Default or Event of Default or (ii) "***Default***" or "***Event of Default***" under and as defined in the Term Loan Credit Agreement; and

(b) (i) any dispute, litigation, investigation or proceeding between the Borrower or any Restricted Subsidiary and any arbitrator or Governmental Authority or (ii) the filing or commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Restricted Subsidiary, or (iii) the occurrence of any ERISA Event that, in any such case referred to in **clause (i)** through **(iii)**, has resulted, or is reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Each notice pursuant to this **Section 6.03** shall be accompanied by a written statement of a Responsible Officer of the Borrower setting forth a summary description of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. For the avoidance of doubt, the foregoing shall be subject to the provisions of **Section 11.08**.

Section 6.04 Payment of Certain Taxes. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all obligations and liabilities in respect of Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (a) any such Tax, assessment, charge or levy is being contested in good faith and by appropriate actions diligently conducted and for which appropriate reserves have been established in accordance with GAAP or (b) the failure to pay, discharge or otherwise satisfy the same has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 6.05 Preservation of Existence, Etc.

(a) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its incorporation or organization, as applicable; and

(b) take all reasonable action to preserve, renew and keep in full force and effect those of its rights (including with respect to Intellectual Property), licenses, permits, privileges, and franchises, that are material to the conduct of the business of the Loan Parties taken as a whole;

except in the case of **clause (a)** or **(b)**, (i) in connection with a transaction permitted by the Loan Documents (including transactions permitted by **Section 7.04** or **Section 7.05**), (ii) with respect to any Immaterial Subsidiary, or (iii) except with respect to the Borrower's compliance with **clause (a)**, to the extent that failure to do so has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 6.06 Maintenance of Properties. Maintain, preserve and protect all of its material properties and equipment used in the operation of its business in good working order, repair and condition (ordinary wear and tear excepted and casualty or condemnation excepted), except to the extent the failure to do so has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 6.07 Maintenance of Insurance.

(a) Except when the failure to do so has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect, maintain or cause to be maintained with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed or with a Captive Insurance Subsidiary, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and of such types and in such amounts (after giving effect to any self-insurance) as are customarily carried under similar circumstances by such other Persons, and furnish to the Administrative Agent, which, absent a continuing Event of Default, shall not be made more than once in any twelve month period, upon reasonable written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried.

(b) Subject to **Section 6.15**, each such policy of insurance shall as appropriate and is customary,

(i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder (with respect to liability insurance), or

(ii) to the extent covering Collateral in the case of property insurance, contain a loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the lenders' loss payee thereunder;

provided that

(A) absent a Specified Event of Default that is continuing, any proceeds of any such insurance shall be delivered by the insurer(s) to the Borrower or one of its Subsidiaries and may be applied in accordance with (or, if this Agreement does not provide for application of such proceeds, in a manner that is not prohibited by) this Agreement and

(B) this **Section 6.07(b)** shall not be applicable to

(1) business interruption insurance, workers' compensation policies, employee liability policies or directors and officers policies,

(2) policies to the extent the Collateral Agent cannot have an insurable interest therein or is unable to be named as an additional insured or lenders' loss payee thereunder or

(3) the extent unavailable from the relevant insurer after the Borrower's use of its commercially reasonable efforts;

provided, ***further***, that no insurance shall be required in any jurisdiction outside of the United States.

Section 6.08 Compliance with Laws. (a) Comply with the requirements of all Laws (including applicable ERISA-related Laws, and all Environmental Laws) and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or to its business or property, except to the extent the failure to comply therewith has not resulted in, or is not reasonably expected, individually or in the aggregate, to result in a Material Adverse Effect and (b) comply in all material respects with the requirements of the USA PATRIOT Act, FCPA, OFAC, UK Bribery Act of 2010 and other anti-terrorism, anti-corruption and anti-money laundering Laws; ***provided*** that the requirements set forth in this **Section 6.08**, as they pertain to compliance by any Foreign Subsidiary with the USA PATRIOT ACT, FCPA, OFAC and UK Bribery Act of 2010 are subject to and limited by any Law applicable to such Foreign Subsidiary in its relevant local jurisdiction.

Section 6.09 Books and Records. Maintain proper books of record and account in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and material matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be (it being understood and agreed that Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization or operations and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder), in each case, to the extent necessary to prepare the financial statements described in **Sections 6.01(a)** and **6.01(b)**.

Section 6.10 Inspection Rights.

(a) Permit representatives of the Administrative Agent and Required Lenders to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers and independent public accountants (subject to such accountants' policies

and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; ***provided*** that (a) excluding any such visits and inspections during the continuation of an Event of Default, only the Administrative Agent on behalf of the Lenders may exercise rights under this **Section 6.10** and the Administrative Agent shall not exercise such rights more often than two times during any calendar year absent the continuation of an Event of Default and only one such time shall be at the Borrower's expense and (b) when an Event of Default is continuing, the Administrative Agent or the Required Lenders (or any of their respective representatives) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. For the avoidance of doubt, the foregoing shall be subject to the provisions of **Section 11.08**.

(b) (i) From time to time the Administrative Agent may conduct (or engage third parties to conduct) such field examinations, inventory appraisals, verifications and evaluations as the Administrative Agent may deem necessary or appropriate; ***provided*** that, the Administrative Agent

(a) may conduct (x) one field examination, inventory appraisal, verification and evaluation with respect to the Collateral in each 12-month period after the date of this Agreement and (y) one additional field examination, inventory appraisal, verification and evaluation with respect to the Collateral in each consecutive 12-month period after the date Specified Excess Availability shall have been less than the greater of (a) 12.5% of the Line Cap and (b) $~~46,500,000~~55,800,000 for five or more consecutive Business Days, and

(b) may conduct such other field examinations, inventory appraisals, verifications and evaluations as frequently as determined by the Administrative Agent in its reasonable discretion upon the occurrence and during the continuance of any Specified ABL Event of Default,

in each case, in a form, and from an Acceptable Appraiser. The Loan Parties will reasonably cooperate with the Administrative Agent and such Acceptable Appraiser in the conduct of such appraisals.

(ii) All such appraisals, field examinations, and other verifications and evaluations shall be at the sole expense of the Loan Parties, and the Administrative Agent shall provide the Borrower with a reasonably detailed accounting of all such expenses. The Loan Parties acknowledge that the Administrative Agent, after exercising its rights of inspection, (x) may prepare and distribute to the Lenders certain Reports pertaining to the Loan Parties' assets for internal use by the Administrative Agent and the Lenders, subject to the provisions of **Section 11.08** hereof and (y) shall promptly distribute copies of any final reports from a third party appraiser or third party consultant delivered in connection with any field exam or appraisal to the Lenders.

(iii) The Loan Parties will reasonably cooperate with the Administrative Agent and such Acceptable Appraiser in the conduct of such appraisals. Such appraisals, field examinations and other verifications and evaluations will be prepared in a form and on a basis reasonably satisfactory to the Administrative Agent, such appraisals, field examinations and other verifications and evaluations to include, without limitation, information required by applicable law and by the internal policies of the Lenders.

(iv) 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 6.11(b)** after the Closing Date,

(a) 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

(b) 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.

(c) 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.

(d) Notwithstanding anything to the contrary in this Agreement 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; ***provided***, in each case, that each of the Loan Parties and the Restricted Subsidiaries shall (i) use commercially reasonable efforts to provide, permit the inspection, examination or making of copies of any such information, documentation or other matter in a manner that does not violate any such agreements, privilege or applicable law or does not create excessive expense or burden and (ii) have notified the Administrative Agent that such document or information is being withheld on the basis of the foregoing.

Section 6.11 Covenant to Guarantee Obligations and Give Security.

At the Borrower's expense, subject to any applicable limitation in any Loan Document (including **Section 6.12**), take the following actions:

(i) within ninety days of the occurrence of any Grant Event (or such longer period as the Administrative Agent may agree in its reasonable discretion),

(a) cause the Restricted Subsidiary subject of the Grant Event to execute and deliver the Guaranty (or a joinder thereto), which may be accomplished by executing a Guaranty Supplement;

(b) cause the Restricted Subsidiary subject of the Grant Event to execute and deliver the Security Agreement (or a supplement thereto), which may be accomplished by executing a Security Agreement Supplement;

(c) cause the Restricted Subsidiary subject of the Grant Event to execute and deliver any applicable Intellectual Property Security Agreements with respect to its registered or applied for Intellectual Property constituting Collateral;

(d) cause the Restricted Subsidiary subject of the Grant Event to execute and deliver an acknowledgement of the Closing Date ABL Intercreditor Agreement and any other applicable Intercreditor Agreement;

(e) cause the Restricted Subsidiary subject of the Grant Event (and any Loan Party of which such Restricted Subsidiary is a direct Subsidiary) to (1) if such Restricted Subsidiary is a corporation or has "opted into" Article 8 of the Uniform Commercial Code, deliver (or deliver to the Term Loan Agent in accordance with the Closing Date ABL Intercreditor Agreement) any and all certificates representing its Equity Interests (to the extent certificated) that constitute Collateral and are required to be delivered pursuant to the Security Agreement accompanied by undated stock powers or other appropriate instruments of transfer executed in blank (or any other documents customary under local law), (2) execute and deliver a counterparty signature page to the Global Intercompany Note (or a joinder thereto), (3) deliver all instruments evidencing Indebtedness held by such Restricted Subsidiary that constitute Collateral and are required to be delivered pursuant to the Security Agreement, endorsed in blank, to the Collateral Agent, and (4) if such Restricted Subsidiary is a Foreign Subsidiary, deliver such additional Collateral Documents and enter into additional collateral arrangements in the jurisdiction of such Foreign Subsidiary reasonably satisfactory to the Administrative Agent;

(f) upon the reasonable request of the Administrative Agent, take and cause the Restricted Subsidiary the subject of the Grant Event and each direct or indirect parent of such Restricted Subsidiary that is required to become a Subsidiary Guarantor pursuant to this Agreement that directly holds Equity Interests in such Restricted Subsidiary to take such customary actions as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) perfected Liens

(subject to Permitted Liens) in the Equity Interests of such Restricted Subsidiary and the personal property and fixtures of such Restricted Subsidiary to the extent required by the Loan Documents, enforceable against all third parties in accordance with their terms, except as such enforceability may be limited by applicable Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law);

(g) upon request of the Administrative Agent deliver to the Administrative Agent a signed copy of a customary opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties as to such matters set forth in this **Section 6.11(a)** as the Administrative Agent may reasonably request; ***provided*** that such matters are not inconsistent with those addressed in opinions delivered on the Closing Date or customary market practice;

provided that without limiting the obligations set forth above, the Administrative Agent and the Collateral Agent will consult in good faith with the Borrower to reduce any stamp, filing or similar taxes imposed as a result of the actions described in the foregoing provisions.

Section 6.12 Further Assurances. Subject to **Section 6.11** and any applicable limitations in any Collateral Document, and in each case at the expense of the Borrower, promptly upon the reasonable request by the Administrative Agent or Collateral Agent (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents.

Notwithstanding anything to the contrary in any Loan Document, other than with respect to the Equity Interests and assets of any Foreign Subsidiary that becomes a Loan Party, neither the Borrower, nor any Restricted Subsidiary will be required to, nor will the Administrative Agent or the Collateral Agent be authorized,

(i) to perform security interests in the Collateral other than by,

(a) "all asset" filings pursuant to the Uniform Commercial Code in the office of the secretary of state (or similar central filing office) of the relevant state(s);

(b) filings in (1) the United States Patent and Trademark Office with respect to any U.S. issued or applied for patents and registered or applied for trademarks and (2) the United States Copyright Office of the Library of Congress with respect to material copyright registrations, in the case of each of **clause (1)** and **(2)**, constituting Collateral; and

(c) delivery to the Administrative Agent or Collateral Agent (or a bailee of the Administrative Agent or Collateral Agent in accordance with the Closing Date ABL Intercreditor Agreement) to be held in its possession of all Collateral

consisting of (1) certificates representing Pledged Equity and (2) promissory notes and other instruments constituting Collateral, in each case, in the manner provided in the Collateral Documents; ***provided*** that promissory notes and instruments having an aggregate principal amount equal to or less than the Materiality Threshold Amount need not be delivered to the Collateral Agent;

(ii) other than as set forth in **Section 6.18** and in the definition of "***Qualified Cash***" or in relation to any Cash Collateral arrangement required hereunder, to enter into any control agreement, blocked account agreement, lockbox or similar arrangement with respect to any deposit account, securities account, commodities account or other bank account, or otherwise take or perfect a security interest with control;

(iii) [reserved]; or

(iv) to take any action with respect to perfecting a Lien with respect to letters of credit, letter of credit rights, commercial tort claims, chattel paper or assets subject to a certificate of title or similar statute (in each case, other than the filing of customary "all asset" UCC-1 financing statements) or to deliver landlord lien waivers, estoppels, bailee letters or collateral access letters, in each case, unless required by the terms of the Security Agreement or the relevant Collateral Document.

Further, the Loan Parties shall not be required to perform any periodic collateral reporting, if any, with any frequency greater than once per fiscal year (***provided*** that this clause shall not limit the obligation of the Loan Parties to comply with **Section 6.02(c)** or **Section 6.11** or the Collateral Documents).

Section 6.13 Designation of Subsidiaries. The Borrower may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or designate (or re-designate, as the case may be) any Unrestricted Subsidiary as a Restricted Subsidiary; ***provided*** that

(a) immediately before and after such designation (or re-designation), no Specified Event of Default or Specified ABL Event of Default shall have occurred and be continuing;

(b) the Investment resulting from the designation of such Restricted Subsidiary as an Unrestricted Subsidiary as described above is permitted by **Section 7.02**;

(c) no Subsidiary may be designated as an Unrestricted Subsidiary unless it is also designated as an "unrestricted subsidiary" under the Term Loan Credit Agreement; and

(d) if such designation (or re-designation) would result in a reduction in Excess Availability of 10% or more, the Borrower shall submit an updated Borrowing Base Certificate at the time such designation (or re-designation) is made.

The designation of any Subsidiary as an Unrestricted Subsidiary shall constitute an Investment by the Borrower therein at the date of designation in an amount equal to the fair market value of the Borrower's or its Restricted Subsidiary's (as applicable) Investment therein. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness and Liens of such Subsidiary existing at

such time and a return on any Investment by the Borrower in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of the Borrower's or its Restricted Subsidiary's (as applicable) Investment in such Subsidiary. Except as set forth in this paragraph, no Investment will be deemed to exist or have been made, and no Indebtedness or Liens shall be deemed to have been incurred or exist, by virtue of a Subsidiary becoming an Excluded Subsidiary or an Excluded Subsidiary becoming a Restricted Subsidiary. For all purposes hereunder, the designation of a Subsidiary as an Unrestricted Subsidiary shall be deemed to constitute a concurrent designation of any Subsidiary of such Subsidiary as an Unrestricted Subsidiary. No Co-Borrower may be designated as an Unrestricted Subsidiary.

Section 6.14 [Reserved].

Section 6.15 Post-Closing Matters. The Borrower will, and will cause each of its Restricted Subsidiaries to, take each of the actions set forth on **Schedule 6.15** within the time period prescribed therefor on such schedule (as such time period may be extended by the Administrative Agent).

Section 6.16 Use of Proceeds.

(a) The proceeds of Revolving Loans will be used for working capital and other general corporate purposes of the Borrower and its Restricted Subsidiaries, including the financing of Permitted Acquisitions, Investments and other transactions, in each case, that are not prohibited by the terms of this Agreement and that are not in violation of **Sections 5.17** and **5.19**.

(b) Letters of Credit will be used for general corporate purposes of the Borrower and its Restricted Subsidiaries, including supporting transactions not prohibited by the Loan Documents, and will not be used in violation of **Sections 5.17** and **5.19**.

Section 6.17 Change in Nature of Business. Engage only in material lines of business that are substantially consistent with those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date and lines of business that are reasonably similar, corollary, ancillary, incidental, synergistic, complementary or related to, or a reasonable extension, development or expansion of, the businesses conducted or proposed to be conducted by the Borrower and the Restricted Subsidiaries on the Closing Date, in each case as determined by the Borrower in good faith.

Section 6.18 Cash Receipts.

(a) 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):

(i) 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;

(ii) 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 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

(iii) 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 Loan Parties that are subject to Blocked Account Agreements; ***provided*** that 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 6.18(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 (a)** of the definition of "***Excluded Account***" until the end of such 90 day period (or later period, if applicable).

(b) 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 6.18(a)** and **(b)**:

(i) 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***").

(ii) 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 2.07(d)** with any excess, unless an Event of Default shall have occurred and be continuing, to be remitted to the Borrower.

(iii) 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 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:

(x) any Excluded Account;

(y) 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 a Cash Dominion Period continues; or

(z) de minimus cash or cash equivalents from time to time inadvertently misapplied by the Borrower or any Restricted Subsidiary.

(c) 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 6.18**; ***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.

(d) The Dominion Account will at all times be under the sole dominion and control of the Collateral Agent.

(e) 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.

(f) 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.

ARTICLE VII.
NEGATIVE COVENANTS

So long as the Termination Conditions are not satisfied, the Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to:

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

(a) Liens securing obligations in respect of Indebtedness incurred pursuant to **Section 7.03(a)**, including obligations under any Loan Document, Incremental Loans and Extended Loans;

(b) Liens securing obligations in respect of Indebtedness incurred pursuant to **Section 7.03(b)**, including obligations with respect to the Term Loan Credit Facility; ***provided,*** that any such Liens on ABL Priority Collateral are at all times subject to the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent that provides that such Liens shall rank on a junior lien basis in respect of the ABL Priority Collateral to the Liens on the ABL Priority Collateral securing the Obligations;

(c) Liens existing on the Closing Date (other than Liens incurred under **Sections 7.01(a)** and **7.01(b)**);

(d) Liens securing obligations in respect of Indebtedness permitted under **Section 7.03(d)**, including in respect to Attributable Indebtedness, Capitalized Lease Obligations, and Indebtedness financing the acquisition, construction, repair, replacement or improvement of fixed or capital assets; ***provided*** that (i) such Liens attach concurrently with or within two hundred and seventy days after completion of the acquisition, construction, repair, replacement or improvement (as applicable) of the property subject to such Liens and (ii) such Liens do not at any time extend to or cover any assets (except for additions and accessions to such assets, replacements and products thereof and customary security deposits) other than the assets subject to, or acquired, constructed, repaired, replaced or improved with the proceeds of such Indebtedness; ***provided*** that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender or its affiliates or branches;

(e) Liens in favor of a Loan Party securing Indebtedness permitted under **Section 7.03**;

(f) Liens securing (i) Obligations in respect of any Secured Hedge Agreement, (ii) obligations in respect of any Secured Hedge Agreement (as defined in the Term Loan Credit Agreement) and (iii) other Indebtedness permitted by **Section 7.03(f)**;

(g) Liens on assets of Non-Loan Parties securing obligations of such Non-Loan Parties and Liens on Excluded Assets;

(h) Liens securing obligations in respect of Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt and any Permitted Refinancing of any of the foregoing incurred pursuant to **Section 7.03(h)**; ***provided,*** that any such Liens on ABL Priority Collateral are at all times subject to the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent that provides that such Liens shall rank on a junior lien basis in respect of the ABL Priority Collateral to the Liens on the ABL Priority Collateral securing the Obligations;

(i) Liens securing obligations in respect of Incremental Equivalent Debt (with the lien priority permitted in such definition and other than to the extent such Indebtedness is only permitted to be incurred as unsecured Indebtedness); ***provided,*** that, subject to the penultimate paragraph of this **Section 7.01**, any such Liens on ABL Priority Collateral in respect thereof are at all times subject to the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent;

(j) Liens securing obligations in respect of Permitted Ratio Debt (with the lien priority permitted in such definition and other than to the extent such Indebtedness is only permitted to be incurred as unsecured Indebtedness); ***provided,*** that, subject to the penultimate paragraph of this **Section 7.01**, any such Liens on ABL Priority Collateral in respect thereof are at all times subject to the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent;

(k) Liens on property or assets contributed to capital of the Borrower or a Subsidiary Guarantor or received in exchange for Equity Interests of the Borrower made after the Closing Date solely to the extent Not Otherwise Applied;

(l) (i) Liens existing on property (other than Accounts, unless such Liens are expressly made junior to the Liens securing the Obligations hereunder) at the time of (and not in contemplation of) its acquisition or existing on the property of any Person or on Equity Interests of any Person, in each case, at the time such Person becomes (and not in contemplation of such Person becoming) a Restricted Subsidiary, in each case after the Closing Date; ***provided*** that

(A) such Lien does not extend to or cover any other assets or property (other than (1) after-acquired property covered by any applicable grant clause, (2) property that is affixed or incorporated into the property covered by such Lien and (3) proceeds and products of assets covered by such Liens),

(B) such Lien does not encumber any assets of the Borrower or its Restricted Subsidiaries other than the assets acquired in such transaction and

(C) the Indebtedness secured thereby is permitted under **Section 7.03**,

(ii) Liens on any cash earnest money deposits made by the Borrower or any of the Restricted Subsidiaries in connection with any letter of intent or purchase agreement relating to an Investment and

(iii) Liens incurred in connection with escrow arrangements or other agreements relating to an Acquisition Transaction or Investment permitted hereunder;

(m) Liens

(i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted pursuant to **Section 7.02** to be applied against the purchase price for such Investment or

(ii) consisting of an agreement to Dispose of any property in a Disposition, in each case, solely to the extent such Investment or Disposition, as the case may be, would have been permitted on the date of the creation of such Lien;

(n) (i) pledges or deposits in the ordinary course of business in connection with workers' compensation, health, disability or employee benefits, unemployment insurance and other social security laws or similar legislation or regulation or other insurance-related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) and

(ii) pledges and deposits in the ordinary course of business 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 Subsidiaries;

(o) (i) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto and

(ii) Liens on cash securing obligations to insurance companies with respect to insurable liabilities incurred in the ordinary course of business;

(p) deposits to secure the performance of bids, trade contracts, governmental contracts and leases (other than Indebtedness for borrowed money), statutory obligations, surety, stay, customs and appeal bonds, performance bonds and other obligations of a like nature (including those to secure health, safety and environmental obligations) incurred in the ordinary course of business;

(q) Liens on the Securitization Assets arising in connection with a Qualified Securitization Financing;

(r) Liens in respect of the cash collateralization of letters of credit;

(s) Liens

(i) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on the items in the course of collection,

(ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and not for speculative purposes and

(iii) in favor of a banking or other financial institution arising as a matter of law encumbering deposits or other funds maintained with a financial institution (including the right of setoff) and that are within the general parameters customary in the banking industry;

(t) Liens securing Cash Management Obligations and Cash Management Obligations (as defined in the Term Loan Credit Agreement), in each case, as permitted by **Section 7.03**;

(u) Liens that are customary contractual rights of setoff

(i) relating to the establishment of depository relations with banks or other deposit-taking financial institutions in the ordinary course of business (and, for the avoidance of doubt, not given in connection with the issuance of Indebtedness),

(ii) relating to pooled deposit or sweep accounts of the Borrower or any of the Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or

(iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of the Restricted Subsidiaries in the ordinary course of business;

(v) statutory or common law Liens of landlords, carriers, warehousemen, mechanics, materialmen, repairmen, construction contractors or other like Liens, or other customary Liens (other than in respect of Indebtedness) in favor of landlords, so long as, in each case, such Liens arise in the ordinary course of business and secure amounts not overdue for a period of more than sixty days or, if more than sixty days overdue, are unfiled and no other action has been taken to enforce such Lien or that are being contested in good faith and by appropriate actions, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(w) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases or licenses entered into by the Borrower or any of the Restricted Subsidiaries as lessee or licensee in the ordinary course of business;

(x) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(y) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with

the ordinary conduct of the business of the Borrower and the Restricted Subsidiaries, taken as a whole;

(z) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business to secure the performance of the Borrower's or a Restricted Subsidiary's obligations under the terms of the lease for such premises;

(aa) (i) Liens for taxes, assessments or governmental charges that are not overdue for a period of more than sixty days or that are being contested in good faith and by appropriate actions diligently conducted and for which appropriate reserves have been established in accordance with GAAP or that are not expected to result in a Material Adverse Effect and

(ii) Liens for property taxes on property the Borrower or its Subsidiaries has decided to abandon if the sole recourse for such tax, assessment or charge is to such property;

(bb) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar encumbrances and title defects affecting real property that, in the aggregate, do not in any case materially interfere with the ordinary conduct of the business of the Borrower and the Restricted Subsidiaries taken as a whole, or the use of the property for its intended purpose;

(cc) Liens arising from judgments or orders for the payment of money not constituting an Event of Default under **Section 9.01(g)**;

(dd) leases, licenses, subleases or sublicenses granted to others in the ordinary course of business (including any other agreement under which the Borrower or any Restricted Subsidiary has granted rights to end users to access and use the Borrower's or any Restricted Subsidiary's products, technologies, facilities or services) which do not interfere in any material respect with the business of the Borrower and the Restricted Subsidiaries, taken as a whole;

(ee) Liens

(i) in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business and

(ii) on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or documentary letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or such other goods in the ordinary course of business;

(ff) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business;

(gg) Liens imposed by law or incurred pursuant to customary reservations or retentions of title (including contractual Liens in favor of sellers and suppliers of goods) incurred in the ordinary course of business for sums not constituting borrowed money that are not overdue for a period of more than sixty days or that are being contested in good faith by appropriated proceedings and for which adequate reserves have been established in accordance with GAAP (if so required);

(hh) Liens deemed to exist in connection with Investments in repurchase agreements and reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts maintained in the ordinary course of business and not for speculative purposes;

(ii) Liens on cash and Cash Equivalents earmarked to be used to satisfy or discharge Indebtedness where such satisfaction or discharge of such Indebtedness is not otherwise prohibited by this Agreement;

(jj) purported Liens evidenced by the filing of precautionary Uniform Commercial Code financing statements or similar public filings;

(kk) the modification, replacement, renewal or extension of any Lien permitted by this **Section 7.01**; ***provided*** that

(i) the Lien does not extend to any additional property, other than (A) after-acquired property covered by any applicable grant clause, (B) property that is affixed or incorporated into the property covered by such Lien and (C) proceeds and products of assets covered by such Liens, and

(ii) the renewal, extension or refinancing of the obligations secured or benefited by such Liens is permitted by **Section 7.03**;

(ll) Liens securing:

(i) a Permitted Refinancing of Indebtedness; ***provided*** that:

(a) such Indebtedness was permitted by **Section 7.03** and was secured by a Permitted Lien;

(b) such Permitted Refinancing is permitted by **Section 7.03**; and

(c) the Lien does not extend to any additional property, other than (1) after-acquired property covered by any applicable grant clause, (2) property that is affixed or incorporated into the property covered by such Lien and (3) proceeds and products of assets covered by such Liens; and

(ii) Guarantees permitted by **Sections 7.03** to the extent that the underlying Indebtedness subject to such Guarantee is permitted to be secured by a Lien;

(mm) Liens securing Pari Passu Lien Debt and/or Junior Lien Debt; ***provided*** that:

(i) such Indebtedness is incurred pursuant to **clause (a)(i)** or **(a)(ii)** of the definition of "***Permitted Ratio Debt***"; and

(ii) such Liens (other than with respect to purchase money and similar obligations) are, in each case, subject to the penultimate paragraph of this **Section 7.01**, to the extent such Indebtedness is required to be subject to the provisions of the Closing Date ABL Intercreditor Agreement, a Debt Representative acting on behalf of the holders of such Indebtedness has become party to, or is otherwise subject to the provisions of the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent;

(nn) Liens securing Indebtedness or other obligations in an aggregate principal amount as of the date such Indebtedness is incurred not to exceed the greater of (A) 50.00% of Closing Date EBITDA and (B) 50.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination, in each case, determined as of the date such Indebtedness is incurred (or commitments with respect thereto are received); ***provided*** that it is agreed that Liens incurred pursuant to this **clause (nn)** may be *pari passu* with the Liens securing the Term Loan Obligations; ***provided, further***, that, subject to the penultimate paragraph of this **Section 7.01**, any Liens on ABL Priority Collateral in respect thereof are at all times subject to the Closing Date ABL Intercreditor Agreement or any other intercreditor agreement that may be executed from time to time and reasonably acceptable to the Administrative Agent;

(oo) Liens in respect of the cash collateralization of corporate credit card programs; ***provided*** that the aggregate amount of such cash securing such obligations shall not exceed $15,000,000;

(pp) Liens securing obligations in respect of Indebtedness incurred pursuant to **Section 7.03(k)**; and

(qq) Liens securing obligations in respect of Indebtedness incurred pursuant to **Section 7.03(x)**.

Notwithstanding the foregoing, any Indebtedness secured by a Lien on ABL Priority Collateral pursuant to **clauses (i)**, **(j)**, **(mm)**, **(nn)** and **(pp)** above, that is not subject to the Closing Date ABL Intercreditor Agreement or another Intercreditor Agreement that provides that such Liens shall rank on a junior lien basis in respect of the ABL Priority Collateral to the Liens on the ABL Priority Collateral securing the Obligations, shall not exceed $5 million in the aggregate at any time outstanding.

For purposes of determining compliance with this **Section 7.01**, in the event that any Lien (or any portion thereof) meets the criteria of more than one of the categories set forth above, 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 Lien (or any portion thereof) in any manner that complies with this covenant on the date such Lien is incurred or such later time, as applicable; ***provided*** that all Liens securing Indebtedness under

(a) the Loan Documents will be deemed to have been incurred in reliance on the exception in **Section 7.01(a)** and

(b) the Term Loan Credit Agreement on the Closing Date will be deemed incurred in reliance on the exception in **Section 7.01(b)**, and shall not be permitted to be reclassified pursuant to this paragraph.

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

(a) Investments:

(i) by the Borrower or any Restricted Subsidiary in the Borrower or any Restricted Subsidiary; and

(ii) by the Borrower or any Restricted Subsidiary in a Person, if as a result of such Investment (A) such Person becomes a Restricted Subsidiary or (B) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary;

(b) Investments existing on the Closing Date or made pursuant to legally binding written contracts in existence on the Closing Date and any modification, replacement, renewal, reinvestment or extension of any of the foregoing; ***provided*** that the amount of any Investment permitted pursuant to this **Section 7.02(b)** is not increased from the amount of such Investment on the Closing Date except pursuant to the terms of such Investment as of the Closing Date or as otherwise permitted by another clause of this **Section 7.02**;

(c) Permitted Acquisitions;

(d) Investments

(i) held by a Restricted Subsidiary acquired after the Closing Date or of a Person merged, amalgamated or consolidated with or into the Borrower or merged, amalgamated or consolidated with or into a Restricted Subsidiary (or committed to be made by any such Person) to the extent that, in each case, such Investments or any such commitments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation and

(ii) held by Persons that become Restricted Subsidiaries after the Closing Date, including Investments by Unrestricted Subsidiaries made or acquired (or committed to be made or acquired), to the extent that such Investments were not made or acquired (or committed to be made or acquired) in contemplation of, or in connection with, such Person becoming a Restricted Subsidiary or such designation as applicable;

(e) Investments in Similar Businesses that do not exceed in the aggregate the greater of (i) 25.00% of Closing Date EBITDA and (ii) 25.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination; ***provided*** that if any Investment pursuant to this **clause (e)** is made in any Person that is not the Borrower or a Restricted Subsidiary on the date of such Investment (prior to giving effect thereto) and such Person subsequently becomes the Borrower or a Restricted Subsidiary, the Investment initially made in such Person pursuant to this **clause (e)** shall thereupon be deemed to have been made pursuant to **clause (a)(i)** hereof and to not have been

made pursuant to this **clause (e)** for so long as such Person continues to be the Borrower or a Restricted Subsidiary.

(f) Investments in Unrestricted Subsidiaries in an aggregate amount which does not exceed the greater of (A) 25.00% of Closing Date EBITDA and (B) 25.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination; ***provided*** that, in the case of any such Investment, no Specified Event of Default has occurred or is continuing or would result therefrom;

(g) Investments to the extent that payment for such Investments is made solely with Qualified Equity Interests of the Borrower or the proceeds from the issuance thereof;

(h) Joint Venture Investments;

(i) [Reserved];

(j) loans or advances to any Company Person;

(i) for reasonable and customary business-related travel, entertainment, relocation and analogous ordinary business purposes;

(ii) in connection with such Person's purchase of Equity Interests of the Borrower; ***provided*** that, to the extent such loans or advances are made in cash, the amount of such loans and advances used to acquire such Equity Interests shall be contributed to the Borrower in cash; and

(iii) for any other purpose; ***provided*** that either (A) no cash or Cash Equivalents are advanced in connection with such Investment or (B) the aggregate principal amount outstanding under this **clause (iii)(B)** shall not exceed the greater of (1) 10.00% of Closing Date EBITDA and (2) 10.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination;

(k) Investments in Hedge Agreements;

(l) promissory notes and other Investments received in connection with Dispositions or any other transfer of assets not constituting a Disposition;

(m) Investments in assets that are cash or Cash Equivalents or were Cash Equivalents when made;

(n) Investments consisting of extensions of trade credit or otherwise made in the ordinary course of business, including Investments consisting of endorsements for collection or deposit and trade arrangements with customers, vendors, suppliers, licensors and licensees;

(o) Investments consisting of Liens, Indebtedness (including Guarantees), fundamental changes, Dispositions and Restricted Payments permitted under **Sections 7.01**, **7.03**, **7.04** (other than **clause (f)** thereof), **7.05** (other than **clause (e)** thereof) and **7.06** (other than **clauses (d)** hereof), respectively;

(p) Investments

(i) received in connection with the bankruptcy, workout, recapitalization or reorganization of, or in settlement of delinquent obligations of, or other disputes with, any other Person who is not an Affiliate of the Borrower,

(ii) received in connection with the foreclosure of any secured Investment or other transfer of title with respect to any secured Investment,

(iii) in satisfaction of judgments against other Persons who are not Affiliates of the Borrower,

(iv) as a result of the settlement, compromise or resolutions of litigation, arbitration or other disputes with Persons who are not Affiliates of the Borrower and

(v) received in satisfaction or partial satisfaction of trade credit and other credit extended in the ordinary course of business, including to vendors and suppliers;

(q) advances of payroll or other payments to any Company Person;

(r) Investments consisting of purchases and acquisitions of inventory, supplies, material, services or equipment or the licensing or contribution of Intellectual Property pursuant to joint marketing arrangements with other Persons;

(s) Investments made in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors, vendors, suppliers, licensors and licensees;

(t) Guarantees of leases (other than Capitalized Leases) or of other obligations that do not constitute Indebtedness;

(u) Investments in connection with any Permitted Reorganization and the transactions relating thereto or contemplated thereby;

(v) Investments in connection with any deferred compensation plan or arrangement or other compensation plan or arrangement, including to a "rabbi" trust or to any grantor trust claims of creditors;

(w) in the event that the Borrower or any Restricted Subsidiary makes any Investment after the Closing Date in any Person that is not a Restricted Subsidiary and such Person subsequently becomes a Restricted Subsidiary, additional Investments in an amount equal to the fair market value of such Investment as of the date on which such Person becomes a Restricted Subsidiary to the extent Investment capacity is not otherwise increased hereunder by such Person becoming a Restricted Subsidiary (including by way of reclassification);

(x) any Investments held by or committed to by the Borrower or any Restricted Subsidiary on the Closing Date;

(y) unfunded pension fund and other employee benefit plan obligations and liabilities to the extent that such obligations and/or liabilities, as applicable, are permitted to remain unfunded under applicable Law;

(z) Investments in connection with intercompany cash management services, treasury arrangements and any related activities;

(aa) Investments consisting of (i) the licensing or contribution of Intellectual Property pursuant to joint marketing, collaborations or other similar arrangements with other Persons and/or (ii) minority equity interests in customers received as part of fee arrangements or other commercial arrangements;

(bb) the conversion to Qualified Equity Interests of any Indebtedness owed by the Borrower or any Restricted Subsidiary;

(cc) (i) Investments in a Securitization Subsidiary or any Investment by a Securitization Subsidiary in any other Person in connection with a Qualified Securitization Financing; ***provided however***, that any such Investment in a Securitization Subsidiary is of Securitization Assets or equity, and

(ii) distributions or payments of Securitization Fees and purchases of Securitization Assets pursuant to a Securitization Repurchase Obligation in connection with a Qualified Securitization Financing;

(dd) Investments in any Captive Insurance Subsidiary in the ordinary course of business and consistent with market practice for Captive Insurance Subsidiaries of similar nature, size and type;

(ee) [reserved];

(ff) [reserved];

(gg) [reserved];

(hh) Investments that do not exceed in the aggregate at any time outstanding the greater of (A) 75.00% of Closing Date EBITDA and (B) 75.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination; and

(ii) Investments, so long as the Payment Conditions are satisfied (after giving Pro Forma Effect to such Investment and the use of proceeds thereof).

If any Investment is made in any Person that is not a Restricted Subsidiary on the date of such Investment and such Person subsequently becomes a Restricted Subsidiary, such Investment shall thereupon be deemed to have been made pursuant to **Section 7.02(a)(i)** and to not have been made pursuant to any other clause set forth above.

Notwithstanding anything to the contrary contained herein, in no event shall the Borrower or any Restricted Subsidiary (a) consummate any disposition of any material intellectual property

to any Unrestricted Subsidiary, (b) contribute or otherwise make any Investment of any material intellectual property to or in any Unrestricted Subsidiary or (c) designate any Subsidiary as an Unrestricted Subsidiary if such Subsidiary owns any material intellectual property; ***provided*** that the foregoing **clauses (a)**, **(b)** and **(c)** shall not apply to transactions that have a bona fide business purpose so long as such transactions are not undertaken to facilitate a financing (including a debtor in possession financing) or a Restricted Payment or undertaken in connection with a liability management transaction.

For purposes of determining compliance with this **Section 7.02**, in the event that any Investment (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time such Investment is made, divide, classify or reclassify, or at any later time divide, classify or reclassify, such Investment (or any portion thereof) in any manner that complies with this covenant on the date such Investment is made or such later time, as applicable.

The amount of any Investment at any time shall be the amount of cash and the fair market value of other property actually invested (measured at the time made), without adjustment for subsequent changes in the value of such Investment at the Borrower's option, net of any return, whether a return of capital, interest, dividend or otherwise, with respect to such Investment. To the extent any Investment in any Person is made in compliance with this **Section 7.02** in reliance on a category above that is subject to a Dollar-denominated restriction on the making of Investments and, subsequently, such Person returns to the Borrower or any Restricted Subsidiary all or any portion of such Investment (in the form of a dividend, distribution, liquidation or otherwise, but excluding intercompany Indebtedness), such return shall be deemed to be credited to the Dollar-denominated category against which the Investment is then charged. To the extent the category subject to a Dollar-denominated restriction is also subject to a percentage of TTM Consolidated Adjusted EBITDA restriction which, at the date of determination, produces a numerical restriction that is greater than such Dollar Amount, then such Dollar equivalent shall be deemed to be substituted in lieu of the corresponding Dollar Amount in the foregoing sentence for purposes of determining such credit.

For purposes of determining compliance with any Dollar-denominated (or percentage of TTM Consolidated Adjusted EBITDA, if greater) restriction on the making of Investments, the Dollar equivalent amount of the Investment denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Investment was made.

Section 7.03 Indebtedness. Create, incur or assume any Indebtedness, other than:

(a) Indebtedness under the Loan Documents (including Incremental Loans and Extended Loans);

(b) Indebtedness in respect of

(i) [reserved];

(ii) (A) the Term Loan Documents in an aggregate principal amount not to exceed the sum of (x) $1,700,000,000, *plus* (y) the Incremental Amount (as defined in the

Term Loan Credit Agreement as in effect on the Closing Date) and (B) any Permitted Refinancing in respect of the foregoing;

(c) Indebtedness existing on the Closing Date (other than Indebtedness under the Term Loan Credit Agreement) and any Permitted Refinancing thereof, including any intercompany Indebtedness of the Borrower or any Restricted Subsidiary outstanding on the Closing Date;

(d) (i) (A) Attributable Indebtedness relating to any transaction,

(B) Capitalized Leases and other Indebtedness financing the acquisition, construction, repair, replacement or improvement of fixed or capital assets, whether through the direct purchase of assets or the Equity Interests of any Person owning such assets, so long as such Indebtedness is incurred concurrently with, or within two-hundred and seventy days after, the applicable acquisition, construction, repair, replacement or improvement and

(C) Indebtedness arising from the conversion of obligations of the Borrower or any Restricted Subsidiary under or pursuant to any "synthetic lease" transactions to Indebtedness of the Borrower or such Restricted Subsidiary;

provided that the aggregate principal amount of such Indebtedness at the time any such Indebtedness is incurred pursuant to this **Section 7.03(d)** shall not exceed the greater of (I) 40.00% of Closing Date EBITDA and (II) 40.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination, in each case determined at the time of incurrence,

(ii) Attributable Indebtedness incurred in connection with a Sale Leaseback Transaction otherwise permitted hereunder and

(iii) any Permitted Refinancing of any Indebtedness incurred under this **Section 7.03(d)**; ***provided*** that for the purposes of determining compliance with this **Section 7.03(d)**, any lease that is not treated under GAAP as a capital lease at the time such lease is executed but is subsequently treated under GAAP as a capitalized lease as the result of a change in GAAP (or interpretations thereof) after the Closing Date shall not be treated as Indebtedness;

(e) Indebtedness of the Borrower or any of the Restricted Subsidiaries owing to the Borrower or any other Restricted Subsidiary; ***provided*** that all such Indebtedness of any Loan Party owed to any Restricted Subsidiary that is not a Loan Party shall be subject to the Global Intercompany Note (but only to the extent permitted by applicable Law);

(f) Indebtedness in respect of (i) Obligations under Secured Hedge Agreements, (ii) obligations under Secured Hedge Agreements (as defined in the Term Loan Credit Agreement) and (iii) Hedge Agreements designed to hedge against the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks, in each case of **clauses (i)** through **(iii)**, incurred not for speculative purposes, and Guarantees thereof;

(g) (i) Indebtedness incurred by a Non-Loan Party in an aggregate amount which does not exceed the greater of (A) 30.00% of Closing Date EBITDA and (B) 30.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination and

(ii) Indebtedness that is recourse only to Excluded Assets in an aggregate amount which does not exceed the fair market value of such Excluded Assets at the time such Indebtedness is incurred;

(h) Credit Agreement Refinancing Indebtedness and any Permitted Refinancing thereof;

(i) Incremental Equivalent Debt and any Permitted Refinancing thereof;

(j) Permitted Ratio Debt and any Permitted Refinancing thereof;

(k) Contribution Indebtedness and any Permitted Refinancing thereof;

(l) Indebtedness,

(i) of any Person that becomes a Restricted Subsidiary after the Closing Date pursuant to an Investment or other Acquisition Transaction permitted hereunder, which Indebtedness is existing at the time such Person becomes a Restricted Subsidiary and is not incurred in contemplation of such Person becoming a Restricted Subsidiary that is non-recourse to (and is not assumed by any of) the Borrower or any Restricted Subsidiary (other than any Subsidiary of such Person that is a Subsidiary on the date such Person becomes a Restricted Subsidiary after the Closing Date) and is either (A) unsecured or (B) secured only by the assets of such Restricted Subsidiary by Liens permitted under **Section 7.01**; and

(ii) any Permitted Refinancing of the foregoing;

(m) Indebtedness incurred in connection with a Permitted Acquisition, Acquisition Transaction or Investment expressly permitted hereunder or any Disposition, in each case to the extent constituting indemnification obligations or obligations in respect of purchase price (including earn-outs, seller notes and purchase price adjustments) or other similar adjustments;

(n) Indebtedness representing deferred compensation to employees of the Borrower and its Subsidiaries incurred in the ordinary course of business;

(o) Indebtedness consisting of obligations of the Borrower and the Restricted Subsidiaries under deferred compensation or other similar arrangements with employees incurred by such Person in connection with the Transactions, Permitted Acquisitions, Acquisition Transaction or any Investment expressly permitted hereunder (other than pursuant to **Section 7.02(o)**);

(p) Indebtedness to current or former officers, directors, managers, consultants, and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Borrower permitted by **Section 7.06**;

(q) Indebtedness in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including such Indebtedness or other obligations that is consistent with past practices in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement-type obligations regarding workers compensation claims and letters of credit that are cash collateralized;

(r) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, incurred in the ordinary course of business;

(s) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Borrower or any of the Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case, in the ordinary course of business or consistent with past practices;

(t) Indebtedness incurred by a Securitization Subsidiary in a Qualified Securitization Financing that is not recourse (except for Standard Securitization Undertakings) to the Borrower or any other Loan Party;

(u) (i) Indebtedness in respect of letters of credit issued for the account of the Borrower or any Restricted Subsidiary so long as (A) such Indebtedness is not secured by any Lien on Collateral other than Permitted Liens and (B) the aggregate face amount of such letters of credit does not exceed the greater of (I) 10.00% of Closing Date EBITDA and (II) 10.00% of TTM Consolidated Adjusted EBITDA, determined at the time of issuance of such letter of credit and

(ii) Indebtedness in respect of letters of credit that are fully cash collateralized;

(v) (i) obligations in respect of Cash Management Obligations, (ii) Cash Management Obligations (as defined in the Term Loan Credit Agreement) and (iii) other Indebtedness in respect of netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements, in each case of **clauses (i)** through **(iii)**, incurred in the ordinary course of business or consistent with past practices and any Guarantees thereof;

(w) Guarantees in respect of Indebtedness of the Borrower or any of the Restricted Subsidiaries otherwise permitted hereunder; ***provided*** that (A) no Guarantee by any Restricted Subsidiary of any Junior Financing shall be permitted unless such Restricted Subsidiary shall have also provided a Guarantee of the Obligations substantially on the terms set forth in the Guaranty and (B) if the Indebtedness being guaranteed is subordinated in right of payment to the Obligations, such Guarantee shall be subordinated to the Guaranty in right of payment on terms at least as favorable to the Lenders as those contained in the subordination terms with respect to such Indebtedness;

(x) Indebtedness incurred on behalf of, or representing Guarantees of Indebtedness of, any Joint Ventures in an aggregate principal amount not to exceed the greater of (A) 25.00% of Closing Date EBITDA and (B) 25.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination, determined at the time of incurrence, and any Permitted Refinancing of the foregoing;

(y) Indebtedness in an aggregate principal amount at any time outstanding not to exceed the sum of the greater of (A) 50.00% of Closing Date EBITDA and (B) 50.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination, determined at the time of incurrence, and any Permitted Refinancing of the foregoing;

(z) Indebtedness consisting of unsecured Indebtedness; ***provided*** that (i) the Payment Conditions are satisfied (after giving Pro Forma Effect to such Indebtedness and the use of proceeds thereof), (ii) such Indebtedness does not mature on or prior to the date that is 91 days after the Latest Maturity Date and (iii) no amortization payments are made in cash on such Indebtedness; and

(aa) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in **clauses (a)** through **(z)** above.

For purposes of determining compliance with this **Section 7.03**, in the event that an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories set forth above, 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 on the date such Indebtedness is incurred or such later time, as applicable; ***provided*** that all Indebtedness under (a) the Loan Documents will be deemed to have been incurred in reliance on the exception in **Section 7.03(a)** and **(b)** the Term Loan Credit Agreement on the Closing Date will be deemed incurred in reliance on the exception in **Section 7.03(b)**, and shall not be permitted to be reclassified pursuant to this paragraph.

For purposes of determining compliance with any Dollar-denominated (or percentage of TTM Consolidated Adjusted EBITDA, if greater) 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 (or percentage of TTM Consolidated Adjusted EBITDA, if greater) restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated (or percentage of TTM Consolidated Adjusted EBITDA, if greater) 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).

The accrual of interest and the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this **Section 7.03**. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date shall be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

Section 7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate or amalgamate with or into another Person, or effect a Division, except that:

(a) Any Restricted Subsidiary may merge, amalgamate or consolidate with the Borrower (including a merger or amalgamation, the purpose of which is to reorganize the Borrower into a new jurisdiction); ***provided*** that:

(i) the Borrower shall be the continuing or surviving Person; and

(ii) such merger, amalgamation or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia; and

(b) any Restricted Subsidiary may merge, amalgamate or consolidate with or into any other Restricted Subsidiary or liquidate or dissolve;

(c) any merger or amalgamation the purpose of which is to reincorporate or reorganize a Restricted Subsidiary in another jurisdiction shall be permitted;

(d) any Restricted Subsidiary may liquidate or dissolve or change its legal form; ***provided***

(i) no Event of Default shall result therefrom and

(ii) the surviving Person (or the Person who receives the assets of such dissolving or liquidated Restricted Subsidiary) shall be a Restricted Subsidiary;

(e) so long as no Default exists or would result therefrom, the Borrower may merge, amalgamate or consolidate with any other Person; ***provided*** that:

(i) the Borrower shall be the continuing or surviving corporation; or

(ii) if the Person formed by or surviving any such merger, amalgamation or consolidation is not the Borrower (any such Person, the "***Successor Borrower***");

(a) the Successor Borrower shall be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia;

(b) the Successor Borrower shall expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the

Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent;

(c) each Guarantor, unless it is the other party to such merger, amalgamation or consolidation, shall have by a supplement to the Guaranty confirmed that its Guarantee of the Obligations shall apply to the Successor Borrower's obligations under this Agreement;

(d) each Loan Party, unless it is the other party to such merger, amalgamation or consolidation, shall have by a supplement to the Security Agreement confirmed that its obligations thereunder shall apply to the Successor Borrower's obligations under this Agreement and the direct parent of such Person shall pledge 100.00% of the Equity Interests of such Person to the Administrative Agent as Collateral to secure the Obligations; and

(e) the Borrower shall have delivered to the Administrative Agent an officer's certificate and an opinion of counsel, each stating that such merger, amalgamation or consolidation and such supplement to this Agreement or any Collateral Document comply with this Agreement, and, with respect to such opinion of counsel only, including customary organization, due execution, no conflicts and enforceability opinions to the extent reasonably requested by the Administrative Agent;

it being agreed that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement;

(f) any Restricted Subsidiary may merge, amalgamate or consolidate with any other Person in order to effect an Investment, Acquisition Transaction or other transaction not prohibited by the Loan Documents (other than any transaction pursuant to **Section 7.02(o)**);

(g) any Loan Party or any Restricted Subsidiary may conduct a Division that produces two or more surviving or resulting Persons; ***provided*** that

(i) if a Division is conducted by the Borrower, then each surviving or resulting Person shall constitute a "***Borrower***" for all purposes of the Loan Documents (unless the Administrative Agent otherwise consents in its reasonable discretion) and shall remain jointly and severally liable for all Obligations (other than Excluded Swap Obligations, where applicable) of the Borrower immediately prior to such Division and otherwise comply with **Section 7.04(e)**;

(ii) [reserved]; and

(iii) if a Division is conducted by a Loan Party other than the Borrower, then each surviving or resulting Person of such Division shall also be a Loan Party unless and to the extent any such surviving or resulting Loan Party is the subject of a Disposition permitted pursuant to **Section 7.05** (other than **Section 7.05(e)**) or otherwise would constitute an Excluded Subsidiary; ***provided further*** that such surviving or resulting Person not becoming a Loan Party and the assets and property of such surviving or resulting Person

not becoming Collateral shall, in each case, be treated as an Investment and shall be permitted under this **Section 7.04(g)(iii)** solely to the extent permitted under **Section 7.02**; and

(h) as long as no Default exists or would result therefrom, a merger, amalgamation, dissolution, liquidation, consolidation or Disposition, the purpose of which is to effect a Disposition permitted pursuant to **Section 7.05** (other than **Section 7.05(e)**).

Notwithstanding anything herein to the contrary, in the event of any merger, dissolution, liquidation, consolidation, amalgamation or Division of any Loan Party or a Restricted Subsidiary effected in accordance with this **Section 7.04**, the Borrower shall or shall cause, with respect to each surviving or continuing Restricted Subsidiary (a) promptly deliver or cause to be delivered to the Administrative Agent for further distribution by the Administrative Agent to each Lender (i) such information and documentation reasonably requested by the Administrative Agent or any Lender in order to comply with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and (ii) a Beneficial Ownership Certification and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonably request in order to perfect or continue the perfection of the Liens granted or purported to be granted by the Collateral Documents in accordance with **Section 6.11** and as promptly as practicable

Section 7.05 Dispositions. Make any Disposition, except:

(a) Dispositions of obsolete, damaged, worn out, used or surplus property (including for purposes of recycling), whether now owned or hereafter acquired and Dispositions of property of the Borrower and the Restricted Subsidiaries that is no longer used or useful in the conduct of the business or economically practicable or commercially desirable to maintain;

(b) Dispositions of property in the ordinary course of business;

(c) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property; ***provided*** that to the extent the property being transferred constitutes Collateral such replacement property shall constitute Collateral;

(d) Dispositions of property to the Borrower or a Restricted Subsidiary;

(e) Dispositions permitted by **Section 7.02** (other than **Section 7.02(o)**), **Section 7.04** (other than **Section 7.04(h)**) and **Section 7.06** (other than **Section 7.06(d)**) and Permitted Liens;

(f) Dispositions of property pursuant to Sale Leaseback Transactions; ***provided*** that

(i) no Event of Default exists or would result therefrom (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Event of Default exists) and

(ii) such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;

(g) Dispositions of Cash Equivalents; ***provided*** that such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;

(h) leases, subleases, licenses or sublicenses (including the provision of software under an open source license), which do not materially interfere with the business of the Borrower and the Restricted Subsidiaries, taken as a whole; ***provided*** that such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;

(i) Dispositions of property subject to Casualty Events upon receipt of the net cash proceeds of such Casualty Event;

(j) Dispositions; ***provided*** that:

(i) at the time of such Disposition (other than any such Disposition made pursuant to a legally binding commitment entered into at a time when no Default exists), no Default shall exist or would result from such Disposition;

(ii) with respect to any Disposition pursuant to this **clause (j)** for a purchase price in excess of the greater of (A) 10.00% of Closing Date EBITDA and (B) 10.00% of TTM Consolidated Adjusted EBITDA as of the date of the Disposition, the Borrower or any of the Restricted Subsidiaries shall receive not less than 75.00% of such consideration in the form of cash or Cash Equivalents; ***provided***, ***however***, that for the purposes of this **clause (ii)** each of the following shall be deemed to be cash;

(a) any liabilities (as shown on the Borrower's or such Restricted Subsidiary's most recent balance sheet provided hereunder or in the footnotes thereto) of the Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the payment in cash of the Obligations, that are assumed by the transferee with respect to the applicable Disposition and for which the Borrower and all of the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing;

(b) any securities received by such Borrower or Restricted Subsidiary from such transferee that are converted by such Borrower or Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within one hundred and eighty days following the closing of the applicable Disposition; and

(c) any Designated Non-Cash Consideration received in respect of such Disposition having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this **clause (C)** that is at that time outstanding, not in excess of the greater of (I) 20.00% of Closing Date EBITDA and (II) 20.00% of TTM Consolidated Adjusted EBITDA as of the date of the Disposition, 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; and

(iii) such Disposition shall be for no less than the fair market value of such property at the time of such Disposition

(this **clause (j)**, the "***General Asset Sale Basket***");

(k) Dispositions of Investments in Joint Ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the Joint Venture parties set forth in joint venture arrangements and similar binding arrangements;

(l) Dispositions or discounts of accounts receivable and related assets in connection with the collection, compromise, settlement or factoring thereof; ***provided*** that any such dispositions in connection with factoring facilities shall not exceed $75,000,000 per annum;

(m) Dispositions (including issuances or sales) of Equity Interests in, or Indebtedness owing to, or of other securities of, an Unrestricted Subsidiary;

(n) Dispositions to the extent of any exchange of like property (excluding any boot thereon permitted by such provision) for use in any business conducted by the Borrower or any of the Restricted Subsidiaries to the extent allowable under Section 1031 of the Code (or comparable or successor provision);

(o) Dispositions in connection with the unwinding of any Hedge Agreement;

(p) Dispositions by the Borrower or any Restricted Subsidiary of assets in connection with the closing or sale of a facility in the ordinary course of business of the Borrower and its Restricted Subsidiaries, which consist of fee or leasehold interests in the premises of such facility, the equipment and fixtures located at such premises and the books and records relating exclusively and directly to the operations of such facility; ***provided*** that as to each and all such sales and closings, (i) no Event of Default shall result therefrom and (ii) such sale shall be on commercially reasonable prices and terms in a bona fide arm's-length transaction;

(q) Dispositions (including bulk sales) of the inventory of a Loan Party and not in the ordinary course of business in connection with facility closings, at arm's length;

(r) Disposition of Securitization Assets to a Securitization Subsidiary in connection with a Qualified Securitization Financing; ***provided*** that such Disposition shall be for no less than the fair market value of such property at the time of such Disposition;

(s) the lapse, abandonment or discontinuance of the use or maintenance of any Intellectual Property if previously determined by the Borrower or any Restricted Subsidiary in its reasonable business judgment that such lapse, abandonment or discontinuance is desirable in the conduct of its business;

(t) Disposition of any property or asset with a and for fair market value not to exceed the greater of (A) 15.00% of Closing Date EBITDA and (B) 15.00% of TTM Consolidated

Adjusted EBITDA as of the applicable date of measurement in any fiscal year in the aggregate for all such transactions in any fiscal year, with unused amounts in any fiscal year being carried over to succeeding fiscal years;

(u) Disposition of assets acquired in a Permitted Acquisition or other Investment permitted hereunder that the Borrower determines will not be used or useful in the business of the Borrower and its Subsidiaries;

(v) Dispositions of Excluded Assets by Non-Loan Parties and Dispositions of Excluded Assets by Loan Parties for fair market value; and

(w) Disposition of Equity Interests in A Place for Rover, Inc., or any successor thereto.

To the extent any Collateral is Disposed of as expressly permitted by this **Section 7.05** to any Person other than a Loan Party, such Collateral shall be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Administrative Agent, upon the certification by the Borrower that such Disposition is permitted by this Agreement, and without limiting the provisions of **Section 10.11** the Administrative Agent shall be authorized to, and shall, take any actions reasonably requested by the Borrower in order to effect the foregoing (and the Lenders hereby authorize and direct the Administrative Agent to conclusively rely on any such certification by the Borrower in performing its obligations under this sentence).

Notwithstanding anything to the contrary, any direct or indirect disposition (including, without limitation, any Disposition) of assets included within the Borrowing Base outside of the ordinary course of business (including by way of Restricted Payment, Junior Debt Prepayment or Investment in a Person that is not a Loan Party and any Loan Party ceasing to be a Guarantor) and in excess of 10% of the Borrowing Base prior to giving effect to such ~~Disposition~~disposition shall be subject to deliver of an updated Borrowing Base Certificate demonstrating, after giving pro forma effect to such ~~Disposition~~disposition, Total Utilization of Revolving Commitments does not exceed the Line Cap.

Notwithstanding anything to the contrary contained herein, in no event shall the Borrower or any Restricted Subsidiary (a) consummate any disposition of any material intellectual property to any Unrestricted Subsidiary, (b) contribute or otherwise make any Investment of any material intellectual property to or in any Unrestricted Subsidiary or (c) designate any Subsidiary as an Unrestricted Subsidiary if such Subsidiary owns any material intellectual property; ***provided*** that the foregoing **clauses (a)**, **(b)** and **(c)** shall not apply to transactions that have a bona fide business purpose so long as such transactions are not undertaken to facilitate a financing (including a debtor in possession financing) or a Restricted Payment or undertaken in connection with a liability management transaction.

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

(a) each Restricted Subsidiary may make Restricted Payments to the Borrower and to any other Restricted Subsidiaries (and, in the case of a Restricted Payment by a non-wholly owned Restricted Subsidiary, to the Borrower or any such other Restricted Subsidiaries and to each other owner of Equity Interests of such Restricted Subsidiary ratably according to their relative

ownership interests of the relevant class of Equity Interests or as otherwise required by the applicable Organization Documents);

(b) the Borrower and each of the Restricted Subsidiaries may declare and make Restricted Payments payable in the form of Equity Interests (other than Disqualified Equity Interests not otherwise permitted to be incurred under **Section 7.03**) of such Person;

(c) [reserved];

(d) to the extent constituting Restricted Payments, the Borrower and the Restricted Subsidiaries may enter into and consummate transactions expressly permitted by any provision of **Section 7.02** (other than **Section 7.02(o)**), **7.04** (other than a merger, amalgamation or consolidation involving the Borrower) or **7.07** (other than **Section 7.07(a)**, **(j)** or **(k)**);

(e) Restricted Payments in respect of the repurchase of Equity Interests in the Borrower, any Restricted Subsidiary that occur upon or in connection with the exercise of stock options or warrants or similar rights if such Restricted Payments represent a portion of the exercise price of such options or warrants or similar rights or tax withholding obligations with respect thereto;

(f) Restricted Payments of Equity Interests in, Indebtedness owing from and/or other securities of or Investments in, any Unrestricted Subsidiaries (other than any Unrestricted Subsidiaries the assets of which consist solely of cash or Cash Equivalents received from an Investment by the Borrower and/or any Restricted Subsidiary into it);

(g) the Borrower may pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests of the Borrower held by any Management Stockholder, including pursuant to any employee or director equity plan, employee or director stock option or profits interest plan or any other employee or director benefit plan or any agreement (including any separation, stock subscription, shareholder or partnership agreement) with any employee, director, consultant or distributor of the Borrower or any of its Subsidiaries; ***provided***, the aggregate Restricted Payments made pursuant to this **Section 7.06(g)** after the Closing Date together with the aggregate amount of loans and advances to the Borrower made pursuant to **Section 7.02(j)** in lieu of Restricted Payments permitted by this **clause (g)** shall not exceed:

(i) the greater of (A) 20.00% of Closing Date EBITDA and (B) 20.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of measurement in any calendar year, with unused amounts in any calendar year being carried over to the next two succeeding calendar years; plus

(ii) an amount not to exceed the cash proceeds of key man life insurance policies received by the Borrower or the Restricted Subsidiaries after the Closing Date; plus

(iii) to the extent contributed in cash to the common Equity Interests of the Borrower and Not Otherwise Applied, the proceeds from the sale of Equity Interests of the Borrower to a Person that is or becomes a Management Stockholder that occurs after the Closing Date; plus

(iv) the amount of any cash bonuses or other compensation otherwise payable to any future, present or former Company Person that are foregone in return for the receipt of Equity Interests of the Borrower or any Restricted Subsidiary; plus

(v) payments made in respect of withholding or other similar taxes payable upon repurchase, retirement or other acquisition or retirement of Equity Interests of the Borrower or its Subsidiaries or otherwise pursuant to any employee or director equity plan, employee or director stock option or profits interest plan or any other employee or director benefit plan or any agreement;

(h) [Reserved]:

(i) Restricted Payments (i) made in connection with the payment cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted Acquisition or other transaction permitted by the Loan Documents or (ii) to honor any conversion request by a holder of convertible Indebtedness and to make cash payments in lieu of fractional shares in connection therewith;

(j) the declaration and payment of dividends on the Borrower's common stock, not to exceed an amount *per annum* equal to the greater of (A) the sum of (i) 6.00% of the net proceeds of the Borrower's initial public offering and (ii) any follow on primary offering received by the Borrower and (B) an amount equal to 7.00% of the Market Capitalization of the Borrower;

(k) repurchases of Equity Interests (i) deemed to occur on the exercise of options by the delivery of Equity Interests in satisfaction of the exercise price of such options or (ii) in consideration of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing), including deemed repurchases in connection with the exercise of stock options or the vesting of any equity awards;

(l) payments or distributions to satisfy dissenters rights (including in connection with or as a result of the exercise of appraisal rights and the settlement of any claims or actions, whether actual, contingent or potential) pursuant to or in connection with a merger, amalgamation, consolidation, transfer of assets or other transaction permitted by the Loan Documents;

(m) payments or distributions of a Restricted Payment within 60 days after the date of declaration thereof if at the date of declaration such Restricted Payment would have been permitted hereunder;

(n) Restricted Payments (not consisting of cash or Cash Equivalents) made in lieu of fees or expenses (including by way of discount), in each case in connection with any Qualified Securitization Financing;

(o) the Borrower may

(i) redeem, repurchase, retire or otherwise acquire in whole or in part any Equity Interests of the Borrower or any Restricted Subsidiary ("***Treasury Equity Interests***"), in exchange for, or with the proceeds (to the extent contributed to the Borrower

substantially concurrently) of the sale or issuance (other than to the Borrower or any Restricted Subsidiary) of, other Equity Interests or rights to acquire its Equity Interests ("***Refunding Equity Interests***") and

(ii) declare and pay dividends on any Treasury Equity Interests out of any such proceeds;

(p) redemptions in whole or in part of any of its Equity Interests for another class of its Equity Interests (other than Disqualified Equity Interests, except to the extent issued by the Borrower to a Restricted Subsidiary) or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests (other than Disqualified Equity Interests, except to the extent issued by the Borrower to a Restricted Subsidiary);

(q) Restricted Payments constituting or otherwise made in connection with or relating to any Permitted Reorganization; ***provided*** that if immediately after giving Pro Forma Effect to any such Permitted Reorganization and the transactions to be consummated in connection therewith, any distributed asset ceases to be owned by the Borrower or another Restricted Subsidiary (or any entity ceases to be a Restricted Subsidiary), the applicable portion of such Restricted Payment must be otherwise permitted under another provision of this **Section 7.06** (and constitute utilization of such other Restricted Payment exception or capacity);

(r) Restricted Payments so long as the Payment Conditions are satisfied (after giving Pro Forma Effect to such Restricted Payment); and

(s) the Borrower may make Restricted Payments in an aggregate amount not to exceed the greater of (A) 25.00% of Closing Date EBITDA and (B) 25.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination; ***provided*** that no Event of Default shall have occurred and be continuing or would result therefrom; and

The amount set forth in **Section 7.06(s)** may, in lieu of Restricted Payments, be utilized by the Borrower or any Restricted Subsidiary to (i) make or hold any Investments without regard to **Section 7.02** or (ii) prepay, repay redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof any Junior Financing without regard to **Section 7.09(a).**

The amount of any Restricted Payment at any time shall be the amount of cash and the fair market value of other property subject to the Restricted Payment at the time such Restricted Payment is made. For purposes of determining compliance with this **Section 7.06**, in the event that any Restricted Payment (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time of such Restricted Payment is made, divide, classify or reclassify, or at any later time divide, classify, or reclassify, such Restricted Payment (or any portion thereof) in any manner that complies with this covenant on the date such Restricted Payment is made or such later time, as applicable.

Section 7.07 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of the Borrower, other than:

(a) transactions between or among the Borrower or any of the Restricted Subsidiaries or any entity that becomes a Restricted Subsidiary as a result of such transaction;

(b) transactions on terms substantially as favorable to the Borrower or such Restricted Subsidiary as would be obtainable by the Borrower or such Restricted Subsidiary at the time in a comparable arm's-length transaction with a Person other than an Affiliate (as determined by the Borrower in good faith);

(c) the Transactions and the payment of fees and expenses (including the Transaction Expenses) related to the Transactions on or about the Closing Date to the extent such fees and expenses are disclosed to the Administrative Agent prior to the Closing Date;

(d) the issuance or transfer of Equity Interests of the Borrower to any Affiliate of the Borrower or any former, current or future officer, director, manager, employee or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) of the Borrower or any of its Subsidiaries;

(e) [reserved];

(f) employment and severance arrangements and confidentiality agreements among the Borrower and the Restricted Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option, profits interest and other equity plans and employee benefit plans and arrangements;

(g) the licensing of trademarks, copyrights or other Intellectual Property in the ordinary course of business to permit the commercial exploitation of Intellectual Property between or among Affiliates and Subsidiaries of the Borrower;

(h) the payment of customary fees and reasonable out-of-pocket costs to, and indemnities provided on behalf of, directors, officers, employees and consultants of the Borrower and the Restricted Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and the Restricted Subsidiaries;

(i) any agreement, instrument or arrangement as in effect as of the Closing Date or any amendment thereto (so long as any such amendment is not adverse to the Lenders in any material respect as compared to the applicable agreement as in effect on the Closing Date);

(j) Restricted Payments permitted under **Section 7.06** and Investments permitted under **Section 7.02**;

(k) so long as no Specified Event of Default shall have occurred and be continuing or would result therefrom, customary payments by the Borrower and any of the Restricted Subsidiaries to the Sponsors made 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 a majority of the members of the Board of Directors of the Borrower in good faith or a majority of the disinterested members of the Board of Directors of the Borrower in good faith; **provided** that payments that would otherwise be permitted to be made under this **Section 7.07(k)** but for a Specified Event of Default may accrue during the continuance of such Event of Default and be paid when such Event of Default is no longer continuing;

(l) transactions in which the Borrower or any of the Restricted Subsidiaries, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or meets the requirements of **clause (b)** of this **Section 7.07** (without giving effect to the parenthetical phrase at the end thereof);

(m) any transaction with consideration valued at less than the greater of (A) 10.00% of Closing Date EBITDA and (B) 10.00% of TTM Consolidated Adjusted EBITDA as of the applicable date of determination;

(n) investments by a Sponsor in securities of the Borrower or Indebtedness of the Borrower or any of the Restricted Subsidiaries so long as (A) the investment is being offered generally to other investors on the same or more favorable terms and (B) the investment constitutes less than 5.00% of the proposed or outstanding issue amount of such class of securities; ***provided***, that any investments in debt securities by any Affiliated Debt Funds shall not be subject to the limitation in this **clause (B)**;

(o) payments to or from, and transactions with, Joint Ventures in the ordinary course of business;

(p) any Disposition of Securitization Assets or related assets in connection with any Qualified Securitization Financing;

(q) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to shareholders of the Borrower pursuant to the stockholders agreement or the registration and participation rights agreement entered into on the Closing Date in connection therewith;

(r) the payment of any dividend or distribution within sixty days after the date of declaration thereof, if at the date of declaration (i) such payment would have complied with the provisions of this Agreement and (ii) no Event of Default occurred and was continuing;

(s) transactions between the Borrower or any of the Subsidiaries and any Person, a director of which is also a director of the Borrower (subject to the *bona fide* related party transaction policies of the Borrower and its Subsidiaries);

(t) payments, loans (or cancellation of loans) or advances to employees or consultants that are (i) approved by a majority of the disinterested members of the Board of Directors of the Borrower in good faith, (ii) made in compliance with applicable Law and (iii) otherwise permitted under this Agreement; and

(u) transactions

(i) with the Borrower in its capacity as a party to any Loan Document or to any agreement, document or instrument governing or relating to (A) any Indebtedness permitted to be incurred pursuant to **Section 7.03** (including Permitted Refinancings thereof) or (B) any other agreements contemplated thereby or any agreement, document or

instrument governing or relating to any Permitted Acquisition (whether or not consummated) and

(ii) with any Affiliate or branch in its capacity as a Lender party to any Loan Document or party to any agreement, document or instrument governing or relating to any Indebtedness permitted to be incurred pursuant to **Section 7.03** (including Permitted Refinancings thereof) to the extent such Affiliate or branch is being treated no more favorably than all other Lenders or lenders thereunder.

Section 7.08 Negative Pledge. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that prohibits or restricts the ability of any Restricted Subsidiary (other than an Excluded Subsidiary)

(i) that is not a Loan Party, to make dividends or distributions to (directly or indirectly), or to make or repay loans or advances to, any Loan Party or

(ii) to create, incur, assume or suffer to exist Liens on property of such Person (other than Excluded Assets) for the benefit of the Lenders to secure the Obligations under the Loan Documents (other than Incremental Facilities that are not intended to be secured on a first lien basis);

provided that the foregoing shall not apply to Contractual Obligations that:

(a) exist on the Closing Date, including Contractual Obligations governing Indebtedness incurred on the Closing Date to finance the Transactions and any Permitted Refinancing thereof or other Contractual Obligations executed on the Closing Date in connection with the Transactions;

(b) are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such Contractual Obligations were not entered into in contemplation of such Person becoming a Restricted Subsidiary or binding with respect to any asset at the time such asset was acquired;

(c) are Contractual Obligations of a Restricted Subsidiary that is not a Loan Party or to the extent applicable only to Excluded Assets;

(d) are customary restrictions that arise in connection with (A) any Lien permitted by **Section 7.01** and relate to the property subject to such Lien or (B) any Disposition permitted by **Section 7.05** applicable pending such Disposition solely to the assets (including Equity Interests) subject to such Disposition;

(e) are joint venture agreements and other similar agreements applicable to Joint Ventures and applicable solely to such Joint Venture;

(f) are negative pledges and restrictions on Liens in favor of any holder of Indebtedness permitted under **Section 7.03** but solely to the extent any negative pledge relates to the property financed by or the subject of or that secures such Indebtedness and the proceeds and products thereof;

(g) are restrictions in leases, subleases, licenses, sublicenses or agreements governing a disposition of assets, trading, netting, operating, construction, service, supply, purchase, sale or other agreements entered into in the ordinary course of business so long as such restrictions relate to the assets subject thereto;

(h) comprise restrictions imposed by any agreement relating to secured Indebtedness permitted pursuant to **Section 7.03** to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

(i) are customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(j) are customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(k) are restrictions on cash or other deposits imposed by customers or trade counterparties under contracts entered into in the ordinary course of business;

(l) arise in connection with cash or other deposits permitted under **Section 7.01**;

(m) comprise restrictions that are, taken as a whole, in the good faith judgment of the Borrower (i) no more restrictive with respect to the Borrower or any Restricted Subsidiary than customary market terms for Indebtedness of such type or (ii) no more restrictive than the restrictions contained in this Agreement, or not reasonably anticipated to materially and adversely affect the Loan Parties' ability to make any payments required hereunder;

(n) apply by reason of any applicable Law, rule, regulation or order or are required by any Governmental Authority having jurisdiction over the Borrower or any Restricted Subsidiary;

(o) customary restrictions contained in Indebtedness permitted to be incurred pursuant to **Section 7.03(h)**, **(i)**, **(j)**, **(k)**, **(l)**, **(m)**, **(x),** or **(y)**;

(p) Contractual Obligations that are subject to the applicable override provisions of the UCC;

(q) customary provisions (including provisions limiting the Disposition, distribution or encumbrance of assets or property) included in sale leaseback agreements or other similar agreements;

(r) net worth provisions contained in agreements entered into by the Borrower or any Restricted Subsidiary, so long as the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower or such Restricted Subsidiary to meet its ongoing obligations;

(s) restrictions arising in any agreement relating to (i) any Cash Management Obligation to the extent such restrictions relate solely to the cash, bank accounts or other assets or activities subject to the applicable Cash Management Services, (ii) any treasury arrangements and (iii) any Hedge Agreement;

(t) restrictions on the granting of a security interest in Intellectual Property contained in licenses, sublicenses or cross-licenses by the Borrower or any Restricted Subsidiary of such Intellectual Property, which licenses, sublicenses and cross-licenses were entered into in the ordinary course of business; and

(u) other restrictions or encumbrances imposed by any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of the contracts, instruments or obligations referred to in the preceding clauses of this **Section 7.08**; ***provided*** that no such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is, in the good faith determination of the Borrower, materially more restrictive with respect to such encumbrances and other restrictions, taken as a whole, than those in effect prior to the relevant amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 7.09 Junior Debt Prepayments; Amendments to Junior Financing Documents.

(a) **Prepayments of Junior Financing**. Prepay, repay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof any Junior Financing (any such prepayment, repayment, redemption, purchase, defeasance or satisfaction, a "***Junior Debt Repayment***"), except:

(i) Junior Debt Repayments with the proceeds of, or in exchange for, any (A) Permitted Refinancing or (B) other Junior Financing or Junior Lien Debt secured by Permitted Liens (***provided*** that such incurrence will thereafter count in the calculation of any remaining basket capacity thereunder, while such Indebtedness remains outstanding);

(ii) Junior Debt Repayments

(a) made with Qualified Equity Interests of the Borrower, with the proceeds of an issuance of any such Equity Interests or with the proceeds of a contribution to the capital of the Borrower after the Closing Date that is Not Otherwise Applied or

(b) consisting of the conversion of any Junior Financing to Equity Interests;

(iii) Junior Debt Repayments of Indebtedness of the Borrower or any Restricted Subsidiary owed to the Borrower or a Restricted Subsidiary;

(iv) Junior Debt Repayments of Indebtedness of any Person that becomes a Restricted Subsidiary after the Closing Date in connection with a transaction not prohibited by the Loan Documents;

(v) Junior Debt Repayments within 60 days of giving notice thereof if at the date of such notice, such payment would have been permitted hereunder;

(vi) [reserved];

(vii) Junior Debt Repayments consisting of the payment of regularly scheduled interest and principal payments, payments of fees, expenses, penalty interest and indemnification obligations when due, other than payments prohibited by any applicable subordination provisions;

(viii) Junior Debt Repayments consisting of a payment to avoid the application of Section 163(e)(5) of the Code (an "***AHYDO Catch Up Payment***");

(ix) Junior Debt Repayments so long as the Payment Conditions are satisfied (after giving Pro Forma Effect to any such Junior Debt Repayment); and

(x) Junior Debt Repayments in an aggregate amount not to exceed the greater of (A) 25.00% of Closing Date EBITDA and (B) 25.00% of TTM Consolidated Adjusted EBITDA on a Pro Forma Basis as of the applicable date of determination.

provided however, that each of the following shall be permitted: payments of regularly scheduled principal and interest on Junior Financing, payments of closing and consent fees related to Junior Financing, indemnity and expense reimbursement payments in connection with Junior Financing, and mandatory prepayments, mandatory redemptions and mandatory purchases, in each case pursuant to the terms of Junior Financing Documentation.

The amount set forth in **Section 7.09(a)(x)** may, in lieu of Junior Debt Repayments be utilized by the Borrower or any Restricted Subsidiary to make or hold any Investments without regard to **Section 7.02**.

The amount of any Junior Debt Repayment at any time shall be the amount of cash and the fair market value of other property used to make the Junior Debt Repayment at the time such Junior Debt Repayment is made. For purposes of determining compliance with this **Section 7.09(a)**, in the event that any prepayment, repayment, redemption, purchase, defeasance or satisfaction (or any portion thereof) meets the criteria of more than one of the categories set forth above, the Borrower may, in its sole discretion, at the time of such prepayment, repayment, redemption, purchase, defeasance or satisfaction is made, divide, classify, or reclassify, or at any later time divide, classify or reclassify, such prepayment, repayment, redemption, purchase, defeasance or satisfaction (or any portion thereof) in any manner that complies with this covenant on the date it was made or such later time, as applicable.

(b) **Amendments to Junior Financing Documents**. Amend, modify or change in any manner without the consent of the Administrative Agent, any Junior Financing Documentation unless (i) such amendment, modification or change is permitted pursuant to any applicable intercreditor or subordination agreement or (ii) the Borrower determines in good faith that the effect of such amendment, modification or waiver is not, taken as a whole, materially adverse to the interests of the Lenders, in each case, other than as a result of a Permitted Refinancing thereof; ***provided*** that, in each case, a certificate of the Borrower delivered to the Administrative Agent at least five Business Days prior to such amendment or other modification, together with a reasonably detailed description of such amendment or modification, stating that the Borrower has reasonably determined in good faith that such terms and conditions satisfy such foregoing requirement shall be conclusive evidence that such terms and conditions satisfy such foregoing requirement unless

the Administrative Agent notifies the Borrower in writing within such five Business Day period that it disagrees with such determination (including a reasonably detailed description of the basis upon which it disagrees).

Section 7.10 [Reserved].

Section 7.11 Changes in Fiscal Year. Make any change in the fiscal year of the Borrower; ***provided***, ***however***, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

ARTICLE VIII.
FINANCIAL COVENANT

So long as the Termination Conditions have not been satisfied, the Borrower and each of the Restricted Subsidiaries covenant and agree that:

Section 8.01 Fixed Charge Coverage Ratio. Upon the occurrence and during the continuance of a Covenant Trigger Event, the Borrower shall not permit (a) as of the last day of the most recently ended Test Period prior to the occurrence of such Covenant Trigger Event and (b) as of the last day of each Test Period ended thereafter during the continuance of such Covenant Trigger Event, the Fixed Charge Coverage Ratio to be less than 1.00 to 1.00. To the extent required to be tested with respect to any Test Period pursuant to the preceding sentence, compliance with this **Section 8.01** shall be calculated in the Compliance Certificate for the applicable Test Period delivered pursuant to **Section 6.02(a)**.

Section 8.02 Borrower's Right to Cure. Notwithstanding anything to the contrary contained in **Section 8.01**, in the event that the Fixed Charge Coverage Ratio is less than the amount set forth in **Section 8.01** on the last day of any applicable Test Period, any equity contribution (in the form of common equity or other equity that is not a Disqualified Equity Interest) made to the Borrower after the end of the relevant fiscal quarter and on or prior to the day that is ten Business Days after the date on which financial statements are required to be delivered for such Test Period and Not Otherwise Applied (such date, the "***Cure Expiration Date***") will, at the request of the Borrower, be included in the calculation of Consolidated Adjusted EBITDA solely for the purposes of determining compliance with the financial covenant set forth in **Section 8.01** at the end of such Test Period and any subsequent period that includes a fiscal quarter in such Test Period (any such equity contribution, a "***Specified Equity Contribution***"); ***provided*** that,

(a) no Lender shall be required to make any new Credit Extension under a Loan Document after receipt by the Administrative Agent of any Notice of Intent to Cure if the Borrower has not at such time received the proceeds of such Specified Equity Contribution;

(b) the Borrower shall not be permitted to so request that a Specified Equity Contribution be included in the calculation of Consolidated Adjusted EBITDA with respect to any fiscal quarter unless, after giving effect to such requested Specified Equity Contribution, there

would be at least two fiscal quarters in the Relevant Four Fiscal Quarter Period in which no Specified Equity Contribution has been made;

(c) no more than five Specified Equity Contributions will be made in the aggregate;

(d) the amount of any Specified Equity Contribution and the use of any proceeds therefrom will be no greater than the amount required to cause the Borrower to be in compliance with **Section 8.01**;

(e) any proceeds of Specified Equity Contributions will be disregarded for all other purposes under the Loan Documents (including calculating Consolidated Adjusted EBITDA for purposes of determining basket levels, pricing and other items governed by reference to Consolidated Adjusted EBITDA or any ratio-based basket and the other negative covenants); and

(f) there shall be no reduction in Indebtedness pursuant to a cash netting provision with the proceeds of any Specified Equity Contribution for purposes of determining compliance with the financial covenant set forth in **Section 8.01** for the fiscal quarter for which such Specified Equity Contribution was made.

ARTICLE IX.
EVENTS OF DEFAULT AND REMEDIES

Section 9.01 Events of Default . Each of the events referred to in **clauses (a)** through **(j)** of this **Section 9.01** shall constitute an "***Event of Default***":

(a) **Non-Payment**. Any Loan Party fails to pay (i) when and as required to be paid pursuant to the terms of this Agreement, any amount of principal of any Loan, or (ii) within five Business Days after the same becomes due, any interest on any Loan or any fee payable pursuant to the terms of a Loan Document; or

(b) **Specific Covenants**. The Borrower or any Subsidiary or any Subsidiary Guarantor fails to perform:

(i) any covenant contained in

(a) **Section 6.02(f)** (and such default shall not have been remedied or waived

(i) within five (5) Business Days or

(ii) during the continuance of any period as described in **clauses (1)** and **(2)** of the first proviso of **Section 6.02(f)**, within three (3) Business Days after the occurrence thereof),

(b) **Section 6.03(a)**,

(c) **Section 6.05(a)** (solely with respect to the Borrower) or

(d) **Article VII**,

(ii) the covenant set forth in **Section 8.01** (any such failure to observe the covenant contained in **Section 8.01**, a "***Financial Covenant Event of Default***"), or

(iii) any covenant set forth in **Section 6.18**.

(c) **Other Defaults**. The Borrower or any Subsidiary Guarantor fails to perform or observe any other covenant (not specified in **Section 9.01(a)** or **(b)** above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty days after the receipt by the Borrower of written notice thereof from the Administrative Agent; or

(d) **Representations and Warranties**. Any representation or warranty made or deemed by any Loan Party in any Loan Document, or in any document required to be delivered pursuant to the terms of a Loan Document shall be untrue in any material respect (or, with respect to any representation or warranty qualified by materiality or "***Material Adverse Effect,***" shall be untrue in any respect) when made or deemed made; ***provided*** that in the case of any representation and warranty (other than with respect to the Borrowing Base (or any component thereof), on the Borrowing Base Certificate or in **Section 5.20**) made or deemed made after the Closing Date that is capable of being cured, such representation or warranty shall remain untrue (in any material respect or in any respect, as applicable) or uncorrected for a period of thirty days after written notice thereof from the Administrative Agent to the Borrower; or

(e) **Cross-Default**. The Borrower or any Subsidiary Guarantor,

(i) fails to make any payment of any principal or interest beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand or otherwise, in respect of its Material Indebtedness; or

(ii) fails to perform or observe any covenant contained in an agreement governing its Material Indebtedness, or any other event occurs, the effect of which failure or other event is to cause such Material Indebtedness to become due prior to its stated maturity, in each case pursuant to its terms;

provided that (A) this **Section 9.01(e)** shall not apply to any failure if it has been remedied, cured or waived in accordance with the terms of such Material Indebtedness and (B) **Section 9.01(e)(ii)** shall not apply

(1) to any secured Indebtedness that becomes due as a result of the sale, transfer or other disposition (including as a result of a casualty or condemnation event) of the property or assets securing such Indebtedness;

(2) to conversion of, or the satisfaction of any condition to the conversion of, any Indebtedness that is convertible or exchangeable for Equity Interests;

(3) to a customary "change of control" put right in any indenture governing any such Indebtedness in the form of notes; or

(4) to a refinancing of Indebtedness permitted by this Agreement; or

(f) Insolvency Proceedings, Etc.

(i) Any Loan Party (A) institutes or consents to the institution of any case or proceeding under any Debtor Relief Law, (B) makes an assignment for the benefit of creditors or (C) applies for or consents to the appointment of any receiver, interim receiver, receiver and manager, monitor, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property or to the marshalling of its assets or liabilities;

(ii) any receiver, interim receiver, receiver and manager, monitor, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed for a Loan Party without the application or consent of such Loan Party and the appointment continues undischarged or unstayed for sixty calendar days;

(iii) any case or proceeding under any Debtor Relief Law relating to a Loan Party is instituted without the consent of such Loan Party and continues undismissed or unstayed for sixty calendar days or

(iv) an order for relief is entered in any such case or proceeding; or

(g) **Judgments**. There is entered against a Loan Party a final, enforceable and non-appealable judgment by a court of competent jurisdiction for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance or another indemnity obligation) and such judgment or order is not satisfied, vacated, discharged or stayed or bonded for a period of sixty consecutive days; or

(h) **Invalidity of Loan Documents**. The material provisions of the Loan Documents, taken as a whole, at any time after their execution and delivery and for any reason cease to be in full force and effect, except

(i) as permitted by, or as a result of a transaction permitted by, the Loan Documents (including as a result of a transaction permitted under **Section 7.04** or **Section 7.05**),

(ii) as a result of the Termination Conditions or

(iii) resulting from acts or omissions of a Secured Party or the application of applicable Law; or

(i) **Collateral Documents and Guarantee**. Any:

(i) Collateral Document with respect to a material portion of the Collateral with a fair market value exceeding the Threshold Amount after its execution and delivery shall for any reason cease to create a valid and perfected Lien, except (A) as otherwise permitted by the Loan Documents, (B) resulting from the failure of the Administrative Agent or the

Collateral Agent or any of their agents or bailees to maintain possession or control of Collateral, (C) resulting from the failure to make a filing of a continuation statement under the Uniform Commercial Code or (D) resulting from acts or omissions of a Secured Party; or

(ii) Guarantee with respect to a Guarantor that is the Borrower or a Material Subsidiary (other than an Excluded Subsidiary) shall for any reason cease to be in full force and effect, except (A) as otherwise permitted by the Loan Documents, (B) upon the Termination Conditions, (C) upon the release of such Guarantor as provided for under the Loan Document or in accordance with its terms or (D) resulting from acts or omissions of a Secured Party or the application of applicable Law; or

(j) **Change of Control**. There occurs any Change of Control.

Section 9.02 Remedies upon Event of Default.

(a) If (and only if) any Event of Default occurs and is continuing, the Administrative Agent may, and shall at the request of the Required Lenders, take any or all of the following actions upon notice to the Borrower:

(i) declare the Commitments of each Lender and the obligation of each Issuing Bank to issue Letters of Credit to be terminated, whereupon such Commitments and obligation shall be terminated;

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

(iii) require that the Borrower Cash Collateralize its Letters of Credit (in an amount equal to 103% (or if not denominated in Dollars, 110%) of the maximum face amount of all outstanding Letters of Credit); and

(iv) exercise on behalf of itself, the Issuing Banks and the Lenders all rights and remedies available to it, the Issuing Banks and the Lenders under the Loan Documents and/or under applicable Law;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under any Debtor Relief Law, the Commitments of each Lender and the obligations of each Issuing Bank to issue Letters of Credit shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest, fees, expenses, and other amounts as aforesaid shall automatically become due and payable and the obligation of the Borrower to Cash Collateralize the Letters of Credit as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

(b) **Limitations on Remedies; Cures**.

(i) [Reserved].

(ii) [Reserved]; and

(iii) ***Cures***. Any Default or Event of Default resulting from failure to provide notice pursuant to **Section 6.03(a)** shall be deemed not to be "continuing" or "existing" and shall be deemed cured upon delivery of such notice unless the Borrower knowingly fails to give timely notice of such Default or Event of Default as required hereunder.

(iv) ***Administrative Agent Notice***. Upon, or prior to, taking any of the actions set forth in **Section 9.02(a)**, other than as set forth in the proviso of **Section 9.02(a)**, the Administrative Agent shall, on behalf of the Required Lenders deliver a notice of Default, Event of Default or acceleration, as applicable, to the Borrower.

For the avoidance of doubt, unless a Default or an Event of Default has occurred and is continuing, the Administrative Agent (and each other Secured Party) shall not take any of the actions described in this **Section 9.02** or bring an action or proceeding under the Loan Documents or with respect to the Obligations.

Section 9.03 Application of Funds. After the exercise of remedies provided for in **Section 9.02** (or after the Loans have automatically become immediately due and payable as set forth in the proviso to **Section 9.02(a)**), any amounts received on account of the Obligations shall, subject to the Intercreditor Agreements (and, in the case of any Defaulting Lender, subject to **Section 2.19**), be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under **Section 11.04** and amounts payable under **Article III**) payable to the Administrative Agent and the Collateral Agent in their capacities as such;

Next, to payment in full of Unfunded Advances/Participations (the amounts so applied to be distributed between or among, as applicable, the Administrative Agent and the Issuing Banks *pro rata* in accordance with the amounts of Unfunded Advances/Participations owed to them on the date of any such distribution);

Next, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest, Obligations under Secured Hedge Agreements and Cash Management Obligations and Letter of Credit fees) payable to the Lenders and the Issuing Banks (including Attorney Costs payable under **Section 11.04** and amounts payable under **Article III**), ratably among them in proportion to the amounts described in this **clause Third** payable to them;

Next, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit fees and interest on the Loans and Letter of Credit Usage, ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this **clause Fourth** held by them;

Next, to pay the principal of Protective Advances;

Next, (a) to payment of that portion of the Obligations constituting unpaid principal of the Loans (other than Protective Advances) and the Letter of Credit Usage,

(b) to the extent a Bank Products Reserve has been established therefor by the Administrative Agent in accordance with the terms hereof, to pay the unpaid Reserved Secured Hedge Obligations, including the cash collateralization of such Reserved Secured Hedge Obligations,

(c) to the extent a Bank Products Reserve has been established therefor by the Administrative Agent in accordance the terms hereof, to pay the unpaid Reserved Secured Cash Management Obligations,

(d) to Cash Collateralize Letters of Credit (to the extent not otherwise Cash Collateralized pursuant to the terms of this Agreement) (in an amount equal to 103% (or if not denominated in Dollars, 110%) of the maximum face amount of all outstanding Letters of Credit) and to further permanently reduce the Revolving Commitments by the amount of such Cash Collateralization, ratably among the Secured Parties in proportion to the respective amounts described in this **clause Sixth** held by them; ***provided*** that

(i) any such amounts applied pursuant to the foregoing **subclause (d)** shall be paid to the Administrative Agent for the ratable account of the Issuing Banks to Cash Collateralize such Letters of Credit, and

(ii) subject to **Section 2.04** and **Section 2.19**, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to this **clause Sixth** shall be applied to satisfy drawings under such Letters of Credit as they occur and

(e) upon the expiration of any Letter of Credit, the *pro rata* share of Cash Collateral attributable to such expired Letter of Credit shall be applied by the Administrative Agent in accordance with the priority of payments set forth in this **Section 9.03**;

Next, ratably to pay other Obligations then due (other than Obligations in respect of Secured Cash Management Services and Secured Hedge Agreements), until paid in full;

Next, ratably to pay other Obligations in respect of Secured Cash Management Services and Secured Hedge Agreements, until paid in full;

Next, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Amounts distributed with respect to any Reserved Secured Cash Management Obligations and Reserved Secured Hedge Obligations shall be the lesser of (x) the maximum Reserved Secured Cash Management Obligations and Reserved Secured Hedge Obligations last reported to the Administrative Agent and (y) the Reserved Secured Cash Management Obligations and Reserved Secured Hedge Obligations as calculated by the methodology reported by each applicable Cash Management Bank and Hedge Bank to the Administrative Agent for determining the amount due. The Administrative Agent shall have no obligation to calculate the amount to be distributed with respect to any Reserved Secured Cash Management Obligations and Reserved Secured Hedge Obligations, and at any time and from time to time may request a reasonably detailed calculation of such amount from the applicable Secured Party holding such Reserved Secured Cash Management Obligations and Reserved Secured Hedge Obligations. If a Secured Party fails to deliver such calculation within five (5) days following request by the Administrative Agent, the Administrative Agent may assume the amount to be distributed is no greater than the maximum amount of the Reserved Secured Cash Management Obligations or Reserved Secured Hedge Obligations last reported to Administrative Agent.

ARTICLE X.
ADMINISTRATIVE AGENT AND OTHER AGENTS

Section 10.01 Appointment and Authority of the Administrative Agent.

(a) Each Lender and each Issuing Bank hereby irrevocably appoints Citibank, N.A. to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this **Article X** (other than **Sections 10.09** and **10.11**) are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have any rights as a third party beneficiary of any such provision. Each Issuing Bank shall act on behalf of the Revolving Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each Issuing Bank shall have all of the benefits and immunities (i) provided to the Agents in this **Article X** with respect to any acts taken or omissions suffered by such Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and the Letter of Credit Documents pertaining to such Letters of Credit as fully as if the term "***Agent***" as used in this **Article X** and the definition of "***Agent-Related Person***" included such Issuing Bank with respect to such acts or omissions, and (ii) as additionally provided herein with respect to each Issuing Bank.

(b) Citibank, N.A. shall irrevocably act as the "collateral agent" under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and/or Cash Management Bank) and each of the Issuing Banks hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Lender and such Issuing Bank for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion

as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to **Section 10.05** and **Section 10.12** for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this **Article X** (including **Section 10.07**, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders and each other Secured Party hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Secured Parties with respect thereto (including the Intercreditor Agreements), as contemplated by and in accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders and each other Secured Party.

Section 10.02 Rights as a Lender. Any Lender that is also serving as an Agent (including as Administrative Agent) hereunder shall have the same rights and powers (and no additional duties or obligations) in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and the term "***Lender***" or "***Lenders***" shall, unless otherwise expressly indicated or unless the context otherwise requires, include each Lender (if any) serving as an Agent hereunder in its individual capacity. Any Person serving as an Agent and its Affiliates and branches may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust or other business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor, and may accept fees and other consideration from the Borrower for services in connection herewith and otherwise without having to account for the same. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates or branches may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

Section 10.03 Exculpatory Provisions. None of the Administrative Agent, any of the other Agents, any of their respective Affiliates or branches, nor any of the officers, partners, directors, employees or agents of the foregoing shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, an Agent (including the Administrative Agent) or any of their respective officers, partners, directors, employees or agents:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term "agent" herein and in the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under any agency doctrine of any applicable Law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(b) shall not have any duty to take any action or exercise any powers, except actions and powers expressly contemplated by the Loan Documents that such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), ***provided*** that, notwithstanding any direction by the Required Lenders to the contrary, no Agent shall be required to take any such action

(i) that, in its opinion or the opinion of counsel (which may include Borrower's counsel), may expose such Agent to liability or that is contrary to any Loan Document or applicable Law, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may be in violation of the automatic stay under the Bankruptcy Code or any other Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of the Bankruptcy Code or any other Debtor Relief Law or

(ii) unless it shall be indemnified to its satisfaction by the Lenders against any and all liability and expenses that may be incurred by it by reason of taking or continuing to take any such action (which satisfaction may require such indemnity from such Lenders to be joint and several obligations of such Lenders);

(c) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose to any Lender, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates, information relating to the Borrower or any of its Affiliates that is communicated to, obtained by or in possession of the Person serving as the Administrative Agent, a Lead Arranger or any of their respective Affiliates or branches in any capacity, except for notices, reports and other documents expressly required herein to be furnished to the Lenders by the Administrative Agent or the Lead Arranger, as applicable; and

(d) shall not be liable for any action taken or omitted to be taken under or in connection with any of the Loan Documents except to the extent caused by such Agent's gross negligence or willful misconduct as determined by a final, non-appealable judgment of a court of competent jurisdiction.

The Administrative Agent shall not be liable for any action taken or not taken by it

(i) with the consent, at the request of or ratified by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Section 9.02** and **Section 11.01**) (and such consent, request or ratification shall be binding upon all the Lenders and future holders of the Loans) or

(ii) in the absence of its own gross negligence, bad faith or willful misconduct as determined by a final, non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein.

Any notice, consent, request, direction, instruction or ratification by the Required Lenders shall be executed by the Lenders of record providing such consent, request, direction, instruction or

ratification. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent by the Borrower or the Required Lenders in writing.

No Agent-Related Person shall be responsible for or have any duty to ascertain or inquire into

(i) any recital, statement, warranty or representation made in or in connection with any Loan Document (including any Release Certificate),

(ii) the contents of any certificate, report, statement or agreement or other document delivered pursuant to a Loan Document thereunder or in connection with a Loan Document or referred to or provided for in, or received by the Administrative Agent under or in connection with any Loan Document,

(iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default,

(iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents,

(v) the value or the sufficiency of any Collateral, or

(vi) the satisfaction of any condition set forth in **Article IV** or elsewhere in a Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof.

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 hereof relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (a) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (b) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender. The list of Disqualified Lenders shall be specified on a schedule that is held with the Administrative Agent, which list may be provided to any Lender or its proposed assignee upon request.

~~For the avoidance of doubt, no Agent shall be obligated to calculate or confirm the calculations of any financial covenants set forth herein or the other Loan Documents or in any of the financial statements of the Loan Parties. No Agent shall be liable to the Lenders for any apportionment or distribution of payments made by it to such Lenders in good faith and if any such apportionment or distribution is subsequently determined to have been made in error, the sole recourse of any Lender to whom payment was due but not made shall be to recover pro rata from the other Lenders any payment equal to the amount to which they are determined to be entitled~~

~~(and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).~~

In no event shall any Agent be liable for any failure or delay in the performance of their respective obligations under this Agreement or any related documents because of circumstances beyond such Agent's control, including, but not limited to, a failure, termination, or suspension of a clearing house, securities depositary, settlement system or central payment system in any applicable part of the world or acts of God, flood, war (whether declared or undeclared), civil or military disturbances or hostilities, nuclear or natural catastrophes, political unrest, explosion, severe weather or accident, earthquake, terrorism, fire, riot, labor disturbances, strikes or work stoppages for any reason, embargo, government action, including any laws, ordinances, regulations or the like (whether domestic, federal, state, county or municipal or foreign) which delay, restrict or prohibit the providing of the services contemplated by this Agreement or any related documents, or the unavailability of communications or computer facilities, the failure of equipment or interruption of communications or computer facilities, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility, or any other causes beyond the Agent's control whether or not of the same class or kind as specified above.

Nothing in this Agreement or any other Loan Document shall require any Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder.

The Agents shall have no obligation for (a) perfecting, maintaining, monitoring, preserving or protecting the security interest or Lien granted under this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby; (b) the filing, re-filing, recording, re-recording, or continuing of any document, financing statement, mortgage, assignment, notice, instrument of further assurance, or other instrument in any public office at any time or times; or (c) providing, maintaining, monitoring, or preserving insurance on or the payment of taxes with respect to any Collateral.

Section 10.04 Reliance by the Agents. The Agents shall be entitled to rely upon, and shall not incur any liability to any Lender for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan or the issuance of a Letter of Credit that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, each 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 Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. Each Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable to any Lender for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Each Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders (or other requisite percentage of Lenders) and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action (which satisfaction may require such indemnity from such Lenders to be joint and several obligations of such Lenders). The Agents shall in all cases be fully protected in taking any action, or in refraining from taking any action under any Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders; ***provided*** that the Agents shall not be required to take any action that, in their opinion or in the opinion of counsel (which may include counsel for the Borrower), may expose such Agent to liability or that is contrary to any Loan Document or applicable Law. The Lenders and each other Secured Party agree not to instruct the Administrative Agent, Collateral Agent or any other Agent to take any action, or refrain from taking any action, that would, in each case, cause it to violate an express duty or obligation under this Agreement.

Section 10.05 Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Documents by or through any one or more sub agents appointed by such Agent. Each Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Agent-Related Persons. The exculpatory provisions of this **Article X** shall apply to any such sub agent and to the Agent-Related Persons of the Agents and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agents. Notwithstanding anything herein to the contrary, with respect to each sub agent appointed by an Agent, (i) such sub agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of the Loan Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub agent, and (iii) such sub agent shall only have obligations to the Agent that appointed it as sub agent and not to any Loan Party, Lender or any other Person and no Loan Party, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub agent. Each Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

Section 10.06 Non-Reliance on Agents and Other Lenders; Disclosure of Information by Agents.

(a) Each Lender and each Issuing Bank expressly acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by any Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any

Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender and each Issuing Bank represents to each Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower and the other Loan Parties hereunder. Each Lender and each Issuing Bank also represents that it will, independently and without reliance upon any Agent, any other Lender or any Agent-Related Person 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 investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and the other Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent herein, such Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person. Each Lender represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender agrees not to assert a claim in contravention of the foregoing. Each Lender represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

(b) Each Lender, by delivering its signature page to this Agreement or an Assignment and Assumption and funding its Revolving Loans on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by any Agent, Required Lenders or Lenders, as applicable on the Closing Date.

(c) Each Lender acknowledges that certain Affiliates of the Loan Parties, including the Sponsors or entities controlled by the Sponsors, are Eligible Assignees hereunder and may purchase Loans and/or Commitments hereunder from the Lenders from time to time, subject to the restrictions set forth in this Agreement.

Section 10.07 Indemnification of Agents.

(a) Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand the Administrative Agent, each Agent, each Issuing Bank,

the Swing Line Lender and each other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of any Agent, any Issuing Bank or the Swing Line Lender, as applicable) (without limiting any indemnification obligation of any Loan Party to do so), pro rata, and hold harmless the Administrative Agent, each Agent, each Issuing Bank, the Swing Line Lender and each other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of any Agent, each Issuing Bank or the Swing Line Lender, as applicable) from and against any and all Indemnified Liabilities incurred by it (regardless of whether any such claim, litigation, investigation or proceeding is by or against any such Lender; ***provided*** that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting from such Agent-Related Person's own gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction; ***provided*** that, to the extent each Issuing Bank or Swing Line Lender is entitled to indemnification under this **Section 10.07** solely in its capacity and role as an Issuing Bank or as a Swing Line Lender, as applicable, only the Revolving Lenders shall be required to indemnify the applicable Issuing Bank or the Swing Line Lender, as the case may be, in accordance with this **Section 10.07** (determined as of the time that the applicable payment is sought based on each Revolving Lender's Pro Rata Share thereof at such time); ***provided***, ***further***, that no action taken in accordance with the terms of a Loan Document or in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this **Section 10.07**. If any indemnity furnished to any Agent, any Issuing Bank or the Swing Line Lender for any purpose shall, in the opinion of such Agent, such Issuing Bank or the Swing Line Lender, as applicable, be insufficient or become impaired, such Agent, such Issuing Bank or the Swing Line Lender, as applicable, may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this **Section 10.07** applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse each Agent, each Issuing Bank and the Swing Line Lender, as applicable, upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by such Agent, such Issuing Bank or the Swing Line Lender, as applicable, in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein; ***provided*** that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto; ***provided***, ***further***, that the failure of any Lender to indemnify or reimburse such Agent, such Issuing Bank or the Swing Line Lender, as applicable, shall not relieve any other Lender of its obligation in respect thereof. The undertaking in this **Section 10.07** shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent, Collateral Agent, any other Agents, any Issuing Bank and the Swing Line Lender.

(b) Each Lender, each Swing Line Lender and each Issuing Bank hereby authorizes the Administrative Agent and Collateral Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable or distributable by the

Administrative Agent or the Collateral Agent to such Lender from any source against any amount due to the Administrative Agent or the Collateral Agent under **Section 2.14** or this **Section 10.07**.

Section 10.08 No Other Duties; Other Agents, Lead Arrangers, Managers, Etc. Each of Citibank, N.A., Goldman Sachs Bank USA, BofA Securities, Inc., ~~Credit Suisse Loan Funding LLC,~~ UBS Securities LLC and Wells Fargo Bank, National Association is each hereby appointed as a Lead Arranger hereunder, and each Lender hereby authorizes Citibank, N.A., Goldman Sachs Bank USA, BofA Securities, Inc., ~~Credit Suisse Loan Funding LLC,~~ UBS Securities LLC and Wells Fargo Bank, National Association to act as a Lead Arranger in accordance with the terms hereof and the other Loan Documents.

Each Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Loan Documents, as applicable. Anything herein to the contrary notwithstanding, none of the Lead Arrangers or the other Agents listed on the cover page hereof (or any of their respective Affiliates or branches) shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except (a) in its capacity, as applicable, as the Administrative Agent, the Collateral Agent or a Lender hereunder and (b) as provided in **Section 11.01(b)(iv)**, and such Persons shall have the benefit of this **Article X**. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any agency or fiduciary or trust relationship with any Lender, the Borrower, or any of their respective Subsidiaries. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder. Any Agent may resign from such role at any time, with immediate effect, by giving prior written notice thereof to the Administrative Agent and Borrower.

Section 10.09 Resignation of Administrative Agent or Collateral Agent.

The Administrative Agent or the Collateral Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, subject to the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed), at all times other than during the existence of a Specified Event of Default, to appoint a successor, which shall be a Lender or a bank with an office in the United States, or an Affiliate of any such Lender or bank with an office in the United States (or such other financial institution reasonably acceptable to the Borrowers).

If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty days after the retiring Administrative Agent or Collateral Agent, as applicable, gives notice of its resignation, then the retiring Administrative Agent or Collateral Agent, as applicable, may on behalf of the Lenders, appoint a successor Administrative Agent or Collateral Agent, as applicable, meeting the qualifications set forth above; ***provided*** that if the Administrative Agent or Collateral Agent, as applicable, shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent or Collateral Agent, as applicable, shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent or Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such collateral security until such time

as a successor of such Agent is appointed) and (b) except for any indemnity payments or other amounts owed to the retiring or retired Administrative Agents, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section.

If neither the Required Lenders nor the Administrative Agent have appointed a successor Administrative Agent, the Required Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent (subject to the proviso in the sentence above).

Upon the acceptance of a successor's appointment as Administrative Agent or Collateral Agent, as applicable, hereunder and upon the execution and filing or recording of such financing statements, or amendments thereto and such other instruments or notices, as may be necessary or appropriate, or as the Required Lenders may request, in order to perfect or continue the perfection of the Liens granted or purported to be granted by the Collateral Documents, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent or Collateral Agent, as applicable (other than any rights to indemnity payments or other amounts owed to the retiring or retired Administrative Agent), and the retiring Administrative Agent or Collateral Agent, as applicable, shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this **Section 10.09**).

The fees payable by the Borrower to a successor Administrative Agent or Collateral Agent, as applicable, shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this **Article X** and **Sections 10.07**, **11.04** and **11.05** shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Agent-Related Persons in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Administrative Agent or Collateral Agent, as applicable.

Section 10.10 Administrative Agent May File Proofs of Claim; Credit Bidding. In case of the pendency of any case or proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or in respect of Letter of Credit Obligations 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 (but not obligated), by intervention in such case or proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure or any comparable provision of any other Debtor Relief Law that, in its sole opinion, complies with such rule's or Debtor Relief Law's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letter of Credit Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to

have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, fees, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks and the Administrative Agent under **Sections 2.11** and **11.04**) allowed in such judicial case or proceeding; and

(c) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, interim receiver, receiver and manager, monitor, assignee, liquidator, sequestrator, trustee, or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments to the Administrative Agent and, in the event that 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, fees, and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under **Sections 2.11** and **11.04**. To the extent that the payment of any such compensation, expenses, disbursements, fees, and advances of the Administrative Agent, its agents and counsel, and any other amounts due the Administrative Agent under **Sections 2.11** and **11.04** out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders or the Issuing Banks may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization, arrangement or proposal or otherwise.

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 any Issuing Bank any proposed plan of reorganization, arrangement, adjustment or composition, proposal or similar dispositive restructuring plan affecting the Obligations or the rights of any Lender or any Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or any Issuing Bank in any such case or proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles so long as no Lender is prohibited from owning an interest therein) all or any portion of the Collateral

(i) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, any comparable provisions of any other Debtor Relief Law, or any similar Laws in any other jurisdictions to which a Loan Party is subject or

(ii) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law.

In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid

(A) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid,

(B) to adopt documents providing for the governance of the acquisition vehicle or vehicles (***provided*** that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof, shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in **Section 11.01** of this Agreement),

(C) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action and

(D) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Section 10.11 Collateral and Guaranty Matters.

(a) Each Agent, each Lender (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank), each Issuing Bank and each other Secured Party irrevocably authorizes the Administrative Agent and the Collateral Agent to be the agent for and representative of the Lenders and Issuing Bank with respect to the Guaranty, the Collateral and the Collateral Documents and agrees that, notwithstanding anything to the contrary in any Loan Documents:

(i) Liens on any property granted to or held by an Agent or in favor of any Secured Party under any Loan Document will be automatically and immediately released, and each Secured Party irrevocably authorizes and directs the Agents to enter into, and

each Secured Party and Agent agrees that it will enter into, the necessary or advisable documents requested by the Borrower and associated therewith, upon the occurrence of any of the following events (each, a "***Lien Release Event***"),

(a) the payment in full in cash of all the Obligations (other than Cash Management Obligations, Obligations in respect of Secured Hedge Agreements and contingent obligations in respect of which no claim has been made);

(b) a transfer of the property subject to such Lien as part of, or in connection with, a transaction that is permitted (or not prohibited) by the terms of the Loan Documents to any Person that is not a Loan Party;

(c) with respect to property owned by any Guarantor or with respect to which any Guarantor has rights (with respect to the rights of such Guarantor), the release of such Guarantor from its obligations under its Guaranty pursuant to a Guaranty Release Event;

(d) the approval, authorization or ratification of the release of such Lien by the Required Lenders or such percentage as may be required pursuant to **Section 11.01**;

(e) such property becoming an Excluded Asset, Excluded Equity Interest or an asset owned by an Excluded Subsidiary or with respect to which an Excluded Subsidiary (and no other Loan Party) has ownership rights;

(f) as to the assets owned by such Excluded Subsidiary (or with respect to which an Excluded Subsidiary (and no other Loan Party) has rights), upon any Person becoming an Excluded Subsidiary (other than pursuant to **clause (a)** of the definition thereof, to the extent a result of the transfer of Equity Interests in such Subsidiary Guarantor to an Affiliate of the Borrower);

(g) any such Securitization Assets becoming subject to a Qualified Securitization Financing to the extent required by the terms of such Qualified Securitization Financing;

(h) upon the request of the Borrower (such request, the "***Release/Subordination Event***") it will release or subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by **Section 7.01(d)**;~~;~~

(i) a Subsidiary Guarantor will be automatically and immediately released from its obligations under the Guaranty upon (A) such Subsidiary Guarantor ceasing to be a Subsidiary of the Borrower, (B) such Subsidiary Guarantor ceasing to be a Material Subsidiary, or (C) such Subsidiary Guarantor becoming an Excluded Subsidiary (other than pursuant to **clause (a)** of the definition thereof, to the extent a result of the transfer of Equity Interests in such Subsidiary Guarantor to an Affiliate of the Borrower) as a result of a transaction

permitted hereunder (**clauses (A)-(C)**, each a "***Guaranty Release Event***"), and each Secured Party irrevocably authorizes and directs the Agents to enter into, and each Agent agrees it will enter into, the necessary and advisable documents requested by the Borrower to (1) release (or acknowledge the release of) such Subsidiary Guarantor from its obligations under the Guaranty and (2) release (or acknowledge the release of) any Liens granted by such Subsidiary or Liens on the Equity Interests of such Subsidiary; and

(j) the Administrative Agent and the Collateral Agent will exclusively exercise the rights and remedies under the Loan Documents, and neither the Lenders nor any other Secured Party will exercise such rights and remedies (other than the Required Lenders exercising such rights and remedies 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 11.09**, enforcing compliance with the provisions set forth in **Section 11.01(b)** 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 or filing proofs of claim (and voting with respect to its claims) or appearing and filing pleadings on its own behalf during the pendency of a case or proceeding relative to any Loan Party under any Debtor Relief Law

(ii) the Administrative Agent and Collateral Agent shall, and the Lenders and other Secured Parties irrevocably authorize and instruct the Administrative Agent and Collateral Agent to, from time to time on and after the Closing Date, without any further consent of any Lender counterparty to any Cash Management Obligation or Secured Hedge Agreement or other Secured Party,

(a) enter into any Intercreditor Agreement or other intercreditor agreement contemplated hereunder with the collateral agent or other representative of the holders of Indebtedness that is secured by a Lien on Collateral that is not prohibited (including with respect to priority) under this Agreement or

(b) subordinate any Lien on any property granted to or held by the Administrative Agent or the Collateral Agent under any Loan Document to the holder of any Permitted Lien on such property in respect of any Indebtedness that has priority as a matter of law or is expressly permitted hereunder to be incurred and secured on a priority lien basis to the Liens securing Obligations.

(b) Each Agent, each Lender and each other Secured Party agrees that it will promptly take such action and execute any such documents in a form reasonably satisfactory to the Administrative Agent as may be reasonably requested by the Borrower (such actions and such execution, the "***Release Actions***"), at the Borrower's sole cost and expense, in connection with a Lien Release Event, Release/Subordination Event or Guaranty Release Event and that such actions are not discretionary. Without limitation, the Release Actions may include, as applicable, (a) executing (if required) and delivering to the Loan Parties (or any designee of the Loan Parties) any such lien releases, discharges of security interests, pledges and guarantees and other similar

discharge or release documents, as are reasonably requested by a Loan Party in connection with the release, as of record, of the Liens (and all notices of security interests and Liens previously filed) the subject of a Lien Release Event or Release/Subordination Event or the release of any applicable Guarantee in connection with a Guaranty Release Event and (b) delivering to the Loan Parties (or any designee of the Loan Parties) all instruments evidencing pledged debt and all equity certificates and any other collateral previously delivered in physical form by the Loan Parties to a Secured Party.

In connection with any Lien Release Event, Release/Subordination Event, Guaranty Release Event or Release Action, each of the Collateral Agent and the Administrative Agent and each Secured Party shall be entitled to rely and shall rely exclusively on an officer's certificate of the Borrower (the "***Release Certificate***") confirming that

(a) such Lien Release Event, Release/Subordination Event or a Guaranty Release Event, as applicable, has occurred or will upon consummation of one or more identified transactions (an "***Identified Transaction***") occur,

(b) the conditions to any such Lien Release Event, Release/Subordination Event or Guaranty Release Event have occurred or will occur upon consummation of an Identified Transaction, and

(c) that any such Identified Transaction is permitted by (or not prohibited by) the Loan Documents.

The Collateral Agent and the Administrative Agent will be fully exculpated from any liability and shall be fully protected and shall not have any liability whatsoever to any Secured Party or any other Person as a result of such reliance or the consummation of any Release Action. The Borrower shall indemnify, defend and hold harmless the Administrative Agent, any Supplemental Administrative Agent, the Collateral Agent, and their respective Affiliates, directors, officers, directors, employees, agents, advisors, partners, trustees, controlling persons, and other representatives of each of the foregoing (collectively, the "***Section 10.11 Indemnitees***") from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs to the extent set forth in **Section 10.05**) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such **Section 10.11** Indemnitee in any way relating to or arising out of or in connection with any Release Action, Lien Release Event, Release/Subordination Event or Guaranty Release Event (regardless of whether any **Section 10.11** Indemnitee is party thereto or such claim, litigation, investigation or proceeding is by or against the Borrower or any Affiliate thereof). A Release Certificate may be delivered in advance of the consummation of any applicable Identified Transaction.

Each Lender and each Secured Party irrevocably authorizes and irrevocably directs the Collateral Agent and the Administrative Agent to take the Release Actions and consents to reliance on the Release Certificate. The Secured Parties agree not to give any Agent any instruction or direction inconsistent with the provisions of this **Section 10.11**. Neither the Administrative Agent nor the Collateral Agent shall be responsible for, or have a duty to ascertain or inquire into, any statement in a Release Certificate, the compliance of any Identified Transaction with the terms of

a Loan Document, any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or contained in any certificate prepared or delivered by any Loan Party in connection with the Collateral or compliance with the terms set forth above or in a Loan Document, nor shall the Administrative Agent or Collateral Agent be responsible or liable for any failure to monitor or maintain any portion of the Collateral or validity, perfection or priority of any lien thereon.

Each relevant Agent, each Lender and each other Secured Party agrees that following its receipt of an applicable Release Certificate it will take all Release Actions promptly upon request of the Borrower and in any event not later than the date that is (i) the fifth Business Day following the date Release Certificate is delivered to the Administrative Agent and (ii) the date any applicable Identified Transaction described in the Release Certificate is consummated (such latter date, the "***Release Date***"), Notwithstanding the foregoing, nothing set forth in this **Section 10.11** shall relieve or release any Loan Party from any liability resulting from a Default or Event of Default that results from an Identified Transaction or misrepresentation or omission in any Release Certificate.

Notwithstanding anything to the contrary, no Lien Release Event, Release/Subordination Event or Guaranty Release Event, outside of the ordinary course of business, shall be permitted if, after giving pro forma effect to such Lien Release Event, Release/Subordination Event or Guaranty Release Event (including any prepayment or repayment of the Loans in connection therewith), the Total Utilization of Revolving Commitments exceeds the Line Cap.

(c) Anything contained in any of the Loan Documents to the contrary notwithstanding, each Agent, each Lender and each Secured Party hereby agree that:

(i) no Lender or other Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty or any other Loan Document, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by the Administrative Agent or the Collateral Agent, as applicable, for the benefit of the Lenders in accordance with the terms hereof and thereof, and all powers, rights and remedies under the Collateral Documents may be exercised solely by the Collateral Agent for the benefit of the Lenders in accordance with the terms thereof;

(ii) in the event of a foreclosure or similar enforcement action by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including, without limitation, pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code (or any comparable provision(s) of any other applicable Debtor Relief Law)), the Collateral Agent or the Administrative Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities), shall be entitled, upon instructions from the Required Lenders to be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition, and the Collateral Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities), shall be entitled, upon instructions from the Required Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at

any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition;

(iii) no provision of any Loan Documents shall require the creation, perfection or maintenance of pledges of or security interests in, or the obtaining of title insurance or abstracts with respect to, any Excluded Assets, any Excluded Equity Interests and any other particular assets, if and for so long as, in the reasonable judgment of the Collateral Agent, the cost of creating, perfecting or maintaining such pledges or security interests in such other particular assets or obtaining title insurance or abstracts in respect of such other particular assets is excessive in view of the fair market value of such assets or the practical benefit to the Lenders afforded thereby;

(iv) the Collateral Agent may grant extensions of time for the creation or perfection of security interests in or the obtaining of title insurance and surveys with respect to particular assets (including extensions beyond the Closing Date for the creation or perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that creation or perfection cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents.

Section 10.12 Appointment of Supplemental Administrative Agents.

(a) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent is hereby authorized to appoint an additional individual or institution selected by the Administrative Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually, as a "***Supplemental Administrative Agent***" and, collectively, as "***Supplemental Administrative Agents***").

(b) In the event that the Administrative Agent appoints a Supplemental Administrative Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to the extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the Administrative Agent or such Supplemental Administrative Agent, and (ii) the

provisions of this **Article X** and of **Sections 11.04** and **11.05** that refer to the Administrative Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent shall be deemed to be references to the Administrative Agent and/or such Supplemental Administrative Agent, as the context may require.

(c) Should any instrument in writing from any Loan Party be required by any Supplemental Administrative Agent so appointed by the Administrative Agent for more fully and certainly vesting in and confirming to him or it 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. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Administrative Agent.

Section 10.13 Intercreditor Agreements.

Notwithstanding anything to the contrary set forth in any Loan Document, to the extent the Administrative Agent or Collateral Agent enters into any Intercreditor Agreement, this Agreement will be subject to the terms and provisions of such Intercreditor Agreement. In the event of any inconsistency between the provisions of this Agreement or any other Loan Document and any such Intercreditor Agreement, the provisions of such Intercreditor Agreement govern and control. The Secured Parties acknowledge and agree that each Agent is (i) authorized and instructed to enter into any Intercreditor Agreement to be executed on the Closing Date with respect to Indebtedness incurred on the Closing Date pursuant to **Section 7.03(b)(i)(A)** and **7.03(b)(ii)** and (ii) authorized to, and each Agent agrees that, with respect to any secured Indebtedness, upon request by the Borrower, it shall, enter into an Intercreditor Agreement contemplated hereunder with respect to such Indebtedness with the collateral agent or other Debt Representative of the holders of such Indebtedness unless such Indebtedness and any related Liens (including the priority of such Liens) are prohibited by **Section 7.01**, **Section 7.03** or any other provision of this Agreement. The Secured Parties hereby authorize and instruct the Administrative Agent and the Collateral Agent to (a) enter into any such Intercreditor Agreement executed on the Closing Date or any such other Intercreditor Agreement, (b) bind the Secured Parties on the terms set forth in any such Intercreditor Agreement and (c) perform and observe its obligations under any such Intercreditor Agreement. The Agents and each Secured Party agree that the Agents shall be entitled to rely and shall rely exclusively on an officer's certificate of the Borrower in determining whether it is authorized or instructed to enter into an Intercreditor Agreement pursuant to this Section. Each Secured Party covenants and agrees not to give the Collateral Agent or Administrative Agent any instruction that is not consistent with the provisions of this **Section 10.13**.

Section 10.14 Secured Cash Management Agreements and Secured Hedge Agreements. Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Cash Management Bank or Hedge Bank that obtains the benefits of **Section 9.03**, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral or any Guaranty (including the release or impairment of any Collateral or Guaranty) other than in its capacity as a

Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this **Article X** to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Cash Management Obligations or Obligations arising under Secured Hedge Agreements unless the Administrative Agent has received written notice of such Cash Management Obligations or such Obligations arising under Secured Hedge Agreements, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

Section 10.15 Withholding Taxes. 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 any 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, or if the Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding tax from such payment, 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.

Section 10.16 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 and performance of the Loans, 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 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 Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) **sub-clause (i)** in the immediately preceding **clause (a)** is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with **sub-clause (iv)** in the immediately preceding **clause (a)**, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or 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 Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Section 10.17 Erroneous Payments.

(a) If the Administrative Agent (x) notifies a Lender, Issuing Bank or Secured Party, or any Person who has received funds on behalf of a Lender, Issuing Bank or Secured Party (any such Lender, Issuing Bank, Secured Party or other recipient (and each of their respective successors and assigns), a "***Payment Recipient***") that the Administrative Agent has determined in its reasonable discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds (as set forth in such notice from the Administrative Agent) received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, Issuing Bank, Secured Party or other Payment Recipient on its behalf) (any such funds, whether transmitted or received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "***Erroneous Payment***") and (y) demands in writing the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent pending its return or repayment as contemplated below in this **Section 10.17(b)** and held in trust for the benefit of the Administrative Agent, and such Lender, Issuing Bank or Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter (or such later date as the Administrative Agent may, in its sole discretion, specify in writing), return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so

received), together with interest thereon (except to the extent waived in writing by the Administrative Agent) in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds 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 from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this **clause (a)** shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding **clause (a)**, each Lender, Issuing Bank, Secured Party or any Person who has received funds on behalf of a Lender, Issuing Bank or Secured Party (and each of their respective successors and assigns), agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in this Agreement or in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Lender, Issuing Bank or Secured Party, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each such case:

(i) it acknowledges and agrees that (A) in the case of immediately preceding clauses (x) or (y), an error and mistake shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) an error and mistake has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(ii) such Lender, Issuing Bank or Secured Party shall use commercially reasonable efforts to (and shall use commercially reasonable efforts to cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of the occurrence of any of the circumstances described in immediately preceding clauses (x), (y) and (z)) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this **Section 10.17(b)**;

For the avoidance of doubt, the failure to deliver a notice to the Administrative Agent pursuant to this Section **10.17(b)** shall not have any effect on a Payment Recipient's obligations pursuant to **Section 10.17(a)** or on whether or not an Erroneous Payment has been made.

(c) Each Lender, Issuing Bank or Secured Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender, Issuing Bank or Secured Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender, Issuing Bank or Secured Party under any Loan Document with respect to any payment of principal, interest, fees or other amounts, against any amount that the Administrative Agent has demanded to be returned under immediately preceding **clause (a)**;

(d)

(i) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor in accordance with immediately preceding clause (a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "***Erroneous Payment Return Deficiency***"), upon the Administrative Agent's notice to such Lender at any time, then effective immediately (with the consideration therefor being acknowledged by the parties hereto), (A) such Lender shall be deemed to have assigned its Loans (but not its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the "***Erroneous Payment Impacted Class***") in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "***Erroneous Payment Deficiency Assignment***") (on a cashless basis and such amount calculated at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance)), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Lender shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent (but the failure of such Person to deliver any such Notes shall not affect the effectiveness of the foregoing assignment), (B) the Administrative Agent as the assignee Lender shall be deemed to have acquired the Erroneous Payment Deficiency Assignment, (C) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Lender, (D) the Administrative Agent and the Borrower shall each be deemed to have waived any consents required under this Agreement to any such Erroneous Payment Deficiency Assignment, and (E) the Administrative Agent will reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(ii) Subject to **Section 10.17(e)** (but excluding, in all events, any assignment consent or approval requirements (whether from the Borrower or otherwise)), the Administrative Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). In addition, an Erroneous Payment Return Deficiency owing by the applicable Lender (x) shall be reduced by the

proceeds of prepayments or repayments of principal and interest, or other distribution in respect of principal and interest, received by the Administrative Agent on or with respect to any such Loans acquired from such Lender pursuant to an Erroneous Payment Deficiency Assignment (to the extent that any such Loans are then owned by the Administrative Agent) and (y) may, in the sole discretion of the Administrative Agent, be reduced by any amount specified by the Administrative Agent in writing to the applicable Lender from time to time;

(e) The parties hereto agree that (x) irrespective of whether the Administrative Agent may be equitably subrogated, in the event that an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights and interests of such Payment Recipient (and, in the case of any Payment Recipient who has received funds on behalf of a Lender, Issuing Bank or Secured Party, to the rights and interests of such Lender, Issuing Bank or Secured Party, as the case may be) under the Loan Documents with respect to such amount (the "***Erroneous Payment Subrogation Rights***") (provided that the Loan Parties' Secured Obligations under the Loan Documents in respect of the Erroneous Payment Subrogation Rights shall not be duplicative of such Secured Obligations in respect of Loans that have been assigned to the Administrative Agent under an Erroneous Payment Deficiency Assignment) and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Secured Obligations] owed by the Borrower or any other Loan Party; provided that this **Section 10.17(e)** shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x) and (y) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making such Erroneous Payment

(f) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including, without limitation, any defense based on "discharge for value" or any similar doctrine:

(g) Each party's obligations, agreements and waivers under this **Section 10.17** shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Lender or Issuing Bank, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Secured Obligations (or any portion thereof) under any Loan Document.

ARTICLE XI.
MISCELLANEOUS

Section 11.01 Amendments, Waivers, Etc.

(a) **General Rule**. Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (or the Administrative Agent on behalf of the Required Lenders) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) **Specific Lender Approvals**. Notwithstanding the provisions of **Section 11.01(a)**, no such amendment, waiver or consent shall:

(i) extend or increase the Commitment of any Lender or extend the final expiration date of any Letter of Credit beyond the Letter of Credit Sublimit Expiration Date, without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in **Section 4.02** or the waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(ii) postpone any date scheduled for, or reduce the amount of, any payment of principal, interest or fees with respect to any Loan or Letter of Credit or with respect to any fees payable under **Section 2.11(b)** without the written consent of each Lender entitled to such payment of principal, interest or fees, it being understood that

(a) the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal, interest or fees and

(b) a waiver of any condition precedent set forth in **Section 4.02** or the waiver of any Default (other than a Default under **Section 9.01(a)**) or mandatory reduction of the Commitments shall not constitute a postponement of any date scheduled for, or a reduction in the amount of, any payment of principal, interest or fees;

(iii) reduce the principal of, or the rate of interest specified herein on, any Loan or Letter of Credit or any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such principal, interest or Person entitled to such fee or other amount, as applicable; ***provided*** that (A) only the consent of the Required Lenders shall be necessary to amend the definition of "***Default Rate***" and (B) with respect to any Facility, only the consent of the Required Facility Lenders shall be necessary to waive any obligation of the Borrower to pay interest at the Default Rate with respect to such Facility;

(iv) change any provision of this **Section 11.01** or the definition of "***Required Lenders,***" "***Required Facility Lenders***", "***Super Majority Lenders***" or "***Pro Rata Share***" or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents, without the written consent of each Lender;

(v) (A) other than in connection with a transfer or other transaction permitted (or not prohibited) under the Loan Documents, release all or substantially all of the Collateral in any transaction or series of related transactions or

(B) (1) subordinate the Obligations to any other obligations or (2) subordinate the Lien securing the Obligations to Liens securing debt for borrowed money (or guarantees thereof) (other than in respect of the Liens of the type incurred pursuant to **Section 7.01(d)** on the date hereof), in each case, without the written consent of each Lender;

(vi) other than in connection with a transfer or other transaction permitted (or not prohibited) under the Loan Documents, release all or substantially all of the aggregate value of the Guaranty or all or substantially all of the Guarantors, without the written consent of each Lender;

(vii) modify **Section 2.15** or **Section 9.03**, including in a manner that would by its terms alter the pro rata sharing of payments required thereby, 2.07(b)(ii) or 9.03 without the written consent of each Lender directly and adversely affected thereby;

(viii) increase the percentages set forth in the definition of "***Borrowing Base***", without the consent of the Super Majority Lenders;

(ix) change the definition of the term "***Borrowing Base***", or any component definition thereof (including the definition of "***Borrowing Base Parties***", "***Eligible Account***", "***Eligible Inventory***", "***Net Orderly Liquidation Value***" and "***Qualified Cash***"), the effect of which would be to increase amounts available to be borrowed, without the consent of the Super Majority Lenders; ***provided***, that the foregoing shall not limit the ability of the Administrative Agent to implement, change or eliminate Reserves in its Permitted Discretion as permitted hereunder without the prior written consent of any Lender;

(x) change the currency in which any Loan or Letter of Credit Borrowing is denominated without the written consent of each Lender holding such Loans or each Issuing Bank holding such Letter of Credit Borrowings;

(xi) change the definition of "***Alternative Currency***" or the related process for designating an Alternative Currency as set forth in **Section 2.01(b)(i)** without the written consent of each Lender; or

(xii) cause any real property to be included in the Collateral securing the Obligations.

(c) **Other Approval Requirements**. Notwithstanding the provisions of **Section 11.02(a)** or **11.01(b)**;

(i) no amendment, waiver or consent shall, unless in writing and signed by an Issuing Bank in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, such Issuing Bank under this Agreement, any

Issuance Notice or any other Loan Document relating to any Letter of Credit issued or to be issued by it,

(ii) no amendment, waiver of consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Swing Line Lender under this Agreement or any other Loan Document,

(iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, adversely affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document,

(iv) no amendment, waiver or consent shall, unless in writing and signed by the Collateral Agent in addition to the Lenders required above, adversely affect the rights or duties of, or any fees or other amounts payable to, the Collateral Agent under this Agreement or any other Loan Document,

(v) **Section 11.07(g)** may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification,

(vi) the consent of the Required Facility Lenders shall be required with respect to any amendment that by its terms adversely affects the rights of Lenders under such Facility in respect of payments hereunder in a manner different than such amendment affects other Facilities,

(vii) [reserved]; and

(viii) any amendment to the definition of "***Letter of Credit ~~Percentage~~Commitment***" shall require the consent only of the Borrower, the Administrative Agent and each directly and adversely affected Issuing Bank.

(d) **Intercreditor Agreement**. No Lender or Issuing Bank consent is required to effect any amendment or supplement to any Intercreditor Agreement or any other intercreditor agreement that is

(i) for the purpose of adding the holders of Pari Passu Lien Debt, Junior Lien Debt, Incremental Equivalent Debt, Permitted Pari Passu Secured Refinancing Debt or Permitted Junior Secured Refinancing Debt (or a Debt Representative with respect to any Indebtedness with respect to which it is a representative or agent) as parties thereto, as expressly contemplated by the terms of such intercreditor agreement (it being understood that any such amendment or supplement may make such other changes to the applicable intercreditor agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing) or

(ii) expressly contemplated by such Intercreditor Agreement or any other intercreditor agreement.

(e) **Additional Facilities and Replacement Loans**.

(i) ***Additional Facilities***. Subject to **clause (b)**, this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent 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 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,

(ii) [reserved]

(f) **Benchmark Replacement Setting**.

(i) ***Benchmark Replacement***. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event with respect to any Benchmark, the Administrative Agent and the Borrower may amend this Agreement to replace such Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5^{th}) Business Day after the Administrative Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section (f) will occur prior to the applicable Benchmark Transition Start Date.

(ii) ***Benchmark Replacement Conforming Changes***. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) ***Notices; Standards for Decisions and Determinations***. The Administrative Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to this Section (f) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section (f), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may

be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section (f).

(iv) ***Unavailability of Tenor of Benchmark***. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) ***Benchmark Unavailability Period***. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Benchmark for Dollar, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate. Upon the commencement of a Benchmark Unavailability Period with respect to a Benchmark for any currency other than Dollar, the Borrower may revoke any pending request for such Borrowing of, conversion to or continuation of such Loans, in each case, to be made, converted or continued during any Benchmark Unavailability Period denominated in the applicable currency and, failing that, if applicable, then such request shall be ineffective and any outstanding affected Loans, in each case, denominated in an Alternative Currency, at the Borrower's election, shall either (I) be converted into Base Rate denominated in Dollars (in an amount equal to the Dollar Amount of such Alternative Currency) or (II) be prepaid in full immediately or at the end of the applicable Interest Period, as applicable.

(vi) ***Disclaimer***. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to Base Rate, the Term SOFR Reference Rate, ~~Adjusted Term SOFR~~ or Term SOFR, or any component

definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Base Rate, the Term SOFR Reference Rate, ~~Adjusted~~ Term SOFR~~, Term SOFR~~ or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of Base Rate, the Term SOFR Reference Rate, ~~Adjusted~~ Term ~~SOFR, Term~~ SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain Base Rate, the Term SOFR Reference Rate, ~~Adjusted Term SOFR,~~ Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

(g) **Certain Amendments to Guaranty and Collateral Documents**. In addition, notwithstanding anything to the contrary contained in this **Section 11.01**, the Guaranty, the Collateral Documents and related documents executed by the Borrower, and/or the Restricted Subsidiaries in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects (as reasonably determined by the Administrative Agent and the Borrower) or (iii) to cause such Guaranty, Collateral Document or other document to be consistent with this Agreement and the other Loan Documents.

(h) **Defaulting Lenders**. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders, the Required Lenders, the Required Facility Lenders, the Super Majority Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders or Disqualified Lenders), except that (1) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender and (2) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender. Disqualified Lenders shall be subject to the provisions of **Section 10.27**.

Section 11.02 Notices and Other Communications; Facsimile Copies.

(a) **General**. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in **subsection (b)** below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Guarantors, the Issuing Banks, the Swing Line Lender, the Collateral Agent or the Administrative Agent, to the address, fax number, electronic mail address or telephone number specified for such Person on **Schedule 11.02**; and

(ii) if to any other Lender, to the address, fax number, electronic mail addresses or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient); and notices deposited in the United States mail with postage prepaid and properly addressed shall be deemed to have been given within three Business Days of such deposit; ***provided*** that no notice to any Agent shall be effective until received by such Agent. Notices and other communications delivered through electronic communications to the extent provided in **subsection (b)** below shall be effective as provided in such **subsection (b)**.

(b) **Electronic Communication**. Notices and other communications to any Agent, the Lenders, the Swing Line Lender and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, including the Platform) pursuant to procedures approved by the Administrative Agent, ***provided*** that the foregoing shall not apply to notices to any Agent, Lender, Swing Line Lender or the Issuing Banks pursuant to **Article II** if such Person, 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.

(c) **Receipt**. Unless the Administrative Agent otherwise prescribes,

(i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), ***provided*** that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be

deemed to have been sent at the opening of business on the next Business Day for the recipient, and

(ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing **clause (i)** of notification that such notice or communication is available and identifying the website address therefor.

(d) **Risks of Electronic Communications**. Each Loan Party understands that the distribution of materials through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct, bad faith or gross negligence of the Administrative Agent, any Lender, the Swing Line Lender or any Issuing Bank as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(e) **The Platform**. THE PLATFORM IS PROVIDED "***AS IS***" AND "***AS AVAILABLE.***" THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS OR IN THE PLATFORM. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Agent-Related Persons or any Lead Arranger (collectively, the "***Agent Parties***") have any liability to the Borrower, any Lender, the Swing Line Lender, any Issuing Bank or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; ***provided***, ***however***, that in no event shall any Agent Party have any liability to the Borrower, any Lender, the Swing Line Lender, any Issuing Bank or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages). Each Loan Party, each Lender, each Issuing Bank and each Agent agrees that the Administrative Agent may, but shall not be obligated to, store any Borrower Materials on the Platform in accordance with the Administrative Agent's customary document retention procedures and policies.

(f) **Change of Address**. Each of the Borrower, the Guarantors, the Administrative Agent, the Swing Line Lender and the Issuing Banks may change its address, fax or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, fax or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, the Collateral Agent, the Swing Line Lender and the Issuing Banks. In addition, each Lender agrees to notify

the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, fax number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(g) **Reliance by the Administrative Agent, the Issuing Banks and the Lenders**. The Administrative Agent, the Issuing Banks and the Lenders shall be entitled to rely and act upon any notices (including Committed Loan Notices, Swing Line Loan Requests and Issuance Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording. The Borrower shall indemnify the Administrative Agent, the Issuing Banks and the Lenders and each Agent-Related Person from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence, bad faith or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction.

(h) **Private-Side Information Contacts**. Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "***Private-Side Information***" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States federal and state securities Laws, to make reference to information that is not made available through the "***Public-Side Information***" portion of the Platform and that may contain Private-Side Information with respect to the Borrower, its Subsidiaries or their respective securities for purposes of United States federal or state securities laws. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither the Borrower nor the Administrative Agent has (A) any responsibility for such Public Lender's decision to limit the scope of the information it has obtained in connection with this Agreement and the other Loan Documents and (B) any duty to disclose such information to such Public Lender or to use such information on behalf of such Public Lender, and shall not be liable for the failure to so disclose or use, such information.

Section 11.03 No Waiver; Cumulative Remedies. No forbearance, failure or delay by any Lender or any Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall impair such right, remedy, power or privilege or operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and independent of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against

the Borrower shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with **Article IX** for the benefit of all the Lenders and the Issuing Banks; ***provided*** that the foregoing shall not prohibit

(i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents,

(ii) any Issuing Bank or the Swing Line Lender from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Bank or the Swing Line Lender, as applicable) hereunder and under the other Loan Documents,

(iii) any Lender from exercising setoff rights in accordance with **Section 11.09** (subject to the terms of **Section 2.15**) or

(iv) any Lender from filing proofs of claim (and voting its claims) or appearing and filing pleadings on its own behalf during the pendency of a case or proceeding relative to the Borrower or any other Loan Party under any Debtor Relief Law;

provided, ***further***, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (A) the Required Lenders shall have the rights otherwise provided to the Administrative Agent pursuant to **Article IX** and (B) in addition to the matters set forth in **clauses (ii)**, **(iii)** and **(iv)** of the preceding proviso and subject to **Section 2.15**, any Lender may, with the consent of the Required Lenders, enforce any rights or remedies available to it and as authorized by the Required Lenders.

Section 11.04 Attorney Costs and Expenses.

The Borrower agrees

(a) if the Closing Date occurs, to pay or reimburse the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Supplemental Administrative Agents, the Lenders, the Issuing Banks and the Swing Line Lender for all reasonable and documented in reasonable detail out-of-pocket expenses incurred on or after the Closing Date in connection with the preparation, execution, delivery and administration of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), limited, in the case of legal fees and expenses, to the Attorney Costs of one primary counsel and, if reasonably necessary, one local counsel in each relevant jurisdiction material to the interests of the Lenders taken as a whole (which may be a single local counsel acting in multiple material jurisdictions), and

(b) to pay or reimburse the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Supplemental Administrative Agents, the Issuing Banks, the Swing Line Lender and the Lenders for all reasonable and documented in reasonable detail out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or

remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any case or proceeding under the Bankruptcy Code or any other Debtor Relief Law) and all Attorney Costs of one counsel to the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Supplemental Administrative Agents, the Issuing Banks, the Swing Line Lender and the Lenders taken as a whole (and, if reasonably necessary, one local counsel in any relevant material jurisdiction (which may be a single local counsel acting in multiple material jurisdictions) and, solely in the event of an actual or potential conflict of interest between the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Supplemental Administrative Agents, the Issuing Banks, the Swing Line Lender and the Lenders, where the Person or Persons affected by such conflict of interest inform the Borrower in writing of such conflict of interest, one additional counsel in each relevant material jurisdiction to each group of affected Persons similarly situated taken as a whole)).

The agreements in this **Section 11.04** shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this **Section 11.04** shall be paid promptly following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail. If the Borrower fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of the Borrower by the Administrative Agent in its sole discretion. Expenses shall be deemed to be documented in reasonable detail only if they provide the detail required to enable the Borrower, acting in good faith, to determine that such expenses relate to the activities with respect to which reimbursement is required hereunder. The Borrower and each other Loan Party hereby acknowledge that the Administrative Agent and/or any Lender may receive a benefit, including a discount, credit or other accommodation, from any of such counsel based on the fees such counsel may receive on account of their relationship with the Administrative Agent and/or such Lender, including fees paid pursuant to this Agreement or any other Loan Document.

Section 11.05 Indemnification by the Borrower . The Borrower shall indemnify and hold harmless the Administrative Agent, any Supplemental Administrative Agent, the Collateral Agent, the Issuing Banks, the Swing Line Lender, each Lender, each Lead Arranger, each Joint Bookrunner and their respective Affiliates, fronting banks, confirming banks, advising banks, directors, officers, employees, agents, advisors, partners, trustees, controlling persons, and other representatives of each of the foregoing (collectively, the "***Indemnitees***") from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (but limited, in the case of legal fees and expenses, to the Attorney Costs of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant jurisdiction that is material to the interest of such Indemnitees (which may be a single local counsel acting in multiple material jurisdictions), and solely in the case of an actual or potential conflict of interest between Indemnitees (where the Indemnitee affected by such conflict of interest informs the Borrower in writing of such conflict of interest), one additional counsel in each relevant jurisdiction to each group of affected Indemnitees similarly situated taken as a whole),

(a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby (including the reliance in good faith by any Indemnitee on any notice purportedly given by or on behalf of the Borrower or any Loan Party),

(b) the Transactions,

(c) any Commitment, Loan, Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit),

(d) any actual or alleged presence or release of, or exposure to, any Hazardous Materials on or from any property currently or formerly owned or operated by the Borrower or any other Loan Party, or any Environmental Claim or Environmental Liability arising out of the activities or operations of or otherwise related to the Borrower or any other Loan Party, or

(e) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto or such claim, litigation, investigation or proceeding is by or against the Borrower or any Affiliate thereof;

(all the foregoing, collectively, the "***Indemnified Liabilities***"); ***provided*** that such indemnity shall not, as to any Indemnitee, be available to the extent that a court of competent jurisdiction determines in a final-non-appealable judgment that any such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements resulted from

(i) the gross negligence, bad faith or willful misconduct of such Indemnitee or of any Related Indemnified Person of such Indemnitee,

(ii) other than with respect to the Administrative Agent, the Collateral Agent and each Agent-Related person, a material breach of any obligations of such Indemnitee under any Loan Document by such Indemnitee or Related Indemnified Person,

(iii) any dispute solely among Indemnitees or of any Related Indemnified Person of such Indemnitee other than any claims against an Indemnitee in its capacity or in fulfilling its role as the Administrative Agent, the Collateral Agent, an Issuing Bank, the Swing Line Lender or a Lead Arranger (or other Agent role) under the Facility and other than any claims arising out of any act or omission of the Borrower or any of its Affiliates.

To the extent that the undertakings to indemnify and hold harmless set forth in this **Section 11.05** may be unenforceable in whole or in part because they are violative of any applicable Law or public policy, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from

the use by others of any information or other materials obtained through Merrill Datasite One, Syndtrak or IntraLinks or other similar information transmission systems in connection with this Agreement, except to the extent resulting from the willful misconduct, bad faith or gross negligence of such Indemnitee or any Related Indemnified Person (as determined by a final and non-appealable judgment of a court of competent jurisdiction), nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party). In the case of an investigation, litigation or other proceeding to which the indemnity in this **Section 11.05** applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this **Section 11.05** (after the determination of a court of competent jurisdiction, if required pursuant to the terms of this **Section 11.05**) shall be paid within twenty Business Days after written demand therefor. The agreements in this **Section 11.05** shall survive the resignation of the Administrative Agent, the Collateral Agent, the Swing Line Lender or any Issuing Bank, replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. This **Section 11.05** shall not apply to Taxes, except it shall apply to any Taxes that represent losses, claims, damages, etc. arising from a non-Tax claim (including a value added tax or similar tax charged with respect to the supply of legal or other services) without duplication of any other indemnification or payments made by the Loan Parties. For the avoidance of doubt and without limiting the foregoing obligations in any manner, none of the Sponsors, nor any of their respective Affiliates, nor any other Affiliate of the Borrower (other than its Restricted Subsidiaries) shall have any liability under this **Section 11.05**, and each is hereby released from any liability arising from the Transactions or any other transaction explicitly permitted (or not prohibited) by the Loan Documents.

Section 11.06 Marshaling; Payments Set Aside. None of the Administrative Agent, any Lender, the Collateral Agent or any Issuing Bank shall be under any obligation to marshal any assets in favor of the Loan Parties or any other Person or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent, any Lender or any Issuing Bank (or to the Administrative Agent, on behalf of any Lender or any Issuing Bank), or any Agent or any Lender enforces any security interests or exercises its right of setoff, and such payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be or avoided as fraudulent or preferential or a transfer at undervalue, set aside and/or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver, interim receiver, receiver and manager, monitor or any other party, in connection with any case or proceeding under any Debtor Relief Law or otherwise, then

(a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred and

(b) each Lender and each Issuing Bank severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, *plus* interest thereon from the date of such demand to the date such payment is made at a rate *per annum* equal to the Federal Funds Rate from time to time in effect.

Section 11.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not, except as permitted by **Section 7.04**, assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except,

(i) to an assignee in accordance with the provisions of **subsection (b)** of this **Section 11.07**,

(ii) by way of participation in accordance with the provisions of **subsection (d)** of this **Section 11.07**,

(iii) by way of pledge or assignment of a security interest subject to the restrictions of **subsection (f)** of this **Section 11.07**, or

(iv) to an SPC in accordance with the provisions of **subsection (g)** of this **Section 11.07** (and any other attempted assignment or transfer by any party hereto shall be null and void).

Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **subsection (d)** of this **Section 11.07** and, to the extent expressly contemplated hereby, the Agent-Related Persons of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders**. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment and the Loans (including for purposes of this **Section 11.07(b)**, participations in Letters of Credit, Swing Line Loans and Protective Advances) at the time owing to it; ***provided*** that any such assignment shall be subject to the following conditions:

(i) ***Minimum Amounts***.

(a) in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment and Revolving Loans at the time held by it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(b) with respect to any assignment not described in **subsection (b)(i)(A)** of this Section, such assignment shall be in an aggregate amount of not less than $5,000,000, unless each of the Administrative Agent, and so long as no Specified Event of Default has occurred and is continuing at the time of such assignment, the Borrower otherwise consents (such consent not to be unreasonably withheld or delayed).

(ii) ***Proportionate Amounts***. Each partial assignment of Revolving Commitments and/or Revolving Loans shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Revolving Commitments and/or Revolving Loans being assigned, except that this **clause (ii)** shall not (x) apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans or (y) prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis.

(iii) ***Required Consents***. No consent shall be required for any assignment except to the extent required by **Section 11.07(b)(i)(B)** and the following:

(a) the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) shall be required unless (1) a Specified Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is made with respect to Revolving Commitments and Revolving Loans, to a Revolving Lender or an Affiliate of the assigning Revolving Lender;

(b) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund;

(c) with respect to assignments of Revolving Loans and/or Revolving Commitments, the Swing Line Lender (such consent not to be unreasonably withheld, conditioned or delayed); and

(d) with respect to assignments of Revolving Loans and/or Revolving Commitments, each Issuing Bank (such consent not to be unreasonably withheld, conditioned or delayed).

(iv) ***Assignment and Assumption***. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500; ***provided*** that (A) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment and (B) no processing and recordation fee shall be payable in connection with an assignments by or to a Lead Arranger or its Affiliates or branches. The Eligible Assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax forms required under **Section 3.01(b)**, **(c)**, **(d)** and **(e)**, as applicable. Upon receipt of the processing and recordation fee and any written consent to assignment required by **Section 11.07(b)(iii)**, the Administrative Agent shall promptly

accept such Assignment and Assumption and record the information contained therein in the Register.

(v) ***No Assignments to Certain Persons***. No such assignment shall be made,

(a) to the Borrower or any of the Borrower's Subsidiaries,

(b) to any of the Borrower's Affiliates (other than any of the Borrower's Subsidiaries),

(c) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing persons described in this **clause (v)**,

(d) to a natural person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person, or

(e) to a Disqualified Lender (subject to the Disqualified Lender Provisions) or Lender who has become a Disqualified Lender (subject to the Disqualified Lender Provisions).

To the extent that any assignment is purported to be made to a Disqualified Lender, such transaction shall be subject to the applicable provisions of **Section 11.27**.

(vi) ***Defaulting Lenders Assignments***. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Banks, the Swing Line Lender and each other Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full Pro Rata Share of all Loans and participations in Letters of Credit, Swing Line Loans and Protective Advances. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to **clause (c)** of this **Section 11.07**, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement (except in the case of an assignment to or purchase by the Borrower or any of the Borrower's Subsidiaries) and, to the extent of the interest assigned by such Assignment and Assumption and as permitted by this **Section 11.07**, have the

rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of **Sections 3.01**, **3.04**, **3.05**, **11.04** and **11.05** with respect to facts and circumstances occurring prior to the effective date of such assignment); ***provided*** that anything contained in any of the Loan Documents to the contrary notwithstanding, each Issuing Bank shall continue to have all rights and obligations with respect to any Letters of Credit issued by it until the cancellation or expiration of such Letters of Credit and the reimbursement of any amounts drawn thereunder. Upon request, and the surrender by the assigning Lender of its applicable Notes, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **subsection (d)** of this **Section 11.07**.

(c) **Register**. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts and stated interest of the Loans and Letter of Credit Obligations (specifying the Reimbursement Obligations), Letter of Credit Borrowings and other amounts due under **Section 2.04** 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 Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower or any Lender (but only, in the case of a Lender at the Administrative Agent's Office and with respect to any entry relating to such Lender's Commitments, Loans, Letter of Credit Obligations and other Obligations), at any reasonable time and from time to time upon reasonable prior notice. This **Section 11.07(c)** shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of **Sections 163(f)**, 871(h)(2) and 881(c)(2) of the Code and any related United States Treasury regulations (or any other relevant or successor provisions of the Code or of such United States Treasury regulations).

(d) **Participations**. Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent, the Issuing Banks, the Swing Line Lender or any other Person sell participations (a "***Participation***") to any Person (other than to (1) a natural person, a Disqualified Lender (subject to the Disqualified Lender Provisions), (2) the Borrower or any of the Borrower's Affiliates or Subsidiaries or (3) any Person described in the proviso to the definition of "***Eligible Assignee***") (each, a "***Participant***") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans, and other Obligations (including such Lender's participations in Letters of Credit, Swing Line Loans and/or Protective Advances) 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 Agents 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 or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; ***provided*** that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in **Section 11.01(b)(i)**, **Section 11.01(b)(ii)**, **Section 11.01(b)(iv)**, **Section 11.01(b)(v)** or **Section 11.01(b)(vi)** that directly and adversely affects such Participant. Subject to **subsection (e)** of this **Section 11.07**, the Borrower agrees that each Participant shall be entitled to the benefits of **Sections 3.01** (subject to the requirements of **Section 3.01(b)**, **(c)**, **(d)** and **(e)**, as applicable (it being understood that the documentation required under such Sections shall be delivered to the participating Lender)), **3.04** and **3.05** (through the applicable Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **subsection (b)** of this **Section 11.07**. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of **Section 11.09** as though it were a Lender; ***provided*** that such Participant agrees to be subject to **Section 2.12** as though it were a Lender. To the extent that any participation is purported to be made to a Disqualified Lender, such transaction shall be subject to the applicable provisions of **Section 11.27**.

(e) **Limitations upon Participant Rights**. A Participant shall not be entitled to receive any greater payment under **Section 3.01**, **3.04** or **3.05** 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, such consent not to be unreasonably withheld or delayed or such entitlement to a greater payment results from a change in law that occurs after the Participant acquired the participation. Each Lender that sells a participation or has a loan funded by an SPC shall (acting solely for this purpose as a non-fiduciary agent of the Borrower) maintain a register complying with the requirements of Sections 163(f), 871(h) and 881(c)(2) of the Code and the Treasury regulations (or any other relevant or successor provisions of the Code or of such United States Treasury regulations) issued thereunder relating to the exemption from withholding for portfolio interest on which is entered the name and address of each Participant or SPC and the principal amounts (and stated interest) of each Participant's or SPC's interest in the Loans or other obligations under this Agreement (the "***Participant Register***"). A Lender shall not be obligated to disclose the Participant Register to any Person except to the extent such disclosure is necessary to establish that any Loan or other obligation is in registered form under Section 5f.103-1(c) or proposed Section 1.163-5(b) of the United States Treasury regulations (or any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(f) **Liens on Loans**. Any Lender may, at any time without the consent of the Borrower or the Administrative Agent, pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Notes, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank; ***provided*** that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) **Special Purpose Funding Vehicles**. Notwithstanding anything to the contrary contained herein, any Lender (a "***Granting Lender***") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "***SPC***") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; ***provided*** that

(i) nothing herein shall constitute a commitment by any SPC to fund any Loan, and

(ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof. Each party hereto hereby agrees that

(a) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under **Sections 3.01**, **3.04** and **3.05**),

(b) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and

(c) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the lender of record hereunder.

The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior debt of any SPC, it will not institute against, or join any other Person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency, receivership or liquidation proceeding under the laws of the United States or any State thereof or any Debtor Relief Law or other applicable Law. Notwithstanding anything to the contrary contained herein, any SPC may

(1) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of $3,500 (which processing fee may be waived by the Administrative Agent in its sole discretion), assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and

(2) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(h) [Reserved].

(i) [Reserved].

(j) [Reserved].

(k) **Resignation of Swing Line Lender**. Notwithstanding anything to the contrary contained herein, the Swing Line Lender may, upon thirty days' notice to the Borrower and the Revolving Lenders, resign as the Swing Line Lender; ***provided*** that on or prior to the expiration of such 30-day period with respect to such resignation, the Swing Line Lender shall have identified a successor Swing Line Lender reasonably acceptable to the Borrower willing to accept its appointment as successor Swing Line Lender hereunder. In the event of any such resignation of the Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders willing to accept such appointment a successor Swing Line Lender hereunder; ***provided*** that no failure by the Borrower to appoint any such successor shall affect the resignation of the Swing Line Lender except as expressly provided above. If the Swing Line Lender resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to **Section 2.03(c)**. Upon the appointment by the Borrower of a successor Swing Line Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Swing Line Lender and (ii) the retiring Swing Line Lender shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents.

(l) [Reserved].

Section 11.08 Confidentiality. Each of the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information in accordance with its customary procedures (as set forth below), except that Information may be disclosed,

(a) to its Affiliates and branches and to its and its Affiliates' and branches' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential and in no event shall such disclosure be made to any Disqualified Lender pursuant to this **clause (a)** but only to the extent that a list of such Disqualified Lenders is available to all Lenders upon request),

(b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including the Federal Reserve Bank or any other central bank or any self-regulatory authority, such as the National Association of Insurance Commissioners),

(c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, ***provided*** that the Administrative Agent, the Collateral Agent, such Lead Arranger or such Lender or such Issuing Bank, as applicable, agrees that it will notify the Borrower as soon as practicable in the event of any such disclosure by such Person (other than at the request of a regulatory authority) unless such notification is prohibited by law, rule or regulation,

(d) to any other party hereto (it being understood that in no event shall such disclosure be made to any Disqualified Lender pursuant to this **clause (d)** but only to the extent that a list of such Disqualified Lenders is available to all Lenders upon request),

(e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder,

(f) subject to an agreement containing provisions at least as restrictive as those of this **Section 11.08** (it being understood that in no event shall such disclosure be made to any Disqualified Lender pursuant to this **clause (f)** but only to the extent that a list of such Disqualified Lenders is available to all Lenders upon request), to (i) any *bona fide* assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be an Additional Lender, (ii) any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any of its Subsidiaries or any of their respective obligations or (iii) any provider of credit risk protection,

(g) with the prior written consent of the Borrower,

(h) to any rating agency when required by it (it being understood that, prior to any such disclosure, that such Lender shall instruct such rating agency to and such rating agency shall undertake to preserve the confidentiality of any Information relating to the Loan Parties received by it from such Lender), or

(i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this **Section 11.08** or (ii) becomes available to the Administrative Agent, the Collateral Agent, any Lead Arranger, any Lender, any Issuing Bank, or any of their respective Affiliates or branches on a non-confidential basis from a source other than the Borrower or any of its Affiliates, and which source is not known by such Person to be subject to a confidentiality restriction in respect thereof in favor of the Borrower or any Affiliate of the Borrower.

In addition, each of the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Issuing Banks and the Lenders may disclose the existence of this Agreement and the information about this Agreement to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans, market data collectors, similar service providers to the lending industry, and service providers to the Administrative Agent, the Collateral Agent, the Lead Arrangers, the Issuing Banks and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents.

For purposes of this **Section 11.08**, "***Information***" means all information received from or on behalf of any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary thereof or their respective businesses, other than any such information that is available to the Administrative Agent, the Collateral Agent or any Lender on a non-confidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; it being understood that all information received from the Borrower or any Subsidiary after the date hereof shall be deemed confidential

unless such information is clearly identified at the time of delivery as not being confidential. Any Person required to maintain the confidentiality of Information as provided in this **Section 11.08** shall be considered to have complied with its obligation to do so in accordance with its customary procedures if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Collateral Agent, the Lead Arrangers and the Lenders acknowledges that (A) the Information may include Private-Side Information concerning the Borrower or a Subsidiary, as the case may be and (B) it has developed compliance procedures regarding the use of Private-Side Information.

Notwithstanding anything to the contrary therein, nothing in any Loan Document shall require the Borrower or any of its Affiliates or other subsidiaries to provide information (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure is prohibited by applicable Law, (iii) that is subject to attorney client or similar privilege or constitutes attorney work product or (iv) the disclosure of which is restricted by binding agreements not entered into primarily for the purpose of qualifying for the exclusion in this **clause (iv)**.

Section 11.09 Set-off. If an Event of Default shall have occurred and be continuing, each Lender and each Issuing Bank and each of their respective Affiliates and branches is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, without notice to any Loan Party or to any other Person (other than the Administrative Agent), any such notice being hereby expressly waived, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or such Issuing Bank or any such Affiliate or branch to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or such Issuing Bank, the Letters of Credit and participations therein, irrespective of whether or not (a) such Lender or such Issuing Bank shall have made any demand under this Agreement or any other Loan Document and (b) the principal of or the interest on the Loans or any amounts in respect of the Letters of Credit or any other amounts due hereunder shall have become due and payable pursuant to **Article II** and although such obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or such Issuing Bank different from the branch or office holding such deposit or obligated on such indebtedness; ***provided*** that in the event that any Defaulting Lender shall exercise any such right of setoff, (i) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of **Sections 2.15** and **2.19** and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks, and the Lenders, and (ii) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and each Issuing Bank and their respective Affiliates under this **Section 11.09** are in addition to other rights and remedies (including other rights of set-off) that such Lender or such Issuing Bank or Affiliates or branches may have. Each Lender agrees to notify the

Borrower and the Administrative Agent promptly after any such set-off and application, ***provided*** that the failure to give such notice shall not affect the validity of such set-off and application.

Section 11.10 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents with respect to any of the Obligations, shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "***Maximum Rate***"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder. If the rate of interest under this Agreement at any time exceeds the Maximum Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Maximum Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, the Borrower shall pay to the Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Maximum Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of the Lenders and the Borrower to conform strictly to any applicable usury laws.

Section 11.11 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging (including in.pdf or .tif format) means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 11.12 Electronic Execution of Assignments and Certain Other Documents. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption, in or related to this Agreement or any other document to be signed in connection with this Agreement and the transactions contemplated hereby or in any amendment or other modification hereof (including without any limitation Assignment and Assumptions, amendments or other Committed Loan Notices, Swing Line Loan Requests, waivers and consents) shall be deemed to include electronic signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar

state laws based on the Uniform Electronic Transactions Act; ***provided*** that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

Section 11.13 Survival . All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent, each Issuing Bank and each Lender, regardless of any investigation made by the Administrative Agent, any Issuing Bank or any Lender or on their behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default at the time of any Borrowing or issuance of a Letter of Credit, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit remain outstanding. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Loan Party set forth in **Sections 3.01**, **3.04**, **3.05**, **11.04**, **11.05,** **11.06** and **11.09** and the agreements of the Lenders set forth in **Sections 2.15**, **10.03** and **10.07** shall survive the satisfaction of the Termination Conditions, and the termination hereof.

Section 11.14 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable in any jurisdiction, (a) the legality, validity and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this **Section 11.14**, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, any Issuing Bank or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

Section 11.15 GOVERNING LAW.

(a) THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) AND EACH OTHER LOAN DOCUMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE

BOROUGH OF MANHATTAN AND OF ANY UNITED STATES FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (OTHER THAN WITH RESPECT TO ACTIONS BY ANY AGENT IN RESPECT OF RIGHTS UNDER ANY COLLATERAL DOCUMENT OR ANY OTHER LOAN DOCUMENT GOVERNED BY A LAW OTHER THAN THE LAWS OF THE STATE OF NEW YORK OR WITH RESPECT TO ANY COLLATERAL SUBJECT THERETO), OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) 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. EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) AGREES THAT THE AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER THIS AGREEMENT, ANY COLLATERAL DOCUMENT OR ANY OTHER LOAN DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.

(c) EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS **SECTION 11.15**. EACH OF THE PARTIES HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

Section 11.16 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE

FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 11.16**, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAVIER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS **SECTION 11.16** AND EXECUTED BY EACH OF THE PARTIES HERETO AND THE LEAD ARRANGERS), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 11.17 Limitation of Liability. The Loan Parties agree that no Indemnitee shall have any liability (whether in contract, tort or otherwise) to any Loan Party or any of their respective Subsidiaries or any of their respective equity holders or creditors for or in connection with the transactions contemplated hereby and in the other Loan Documents, except to the extent such liability is determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnitee's gross negligence or willful misconduct or bad faith or material breach by such Indemnitee of its obligations under this Agreement. In no event, shall any party hereto, any Loan Party or any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings) (other than, in the case of the Loan Parties, in respect of any such damages incurred or paid by an Indemnitee to a third party). Each party hereto (and by its acceptance of its appointment in such capacity, each Lead Arranger) hereby waives, releases and agrees (each for itself and on behalf of its Subsidiaries) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Section 11.18 Use of Name, Logo, Etc. Each Loan Party consents to the publication in the ordinary course by the Administrative Agent or any Lead Arranger of customary advertising material relating to the financing transactions contemplated by this Agreement using such Loan

Party's name, product photographs, logo or trademark; ***provided*** that any such trademarks or logos are used solely in a manner that is not intended to or reasonably likely to harm or disparage the Borrower or any of its Subsidiaries or the reputation or goodwill of any of them. Such consent shall remain effective until revoked by such Loan Party in writing to the Administrative Agent and such Lead Arranger, as applicable.

Section 11.19 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 each Loan Party 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. Each Loan Party shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act.

Section 11.20 Service of Process. EACH PARTY HERETO (AND BY ITS ACCEPTANCE OF ITS APPOINTMENT IN SUCH CAPACITY, EACH LEAD ARRANGER) IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN **SECTION 11.02**. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

Section 11.21 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 Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding that:

(a) (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Agents, the Lenders, the Issuing Banks, the Swing Line Lender and the Lead Arrangers on the one hand, and the Loan Parties and their Affiliates, on the other hand,

(ii) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and

(iii) each of the Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents;

(b) (i) the Agents, the Issuing Banks, the Swing Line Lender and the Lead Arrangers are and have been, and each Lender is and has been, acting solely as a principal and, except as expressly agreed in writing by the relevant parties, have or has not been, are or is not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties, its stockholders or its

Affiliates (irrespective of whether any Lender has advised, is currently advising or will advise any Loan Party, its stockholders or its Affiliates on other matters), or any other Person and

(ii) none of the Agents, the Issuing Banks, the Swing Line Lender, the Lead Arrangers nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and

(c) the Agents, the Issuing Banks, the Swing Line Lender, the Lead Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve economic interests that conflict with those of the Loan Parties, their stockholders and/or their affiliates, and none of the Agents, the Issuing Banks, the Swing Line Lender, the Lead Arrangers nor any Lender has any obligation to disclose any of such interests to the Borrower or any of its Affiliates.

Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Loan Party, its stockholders or its affiliates, on the other. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the Agents, the Issuing Banks, the Swing Line Lender, the Lead Arrangers or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 11.22 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and the Administrative Agent shall have been notified by each Lender and each Issuing Bank that each such Lender or each such Issuing Bank has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, each Agent, each Lender and each Issuing Bank and their respective successors and assigns.

Section 11.23 Obligations Several; Independent Nature of Lender's Rights. The obligations of the Lenders hereunder are several and not joint and no Lender shall be responsible for the obligations or Commitments of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by the Lenders pursuant hereto or thereto, shall be deemed to constitute the Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 11.24 Headings . Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

Section 11.25 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

Section 11.26 Acknowledgement Regarding Any Supported QFCs.

(a) To the extent that the Loan Documents provide support, through a guarantee or otherwise (including the Guaranty), for any Hedge Agreement or any other agreement or instrument that is a QFC (such support, "***QFC Credit Support***", and each such QFC, a "***Supported QFC***"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "***U.S. Special Resolution Regimes***") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States).

(b) In the event a Covered Entity that is party to a Supported QFC (each, a "***Covered Party***") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the

event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 11.27 Disqualified Lenders.

(a) **Replacement of Disqualified Lenders**.

(i) To the extent that any assignment or participation is made or purported to be made to a Disqualified Lender (notwithstanding the other restrictions in this Agreement with respect to Disqualified Lenders), or if any Lender or Participant becomes a Disqualified Lender, in each case, without limiting any other provision of the Loan Documents,

(a) upon the request of the Borrower, such Disqualified Lender shall be required immediately (and in any event within five Business Days) to assign all or any portion of the Loans and Commitments then owned by such Disqualified Lender (or held as a participation) to another Lender (other than a Defaulting Lender or another Disqualified Lender), Eligible Assignee or the Borrower, and

(b) the Borrower shall have the right to prepay all or any portion of the Loans and Commitments then owned by such Disqualified Lender (or held as a participation), and if applicable, terminate the Commitments of such Disqualified Lender, in whole or in part.

(ii) Any such assignment or prepayment shall be made in exchange for an amount equal to the lesser of (A) the face principal amount of the Loans so assigned, (B) the amount that such Disqualified Lender paid to acquire such Commitments and/or Loans and (C) the then-quoted trading price for such Loans or Participations, in each case without interest thereon (it being understood that if the effective date of any such assignment is not an interest payment date, such assignee shall be entitled to receive on the next succeeding interest payment date interest on the principal amount of the Loans so assigned that has accrued and is unpaid from the interest payment date last preceding such effective date (except as may be otherwise agreed between such assignee and the Borrower)).

(iii) The Borrower shall be entitled to seek specific performance in any applicable court of law or equity to enforce this **Section 11.27**. In addition, in connection with any such assignment, (A) if such Disqualified Lender does not execute and deliver to the Administrative Agent a duly completed Assignment and Assumption and/or any other documentation necessary or appropriate (in the good faith determination of the Administrative Agent or the Borrower, which determination shall be conclusive) to reflect

such replacement by the later of (1) the date on which the replacement Lender executes and delivers such Assignment and Assumption and/or such other documentation and (2) the date as of which such Disqualified Lender shall be paid by the assignee Lender (or, at its option, the Borrower) the amount required pursuant to this section, then such Disqualified Lender shall be deemed to have executed and delivered such Assignment and Assumption and/or such other documentation as of such date and the Borrower shall be entitled (but not obligated) to execute and deliver such Assignment and Assumption and/or such other documentation on behalf of such Disqualified Lender, and the Administrative Agent shall record such assignment in the Register, (B) each Lender (whether or not then a party hereto) agrees to disclose to the Borrower the amount that the applicable Disqualified Lender paid to acquire Commitments and/or Loans from such Lender and (C) each Lender that is a Disqualified Lender agrees to disclose to the Borrower the amount it paid to acquire the Commitments and/or Loans held by it.

(b) **Amendments, Consents and Waivers under the Loan Documents**. No Disqualified Lender shall have the right to approve or disapprove any amendment, waiver or consent pursuant to **Section 11.01** or under any Loan Document. In connection with any determination as to whether the requisite Lenders (including whether the Required Lenders or Required Facility Lenders) have provided any amendment, waiver or consent pursuant to **Section 11.01** or under any other Loan Document:

(i) Disqualified Lenders shall not be considered, and

(ii) Disqualified Lenders shall be deemed to have consented to any such amendment, waiver or consent with respect to its interest as a Lender in the same proportion as the allocation of voting with respect to such matter by Lenders who are not Disqualified Lenders;

provided that (A) the Commitment of any Disqualified Lender may not be increased or extended without the consent of such Disqualified Lender and (B) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Disqualified Lender more adversely than other affected Lenders shall require the consent of such Disqualified Lender.

(c) **Limitation on Rights and Privileges of Disqualified Lenders**. Except as otherwise provided in **Section 11.27(b)(ii)**, no Disqualified Lenders shall have the right to, and each such Person covenants and agrees not to, instruct the Administrative Agent, Collateral Agent or any other Person in respect of the exercise of remedies with respect to the Loans or other Obligations. Further, no Disqualified Lender that purports to be a Lender or Participant (notwithstanding any provisions of this Agreement that may have prohibited such Disqualified Lender from becoming Lender or Participant) shall be entitled to any of the rights or privileges enjoyed by the other Lenders with respect to voting (other than to the extent provided in **Section 11.27(b)**), and shall be deemed for all purposes to be, at most, a Defaulting Lender until such time as such Disqualified Lender no longer owns any Loans or Commitments.

(d) **Survival**. The provisions of this **Section 11.27** shall apply and survive with respect to each Lender and Participant notwithstanding that any such Person may have ceased to be a Lender or Participant hereunder or this Agreement may have been terminated.

(e) **Administrative Agent**.

(i) ***Reliance***. The Administrative Agent shall have no liability to the Borrower, any Lender or any other Person in acting in good faith on any notice of Default or acceleration.

(ii) ***Disqualified Lender Lists***. The Administrative Agent shall have no responsibility or liability for monitoring or enforcing the list of Disqualified Lenders or for any assignment or participation to a Disqualified Lender.

(iii) ***Liability Limitations***. 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 hereof relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (A) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Lender or (B) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information (including Information), to any Disqualified Lender. The list of Disqualified Lenders shall be specified on a schedule that is held with the Administrative Agent, which list may be provided to any Lender or its proposed assignee upon request.

[SIGNATURE PAGES ARE OMITTED]

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

PETCO HEALTH AND WELLNESS COMPANY, INC., as Borrower

By: _____
Name:
Title:

CITIBANK, N.A., as Administrative Agent, Collateral Agent, Swing Line Lender, Issuing Bank and Lender

By: _____
Name:
Title:

~~105695831.2~~

Exhibit 23

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statements (Form S-8 Nos. 333-252221 and 333-273711) pertaining to the 2021 Equity Incentive Plan and 2021 Employee Stock Purchase Plan of Petco Health and Wellness Company, Inc. of our reports dated April 2, 2024, with respect to the consolidated financial statements of Petco Health and Wellness Company, Inc., and the effectiveness of internal control over financial reporting of Petco Health and Wellness Company, Inc., included in this Annual Report (Form 10-K) for the year ended February 3, 2024.

/s/ Ernst & Young LLP

San Diego, California
April 2, 2024

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, R. Michael Mohan, certify that:

1. I have reviewed this Annual Report on Form 10-K of Petco Health and Wellness Company, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 2, 2024

By: /s/ R. Michael Mohan

R. Michael Mohan
Interim Chief Executive Officer

(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Brian LaRose, certify that:

1. I have reviewed this Annual Report on Form 10-K of Petco Health and Wellness Company, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 2, 2024

By: /s/ Brian LaRose

Brian LaRose
Chief Financial Officer

(Principal Financial Officer and Principal Accounting Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the accompanying Annual Report on Form 10-K of Petco Health and Wellness Company, Inc. (the "Company") for the year ended February 3, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, R. Michael Mohan, Interim Chief Executive Officer of the Company, hereby certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: April 2, 2024

By: /s/ R. Michael Mohan

R. Michael Mohan
Interim Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the accompanying Annual Report on Form 10-K of Petco Health and Wellness Company, Inc. (the "Company") for the year ended February 3, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Brian LaRose, Chief Financial Officer of the Company, hereby certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: April 2, 2024

By: /s/ Brian LaRose

Brian LaRose
Chief Financial Officer
(Principal Financial Officer and
Principal Accounting Officer)

Exhibit 97

Petco Health and Wellness Company, Inc.

Clawback Policy

Effective Date: October 2, 2023

1. Purpose

Petco Health and Wellness Company, Inc. (the "Company") is committed to conducting business with integrity, in accordance with high ethical standards and in compliance with all applicable laws, rules and regulations, including those regarding the presentation of the Company's financial information to the public. As a result, the Board of Directors of the Company (the "Board") has adopted this Clawback Policy (as amended from time to time, this "Policy") effective as of the Effective Date, which supersedes and replaces that certain Clawback Policy dated May 25, 2021 (the "Prior Policy"). This Policy is intended to comply with, and as applicable to be administered and interpreted consistent with, and subject to the exceptions set forth in, Listing Rule 5608 adopted by the Nasdaq Stock Market to implement Rule 10D-1 under the Securities Exchange Act of 1934, as amended (collectively, "Rule 10D-1").

2. Administration

This Policy is administered by the Compensation Committee of the Board (the "Committee"). Except as limited by law, the Committee has full power, authority, and discretion to construe, interpret and apply this Policy in accordance with Rule 10D-1 to the extent applicable. Any determinations made by the Committee will be final, conclusive and binding on all affected individuals, and any such determinations made by the Committee under Section 4 will be made in its sole discretion and need not be uniform with respect to all Covered Executives.

Subject to Rule 10D-1, the Board or Committee may amend, modify or terminate this Policy in whole or in part at any time in its sole discretion and may adopt such rules and procedures that it deems necessary or appropriate to implement this Policy or to comply with applicable laws and regulations. The Company is authorized to take appropriate steps to implement this Policy with respect to Incentive-Based Compensation or Other Incentive Compensation arrangements with Covered Executives. No recovery of compensation under this Policy will be an event giving rise to a right to resign for "good reason" or be deemed a "constructive termination" (or any similar terms) as such terms are used in any agreement between any Covered Executive and the Company or any of its subsidiaries.

3. Mandatory Clawback Triggers

In the event the Company is required to prepare an accounting restatement of the Company's financial statements (including any such correction that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period) due to the Company's material non-compliance with any financial reporting requirement under the federal securities laws (a "Restatement"), the Company will recover on a reasonably prompt basis Excess Incentive Compensation.

For Incentive-Based Compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in a Restatement, the Committee will determine the amount based on a reasonable estimate of the effect of the Restatement on the relevant stock price or total shareholder return. The Company will maintain and will provide to The Nasdaq Stock Market documentation of all determinations and actions taken in complying with this Policy.

4. Discretionary Clawback Triggers

In the event that a Covered Executive engages in Misconduct, the Committee may (i) require the Covered Executive to reimburse all or any portion of the Incentive-Based Compensation and Other Incentive Compensation Received by such Covered Executive, in each case, during the three fiscal years immediately preceding the date on which the Committee discovers the Misconduct; and/or (ii) cancel all or any portion of any outstanding Incentive-Based Compensation and Other Incentive Compensation.

In addition, in the event of a Restatement, the Committee may recover all or any portion of any Other Incentive Compensation.

5. Recovery

The Company may effect any recovery pursuant to this Policy by requiring payment of the Incentive-Based Compensation and/or Other Incentive Compensation, as applicable (collectively, the "Recoverable Compensation"), to the Company, by set-off, by reducing future compensation, or by such other means or combination of means as the Committee determines to be appropriate. In all cases, the calculation of the Recoverable Compensation will be determined on a pre-tax basis. The Company need not recover the Recoverable Compensation if and to the extent that the Committee determines that such recovery is impracticable, subject to and in accordance with any applicable exceptions under the Nasdaq Stock Market listing rules and not required under Rule 10D-1, including if the Committee determines that the direct expense paid to a third party to assist in enforcing this Policy would exceed the amount to be recovered after making a reasonable attempt to recover the Recoverable Compensation.

The Company will not indemnify any Covered Executive against the loss of any Incentive-Based Compensation or Other Incentive Compensation (or provide any advancement of expenses in such instance), including payment or reimbursement for the cost of third-party insurance purchased by the Covered Executives to fund potential recovery obligations under this Policy, nor will the Company pay or agree to pay any attorney fees or other costs incurred in challenging any determination under this Policy.

6. Definitions

"Covered Executives" means any "executive officer" of the Company as defined under Rule 10D-1.

"Excess Incentive Compensation" means, if positive, (i) the amount of Incentive-Based Compensation Received by a Covered Executive during a Recovery Period, less (ii) the amount of Incentive-Based Compensation that would have been Received if determined or calculated based on the Company's restated financial results.

"Incentive-Based Compensation" means any compensation granted, earned or vested based in whole or in part on the Company's attainment of a financial reporting measure that was Received by a person (i) on or after October 2, 2023 and after the person began service as a Covered Executive, and (ii) who served as a Covered Executive at any time during the performance period for the Incentive-Based Compensation. A financial reporting measure is (A) any measure that is determined and presented in accordance with the accounting principles used in preparing the Company's financial statements and any measure derived wholly or in part from such a measure, and (B) any measure based in whole or in part on the Company's stock price or total shareholder return.

"Misconduct" means (i) the Covered Executive's egregious misconduct including, but not limited to, fraud, willful misconduct, recklessness, gross negligence, criminal activities, falsification of Company records, theft, violent acts or threats of violence, violation of law, unethical conduct or inappropriate behavior, in each case, that causes, or is reasonably expected to cause, substantial financial or reputational harm to the Company or exposes the Company to substantial legal

liability, or (ii) any violation by the Covered Executive of the Company's Code of Business Conduct and Ethics as in effect from time to time.

"Other Incentive Compensation" means any compensation (other than any Incentive-Based Compensation or base salary), whether outstanding as of the Effective Date or in the future, that the Company awards, grants or pays to, or that is otherwise vested or earned by a Covered Executive, including any annual bonuses and other short- and long-term cash, equity and equity-based incentive awards, whether vesting on the basis of time, performance or a combination thereof.

Incentive-Based Compensation is deemed to be "Received" in the fiscal period during which the relevant financial reporting measure is attained, regardless of when the compensation is actually paid or awarded. Other Incentive Compensation is deemed to be "Received" in the fiscal period in which the performance measure is attained or continued service requirement is satisfied, regardless of when the compensation is actually paid or awarded.

"Recovery Period" means the three completed fiscal years immediately preceding the date that the Company is required to prepare the Restatement described in this Policy, as determined pursuant to Rule 10D-1, and any transition period of less than nine months that is within or immediately following such three fiscal years.

5. Not Exclusive

Any right of recoupment or recovery pursuant to this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company, including, without limitation, (i) pursuant to the terms of any Company plan or policy or any agreement with the Covered Executive; provided, that the Company shall not recoup amounts pursuant to such other policy, terms or remedies to the extent it is recovered pursuant to this Policy, (ii) disciplinary action up to and including termination, and (iii) institution of civil or criminal proceedings. Any right of recoupment under this Policy is in addition to, and is not in lieu of, any actions imposed by law enforcement agencies, regulators or other authorities. For the avoidance of doubt, any Incentive-Based Compensation or Other Incentive Compensation Received by a Covered Executive prior to the Effective Date of this Policy shall be subject to recoupment pursuant to the terms of the Prior Policy. Additionally, nothing in this Policy is intended to conflict with or limit any compensation recoupment or clawback provisions of any applicable laws, including Section 304 of the Sarbanes-Oxley Act of 2002.