

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
FORM 10-Q**

- (Mark One)
- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
- For the quarterly period ended April 3, 2021  
OR
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission File Number: 000-25121



**SLEEP NUMBER CORPORATION**

(Exact name of registrant as specified in its charter)

**Minnesota** **41-1597886**  
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

**1001 Third Avenue South** **55404**  
**Minneapolis, Minnesota** (Zip Code)  
(Address of principal executive offices)

Registrant's telephone number, including area code: **(763) 551-7000**

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.01 per share	SNBR	Nasdaq Global Select Market

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, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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 is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES  NO

As of April 3, 2021, 24,464,000 shares of the registrant's Common Stock were outstanding.

**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES  
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**PART I: FINANCIAL INFORMATION**  
**ITEM 1. FINANCIAL STATEMENTS**

**SLEEP NUMBER CORPORATION**  
**AND SUBSIDIARIES**  
*Condensed Consolidated Balance Sheets*  
(unaudited - in thousands, except per share amounts)

	April 3, 2021	January 2, 2021
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 2,238	\$ 4,243
Accounts receivable, net of allowances of \$1,028 and \$1,046, respectively	25,923	31,871
Inventories	82,308	81,362
Prepaid expenses	27,189	20,839
Other current assets	33,844	43,489
Total current assets	171,502	181,804
Non-current assets:		
Property and equipment, net	182,113	175,223
Operating lease right-of-use assets	329,714	314,226
Goodwill and intangible assets, net	72,270	72,871
Other non-current assets	66,610	56,012
Total assets	\$ 822,209	\$ 800,136
<b>Liabilities and Shareholders' Deficit</b>		
Current liabilities:		
Borrowings under credit facility	\$ 314,900	\$ 244,200
Accounts payable	122,098	91,904
Customer prepayments	92,569	72,017
Accrued sales returns	24,610	24,765
Compensation and benefits	42,185	76,786
Taxes and withholding	39,098	23,339
Operating lease liabilities	64,076	62,077
Other current liabilities	57,833	60,856
Total current liabilities	757,369	655,944
Non-current liabilities:		
Deferred income taxes	1,757	242
Operating lease liabilities	298,475	283,084
Other non-current liabilities	97,258	84,844
Total liabilities	1,154,859	1,024,114
Shareholders' deficit:		
Undesignated preferred stock; 5,000 shares authorized, no shares issued and outstanding	—	—
Common stock, \$0.01 par value; 142,500 shares authorized, 24,464 and 25,390 shares issued and outstanding, respectively	245	254
Additional paid-in capital	—	—
Accumulated deficit	(332,895)	(224,232)
Total shareholders' deficit	(332,650)	(223,978)
Total liabilities and shareholders' deficit	\$ 822,209	\$ 800,136

See accompanying notes to condensed consolidated financial statements.

**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**  
*Condensed Consolidated Statements of Operations*  
(unaudited - in thousands, except per share amounts)

	<b>Three Months Ended</b>	
	<b>April 3, 2021</b>	<b>March 28, 2020</b>
Net sales	\$ 568,256	\$ 472,566
Cost of sales	212,338	170,435
Gross profit	<u>355,918</u>	<u>302,131</u>
Operating expenses:		
Sales and marketing	223,617	207,744
General and administrative	42,592	31,072
Research and development	13,286	10,501
Total operating expenses	<u>279,495</u>	<u>249,317</u>
Operating income	76,423	52,814
Interest expense, net	977	2,344
Income before income taxes	75,446	50,470
Income tax expense	8,812	11,330
Net income	<u>\$ 66,634</u>	<u>\$ 39,140</u>
Basic net income per share:		
Net income per share – basic	<u>\$ 2.63</u>	<u>\$ 1.40</u>
Weighted-average shares – basic	<u>25,377</u>	<u>27,858</u>
Diluted net income per share:		
Net income per share – diluted	<u>\$ 2.51</u>	<u>\$ 1.36</u>
Weighted-average shares – diluted	<u>26,544</u>	<u>28,772</u>

See accompanying notes to condensed consolidated financial statements.

**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**  
*Condensed Consolidated Statements of Shareholders' Deficit*  
(unaudited - in thousands)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount			
Balance at January 2, 2021	25,390	\$ 254	\$ —	\$ (224,232)	\$ (223,978)
Net income	—	—	—	66,634	66,634
Exercise of common stock options	106	1	2,459	—	2,460
Stock-based compensation	314	3	6,413	—	6,416
Repurchases of common stock	(1,346)	(13)	(8,872)	(175,297)	(184,182)
Balance at April 3, 2021	24,464	\$ 245	\$ —	\$ (332,895)	\$ (332,650)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount			
Balance at December 28, 2019	27,961	\$ 280	\$ —	\$ (159,711)	\$ (159,431)
Net income	—	—	—	39,140	39,140
Exercise of common stock options	167	1	3,282	—	3,283
Stock-based compensation	396	4	2,047	—	2,051
Repurchases of common stock	(888)	(9)	(5,329)	(35,614)	(40,952)
Balance at March 28, 2020	27,636	\$ 276	\$ —	\$ (156,185)	\$ (155,909)

See accompanying notes to condensed consolidated financial statements.

**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**  
*Condensed Consolidated Statements of Cash Flows*  
(unaudited - in thousands)

	Three Months Ended	
	April 3, 2021	March 28, 2020
Cash flows from operating activities:		
Net income	\$ 66,634	\$ 39,140
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	14,638	15,371
Stock-based compensation	6,416	2,051
Net loss (gain) on disposals and impairments of assets	78	(22)
Deferred income taxes	1,515	5,334
Changes in operating assets and liabilities:		
Accounts receivable	5,948	12,808
Inventories	(946)	5,044
Income taxes	6,847	5,798
Prepaid expenses and other assets	(3,113)	7,478
Accounts payable	12,390	11,282
Customer prepayments	20,552	(8,432)
Accrued compensation and benefits	(34,605)	(13,157)
Other taxes and withholding	8,912	(479)
Other accruals and liabilities	6,332	2,725
Net cash provided by operating activities	111,598	84,941
Cash flows from investing activities:		
Purchases of property and equipment	(11,546)	(10,351)
Proceeds from sales of property and equipment	12	25
Net cash used in investing activities	(11,534)	(10,326)
Cash flows from financing activities:		
Repurchases of common stock	(178,613)	(41,445)
Net increase in short-term borrowings	74,087	201,170
Proceeds from issuance of common stock	2,460	3,283
Debt issuance costs	(3)	(3)
Net cash (used in) provided by financing activities	(102,069)	163,005
Net (decrease) increase in cash and cash equivalents	(2,005)	237,620
Cash and cash equivalents, at beginning of period	4,243	1,593
Cash and cash equivalents, at end of period	\$ 2,238	\$ 239,213

See accompanying notes to condensed consolidated financial statements.

**SLEEP NUMBER CORPORATION  
AND SUBSIDIARIES**  
*Notes to Condensed Consolidated Financial Statements*  
(unaudited)

## 1. Business and Summary of Significant Accounting Policies

### *Business & Basis of Presentation*

We prepared the condensed consolidated financial statements as of and for the three months ended April 3, 2021 of Sleep Number Corporation and our 100%-owned subsidiaries (Sleep Number or the Company), without audit, pursuant to the rules and regulations of the Securities and Exchange Commission (SEC) and they reflect, in the opinion of management, all normal recurring adjustments necessary to present fairly our financial position as of April 3, 2021 and January 2, 2021, and the consolidated results of operations and cash flows for the periods presented. Our historical and quarterly consolidated results of operations may not be indicative of the results that may be achieved for the full year or any future period. Additionally, based on the duration and severity of the current global situation involving the novel coronavirus (COVID-19) pandemic, including but not limited to general economic conditions, consumer confidence, store closings mandated by federal, state or local authorities and possible supply chain disruptions, the extent to which COVID-19 will impact our business and our consolidated financial results will depend on future developments, which are highly uncertain and cannot be predicted.

Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. generally accepted accounting principles (GAAP) have been condensed or omitted pursuant to such rules and regulations. These condensed consolidated financial statements should be read in conjunction with our most recent audited consolidated financial statements and related notes included in our Annual Report on Form 10-K for the fiscal year ended January 2, 2021 and other recent filings with the SEC.

The preparation of condensed consolidated financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements, and the reported amounts of sales, expenses and income taxes during the reporting period. Predicting future events is inherently an imprecise activity and, as such, requires the use of judgment. As future events and their effects cannot be determined with precision, actual results could differ significantly from these estimates. In addition, during the current environment involving COVID-19, predicting future events will be especially challenging for management. Changes in these estimates will be reflected in the consolidated financial statements in future periods and could be material. Our critical accounting policies consist of stock-based compensation, warranty liabilities and revenue recognition.

The condensed consolidated financial statements include the accounts of Sleep Number Corporation and our 100%-owned subsidiaries. All significant intra-entity balances and transactions have been eliminated in consolidation.

## 2. Fair Value Measurements

At April 3, 2021 and January 2, 2021, we had \$16 million and \$12 million, respectively, of debt and equity securities that fund our deferred compensation plan and are classified in other non-current assets. We also had corresponding deferred compensation plan liabilities of \$16 million and \$12 million at April 3, 2021 and January 2, 2021, respectively, which are included in other non-current liabilities. The majority of the debt and equity securities are Level 1 as they trade with sufficient frequency and volume to enable us to obtain pricing information on an ongoing basis. Unrealized gains/(losses) on the debt and equity securities offset those associated with the corresponding deferred compensation plan liabilities.

## 3. Inventories

Inventories consisted of the following (in thousands):

	April 3, 2021	January 2, 2021
Raw materials	\$ 10,496	\$ 12,599
Work in progress	88	103
Finished goods	71,724	68,660
	<u>\$ 82,308</u>	<u>\$ 81,362</u>

**SLEEP NUMBER CORPORATION  
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*Notes to Condensed Consolidated Financial Statements*  
(unaudited)

**4. Goodwill and Intangible Assets, Net***Goodwill and Indefinite-lived Intangible Assets*

Goodwill was \$64 million at April 3, 2021 and January 2, 2021. Indefinite-lived trade name/trademarks totaled \$1.4 million at April 3, 2021 and January 2, 2021.

*Definite-lived Intangible Assets*

The gross carrying amount of our developed technologies was \$19 million at April 3, 2021 and January 2, 2021. Accumulated amortization was \$14 million and \$13 million at April 3, 2021 and January 2, 2021, respectively. Amortization expense for both the three months ended April 3, 2021 and March 28, 2020, was \$0.5 million.

The gross carrying amount of our patents, which were acquired in June 2020, was \$2 million at April 3, 2021 and January 2, 2021, respectively. Accumulated amortization was \$0.2 million and \$0.1 million at April 3, 2021 and January 2, 2021, respectively. Amortization expense for the three months ended April 3, 2021 was \$55 thousand.

Annual amortization for definite-lived intangible assets for subsequent years are as follows (in thousands):

2021 (excluding the three months ended April 3, 2021)	\$	1,802
2022		2,403
2023		1,431
2024		222
2025		226
2026		222
Thereafter		522
Total future amortization for definite-lived intangible assets	\$	<u>6,828</u>

**5. Credit Agreement**

Our credit facility as of April 3, 2021, had a net aggregate availability of \$450 million. The credit facility is for general corporate purposes, to meet our seasonal working capital requirements and to repurchase our stock. The credit agreement provides the lenders with a collateral security interest in substantially all of our assets and those of our subsidiaries and requires us to comply with, among other things, a maximum leverage ratio (4.5x) and a minimum interest coverage ratio (3.0x). Under the terms of the credit agreement, we pay a variable rate of interest and a commitment fee based on our leverage ratio. We were in compliance with all financial covenants as of April 3, 2021.

The following table summarizes our borrowings under the credit facility (\$ in thousands):

	<b>April 3, 2021</b>	<b>January 2, 2021</b>
Outstanding borrowings	\$ 314,900	\$ 244,200
Outstanding letters of credit	\$ 3,997	\$ 3,997
Additional borrowing capacity	\$ 131,103	\$ 201,803
Weighted-average interest rate	1.5 %	1.5 %

On April 21, 2021, we amended our revolving credit facility to increase our net aggregate availability from \$450 million to \$600 million. We maintained the accordion feature which allows us to increase the amount of the credit facility from \$600 million to \$800 million, subject to lenders' approval. The amended credit facility matures in February 2024. There were no other significant changes to the credit facility's terms and conditions.



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(unaudited)

**6. Leases**

We lease our retail, office and manufacturing space under operating leases which, in addition to the minimum lease payments, may require payment of a proportionate share of the real estate taxes and certain building operating expenses. While our local market development approach generally results in long-term participation in given markets, our retail store leases generally provide for an initial lease term of five to 10 years. Our office and manufacturing leases provide for an initial lease term of up to 15 years. In addition, our mall-based retail store leases may require payment of variable rent based on net sales in excess of certain thresholds. Certain leases may contain options to extend the term of the original lease. The exercise of lease renewal options is at our sole discretion. Lease options are included in the lease term only if exercise is reasonably certain at lease commencement. Our lease agreements do not contain any material residual value guarantees. We also lease vehicles and certain equipment under operating leases with an initial lease term of three to five years.

Our operating lease costs include facility, vehicle and equipment lease costs, but exclude variable lease costs. Operating lease costs are recognized on a straight-line basis over the lease term, after consideration of rent escalations and rent holidays. The lease term for purposes of the calculation begins on the earlier of the lease commencement date or the date we take possession of the property. During lease renewal negotiations that extend beyond the original lease term, we estimate straight-line rent expense based on current market conditions. Variable lease costs are recorded when it is probable the cost has been incurred and the amount can be reasonably estimated. Future payments for real estate taxes and certain building operating expenses for which we are obligated are not included in operating lease costs.

At April 3, 2021, our finance right-of-use assets and lease liabilities were not significant.

Lease costs were as follows (in thousands):

	<b>Three Months Ended</b>	
	<b>April 3, 2021</b>	<b>March 28, 2020</b>
Operating lease costs <sup>(1)</sup>	\$ 23,638	\$ 22,949
Variable lease costs	\$ 515	\$ 12

<sup>(1)</sup> Includes short-term lease costs which are not significant.

The maturities of operating lease liabilities as of April 3, 2021, were as follows<sup>(1)</sup> (in thousands):

2021 (excluding the three months ended April 3, 2021)	\$ 65,248
2022	79,974
2023	69,962
2024	58,098
2025	49,146
2026	39,853
Thereafter	83,392
Total operating lease payments <sup>(2)</sup>	445,673
Less: Interest	83,059
Present value of operating lease liabilities <sup>(3)</sup>	<u>\$ 362,614</u>

<sup>(1)</sup> During 2020, we deferred certain cash lease payments to future periods. At April 3, 2021, we had deferred cash rent payments of \$2.6 million which are excluded from this table and are included in Other current liabilities and Other non-current liabilities.

<sup>(2)</sup> Total operating lease payments exclude \$92 million of legally binding minimum lease payments for leases signed but not yet commenced.

<sup>(3)</sup> Includes the current portion of \$64 million for operating lease liabilities.

**SLEEP NUMBER CORPORATION  
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*Notes to Condensed Consolidated Financial Statements*  
(unaudited)

Other information related to operating leases was as follows:

	April 3, 2021	January 2, 2021
Weighted-average remaining lease term (years)	6.4	6.3
Weighted-average discount rate	6.7 %	6.9 %

(in thousands)	Three Months Ended	
	April 3, 2021	March 28, 2020
Cash paid for amounts included in present value of operating lease liabilities	\$ 21,386	\$ 21,469
Right-of-use assets obtained in exchange for operating lease liabilities	\$ 29,454	\$ 10,954

### 7. Repurchases of Common Stock

Repurchases of our common stock were as follows (in thousands):

	Three Months Ended	
	April 3, 2021	March 28, 2020
Amount repurchased under Board-approved share repurchase program	\$ 167,418	\$ 38,111
Amount repurchased in connection with the vesting of employee restricted stock grants	16,764	2,841
Total amount repurchased (based on trade dates)	<u>\$ 184,182</u>	<u>\$ 40,952</u>

Effective as of April 4, 2021, our Board of Director approved an increase in our total remaining share repurchase authorization to \$600 million.

### 8. Revenue Recognition

Deferred contract assets and deferred contract liabilities are included in our condensed consolidated balance sheets as follows (in thousands):

	April 3, 2021	January 2, 2021
Deferred Contract Assets included in:		
Other current assets	\$ 23,924	\$ 26,593
Other non-current assets	45,075	37,976
	<u>\$ 68,999</u>	<u>\$ 64,569</u>

	April 3, 2021	January 2, 2021
Deferred Contract Liabilities included in:		
Other current liabilities	\$ 31,623	\$ 35,288
Other non-current liabilities	58,736	49,689
	<u>\$ 90,359</u>	<u>\$ 84,977</u>

During the three months ended April 3, 2021 and March 28, 2020, we recognized revenue of \$7 million and \$10 million, that were included in the deferred contract liability balances at the beginning of the respective periods.

Revenue from goods and services transferred to customers at a point in time accounted for approximately 99% and 98% of our revenues for the three months ended April 3, 2021 and March 28, 2020, respectively.

**SLEEP NUMBER CORPORATION  
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*Notes to Condensed Consolidated Financial Statements*  
(unaudited)

Net sales were as follows (in thousands):

	<b>Three Months Ended</b>	
	<b>April 3, 2021</b>	<b>March 28, 2020</b>
Retail stores	\$ 489,188	\$ 435,357
Online, phone, chat and other	79,068	37,209
<b>Total Company</b>	<b>\$ 568,256</b>	<b>\$ 472,566</b>

*Obligation for Sales Returns*

The activity in the sales returns liability account was as follows (in thousands):

	<b>Three Months Ended</b>	
	<b>April 3, 2021</b>	<b>March 28, 2020</b>
Balance at beginning of year	\$ 24,765	\$ 19,809
Additions that reduce net sales	23,711	22,258
Deductions from reserves	(23,866)	(19,794)
<b>Balance at end of period</b>	<b>\$ 24,610</b>	<b>\$ 22,273</b>

**9. Stock-Based Compensation Expense**

Total stock-based compensation expense was as follows (in thousands):

	<b>Three Months Ended</b>	
	<b>April 3, 2021</b>	<b>March 28, 2020</b>
Stock awards	\$ 5,808	\$ 1,405
Stock options	608	646
<b>Total stock-based compensation expense <sup>(1)</sup></b>	<b>6,416</b>	<b>2,051</b>
Income tax benefit	1,598	496
<b>Total stock-based compensation expense, net of tax</b>	<b>\$ 4,818</b>	<b>\$ 1,555</b>

<sup>(1)</sup> Changes in stock-based compensation expense reflect the cumulative impact of the change in the expected achievements of certain performance targets.

**10. Profit Sharing and 401(k) Plan**

Under our profit sharing and 401(k) plan, eligible employees may defer up to 50% of their compensation on a pre-tax basis, subject to Internal Revenue Service limitations. Each pay period, we may make a discretionary contribution equal to a percentage of the employee's contribution. During the three months ended April 3, 2021 and March 28, 2020, our contributions, net of forfeitures, were \$1.9 million and \$1.6 million, respectively.

**SLEEP NUMBER CORPORATION  
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*Notes to Condensed Consolidated Financial Statements*  
(unaudited)

**11. Net Income per Common Share**

The components of basic and diluted net income per share were as follows (in thousands, except per share amounts):

	Three Months Ended	
	April 3, 2021	March 28, 2020
Net income	\$ 66,634	\$ 39,140
<b>Reconciliation of weighted-average shares outstanding:</b>		
Basic weighted-average shares outstanding	25,377	27,858
Dilutive effect of stock-based awards	1,167	914
Diluted weighted-average shares outstanding	26,544	28,772
Net income per share – basic	\$ 2.63	\$ 1.40
Net income per share – diluted	\$ 2.51	\$ 1.36

For the three months ended April 3, 2021 and March 28, 2020, anti-dilutive stock-based awards excluded from the diluted net income per share calculations were immaterial.

**12. Commitments and Contingencies***Warranty Liabilities*

The activity in the accrued warranty liabilities account was as follows (in thousands):

	Three Months Ended	
	April 3, 2021	March 28, 2020
Balance at beginning of year	\$ 12,152	\$ 11,345
Additions charged to costs and expenses for current-year sales	4,330	2,628
Deductions from reserves	(4,717)	(2,779)
Changes in liability for pre-existing warranties during the current year, including expirations	(156)	297
Balance at end of period	\$ 11,609	\$ 11,491

*Legal Proceedings*

We are involved from time to time in various legal proceedings arising in the ordinary course of our business, including primarily commercial, product liability, employment and intellectual property claims. In accordance with U.S. generally accepted accounting principles, we record a liability in our consolidated financial statements with respect to any of these matters when it is both probable that a liability has been incurred and the amount of the liability can be reasonably estimated. If a material loss is reasonably possible but not known or probable, and may be reasonably estimated, the estimated loss or range of loss is disclosed. With respect to currently pending legal proceedings, we have not established an estimated range of reasonably possible material losses either because we believe that we have valid defenses to claims asserted against us, the proceeding has not advanced to a stage of discovery that would enable us to establish an estimate, or the potential loss is not material. We currently do not expect the outcome of pending legal proceedings to have a material effect on our consolidated results of operations, financial position or cash flows. Litigation, however, is inherently unpredictable, and it is possible that the ultimate outcome of one or more claims asserted against us could adversely impact our consolidated results of operations, financial position or cash flows. We expense legal costs as incurred.

On September 18, 2018, two former Home Delivery team members filed suit, now venued in San Diego County Superior Court, California, alleging representative claims on a purported class action basis under the California Labor Code Private Attorney General Act. While the two representative plaintiffs were in the Home Delivery workforce, the Complaint does not limit the purported plaintiff class to that group. The plaintiffs allege that Sleep Number failed or refused to adopt adequate practices, policies and procedures relating to wage payments, record keeping, employment disclosures, meal and rest breaks, among other claims, under California law. The Complaint sought damages in the form of civil penalties and plaintiffs' attorneys' fees. The parties have executed a settlement agreement, including the settlement and release of certain additional related claims that are contained in a consolidated complaint,

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*Notes to Condensed Consolidated Financial Statements*  
**(unaudited)**

which received preliminary Court approval on July 29, 2020. On January 8, 2021, the Court granted final approval of the parties' settlement and any right to appeal the final approval expired on April 6, 2021. Sleep Number has satisfied its obligations under the settlement and all that remains are the administrative steps related to the distribution to be performed by the claims administrator.

On March 27, 2018, Level Sleep, LLC (Level Sleep) filed a patent infringement lawsuit against Sleep Number in the Federal District Court for the Eastern District of Texas. In its Complaint, Level Sleep claims that Sleep Number infringed two patents owned by Level Sleep, U.S. Patent Nos. 6,807,698 and 7,036,172 (the Patents), by, among other things, making, using, offering for sale, or selling within the United States, and/or importing into the United States, beds with sleep surfaces having foam with multiple zones in the longitudinal direction. Level Sleep has asserted that five non-360<sup>®</sup> beds no longer sold and two current non-360 beds infringe the Patents. Level Sleep seeks damages in the form of a reasonable royalty. Sleep Number has asserted that the Patents are invalid and that our products do not infringe the Patents. On January 14, 2020, the Court granted summary judgment in favor of Sleep Number, finding that Sleep Number's products do not infringe the Patents. Level Sleep has filed an appeal of the Court's summary judgment order, which was heard by the Federal Circuit Court of Appeals on January 5, 2021, and we are awaiting a decision. We intend to continue vigorously defending this matter.

### **13. COVID-19 Pandemic**

At the onset of the COVID-19 pandemic in mid-March 2020, government restrictions resulted in the temporary closure of most of our retail stores, with 47% of our stores closed on average during the second quarter of 2020. While prioritizing the safety of our team, serving our customers and ensuring business continuity, we swiftly took decisive actions to strengthen our liquidity, cash flows and financial position, and mitigate the future impact on our operations and financial performance.

The pandemic mainly impacted our second quarter of 2020 financial performance, as we generated strong financial performance during the full-year of 2020 and the first quarterly period ended April 3, 2021. However, the pandemic's future effect on consumer demand and our ongoing financial performance remains uncertain. See Item 2. *Management's Discussion and Analysis of Financial Condition and Results of Operations* and Part II: Item 1A. *Risk Factors* for additional discussion on the COVID-19 pandemic and the impact on our business.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) is intended to provide a reader of our condensed consolidated financial statements with a narrative from the perspective of management on our financial condition, results of operations, liquidity and certain other factors that may affect our future results. Our MD&A is presented in eight sections:

- Forward-Looking Statements and Risk Factors
- Business Overview
- COVID-19 Pandemic - Impact on our Business
- Results of Operations
- Liquidity and Capital Resources
- Non-GAAP Data Reconciliations
- Off-Balance-Sheet Arrangements and Contractual Obligations
- Critical Accounting Policies

### **Forward-Looking Statements and Risk Factors**

*The discussion in this Quarterly Report contains certain forward-looking statements that relate to future plans, events, financial results or performance. You can identify forward-looking statements by those that are not historical in nature, particularly those that use terminology such as "may," "will," "should," "could," "expect," "anticipate," "believe," "estimate," "plan," "project," "predict," "intend," "potential," "continue" or the negative of these or similar terms. These statements are subject to certain risks and uncertainties that could cause actual results to differ materially from our historical experience and our present expectations or projections. These risks and uncertainties include, among others:*

- *Current and future general and industry economic trends and consumer confidence;*
- *Risks inherent in outbreaks of pandemics or contagious disease, including the COVID-19 pandemic;*
- *The effectiveness of our marketing messages;*
- *The efficiency of our advertising and promotional efforts;*
- *Our ability to execute our Total Retail distribution strategy;*
- *Our ability to achieve and maintain acceptable levels of product and service quality, and acceptable product return and warranty claims rates;*
- *Our ability to continue to improve and expand our product line, and consumer acceptance of our products, product quality, innovation and brand image;*
- *Industry competition, the emergence of additional competitive products and the adequacy of our intellectual property rights to protect our products and brand from competitive or infringing activities;*
- *Claims that our products, processes, advertising, or trademarks infringe the intellectual property rights of others;*
- *Availability of attractive and cost-effective consumer credit options;*
- *Our manufacturing processes with minimal levels of inventory, which may leave us vulnerable to shortages in supply;*
- *Our dependence on significant suppliers and third parties and our ability to maintain relationships with key suppliers or third-parties, including several sole-source suppliers or providers of services;*
- *Rising commodity costs and other inflationary pressures;*
- *Risks inherent in global sourcing activities, including tariffs, outbreaks of pandemics or contagious diseases, strikes and the potential for shortages in supply;*
- *Risks of disruption in the operation of any of our main manufacturing facilities or assembly facilities;*
- *Increasing government regulation;*
- *Pending or unforeseen litigation and the potential for adverse publicity associated with litigation;*
- *The adequacy of our and third-party information systems to meet the evolving needs of our business and existing and evolving risks and regulatory standards applicable to data privacy and security;*
- *The costs and potential disruptions to our business related to upgrading our information systems;*
- *The vulnerability of our and third-party information systems to attacks by hackers or other cyber threats that could compromise the security of our systems, result in a data breach or disrupt our business; and*
- *Our ability to attract, retain and motivate qualified management, executive and other key team members, including qualified retail sales professionals and managers.*

*Additional information concerning these, and other risks and uncertainties is contained under the caption "Risk Factors" below in Part II: Item 1A of this Quarterly Report on Form 10-Q and under the same caption in our Annual Report on Form 10-K.*

We have no obligation to publicly update or revise any of the forward-looking statements contained in this Quarterly Report on Form 10-Q.

## **Business Overview**

Individuality is core to Sleep Number. Our purpose driven Company is comprised of over 5,000 passionate team members who are dedicated to our mission of improving lives by individualizing sleep experiences. Our 360 smart beds provide each sleeper with adjustable, personalized comfort for proven quality sleep. We have already improved over 13 million lives as we strive to positively impact the lives of our customers and society. Sleep science and data are the foundation of our innovations. Our award-winning 360 smart beds benefit from our proprietary SleepIQ technology – integrating over 9 billion hours of highly accurate sleep data – to provide effortless comfort and individualized sleep health insights, including a daily SleepIQ score.

As a purpose driven Company in health and wellness, Sleep Number is a leader in sleep innovation. Our vertically integrated business model and role as the exclusive designer, manufacturer, marketer, retailer and servicer of Sleep Number beds allows us to offer consumers high-quality, individualized sleep solutions and services.

We generate revenue by marketing our innovations directly to new and existing customers, and selling products through our Stores, Online, Phone and Chat (Total Retail).

We are committed to delivering superior shareholder value by: (1) increasing consumer demand; (2) leveraging our business model; and (3) deploying capital efficiently.

## **COVID-19 Pandemic - Impact on our Business**

At the onset of the COVID-19 pandemic in mid-March 2020, government restrictions resulted in the temporary closure of most of our retail stores, with 47% of our stores closed on average during the second quarter of 2020. While prioritizing the safety of our team, serving our customers and ensuring business continuity, we swiftly took decisive actions to strengthen our liquidity, cash flows and financial position, and mitigate the future impact on our operations and financial performance.

The pandemic mainly impacted our second quarter of 2020 financial performance, as we generated strong financial performance during the full-year of 2020 and the first quarterly period ended April 3, 2021. However, the pandemic's future effects on consumer demand and our ongoing financial performance remains uncertain. See Part I: Item 2. *Management's Discussion and Analysis of Financial Condition and Results of Operations* and Part II: Item 1A. *Risk Factors* for additional discussion on the COVID-19 pandemic and the impact on our business.

## **Results of Operations**

### **Quarterly and Year-to-Date Results**

Quarterly and year-to-date operating results may fluctuate significantly as a result of a variety of factors, including increases or decreases in sales, timing, amount and effectiveness of advertising expenditures, changes in sales return rates or warranty experience, timing of investments in growth initiatives and infrastructure, timing of store openings/closings and related expenses, changes in net sales resulting from changes in our store base, timing of new product introductions and related expenses, timing of promotional offerings, competitive factors, changes in commodity costs, disruptions in supplies or third-party service providers, seasonality of retail and bedding industry sales, consumer confidence and general economic conditions. In addition, based on the duration and severity of the current global situation involving the COVID-19 pandemic, the extent to which our business and our condensed consolidated financial results are impacted, will depend on future developments, which are highly uncertain and cannot be predicted. Therefore, our historical results of operations may not be indicative of the results that may be achieved for any future period.

### **Highlights**

Financial highlights for the three months ended April 3, 2021 were as follows:

- Net sales for the three months ended April 3, 2021 increased 20% to \$568 million, compared with \$473 million for the same period one year ago.
- The 20% net sales increase included a 20% comparable sales increase in Total Retail, including strong growth in online, phone and chat sales. For additional details, see the components of total net sales change on page 15.
- Sales per store (sales for stores open at least one year, Total Retail, including online, phone and chat sales) on a trailing twelve-month basis for the period ended April 3, 2021 totaled \$3.2 million, 9% higher than the same period last year.
- Operating income for the three months ended April 3, 2021 was \$76 million, an increase of \$24 million, or 45%, compared with \$53 million in the prior-year period. The \$24 million increase in operating income was driven by the 20% increase in net sales and

a 3.6 percentage points (ppt.) reduction in our operating expenses rate, partially offset by a 1.3 ppt. decrease in the gross profit rate.

- The gross profit rate decrease of 1.3 ppt. was primarily due to reinstated incentive compensation (minimal incentive compensation was recorded in the first quarter of 2020 based on the economic uncertainty related to the pandemic), and inflationary cost pressures and higher supply chain costs associated with temporary supply constraints, partially offset by the leverage from the 20% net sales increase.
- The 3.6 ppt. reduction in our operating expenses rate was mainly due to the leveraging impact of the 20% net sales increase. During the three months ended April 3, 2021, we continued to prioritize investments in near- and long-term growth drivers, including \$13.3 million of R&D expenses, 27% more than the same period one year ago.
- Net income for the three months ended April 3, 2021 increased by 70% to \$67 million, compared with net income of \$39 million for the same period one year ago. Net income per diluted share was \$2.51, an 85% increase compared with net income per diluted share of \$1.36 last year.
- We achieved a return on invested capital (ROIC) of 27.6% on a trailing twelve-month basis for the period ended April 3, 2021, compared with 19.1% for the comparable period one year ago.
- Cash provided by operating activities for the three months ended April 3, 2021 increased by \$27 million, or 31%, to \$112 million, compared with \$85 million for the same period one year ago.
- At April 3, 2021, we had \$315 million of borrowings under our revolving credit facility. Net liquidity available under our revolving credit facility was \$131 million at April 3, 2021.
- On April 21, 2021, we amended our revolving credit facility to expand the aggregate availability from \$450 million to \$600 million. We also replenished our outstanding share repurchase authorization to \$600 million effective at the beginning of the fiscal second quarter, April 4, 2021. We remain committed to our capital deployment priorities focused on performance drivers.

The following table sets forth our results of operations expressed as dollars and percentages of net sales. Figures are in millions, except percentages and per share amounts. Amounts may not add due to rounding differences.

	Three Months Ended			
	April 3, 2021		March 28, 2020	
Net sales	\$ 568.3	100.0 %	\$ 472.6	100.0 %
Cost of sales	212.3	37.4 %	170.4	36.1 %
Gross profit	355.9	62.6 %	302.1	63.9 %
Operating expenses:				
Sales and marketing	223.6	39.4 %	207.7	44.0 %
General and administrative	42.6	7.5 %	31.1	6.6 %
Research and development	13.3	2.3 %	10.5	2.2 %
Total operating expenses	279.5	49.2 %	249.3	52.8 %
Operating income	76.4	13.4 %	52.8	11.2 %
Interest expense, net	1.0	0.2 %	2.3	0.5 %
Income before income taxes	75.4	13.3 %	50.5	10.7 %
Income tax expense	8.8	1.6 %	11.3	2.4 %
Net income	\$ 66.6	11.7 %	\$ 39.1	8.3 %
Net income per share:				
Basic	\$ 2.63		\$ 1.40	
Diluted	\$ 2.51		\$ 1.36	
Weighted-average number of common shares:				
Basic	25.4		27.9	
Diluted	26.5		28.8	



The percentage of our total net sales, by dollar volume, was as follows:

	Three Months Ended	
	April 3, 2021	March 28, 2020
Retail stores	86.1 %	92.1 %
Online, phone, chat and other	13.9 %	7.9 %
Total Company	100.0 %	100.0 %

The components of total net sales change, including comparable net sales changes, were as follows:

	Three Months Ended	
	April 3, 2021	March 28, 2020
<b>Sales change rates:</b>		
Retail comparable-store sales <sup>(1)</sup>	12 %	6 %
Online, phone and chat	116 %	21 %
Total Retail comparable sales change <sup>(1)</sup>	20 %	7 %
Net opened/closed stores and other	0 %	4 %
Total Company	20 %	11 %

<sup>(1)</sup> Stores are included in the comparable-store calculations in the 13th full month of operations. Stores that have been remodeled or repositioned within the same shopping center remain in the comparable-store base.

Other sales metrics were as follows:

	Three Months Ended	
	April 3, 2021	March 28, 2020
Average sales per store <sup>(1)(4)</sup> (\$ in thousands)	\$ 3,196	\$ 2,932
Average sales per square foot <sup>(1)(4)</sup>	\$ 1,095	\$ 1,040
Stores > \$2 million in net sales <sup>(2)(4)</sup>	71 %	71 %
Stores > \$3 million in net sales <sup>(2)(4)</sup>	33 %	32 %
Average revenue per mattress unit <sup>(3)</sup>	\$ 5,030	\$ 4,884

<sup>(1)</sup> Trailing-twelve months Total Retail comparable sales per store open at least one year.

<sup>(2)</sup> Trailing-twelve months for stores open at least one year (excludes online, phone and chat sales).

<sup>(3)</sup> Represents Total Retail (stores, online, phone and chat) net sales divided by Total Retail mattress units.

<sup>(4)</sup> Fiscal 2020 included 53 weeks, as compared to 52 weeks in fiscal 2021 and 2019. The additional week in 2020 was in the fiscal fourth quarter. Total Retail comparable sales have been adjusted to remove the estimated impact of the additional week on those metrics.

The number of retail stores operating was as follows:

	Three Months Ended	
	April 3, 2021	March 28, 2020
Beginning of period	602	611
Opened	11	8
Closed	(6)	(8)
End of period	607	611

## **Comparison of Three Months Ended April 3, 2021 with Three Months Ended March 28, 2020**

### **Net sales**

Net sales for the three months ended April 3, 2021 increased by \$96 million, or 20%, to \$568 million, compared with \$473 million for the same period one year ago.

The 20% net sales increase consisted primarily of a 20% comparable sales increase in Total Retail. For additional details, see the components of total net sales change on page 15. Online, phone and chat sales (included in comparable sales noted above) made up 14% of total net sales compared with 8% in the prior year as consumers embrace transacting remotely with Sleep Number as well as in our stores.

The \$96 million net sales increase compared with the same period one year ago was comprised of the following: (i) a \$90 million increase in our Total Retail comparable net sales; and (ii) a \$6 million increase from net store openings. Total Retail mattress unit sales increased 17% compared with the prior year. Total Retail average revenue per mattress unit increased by 3% to \$5,030, compared with \$4,884 in the prior-year period.

### **Gross profit**

Gross profit of \$356 million increased by \$54 million, or 18%, compared with \$302 million for the same period one year ago. The gross profit rate was 62.6% of net sales for the three months ended April 3, 2021, compared with 63.9% for the prior-year comparable period. The current-year gross profit rate decrease of 1.3 ppt. was mainly due to: (i) increased performance-based incentive compensation expense (0.5 ppt.; minimal incentive compensation was recorded in the first quarter of 2020 based on the economic uncertainty related to the pandemic); (ii) inflationary cost pressures and higher supply chain costs associated with temporary supply constraints (0.5 ppt.); and (iii) other miscellaneous items, including product mix (0.6 ppt.); partially offset by (iv) leverage from the 20% net sales increase (0.3 ppt.). In addition, our gross profit rate will fluctuate from quarter to quarter due to a variety of other factors, including return and exchange costs.

### **Sales and marketing expenses**

Sales and marketing expenses for the three months ended April 3, 2021 were \$224 million, or 39.4% of net sales, compared with \$208 million, or 44.0% of net sales, for the same period one year ago. The current-year sales and marketing expenses rate decrease of 4.6 ppt. was primarily due to: (i) the leveraging impact of the 20% net sales increase; and (ii) efficiency gains through our digital ecosystem and operating initiatives. Efficiency gains and operating initiatives included leveraging our media spending, which increased by 17% compared with the prior year, while net sales increased by 20%, and improved store operating productivity.

### **General and administrative expenses**

General and administrative (G&A) expenses totaled \$43 million, or 7.5% of net sales, for the three months ended April 3, 2021, compared with \$31 million, or 6.6% of net sales, in the prior-year period. The \$12 million increase in G&A expenses consisted primarily of: (i) a \$13.9 million increase in employee compensation primarily resulting from a year-over-year increase in company-wide performance-based incentive compensation (minimal incentive compensation was recorded in the first quarter of 2020 based on the economic uncertainty related to the pandemic); partially offset by (ii) a \$2.4 million decrease in travel expenses and other miscellaneous expenses. The G&A expenses rate increased by 0.9 ppt. in the current-year period, compared with the same period one year ago due to the items discussed above, partially offset by the leveraging impact of the 20% net sales increase.

### **Research and development expenses**

Research and development (R&D) expenses increased by 27% to \$13.3 million for the three months ended April 3, 2021, compared with \$10.5 million for the same period last year as we continued to prioritize our long-term innovation initiatives.

### **Interest expense, net**

Interest expense, net decreased to \$1.0 million for the three months ended April 3, 2021, compared with \$2.3 million for the same period one year ago. The \$1.4 million decrease was mainly driven by a lower level of outstanding borrowings during the three months ended April 3, 2021 and a decrease in the weighted-average interest rate on borrowings, compared with the same period one year ago.

## Income tax expense

Income tax expense totaled \$9 million for the three months ended April 3, 2021, compared with \$11 million last year. The effective income tax rate for the three months ended April 3, 2021 was 11.7%, compared with 22.4% for the comparable period last year, reflecting stock-based compensation excess tax benefits of \$10 million in the current-year period compared with approximately \$1 million last year.

## Liquidity and Capital Resources

Managing our liquidity and capital resources is an important part of our commitment to deliver superior shareholder value over time. Our primary sources of liquidity are cash flows provided by operating activities and cash available under our \$600 million revolving credit facility (increased from \$450 million to \$600 million as of April 21, 2021). The cash generated from ongoing operations and cash available under our revolving credit facility are expected to be adequate to maintain operations, and fund anticipated expansion and strategic initiatives for the foreseeable future.

Changes in cash and cash equivalents during the three months ended April 3, 2021 primarily consisted of \$112 million of cash provided by operating activities and a \$74 million net increase in short-term borrowings, offset by \$12 million of cash used to purchase property and equipment, and \$179 million of cash used to repurchase our common stock (based on settlement, \$162 million under our Board-approved share repurchase program and \$17 million in connection with the vesting of employee restricted stock grants).

The following table summarizes our cash flows (\$ in millions). Amounts may not add due to rounding differences:

	Three Months Ended	
	April 3, 2021	March 28, 2020
<b>Total cash provided by (used in):</b>		
Operating activities	\$ 111.6	\$ 84.9
Investing activities	(11.5)	(10.3)
Financing activities	(102.1)	163.0
Net (decrease) increase in cash and cash equivalents	<u>\$ (2.0)</u>	<u>\$ 237.6</u>

Cash provided by operating activities for the three months ended April 3, 2021 was \$112 million, compared with \$85 million for the three months ended March 28, 2020. Significant components of the year-over-year change in cash provided by operating activities included: (i) a \$27 million increase in net income for the three months ended April 3, 2021, compared with the same period one year ago; (ii) a \$29 million fluctuation in customer prepayments due to strong customer demand during the three months ended April 3, 2021 and temporary supply constraints which extended customer delivery timelines; (iii) a \$21 million fluctuation in the amount of compensation and benefits accrued and timing of the related payments resulting from year-over-year changes in Company-wide performance-based incentive compensation; and (iv) an \$11 million fluctuation in prepaid expenses and other assets due to both periods being impacted by the timing of rent payments and prior-year changes in business activities due to the pandemic.

Net cash used in investing activities to purchase property and equipment was \$12 million for the three months ended April 3, 2021, compared with \$10 million for the same period one year ago. The year-over-year increase was due to higher property and equipment purchases for new and remodeled stores.

Net cash used in financing activities was \$102 million for the three months ended April 3, 2021, compared with net cash provided by of \$163 million for the same period last year. During the three months ended April 3, 2021, we repurchased \$179 million of our stock (based on settlement dates, \$162 million under our Board-approved share repurchase program and \$17 million in connection with the vesting of employee restricted stock awards), compared with \$41 million during the same period one year ago. Short-term borrowings increased by \$74 million during the current-year period due to a \$71 million increase in borrowings under our revolving credit facility to \$315 million and a \$3 million increase in book overdrafts which are included in the net change in short-term borrowings. Short-term borrowings increased by \$201 million during the prior-year period due to a \$215 million increase in borrowings under our revolving credit facility based on uncertainty related to the pandemic, partially offset by a decrease in book overdrafts.

Under our Board-approved share repurchase program, we repurchased 1.2 million shares at a cost of \$167 million (based on trade dates, an average of \$136.27 per share) during the three months ended April 3, 2021. During the three months ended March 28, 2020, we repurchased 0.8 million shares at a cost of \$38 million (based on trade dates, an average of \$49.42 per share). There is no expiration date governing the period over which we can repurchase shares. Effective as of April 4, 2021, our Board approved an increase in our total remaining share repurchase authorization to \$600 million.

As of April 3, 2021, we had \$315 million of borrowings under our revolving credit facility. We also had \$4 million in outstanding letters of credit. Net liquidity available under our credit facility was \$131 million at April 3, 2021. The credit agreement provides the lenders with a collateral security interest in substantially all of our assets and those of our subsidiaries and requires us to comply with, among other things, a maximum leverage ratio (4.5x) and a minimum interest coverage ratio (3.0x). Our leverage ratio as defined in our credit agreement was 2.3x as of April 3, 2021. Under the terms of the credit agreement, we pay a variable rate of interest and a commitment fee based on our leverage ratio. The credit agreement is for general corporate purposes, to meet our seasonal working capital requirements and to repurchase our stock. As of April 3, 2021, the weighted-average interest rate on borrowings under the credit facility was 1.5% and we were in compliance with all financial covenants.

On April 21, 2021, we amended our revolving credit facility to increase our net aggregate availability from \$450 million to \$600 million. We maintain the accordion feature which allows us to increase the amount of the credit facility from \$600 million to \$800 million, subject to lenders' approval. The amended credit facility matures in February 2024. There were no other significant changes to the credit facility's terms and conditions.

We have an agreement with Synchrony Bank to offer qualified customers revolving credit arrangements to finance purchases from us (Synchrony Agreement). The Synchrony Agreement contains financial covenants consistent with our credit facility, including a maximum leverage ratio and a minimum interest coverage ratio consistent with our credit agreement. As of April 3, 2021, we were in compliance with all financial covenants.

Under the terms of the Synchrony Agreement, Synchrony Bank sets the minimum acceptable credit ratings, the interest rates, fees and all other terms and conditions of the customer accounts, including collection policies and procedures, and is the owner of the accounts. As the accounts are owned by Synchrony Bank, at no time are the accounts purchased or acquired from us. We are not liable to Synchrony Bank for our customers' credit defaults.

**Non-GAAP Data Reconciliations****Earnings before Interest, Taxes, Depreciation and Amortization (Adjusted EBITDA)**

We define earnings before interest, taxes, depreciation and amortization (Adjusted EBITDA) as net income plus: income tax expense, interest expense, depreciation and amortization, stock-based compensation and asset impairments. Management believes Adjusted EBITDA is a useful indicator of our financial performance and our ability to generate cash from operating activities. Our definition of Adjusted EBITDA may not be comparable to similarly titled definitions used by other companies. The table below reconciles Adjusted EBITDA, which is a non-GAAP financial measure, to the comparable GAAP financial measure.

Our Adjusted EBITDA calculations are as follows (in thousands):

	Three Months Ended		Fifty-Three Weeks Ended	Fifty-Two Weeks Ended
	April 3, 2021	March 28, 2020	April 3, 2021	March 28, 2020
Net income	\$ 66,634	\$ 39,140	\$ 166,683	\$ 95,567
Income tax expense	8,812	11,330	34,265	25,313
Interest expense	978	2,357	7,642	11,338
Depreciation and amortization	14,519	15,253	60,049	61,026
Stock-based compensation	6,417	2,051	26,179	15,070
Asset impairments	89	3	388	49
Adjusted EBITDA	<u>\$ 97,449</u>	<u>\$ 70,134</u>	<u>\$ 295,206</u>	<u>\$ 208,363</u>

**Free Cash Flow**

Our “free cash flow” data is considered a non-GAAP financial measure and is not in accordance with, or preferable to, “net cash provided by operating activities,” or GAAP financial data. However, we are providing this information as we believe it facilitates analysis for investors and financial analysts.

The following table summarizes our free cash flow calculations (in thousands):

	Three Months Ended		Fifty-Three Weeks Ended	Fifty-Two Weeks Ended
	April 3, 2021	March 28, 2020	April 3, 2021	March 28, 2020
Net cash provided by operating activities	\$ 111,598	\$ 84,941	\$ 306,318	\$ 205,965
Subtract: Purchases of property and equipment	11,546	10,351	38,295	49,847
Free cash flow	<u>\$ 100,052</u>	<u>\$ 74,590</u>	<u>\$ 268,023</u>	<u>\$ 156,118</u>

**Non-GAAP Data Reconciliations (continued)****Return on Invested Capital (ROIC)**

(dollars in thousands)

ROIC is a financial measure we use to determine how efficiently we deploy our capital. It quantifies the return we earn on our invested capital. Management believes ROIC is also a useful metric for investors and financial analysts. We compute ROIC as outlined below. Our definition and calculation of ROIC may not be comparable to similarly titled definitions and calculations used by other companies. The tables below reconcile net operating profit after taxes (NOPAT) and total invested capital, which are non-GAAP financial measures, to the comparable GAAP financial measures:

	<b>Fifty-Three Weeks Ended</b>	<b>Fifty-Two Weeks Ended</b>
	<b>April 3, 2021</b>	<b>March 28, 2020</b>
Net operating profit after taxes (NOPAT)		
Operating income	\$ 208,506	\$ 132,203
Add: Rent expense <sup>(1)</sup>	92,650	89,237
Add: Interest income	84	15
Less: Depreciation on capitalized operating leases <sup>(2)</sup>	(24,258)	(22,883)
Less: Income taxes <sup>(3)</sup>	(66,118)	(47,453)
NOPAT	\$ 210,864	\$ 151,119
Average invested capital		
Total deficit	\$ (332,650)	\$ (155,909)
Less: Cash greater than target <sup>(4)</sup>	—	(113,397)
Add: Long-term debt <sup>(5)</sup>	315,522	446,733
Add: Capitalized operating lease obligations <sup>(6)</sup>	741,200	713,896
Total invested capital at end of period	\$ 724,072	\$ 891,323
Average invested capital <sup>(7)</sup>	\$ 763,227	\$ 790,420
Return on invested capital (ROIC) <sup>(8)</sup>	27.6 %	19.1 %

<sup>(1)</sup> Rent expense is added back to operating income to show the impact of owning versus leasing the related assets.

<sup>(2)</sup> Depreciation is based on the average of the last five fiscal quarters' ending capitalized operating lease obligations (see note 6) for the respective reporting periods with an assumed thirty-year useful life. This life assumption is based on our long-term participation in given markets though specific retail location lease commitments are generally 5 to 10 years at inception. This is subtracted from operating income to illustrate the impact of owning versus leasing the related assets.

<sup>(3)</sup> Reflects annual effective income tax rates, before discrete adjustments, of 23.9% for both 2021 and 2020.

<sup>(4)</sup> Cash greater than target is defined as cash, cash equivalents and marketable debt securities less customer prepayments in excess of \$100 million.

<sup>(5)</sup> Long-term debt includes existing finance lease liabilities.

<sup>(6)</sup> A multiple of eight times annual rent expense is used as an estimate for capitalizing our operating lease obligations. The methodology utilized aligns with the methodology of a nationally recognized credit rating agency.

<sup>(7)</sup> Average invested capital represents the average of the last five fiscal quarters' ending invested capital balances.

<sup>(8)</sup> ROIC equals NOPAT divided by average invested capital.

Note - Our ROIC calculation and data are considered non-GAAP financial measures and are not in accordance with, or preferable to, GAAP financial data. However, we are providing this information as we believe it facilitates analysis of the Company's financial performance by investors and financial analysts.

GAAP - generally accepted accounting principles in the U.S.

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

As of April 3, 2021, we were not involved in any unconsolidated special purpose entity transactions. Other than our \$4 million in outstanding letters of credit, we do not have any off-balance-sheet financing.

There have been no material changes in our contractual obligations, other than the amendments to our credit agreement, since the end of fiscal 2020. See Note 5, *Credit Agreement*, of the Notes to our Condensed Consolidated Financial Statements for information regarding our credit agreement. See our Annual Report on Form 10-K for the fiscal year ended January 2, 2021 for additional information regarding our other contractual obligations.

### **Critical Accounting Policies**

We discuss our critical accounting policies and estimates in *Management's Discussion and Analysis of Financial Condition and Results of Operations* in our Annual Report on Form 10-K for the fiscal year ended January 2, 2021. There were no significant changes in our critical accounting policies since the end of fiscal 2020.

## **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to changes in market-based short-term interest rates that will impact our net interest expense. If overall interest rates were one percentage point higher than current rates, our annual net income would decrease by \$2.4 million based on the \$315 million of borrowings under our credit facility at April 3, 2021. We do not manage the interest-rate volatility risk of borrowings under our credit facility through the use of derivative instruments.

## **ITEM 4. CONTROLS AND PROCEDURES**

### **Conclusions Regarding the Effectiveness of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures, as defined in Exchange Act Rule 13a-15(e), that are designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Our management, with the participation of our principal executive officer and principal financial officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this quarterly report. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this quarterly report.

### **Changes in Internal Control**

There were no changes in our internal control over financial reporting during the fiscal quarter ended April 3, 2021, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**PART II: OTHER INFORMATION****ITEM 1. LEGAL PROCEEDINGS**

Our legal proceedings are discussed in Note 12, *Commitments and Contingencies*, Legal Proceedings, in the Notes to Condensed Consolidated Financial Statements in this Quarterly Report on Form 10-Q.

**ITEM 1A. RISK FACTORS**

Our business, financial condition and operating results are subject to a number of risks and uncertainties, including both those that are specific to our business and others that affect all businesses operating in a global environment. Investors should carefully consider the information in this report under the heading, *Management's Discussion and Analysis of Financial Condition and Results of Operations* and also the information under the heading, *Risk Factors* in our most recent Annual Report on Form 10-K. The risk factors discussed in the Annual Report on Form 10-K and in this Quarterly Report on Form 10-Q do not identify all risks that we face because our business operations could also be affected by additional risk factors that are not presently known to us or that we currently consider to be immaterial to our operations.

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

(a) – (b) Not applicable.

(c) Issuer Purchases of Equity Securities

Period	Total Number of Shares Purchased <sup>(1)(2)</sup>	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs <sup>(1)</sup>	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs <sup>(3)</sup>
January 3, 2021 through January 30, 2021	30,802	\$ 81.89	29,700	\$ 244,471,000
January 31, 2021 through February 27, 2021	256,725	\$ 129.25	255,000	\$ 211,501,000
February 28, 2021 through April 3, 2021	1,058,877	\$ 140.22	943,913	\$ 79,471,000
Total	1,346,404	\$ 136.80	1,228,613	\$ 79,471,000

<sup>(1)</sup> Under our Board-approved \$500 million share repurchase program (effective September 29, 2019), we repurchased 1.2 million shares of our common stock at a cost of \$167 million (based on trade dates) during the three months ended April 3, 2021.

<sup>(2)</sup> In connection with the vesting of employee restricted stock grants, we repurchased 117,791 shares of our common stock at a cost of \$16.8 million during the three months ended April 3, 2021.

<sup>(3)</sup> There is no expiration date governing the period over which we can repurchase shares under our Board-approved share repurchase program. Any repurchased shares are constructively retired and returned to an unissued status. Effective as of April 4, 2021, our Board approved an increase in our total remaining share repurchase authorization to \$600 million.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

Not applicable.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**ITEM 5. OTHER INFORMATION**

Not applicable.



**ITEM 6. EXHIBITS**

<b>Exhibit Number</b>	<b>Description</b>
10.1*	<a href="#">Fifth Amendment to Amended and Restated Credit and Security Agreement, dated as of April 21, 2021 among Sleep Number Corporation, U.S. Bank National Association and the several banks and other financial institutions from time to time party thereto</a>
10.2*	<a href="#">Form of Non-Statutory Stock Option Award Agreement (Senior Team) under the Sleep Number Corporation 2020 Equity Incentive Plan</a>
10.3*	<a href="#">Form of Performance Adjusted Restricted Stock Unit Award Agreement (ROIC) (Senior Team) under the Sleep Number Corporation 2020 Equity Incentive Plan</a>
10.4*	<a href="#">Form of Restricted Stock Unit Award Agreement (3-Year Ratable) (Sleep Number Labs) under the Sleep Number Corporation 2020 Equity Incentive Plan</a>
10.5*	<a href="#">Form of Restricted Stock Unit Award Agreement (3-Year Cliff Vest) under the Sleep Number Corporation 2020 Equity Incentive Plan</a>
31.1*	<a href="#">Certification of CEO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
31.2*	<a href="#">Certification of CFO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
32.1*	<a href="#">Certification of CEO pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350</a>
32.2*	<a href="#">Certification of CFO pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350</a>
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

**SIGNATURES**

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

**SLEEP NUMBER CORPORATION**

(Registrant)

Dated: May 7, 2021

By: /s/ Shelly R. Ibach

Shelly R. Ibach

Chief Executive Officer

(principal executive officer)

By: /s/ Robert J. Poirier

Robert J. Poirier

Chief Accounting Officer

(principal accounting officer)

**FIFTH AMENDMENT  
TO  
AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT**

THIS FIFTH AMENDMENT TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (this “Amendment”) is made as of April 21, 2021 (the “Amendment Effective Date”) by and among Sleep Number Corporation, a Minnesota corporation (the “Borrower”), the lenders listed on the signature pages hereto (the “Lenders”) and U.S. Bank National Association, as Issuing Lender (in such capacity, the “Issuing Lender”), Swing Line Lender (in such capacity, the “Swing Line Lender”) and Administrative Agent (in such capacity, the “Administrative Agent”), under that certain Credit and Security Agreement, dated as of February 14, 2018 (as amended, supplemented or otherwise modified from time to time, including by this Amendment, the “Credit Agreement”), by and among the Borrower, the Lenders, the Issuing Lender, the Swing Line Lender and the Administrative Agent. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Credit Agreement.

WHEREAS, the Borrower has requested that the Lenders, the Issuing Lender, the Swing Line Lender and the Administrative Agent agree to make certain modifications to the Credit Agreement; and

WHEREAS, the Borrower, the Lenders, the Issuing Lender, the Swing Line Lender and the Administrative Agent have so agreed on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower, the Lenders, the Issuing Lender, the Swing Line Lender and the Administrative Agent hereby agree as follows.

**ARTICLE I**

**AMENDMENTS**

1.1 Amendments to Credit Agreement. Effective as of the Amendment Effective Date but subject to the satisfaction of the conditions precedent set forth in Article III below, (a) the Credit Agreement is hereby amended in its entirety pursuant to the credit agreement attached hereto as Annex I (including, without limitation, Schedule 1 (Commitments of Lenders) and Schedule 5.9 (Liens) thereto), and (b) Exhibit A-2 to the Credit Agreement is hereby amended in its entirety as follows: “[Intentionally Omitted]”.

**ARTICLE II**

**REPRESENTATIONS AND WARRANTIES**

The Borrower hereby represents and warrants as follows:

2.1 This Amendment and the Credit Agreement, as amended hereby, constitute legal, valid and binding obligations of the Borrower and are enforceable against the Borrower in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors’ rights generally or by general principles of equity.

---

2.2 As of the date hereof and after giving effect to the terms of this Amendment, (i) no Default or Event of Default has occurred and is continuing and (ii) the representations and warranties of the Borrower and the other Credit Parties set forth in Article VI of the Credit Agreement, as amended hereby, are true and correct in all material respects, except to the extent any such representation or warranty is stated to relate solely to an earlier date.

### **ARTICLE III**

#### **CONDITIONS PRECEDENT**

This Amendment shall become effective on the Amendment Effective Date, *provided, however*, that the effectiveness of this Amendment is subject to the satisfaction of each of the following conditions precedent:

3.1 The Administrative Agent shall have received counterparts of this Amendment duly executed by the Borrower, the Administrative Agent, the Issuing Lender, the Swing Line Lender and each of the Lenders required to execute this Amendment in order to give effect hereto.

3.2 To the extent invoiced prior to the Amendment Effective Date, all of the Administrative Agent's reasonable out-of-pocket costs and expenses of the Administrative Agent required to be reimbursed or paid by the Borrower hereunder or under the Credit Agreement shall be fully reimbursed or paid.

3.3 The Administrative Agent shall have received, on behalf of each Lender that has increased its Commitment as of the Amendment Effective Date pursuant to this Amendment, an upfront fee equal to 0.15% multiplied by the amount of such increase.

3.4 The Administrative Agent shall have received, in form and substance reasonably acceptable to it, those deliverables set forth in the list of closing documents attached hereto as Annex II.

### **ARTICLE IV**

#### **RELEASE**

In further consideration of the execution by the Administrative Agent and the Lenders of this Amendment, the Borrower, on behalf of itself and each of its affiliates, and all of the successors and assigns of each of the foregoing (collectively, the "Releasers"), hereby completely, voluntarily, knowingly, and unconditionally releases and forever discharges the Administrative Agent, the Issuing Lender, the Swing Line Lender, the Lenders, each of their advisors, professionals and employees, each affiliate of the foregoing and all of their respective successors and assigns (collectively, the "Releasees"), from any and all claims, actions, suits, and other liabilities, including, without limitation, any so-called "lender liability" claims or defenses (collectively, "Claims"), whether arising in law or in equity, which any of the Releasers ever had, now has or hereinafter can, shall or may have against any of the Releasees for, upon or by reason of any matter, cause or thing whatsoever from time to time occurred on or prior to the date hereof, in any way concerning, relating to, or arising from (i) any of the Releasers, (ii) the Obligations, (iii) all collateral securing the Obligations, (iv) the Credit Agreement or any of the other Loan Documents, and (v) the financial condition, business operations, business plans, prospects or creditworthiness of the Borrower or any affiliate thereof. The Releasers hereby acknowledge that they have been advised by legal counsel of the meaning and consequences of this release.

---

## ARTICLE V

### GENERAL

5.1 Expenses. The Borrower agrees to reimburse the Administrative Agent upon demand for all reasonable out-of-pocket expenses paid or incurred by the Administrative Agent, including, without limitation, reasonable fees, charges and disbursements of outside counsel to the Administrative Agent, incurred in connection with preparation, negotiation and execution of this Amendment and any other document required to be furnished herewith.

5.2 Counterparts. This Amendment 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. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or electronically shall be effective as delivery of a manually executed counterpart of this Amendment. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this Amendment, the documents delivered together herewith, and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, 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, in respect of documents to be signed by entities established within the European Union, the Electronic Signature qualifies as a “qualified electronic signature” within the meaning of the Regulation (EU) n°910/2014 of the European parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transaction in the internal market as amended from time to time and provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without their prior written consent. For purposes hereof, “Electronic Signature” means electronic symbol or process attached to, or associated with, a contract or other record and adopted by a person or entity with the intent to sign, authenticate or accept such contract or record.

5.3 Severability. Any provision in this Amendment that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of this Amendment are declared to be severable.

5.4 **Governing Law. This Amendment shall be construed in accordance with the internal laws (without regard to the conflict of law provisions) of the State of New York, but giving effect to federal laws applicable to national banks.**

5.5 Successors; Enforceability. The terms and provisions of this Amendment shall be binding upon the Borrower, the Administrative Agent, the Issuing Lender, the Swing Line Lender and the Lenders and their respective successors and assigns, and shall inure to the benefit of the Borrower, the Administrative Agent, the Issuing Lender, the Swing Line Lender and the Lenders and their respective successors and assigns.

5.6 Reference to and Effect on the Credit Agreement.

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(a) Upon the effectiveness of this Amendment, on and after the date hereof, each reference in the Credit Agreement to “this Agreement,” “hereunder,” “hereof,” “herein” or words of like import shall mean and be a reference to the Credit Agreement, as amended and modified hereby.

(b) Except as specifically amended above, the Credit Agreement and all other documents, instruments and agreements executed and/or delivered in connection therewith (including, without limitation, all of the Loan Documents) shall remain in full force and effect and are hereby ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or the Lenders, nor constitute a waiver of any provision of the Credit Agreement or any other documents, instruments and agreements executed and/or delivered in connection therewith.

(d) This Amendment is a Loan Document.

5.7 Headings. Section headings in this Amendment are for convenience of reference only, and shall not govern the interpretation of any of the provisions of this Amendment.

5.8 Affirmation. Each of the Borrower and each Guarantor of Payment ratifies and reaffirms all of its obligations, contingent or otherwise, under each Loan Document to which it is a party, and ratifies and reaffirms its grant of liens on and security interests in any of its properties pursuant to each Loan Document to which it is a party and which evidences any such lien or security interest, and confirms that such liens and security interests continue to secure the Secured Obligations as modified pursuant to the Amendment and the transactions contemplated thereby.

5.9 Addition of Lender. By its execution hereof, Capital One, N.A. is becoming a party to this Agreement as a Lender (a “New Lender”). The New Lender agrees that it constitutes a Lender under this Agreement and the other Loan Documents and shall be bound by the provisions of this Agreement and the other Loan Documents. Each New Lender’s Revolving Credit Commitment appears in Schedule 1 hereto. Each New Lender acknowledges and agrees that it has received a copy of this Agreement, together with copies of financial statements and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Agreement and to become a Lender, which analysis and decision has been made independently of and without reliance upon the Administrative Agent or any other Lender. Each New Lender confirms it will, independently and without reliance on the Administrative Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the Loan Documents, and it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

*(signature pages follow)*

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized as of the date first written above.

SLEEP NUMBER CORPORATION, as the Borrower

By: /s/ David R. Callen  
Name: David R. Callen  
Title: EVP and Chief Financial Officer

SELECT COMFORT RETAIL CORPORATION, as a Guarantor of Payment

By: /s/ David R. Callen  
Name: David R. Callen  
Title: EVP and Chief Financial Officer

SELECT COMFORT CANADA HOLDING INC., as a  
Guarantor of Payment

By: /s/ David R. Callen  
Name: David R. Callen  
Title: EVP and Chief Financial Officer

SELECT COMFORT SC CORPORATION, as a  
Guarantor of Payment

By: /s/ David R. Callen  
Name: David R. Callen  
Title: EVP and Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION,  
as a Lender and as Issuing Lender, Swing Line Lender and Administrative  
Agent

By: /s/ Conan Schleicher  
Name: Conan Schleicher  
Title: Senior Vice President

Signature Page to  
Sleep Number Corporation  
Fifth Amendment to Amended and Restated Credit and Security Agreement

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BANK OF AMERICA, N.A, as a Lender

By: /s/ Chad Kardash  
Name: Chad Kardash  
Title: Vice President

Signature Page to  
Sleep Number  
Fifth Amendment to Amended and Restated Credit and Security Agreement

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BMO HARRIS BANK N.A., as a Lender

By: /s/ Wesley M. Anderson  
Name: Wesley M. Anderson  
Title: Managing Director

Signature Page to  
Sleep Number  
Fifth Amendment to Amended and Restated Credit and Security Agreement

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CITIBANK, N.A., as a Lender

By: /s/ Collene Greenlee  
Name: Collene Greenlee  
Title: Authorized Signatory

Signature Page to  
Sleep Number  
Fifth Amendment to Amended and Restated Credit and Security Agreement

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PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Donna Benson  
Name: Donna Benson  
Title: Assistant Vice President

Signature Page to  
Sleep Number  
Fifth Amendment to Amended and Restated Credit and Security Agreement

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KEYBANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Marianne T. Meil

Name: Marianne T. Meil

Title: Sr. Vice President

Signature Page to  
Sleep Number

Fifth Amendment to Amended and Restated Credit and Security Agreement

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CAPITAL ONE, N.A., as a Lender

By: /s/ Neha Shah

Name: Neha Shah

Title: Duly Authorized Signatory

Signature Page to

Sleep Number

Fifth Amendment to Amended and Restated Credit and Security Agreement

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ASSOCIATED BANK, N.A., as a Lender

By: /s/ Nicholas Myers  
Name: Nicholas Myers  
Title: Sr. Vice President

Signature Page to  
Sleep Number  
Fifth Amendment to Amended and Restated Credit and Security Agreement

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**Deal CUSIP Number: 83125PAA8**  
**Revolving Loan CUSIP Number: 83125PAB6**

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**AMENDED AND RESTATED**  
**CREDIT AND SECURITY AGREEMENT**  
**among**

**SLEEP NUMBER CORPORATION**

*as Borrower*

**THE LENDERS NAMED HEREIN**

*as Lenders*

**U.S. BANK NATIONAL ASSOCIATION**

*as Administrative Agent, Swing Line Lender and Issuing Lender*  
**BANK OF AMERICA, N.A.**

**and**

**BMO HARRIS BANK N.A.**

*as Co-Syndication Agents*

**CITIBANK, N.A.**

*as Documentation Agent*

**U.S. BANK NATIONAL ASSOCIATION,**

**BOFA SECURITIES, INC.**  
**BMO CAPITAL MARKETS CORP.**

**and**

**CITIBANK, N.A.**

*as Joint Lead Arrangers*

**and**

**U.S. BANK NATIONAL ASSOCIATION,**

*as Sole Book Runner<sup>1</sup>*

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**dated as of**

**February 14, 2018**

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<sup>1</sup> Arranger and agency titles effective as of the Fifth Amendment Effective Date.

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This AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (as the same may from time to time be amended, restated or otherwise modified, this “Agreement”) is made effective as of the 14th day of February, 2018 among:

(a) SLEEP NUMBER CORPORATION, a Minnesota corporation (the “Borrower”);

(b) the lenders listed on Schedule 1 hereto and each other Eligible Transferee, as hereinafter defined, that from time to time becomes a party hereto pursuant to Section 2.9(b) or 11.10 hereof (collectively, the “Lenders” and, individually, each a “Lender”); and

(c) U.S. BANK NATIONAL ASSOCIATION, a national banking association, as the administrative agent for the Lenders under this Agreement (the “Administrative Agent”).

WITNESSETH:

WHEREAS, the Borrower, the Administrative Agent and the Lenders desire to contract for the establishment of credits in the aggregate principal amounts hereinafter set forth, to be made available to the Borrower upon the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, it is mutually agreed as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1. Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

“Account” means an account, as that term is defined in the U.C.C.

“Account Debtor” means an account debtor, as that term is defined in the U.C.C., or any other Person obligated to pay all or any part of an Account in any manner and includes (without limitation) any Guarantor thereof.

“Acquisition” means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of any Person (other than a Company), or any business unit or division of any Person (other than a Company), (b) the acquisition of in excess of fifty percent (50%) of the outstanding capital stock (or other equity interest) of any Person (other than a Company), or (c) the acquisition of another Person (other than a Company) by a merger, amalgamation or consolidation or any other combination with such Person, including pursuant to any merger or consolidation with, or as a Division Successor pursuant to the Division of, any Person that was not a Domestic Subsidiary prior to such merger or consolidation or Division.

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“Additional Commitment” means that term as defined in Section 2.9(b)(i) hereof.

“Additional Lender” means an Eligible Transferee that shall become a Lender during the Commitment Increase Period pursuant to Section 2.9(b) hereof.

“Additional Lender Assumption Agreement” means an additional lender assumption agreement, in form and substance satisfactory to the Administrative Agent, wherein an Additional Lender shall become a Lender.

“Additional Lender Assumption Effective Date” means that term as defined in Section 2.9(b)(ii) hereof.

“Administrative Agent” means that term as defined in the first paragraph of this Agreement.

“Administrative Agent Fee Letter” means that certain Amended and Restated Administrative Agent Fee Letter, dated as of February 11, 2019, between the Borrower and the Administrative Agent, as the same may from time to time be amended, restated or otherwise modified.

“Advantage” means any payment (whether made voluntarily or involuntarily, by offset of any deposit or other indebtedness or otherwise) received by any Lender in respect of the Obligations, if such payment results in that Lender having less than its pro rata share (based upon its Commitment Percentage) of the Obligations then outstanding.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affected Lender” means a Defaulting Lender or a Downgraded Lender.

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

“Agreed Currencies” means (i) Dollars, (ii) so long as such currencies remain Eligible Currencies, Canadian Dollars, euro, and Pounds Sterling, and (iii) any other Eligible Currency which the Borrower requests the Administrative Agent to include as an Agreed Currency hereunder and which is acceptable to all of the Lenders with Revolving Credit Commitments.

“Agreement” means that term as defined in the first paragraph of this agreement.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Companies from time to time concerning or relating to bribery or corruption.

“Applicable Commitment Fee Rate” means:

- (a) for the period from the Closing Date through March 31, 2018, twenty (20.00) basis points; and
- (b) commencing with the delivery of the Consolidated financial statements of the Borrower for the Quarterly Reporting Period ending December 30, 2017, the number of basis points set forth in the following matrix, based upon the result of the computation of the Net Leverage Ratio as set forth in the Compliance Certificate for such fiscal period and, thereafter, as set forth in each successive Compliance Certificate, as provided below:

Net Leverage Ratio	Applicable Commitment Fee Rate
Greater than or equal to 3.50 to 1.00	40.00 basis points
Greater than or equal to 3.00 to 1.00 but less than 3.50 to 1.00	35.00 basis points
Greater than or equal to 2.50 to 1.00 but less than 3.00 to 1.00	30.00 basis points
Greater than or equal to 2.00 to 1.00 but less than 2.50 to 1.00	25.00 basis points
Greater than or equal to 1.50 to 1.00 but less than 2.00 to 1.00	20.00 basis points
Less than 1.50 to 1.00	15.00 basis points

The first date on which the Applicable Commitment Fee Rate is subject to change is April 1, 2018. After April 1, 2018, changes to the Applicable Commitment Fee Rate shall be effective on the first day of each calendar month following the date upon which the Administrative Agent should have received, pursuant to Section 5.3(c) hereof, the Compliance Certificate. The above pricing matrix does not modify or waive, in any respect, the requirements of Section 5.7 hereof, the rights of the Administrative Agent and the Lenders to charge the Default Rate, or the rights and remedies of the Administrative Agent and the Lenders pursuant to Articles VIII and IX hereof. Notwithstanding anything herein to the contrary, (i) during any period when the Borrower shall have failed to timely deliver the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or the Compliance Certificate pursuant to Section 5.3(c) hereof, until such time as the appropriate Consolidated financial statements and Compliance Certificate are delivered, the Applicable Commitment Fee Rate shall, at the election of the Administrative Agent (which may be retroactively effective to the first day of the calendar month following the date upon which the Administrative Agent should have received the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or pursuant to Section 5.3(c) hereof, the Compliance Certificate), be the highest rate per annum indicated in the above pricing grid regardless of the Net Leverage Ratio at such time, and (ii) in the event that any financial information or certification provided to the Administrative Agent in the Compliance Certificate is shown to be inaccurate (if this Agreement or the Commitment in respect of Revolving Loans is in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Commitment Fee Rate for any period (an “Applicable Commitment Fee Period”) than the Applicable Commitment Fee Rate applied for such Applicable Commitment Fee Period, then (A) the Borrower shall promptly deliver to the Administrative Agent a corrected Compliance Certificate for such Applicable Commitment Fee Period, (B) the Applicable Commitment Fee Rate shall be determined based on such corrected

Compliance Certificate, and (C) the Borrower shall promptly pay to the Administrative Agent the accrued additional fees owing as a result of such increased Applicable Commitment Fee Rate for such Applicable Commitment Fee Period. As of the Second Amendment Effective Date, each of the Net Leverage Ratio and Total Leverage Ratio is greater than or equal to 2.50 to 1.00 but less than 3.00 to 1.00.

“Applicable Margin” means:

(a) for the period from the Closing Date through March 31, 2018, one hundred thirty-seven and one-half (137.5) basis points for Eurocurrency Loans and thirty-seven and one-half (37.5) basis points for Base Rate Loans; and

(b) commencing with the delivery of the Consolidated financial statements of the Borrower for the Quarterly Reporting Period ending December 30, 2017, the number of basis points (depending upon whether Loans are Eurocurrency Loans or Base Rate Loans) set forth in the following matrix, based upon the result of the computation of the Net Leverage Ratio or Total Leverage Ratio, as applicable, as set forth in the Compliance Certificate for such fiscal period and, thereafter, as set forth in each successive Compliance Certificate, as provided below:

Revolving Loans

Net Leverage Ratio	Applicable Basis Points for Eurocurrency Loans	Applicable Basis Points for Base Rate Loans
Greater than or equal to 3.50 to 1.00	225.00	125.00
Greater than or equal to 3.00 to 1.00 but less than 3.50 to 1.00	200.00	100.00
Greater than or equal to 2.50 to 1.00 but less than 3.00 to 1.00	175.00	75.00
Greater than or equal to 2.00 to 1.00 but less than 2.50 to 1.00	150.00	50.00
Greater than or equal to 1.50 to 1.00 but less than 2.00 to 1.00	137.50	37.50
Less than 1.50 to 1.00	125.00	25.00

The first date on which the Applicable Margin is subject to change is April 1, 2018. After April 1, 2018, changes to the Applicable Margin shall be effective on the first day of each calendar month following the date upon which the Administrative Agent should have received, pursuant to Section 5.3(c) hereof, the Compliance Certificate. The above pricing matrix does not modify or waive, in any respect, the requirements of Section 5.7 hereof, the rights of the Administrative Agent and the Lenders to charge the Default Rate, or the rights and remedies of the

Administrative Agent and the Lenders pursuant to Articles VIII and IX hereof. Notwithstanding anything herein to the contrary, (i) during any period when the Borrower shall have failed to timely deliver the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or the Compliance Certificate pursuant to Section 5.3(c) hereof, until such time as the appropriate Consolidated financial statements and Compliance Certificate are delivered, the Applicable Margin shall, at the election of the Administrative Agent (which may be retroactively effective to the first day of the calendar month following the date upon which the Administrative Agent should have received the Consolidated financial statements pursuant to Section 5.3(a) or (b) hereof, or pursuant to Section 5.3(c) hereof, the Compliance Certificate), be the highest rate per annum indicated in the above pricing grid for Loans of that type, regardless of the Net Leverage Ratio or Total Leverage Ratio, as applicable, at such time, and (ii) in the event that any financial information or certification provided to the Administrative Agent in the Compliance Certificate is shown to be inaccurate (if this Agreement or the Commitment is in effect when such inaccuracy is discovered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an “Applicable Margin Period”) than the Applicable Margin applied for such Applicable Margin Period, then (A) the Borrower shall promptly deliver to the Administrative Agent a corrected Compliance Certificate for such Applicable Margin Period, (B) the Applicable Margin shall be determined based on such corrected Compliance Certificate, and (C) the Borrower shall promptly pay to the Administrative Agent the accrued additional interest owing as a result of such increased Applicable Margin for such Applicable Margin Period. As of the Second Amendment Effective Date, each of the Net Leverage Ratio and Total Leverage Ratio is greater than or equal to 2.50 to 1.00 but less than 3.00 to 1.00.

“Approved Fund” means any Person (other than a natural Person) that is engaged in making, purchasing, holding or investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an affiliate of a Lender, or (c) an entity or an affiliate of an entity that administers or manages a Lender.

“Approximate Equivalent Amount” of any currency with respect to any amount of Dollars means the Equivalent Amount of such currency with respect to such amount of Dollars on or as of such date, rounded up to an amount not greater than the nearest .01 (1/100) of the standard unit of such currency, as determined by the Administrative Agent from time to time.

“Assignment Agreement” means an Assignment and Acceptance Agreement in the form of the attached Exhibit E.

“Authorized Officer” means a Financial Officer or other individual authorized by a Financial Officer in writing (with a copy to the Administrative Agent) to handle certain administrative matters in connection with this Agreement.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement 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 to clause (v) of Section 3.5(b).

“Bailee’s Waiver” means a bailee’s waiver, in form and substance satisfactory to the Administrative Agent, delivered by a Credit Party in connection with this Agreement, as such waiver may from time to time be amended, restated or otherwise modified.

“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, regulation rule 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 Product Agreements” means those certain cash management services and other agreements entered into from time to time between a Company and the Administrative Agent or a Lender (or an affiliate of a Lender) in connection with any of the Bank Products.

“Bank Product Obligations” means all obligations, liabilities, contingent reimbursement obligations, fees and expenses owing by a Company to the Administrative Agent or any Lender (or an affiliate of a Lender) pursuant to or evidenced by the Bank Product Agreements.

“Bank Products” means a service or facility extended to a Company by the Administrative Agent or any Lender (or an affiliate of a Lender) for (a) credit cards and credit card processing services, (b) debit cards, purchase cards and stored value cards, (c) ACH transactions, and (d) cash management, including controlled disbursement, accounts or services.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy”, as now or hereafter in effect, or any successor thereto, as hereafter amended.

“Base Rate” means, for any day, a rate per annum equal to the highest of (a) 0.00%, (b) the Prime Rate, (c) one-half of one percent (.50%) in excess of the Federal Funds Effective Rate, and (d) one percent (1.00%) in excess of the Eurocurrency Rate for a Dollar-denominated Loan for a one-month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day). Any change in the Base Rate shall be effective immediately from and after such change in the Base Rate.

“Base Rate Loan” means a Revolving Loan described in Section 2.2(a) hereof that shall be denominated in Dollars and on which the Borrower shall pay interest at the Derived Base Rate.

“Benchmark” means, initially, the Eurocurrency Rate; provided that if a Benchmark Transition Event, a Term SOFR Transition Event, or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to the Eurocurrency Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has become effective pursuant to Section 3.5(b).

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

- (1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;
- (2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;
- (3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor 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 the then-current Benchmark for syndicated credit facilities denominated in the applicable currency at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is 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; provided further that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the “Benchmark Replacement” shall revert to and shall be deemed to be the sum of (a) Term SOFR and (b) the related Benchmark Replacement Adjustment, as set forth in clause (1) of this definition (subject to the first proviso above). If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the 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 for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

- (1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Administrative Agent:



(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (3) of the definition of “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 for the applicable Corresponding Tenor giving due consideration to (i) 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 on the applicable Benchmark Replacement Date or (ii) 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 the applicable currency;

provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Eurocurrency Loan,” the definition of “Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the 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 such Benchmark Replacement 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:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) 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);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein;

(3) in the case of a Term SOFR Transition Event, the date that is 30 days after the date a Term SOFR Notice is provided to the Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such Term SOFR Notice from the Borrower; or

(4) in the case of an Early Opt-in Election, the sixth Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) 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 the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) 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);

(2) 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 Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, 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

(3) 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 no longer 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 Unavailability Period” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.5(b) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.5(b).

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in 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.

“Borrower” means that term as defined in the first paragraph of this Agreement.

“Borrower Investment Policy” means the Investment Policy of the Borrower in effect as of the Closing Date, together with such modifications as approved from time to time by the board of directors of the Borrower.

“Business Day” means (i) with respect to any borrowing, payment or rate selection of Eurocurrency Loans, a day (other than a Saturday or Sunday) on which banks generally are open in New York City, New York and London, England for the conduct of substantially all of their commercial lending activities, interbank wire transfers can be made on the Fedwire system and dealings in the applicable Agreed Currency are carried on in the London interbank market or the principal financial center of such Agreed Currency and (ii) for all other purposes, a day (other than a Saturday or Sunday) on which banks generally are open in New York City, New York for the conduct of substantially all of their commercial lending activities and interbank wire transfers can be made on the Fedwire system.

“Canadian Dollar” means the lawful currency of Canada.

“Capital Distribution” means a payment made, liability incurred or other consideration given by a Company to any Person that is not a Company, (a) for the purchase, acquisition, redemption, repurchase, payment or retirement of any capital stock or other equity interest of such Company, or (b) as a dividend, return of capital or other distribution (other than any stock dividend, stock split or other equity distribution payable only in capital stock or other equity of such Company) in respect of such Company’s capital stock or other equity interest.

“Capitalized Lease Obligations” means obligations of the Companies for the payment of rent for any real or personal property under leases or agreements to lease that, in accordance with GAAP, have been or should be capitalized on the books of the lessee and, for purposes hereof, the amount of any such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Collateral Account” means a commercial Deposit Account designated “cash collateral account” and maintained by the Borrower with the Administrative Agent, without liability by the Administrative Agent or the Lenders to pay interest thereon, from which account the Administrative Agent, on behalf of the Lenders, shall have the exclusive right to withdraw funds until all of the Secured Obligations (other than unasserted contingent indemnity obligations) are paid in full.

“Cash Equivalents” means (a) cash equivalents as determined in accordance with GAAP, and (b) other investments permitted under the Borrower Investment Policy that have a maturity of no more than two years, so long as the weighted average maturity of all such investments permitted under the Borrower Investment Policy does not exceed nine months.

“Cash Security” means all cash, instruments, Deposit Accounts, Securities Accounts and cash equivalents, in each case whether matured or unmatured, whether collected or in the process of collection, upon which a Credit Party presently has or may hereafter have any claim or

interest, wherever located, including but not limited to any of the foregoing that are presently or may hereafter be existing or maintained with, issued by, drawn upon, or in the possession of the Administrative Agent or any Lender.

“CDOR Rate” means, with respect to the relevant Interest Period, the greater of (a) 0.00% and (b) the per annum rate equal to the arithmetic average of the annual yield rates applicable to Canadian dollar bankers’ acceptances for such Interest Period (or if such Interest Period is not equal to a number of months, for a term equivalent to the number of months closest to such Interest Period) on the “CDOR Page” (or any display substituted therefor) of Reuters Monitor Money Rates Services (or such other page or commercially available source displaying Canadian interbank bid rates for Canadian dollar bankers’ acceptances as may be designated by the Administrative Agent from time to time) at or about 10:00 a.m. (Toronto, Ontario time) two (2) Business Days prior to the commencement of such Interest Period plus the Applicable Margin for Eurocurrency Loans; provided, that if such Canadian dollar CDOR rate is unavailable at any time pursuant to the foregoing methodology, the Administrative Agent may select, using its reasonable judgment, an alternative published interest rate in order to determine such rate.

“Change in Control” means:

(a) the acquisition of, directly or indirectly, beneficially (within the meaning of Rules 13d-3 and 13d-5 of the Exchange Act) or of record, on or after the Closing Date, by any Person or group (within the meaning of Sections 13d and 14d of the Exchange Act), of shares representing more than thirty percent (30%) of the aggregate ordinary Voting Power represented by the issued and outstanding equity interests of the Borrower;

(b) occupation at any time of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) directors of the Borrower on the date on this Agreement nor (ii) nominated or appointed by the board of directors of the Borrower; or

(c) if the Borrower shall cease to own, directly or indirectly, one hundred percent (100%) of the aggregate ordinary Voting Power represented by the issued and outstanding equity interests of each of its Subsidiaries.

“Closing Date” means the effective date of this Agreement as set forth in the first paragraph of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended, together with the rules and regulations promulgated thereunder.

“Collateral” means (a) all of the Borrower’s now existing and hereafter acquired or arising (i) personal property, (ii) Accounts, Investment Property, instruments, contract rights, chattel paper, documents, supporting obligations, letter-of-credit rights, Pledged Securities, Pledged Notes (if any), Commercial Tort Claims, General Intangibles, Inventory, and Equipment, (iii) funds now or hereafter on deposit in the Cash Collateral Account, if any, and (iv) Cash Security; and (b) Proceeds and products of, additions and accessions to, and

substitutions for, any of the foregoing; provided that Collateral shall not include Excluded Collateral.

“Commercial Tort Claim” means a commercial tort claim, as that term is defined in the U.C.C.

“Commitment” means the obligation hereunder of the Lenders, during the Commitment Period, to make Loans and to participate in Swing Loans and the issuance of Letters of Credit pursuant to the Revolving Credit Commitment, up to the Total Commitment Amount.

“Commitment Increase Period” means the period from the Closing Date to the date that is six months prior to the last day of the Commitment Period.

“Commitment Percentage” means, for each Lender, such Lender’s percentage of the Commitment in respect of Revolving Loans, Swing Loans and Letters of Credit as set forth opposite such Lender’s name under the column headed “Commitment Percentage”, as listed in Schedule 1 hereto (taking into account any reallocations pursuant to Section 2.5(f) hereof and assignments pursuant to Section 11.10 hereof).

“Commitment Period” means the period from the Closing Date to February 11, 2024, or such earlier date on which the Commitment in respect of Revolving Loans, Swing Loans and Letters of Credit shall have been terminated pursuant to Article IX hereof.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), as amended from time to time, together with the rules and regulations promulgated thereunder.

“Companies” means the Borrower and all Subsidiaries.

“Company” means the Borrower or a Subsidiary.

“Compliance Certificate” means a Compliance Certificate in the form of the attached Exhibit D.

“Consideration” means, in connection with an Acquisition, the aggregate consideration paid or to be paid, including borrowed funds, cash, deferred payments, the issuance of securities or notes, the assumption or incurring of liabilities (direct or contingent), the payment of consulting fees or fees for a covenant not to compete and any other consideration paid or to be paid for such Acquisition.

“Consignee’s Waiver” means a consignee’s waiver (or similar agreement), in form and substance reasonably satisfactory to the Administrative Agent, delivered by a Credit Party in connection with this Agreement, as such waiver may from time to time be amended, restated or otherwise modified.

“Consolidated” means the resultant consolidation of the financial statements of the Borrower and its Subsidiaries in accordance with GAAP, including principles of consolidation

consistent with those applied in preparation of the consolidated financial statements referred to in Section 6.14 hereof.

“Consolidated Depreciation and Amortization Charges” means, for any period, the aggregate of all depreciation and amortization charges for fixed assets, leasehold improvements and general intangibles (specifically including goodwill) of the Borrower for such period, as determined on a Consolidated basis.

“Consolidated EBITDA” means, for any period, as determined on a Consolidated basis, (a) Consolidated Net Earnings for such period plus, without duplication, the aggregate amounts deducted in determining such Consolidated Net Earnings in respect of (i) Consolidated Interest Expense, (ii) Consolidated Income Tax Expense, (iii) Consolidated Depreciation and Amortization Charges, (iv) reasonable non-recurring non-cash losses not incurred in the ordinary course of business, (v) non-cash expenses incurred in connection with stock-based compensation, (vi) non-cash impairment expenses relating to store closures or remodeling during such period, and (vii) amortization of fees payable in connection with the incurrence of Indebtedness during such period; minus (b) to the extent included in Consolidated Net Earnings for such period, non-recurring non-cash gains not incurred in the ordinary course of business.

“Consolidated EBITDAR” means, for any period, as determined on a Consolidated basis, (a) Consolidated EBITDA, plus (b) Consolidated Rent Expense.

“Consolidated Funded Indebtedness” means, at any date, all Indebtedness (including, but not limited to, short-term, long-term and Subordinated Indebtedness, if any) of the Borrower, as determined on a Consolidated basis.

“Consolidated Income Tax Expense” means, for any period, all provisions for taxes based on the gross or net income of the Borrower (including, without limitation, any additions to such taxes, and any penalties and interest with respect thereto), as determined on a Consolidated basis.

“Consolidated Interest Expense” means, for any period, the interest expense (including, without limitation, the “imputed interest” portion of Capitalized Lease Obligations, synthetic leases and asset securitizations, if any, and excluding deferred financing costs) of the Borrower for such period, as determined on a Consolidated basis.

“Consolidated Net Earnings” means, for any period, the net income (loss) of the Borrower for such period, as determined on a Consolidated basis.

“Consolidated Rent Expense” means, for any period, the total rent expense with respect to real and personal property of the Borrower for such period, as determined on a Consolidated basis and as reported in its financial statements.

“Consolidated Total Assets” means, for any Fiscal Year, total assets of the Companies, calculated in accordance with GAAP on a Consolidated basis as of the last day of such Fiscal Year.

“Control Agreement” means a Deposit Account Control Agreement or Securities Account Control Agreement.

“Controlled Group” means a Company and each Person required to be aggregated with a Company under Code Section 414(b), (c), (m) or (o).

“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.

“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” is defined in Section 11.23.

“Credit Event” means the making by the Lenders of a Loan, the conversion by the Lenders of a Base Rate Loan to a Eurocurrency Loan, the continuation by the Lenders of a Eurocurrency Loan after the end of the applicable Interest Period, the making by the Swing Line Lender of a Swing Loan, or the issuance (or amendment or renewal) by the Issuing Lender of a Letter of Credit.

“Credit Party” means the Borrower, and any Subsidiary or other Affiliate that is a Guarantor of Payment.

“Customary Setoffs” means, as to any Securities Intermediary or depository institution, as applicable, with respect to any Securities Account or Deposit Account, as applicable, maintained with such Person, setoffs and chargebacks by such Person against such Securities Account or Deposit Account, as applicable, that directly relate to the maintenance and administration thereof, including, without limitation, for the following purposes: (a) administrative and maintenance fees and expenses; (b) items deposited in or credited to the account and returned unpaid or otherwise uncollected or subject to an adjustment entry; (c) adjustments or corrections of posting or encoding errors; (d) any ACH credit or similar entries that are subsequently returned thereafter; (e) items subject to a claim against the depository bank/securities intermediary for breach of transfer, presentment, encoding, retention or other warranty under Federal Reserve Regulations or Operating Circulars, ACH or other clearing house rules, or applicable law (including, without limitation, Articles 3, 4 and 4A of the U.C.C.); and (f) chargebacks in connection with merchant card transactions.



“Daily Eurodollar Rate” means, with respect to a Swing Loan accruing interest at such rate, a rate per annum equal to the quotient obtained by dividing (x) the greater of (1) 0.00% and (2) the applicable interest settlement rate for deposits in Dollars administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for one month appearing on Reuters Screen LIBOR01 (or on any successor or substitute page on such screen) as of 11:00 a.m. (London time) on a Business Day, by (y) 1.00 minus the Reserve Percentage (expressed as a decimal); provided, that, if Reuters Screen LIBOR01 (or any successor or substitute page) is not available to the Administrative Agent for any reason, the applicable Daily Eurodollar Rate for one month shall instead be the applicable interest settlement rate for deposits in Dollars administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for one month as reported by any other generally recognized financial information service selected by the Administrative Agent as of 11:00 a.m. (London time) on a Business Day. For purposes of determining any interest rate hereunder or under any other Loan Document which is based on the Daily Eurodollar Rate, such interest rate shall change as and when the Daily Eurodollar Rate shall change. The Daily Eurodollar Rate shall be unavailable when and to the extent the Eurocurrency Rate is unavailable.

“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.

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

“Default” means an event or condition that constitutes, or with the lapse of any applicable grace period or the giving of notice or both would constitute, an Event of Default.

“Default Rate” means (a) with respect to any Loan or other Obligation for which a rate is specified, a rate per annum equal to two percent (2%) in excess of the rate otherwise applicable thereto, and (b) with respect to any other amount, if no rate is specified or available, a rate per annum equal to two percent (2%) in excess of the Derived Base Rate from time to time in effect.

“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 a Lender, as reasonably determined by the Administrative Agent, that (a) has failed (which failure has not been cured) to fund any Loan or any participation interest in Letters of Credit or Swing Loans required to be made hereunder in accordance with the terms hereof (unless such Lender shall have notified the Administrative Agent and the Borrower in writing of its good faith determination that a condition under

Section 4.1 hereof to its obligation to fund any Loan shall not have been satisfied); (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or generally under other agreements in which it commits to extend credit; (c) has failed, within three Business Days after receipt of a written request from the Administrative Agent or the Borrower to confirm that it will comply with the terms of this Agreement relating to its obligation to fund prospective Loans or participations in Letters of Credit or Swing Loans, and such request states that the requesting party has reason to believe that the Lender receiving such request may fail to comply with such obligation, and states such reason; (d) has failed to pay to the Administrative Agent or any other Lender when due an amount owed by such Lender to the Administrative Agent or any other Lender pursuant to the terms of this Agreement, unless such amount is subject to a good faith dispute or such failure has been cured; or (e) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets (other than an Undisclosed Administration), including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action. Any Defaulting Lender shall cease to be a Defaulting Lender when the Administrative Agent determines, in its reasonable discretion, that such Defaulting Lender is no longer a Defaulting Lender based upon the characteristics set forth in this definition.

“Deferred Payments” means payments owing for obligations incurred in the ordinary course of business by any of the Companies to third-parties for property sold (other than the sale of real property) or services provided or rendered by such third-parties, including, without limitation, rent to landlords for leased properties, payments owing to professionals (such as accounting firms) and other similar payments; provided, that the applicable Company and the applicable third-party have contractually agreed to defer payment of such amount as a result of the general impact of COVID-19 virus, and the applicable Company in good faith expects to pay such deferred amount to such third-party at a later date acceptable to such third-party.

“Deposit Account” means a deposit account, as that term is defined in the U.C.C.

“Deposit Account Control Agreement” means each Deposit Account Control Agreement among a Credit Party, the Administrative Agent and a depository institution, dated on or after the Closing Date, to be in form and substance satisfactory to the Administrative Agent, as the same may from time to time be amended, restated or otherwise modified.

“Derived Base Rate” means a rate per annum equal to the sum of the Applicable Margin (from time to time in effect) for Base Rate Loans plus the Base Rate.

“Derived Eurocurrency Rate” means a rate per annum equal to the sum of the Applicable Margin (from time to time in effect) for Eurocurrency Loans plus the Eurocurrency Rate.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale and leaseback transaction and any issuance of equity interests by a Subsidiary of such Person), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Dividing Person” has the meaning assigned to it in the definition of “Division”.

“Division” means the division of the assets, liabilities and/or obligations of a Person (the “Dividing Person”) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“Division Successor” means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person which retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

“Dodd-Frank Act” means the Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173) signed into law on July 21, 2010, as amended from time to time.

“Dollar” or the \$ sign means lawful currency of the United States.

“Dollar Amount” means, on any date of determination, (a) with respect to any amount in Dollars, such amount, and (b) with respect to any amount in an Agreed Currency, the equivalent in Dollars of such amount, determined by the Administrative Agent pursuant to Section 2.5(g) using the Exchange Rate with respect to such Agreed Currency at the time in effect.

“Domestic Subsidiary” means a Subsidiary that is not a Foreign Subsidiary.

“Dormant Subsidiary” means a Company that (a) is not a Credit Party or the direct or indirect equity holder of a Credit Party, (b) has aggregate assets of less than Fifty Thousand Dollars (\$50,000) (or the foreign currency equivalent of such amount), and (c) has no direct or indirect Subsidiaries with aggregate assets, for such Company and all such Subsidiaries, of more than Fifty Thousand Dollars (\$50,000) (or the foreign currency equivalent of such amount).

“Downgraded Lender” means a Lender that has a non-credit enhanced senior unsecured debt rating below investment grade from either Moody’s or Standard & Poor’s, or any other nationally recognized statistical rating organization recognized as such by the SEC, and that has been designated by the Administrative Agent, in its reasonable discretion, as a Downgraded Lender. Any Downgraded Lender shall cease to be a Downgraded Lender when the Administrative Agent determines, in its reasonable discretion, that such Downgraded Lender is no longer a Downgraded Lender based upon the characteristics set forth in this definition.

“Early Opt-in Election” means, if the then-current Benchmark is the Eurocurrency Rate, the occurrence of:

(1) a notification by the Administrative Agent to each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as the then-current benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from the Eurocurrency Rate and the provision by the Administrative Agent of written notice of such election to the Lenders.

“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 subpart (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in subparts (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 Currency” means any currency other than Dollars that is readily available, freely traded, in which deposits are customarily offered to banks in the London interbank market, convertible into Dollars in the international interbank market available to the Lenders in such market and as to which a Dollar Amount may be readily calculated; provided, that Canadian Dollars shall constitute an Eligible Currency even if not customarily offered on the London interbank market so long as the CDOR Rate may be determined for Canadian Dollar Loans pursuant to the definition of CDOR Rate, and Canadian Dollars otherwise satisfy the requirements of this definition of Eligible Currency. If, after the designation by the Lenders of any currency as an Agreed Currency, currency control or other exchange regulations are imposed in the country in which such currency is issued, or any other event occurs, in each case with the result that different types of such currency are introduced, such country’s currency is, (i) in the determination of the Administrative Agent, no longer readily available or freely traded, (ii) as to which, in the determination of the Administrative Agent, a Dollar Amount is not readily calculable, or (iii) no longer a currency in which the Required Lenders are willing to make Loans (each of (i), (ii) and (iii), a “Disqualifying Event”), then the Administrative Agent shall promptly notify the Lenders and the Borrower, and such country’s currency shall no longer be an Agreed Currency until such time as the Disqualifying Event(s) no longer exist, but in any event within five (5) Business Days after receipt of such notice from the Administrative Agent, the Borrower

shall repay all Loans made in the currency to which the Disqualifying Event applies in Dollars or convert such Loans into the Dollar Amount of Loans in Dollars, subject to the other terms contained in Article II.

“Eligible Transferee” means (a) any Lender (other than an Affected Lender), any affiliate of a Lender and any Approved Fund, and (b) any commercial bank, insurance company, investment or mutual fund or other Person (other than a natural Person or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person) that extends credit or buys loans of the type made hereunder as part of its principal business; provided that no Company, no Affiliate of a Company, nor any Person acting at the direction of, or in concert with, any such Person, shall be an Eligible Transferee.

“Environmental Laws” means all provisions of law (including the common law), statutes, ordinances, codes, rules, guidelines, policies, procedures, orders-in-council, regulations, permits, licenses, judgments, writs, injunctions, decrees, orders, awards and standards promulgated by a Governmental Authority or by any court, agency, instrumentality, regulatory authority or commission of any of the foregoing concerning environmental health or safety and protection of, or regulation of the discharge of substances into, the environment.

“Environmental Permits” means all permits, licenses, authorizations, certificates, approvals or registrations required by any Governmental Authority under any Environmental Laws.

“Equipment” means equipment, as that term is defined in the U.C.C.

“Equivalent Amount” of any currency at any date means the equivalent in Dollars of such currency, calculated on the basis of the arithmetic mean of the buy and sell spot rates of exchange of the Administrative Agent in the London interbank market (or other market where the Administrative Agent’s foreign exchange operations in respect of such currency are then being conducted) for such other currency at or about 11:00 a.m. (Central time) on the date on which such amount is to be determined, rounded up to an amount not greater than the nearest .01 (1/100) of the standard unit of such currency, as determined by the Administrative Agent from time to time; *provided, however*, that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent may use any reasonable method it deems appropriate to determine such amount, and such determination shall be conclusive absent manifest error.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated pursuant thereto.

“ERISA Event” means (a) the existence of a condition or event with respect to an ERISA Plan that would reasonably be expected to result in the imposition of a material excise tax under Chapter 43 of the Code or any other material liability under ERISA on a Company or of the imposition of a Lien on the assets of a Company pursuant to Section 430(k) of the Code or Section 4068 of ERISA; (b) the engagement by a Company in a non-exempt “prohibited transaction” (as defined under ERISA Section 406 or Code Section 4975) or a breach of a

fiduciary duty under ERISA with respect to an ERISA Plan that, in each case could reasonably be expected to result in material liability to a Company; (c) the application by a Controlled Group member for a waiver from the minimum funding requirements of Code Section 412 or ERISA Section 302 or a Pension Plan is subject to funding based limitations pursuant to Code Section 401(a) (29) or 436; (d) the occurrence of a Reportable Event with respect to any Pension Plan as to which notice is required to be provided to the PBGC; (e) the withdrawal by a Controlled Group member from a Multiemployer Plan in a “complete withdrawal” or a “partial withdrawal” (as such terms are defined in ERISA Sections 4203 and 4205, respectively) that could reasonably be expected to result in material liability to a Company; (f) the failure of an ERISA Plan (and any related trust) that is intended to be qualified under Code Sections 401 and 501 to be so qualified or the failure of any “cash or deferred arrangement” under any such ERISA Plan to meet the requirements of Code Section 401(k) that, in each case, could reasonably be expected to result in material liability to a Company; (g) the taking by the PBGC of any steps to terminate a Pension Plan or appoint a trustee to administer a Pension Plan, or the taking by a Controlled Group member of any steps to terminate a Pension Plan that would reasonably be expected to result in material liability to a Company; (h) the failure by a Controlled Group member or an ERISA Plan to satisfy any requirements of law applicable to an ERISA Plan that would reasonably be expected to result in material liability to a Company; (i) the commencement, existence or, to the knowledge of a Company, threatening of a claim, action, suit, audit or investigation with respect to an ERISA Plan, other than a routine claim for benefits that would reasonably be expected to result in material liability to a Company; or (j) any incurrence by or any expectation of the incurrence by a Controlled Group member of any liability for post-retirement benefits under any Welfare Plan, other than as required by ERISA Section 601, *et. seq.* or Code Section 4980B or other applicable law that would reasonably be expected to result in material liability to a Company. As used in this definition of “ERISA Event”, “material” means the measure of a matter of significance that shall be determined as being an amount equal to Twelve Million Five Hundred Thousand Dollars (\$12,500,000).

“ERISA Plan” means an “employee benefit plan” (within the meaning of ERISA Section 3(3)) that a Controlled Group member at any time sponsors, maintains, contributes to, has liability with respect to or has an obligation to contribute to such plan.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Eurocurrency Liabilities” shall have the meaning assigned to that term in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

“Eurocurrency” means an Agreed Currency denominated deposit in a bank or branch outside of the United States.

“Eurocurrency Loan” means a Revolving Loan described in Section 2.2(a) hereof that shall be denominated in an Agreed Currency and on which the Borrower shall pay interest at the Derived Eurocurrency Rate.

“Eurocurrency Rate” means (i) for a Eurocurrency Loan denominated in Canadian Dollars, the CDOR Rate, and (ii) with respect to a Eurocurrency Loan in an Agreed Currency other than Canadian Dollars, for any Interest Period, a rate per annum equal to the quotient obtained by dividing (x) the greater of (1) 0.00% and (2) the applicable interest settlement rate for deposits in the applicable Agreed Currency administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) appearing on the applicable Reuters Screen (or on any successor or substitute page on such screen) as of 11:00 a.m. (London time) on the Quotation Date for such Interest Period, and having a maturity equal to such Interest Period, by (y) 1.00 minus the Reserve Percentage (expressed as a decimal); provided, that, if the applicable Reuters Screen (or any successor or substitute page) is not available to the Administrative Agent for any reason, the applicable Eurocurrency Rate for the relevant Interest Period shall instead be the applicable interest settlement rate for deposits in the applicable Agreed Currency administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) as reported by any other generally recognized financial information service selected by the Administrative Agent as of 11:00 a.m. (London time) on the Quotation Date for such Interest Period, and having a maturity equal to such Interest Period.

“Event of Default” means an event or condition that shall constitute an event of default as defined in Article VIII hereof.

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

“euro” and/or “EUR” means the single currency of the participating member states of the EU.

“Exchange Rate” means on any day, for purposes of determining the Dollar Amount of any other currency, the rate at which such other currency may be exchanged into Dollars at the time of determination on such day on the Reuters WRLD Page for such currency. In the event that such rate does not appear on any Reuters WRLD Page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower, or, in the absence of such an agreement, 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 such time as the Administrative Agent shall elect after determining that such rates shall be the basis for determining the Exchange Rate, on such date for the purchase of Dollars for delivery two (2) 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 may use any reasonable method it deems appropriate to determine such rate, and such determination shall be presumed correct absent manifest error.

“Excluded Collateral” means (a) any intent-to-use trademark application filed with the United States Patent and Trademark Office in Washington D.C. pursuant to 15 U.S.C. § 1051(b) to the extent such application would be deemed to be transferred in violation of 15 U.S.C. § 1060(a) as a result of the security interest granted herein, or otherwise invalidated or made

unenforceable as a result of the execution or performance of this Agreement, until such time as the circumstances that would give rise to such violation, invalidation or unenforceability no longer exist, (b) any item of equipment or general intangibles to the extent that such item is subject to a written agreement or a law or regulation which prohibits, or requires a consent of any Person other than the Borrower or any Affiliate of the Borrower (which consent has not been obtained or waived) to, the security interest granted by this Agreement and such prohibition or requirement of consent is effective and enforceable under applicable law and is not rendered ineffective by applicable law, including, without limitation, Sections 9-406, 9-407, 9-408 or 9-409 of the UCC, (c) any deposit or other account used with respect to the funds or property held in the Sleep Number Executive Investment Plan Trust, and (d) any Deposit Account that is a trust or “special account” on the records of the financial institution where such Deposit Account is located that is exclusively comprised of funds for payroll (and related payroll taxes).

“Excluded Swap Obligations” means, with respect to any Credit Party, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Credit Party of, or the grant by such Credit Party of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Credit Party’s failure 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 Credit Party and any and all guarantees of such Credit Party’s Swap Obligations by other Credit Parties), at the time such guarantee or grant of security interest of such Credit Party becomes, or would become, effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is, or becomes, illegal.

“Excluded Taxes” means, in the case of the Administrative Agent and each Lender, (a) taxes imposed on or measured by its overall net income or revenue or branch profits, franchise taxes and branch profit taxes, in each case (i) imposed on it by the jurisdiction (or any political subdivision thereof) under the laws of which the Administrative Agent or such Lender, as the case may be, 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 (ii) that are Other Connection Taxes, and (b) any withholding tax imposed with respect to the Administrative Agent or such Lender, as the case may be, pursuant to FATCA.

“Existing Credit Agreement” means the Credit and Security Agreement, dated as of September 9, 2015, by and among the Borrower, the lenders party thereto, and KeyBank National Association, as amended or modified prior to the date hereof.

“Existing Letters of Credit” has the meaning set forth in Section 2.2(b)(i).

“FATCA” means Section 1471 through 1474 of the Code as in effect on the Closing Date (or any amended or successor version that is substantively comparable to and not materially



more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Effective Rate” means, for any day, the greater of (a) zero percent (0.0%) and (b) the rate per annum 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 or, if such rate is not so published for any day which is a Business Day, the average of the quotations at approximately 10:00 a.m. (Central time) on such day on such transactions received by the Administrative Agent from three (3) Federal funds brokers of recognized standing selected by the Administrative Agent in its sole discretion.

“Fifth Amendment Effective Date” means April 21, 2021.

“Financial Officer” means any of the following officers: chief executive officer, president, chief financial officer, chief accounting officer or treasurer. Unless otherwise qualified, all references to a Financial Officer in this Agreement shall refer to a Financial Officer of the Borrower.

“First Amendment Effective Date” means February 11, 2019.

“Fiscal Year” means each fiscal year of the Borrower ending on the date corresponding with such fiscal year as set forth on Schedule 5.3.

“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Eurocurrency Rate.

“Foreign Subsidiary” means a Subsidiary that is organized under the laws of any jurisdiction other than the United States, a State thereof or the District of Columbia.

“Foreign Subsidiary Borrower” has the meaning set forth in Section 2.13.

“GAAP” means generally accepted accounting principles in the United States as then in effect, which shall include the official interpretations thereof by the Financial Accounting Standards Board, applied on a basis consistent with the past accounting practices and procedures of the Borrower.

“General Intangibles” means (a) general intangibles, as that term is defined in the U.C.C. and (b) choses in action, causes of action, intellectual property, customer lists, corporate or other business records, inventions, designs, patents, patent applications, service marks, registrations, trade names, trademarks, copyrights, licenses, goodwill, computer software, rights to indemnification and tax refunds.

“Governmental Authority” means any nation or government, any state, province or territory or local or other political subdivision thereof, any governmental agency, department,

authority, instrumentality, regulatory body, court, central bank or other governmental 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), any securities exchange and any self-regulatory organization exercising such functions, and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing).

“Guarantor” means a Person that shall have pledged its credit or property in any manner for the payment or other performance of the indebtedness, contract or other obligation of another and includes (without limitation) any guarantor (whether of payment or of collection), surety, co-maker, endorser or Person that shall have agreed conditionally or otherwise to make any purchase, loan or investment in order thereby to enable another to prevent or correct a default of any kind.

“Guarantor of Payment” means each of the Companies designated a “Guarantor of Payment” on Schedule 2 hereto, and any other Person that shall execute and deliver a Guaranty of Payment (or Guaranty of Payment Joinder) to the Administrative Agent subsequent to the Closing Date.

“Guaranty of Payment” means each Guaranty of Payment executed and delivered on or after the Closing Date in connection with this Agreement by the Guarantors of Payment, as the same may from time to time be amended, restated or otherwise modified.

“Guaranty of Payment Joinder” means each Guaranty of Payment Joinder, executed and delivered by a Guarantor of Payment for the purpose of adding such Guarantor of Payment as a party to a previously executed Guaranty of Payment.

“Hedge Agreement” means any (a) hedge agreement, interest rate swap, cap, collar or floor agreement, or other interest rate, commodity or foreign exchange management device entered into by a Company with any Person in connection with any Indebtedness of such Company, or (b) currency swap agreement, forward currency purchase agreement or similar arrangement or agreement designed to protect against fluctuations in currency exchange rates entered into by a Company.

“Indebtedness” means, for any Company, without duplication, (a) all obligations to repay borrowed money, direct or indirect, incurred, assumed, or guaranteed, (b) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and Deferred Payments), (c) all obligations under conditional sales or other title retention agreements, (d) all obligations (contingent or otherwise) under any letter of credit or banker’s acceptance, (e) all net obligations under any currency swap agreement, interest rate or commodity swap, cap, collar or floor agreement or other interest rate, commodity or foreign exchange management device or any Hedge Agreement, (f) all synthetic leases, (g) all Capitalized Lease Obligations, (h) all obligations of such Company with respect to asset securitization financing programs, (i) all obligations to advance funds to, or to purchase

assets, property or services from, any other Person in order to maintain the financial condition of such Person, (j) all indebtedness of the types referred to in subparts (a) through (i) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Company is a general partner or joint venturer, unless such indebtedness is expressly made non-recourse to such Company, (k) any other transaction (including forward sale or purchase agreements) having the commercial effect of a borrowing of money entered into by such Company to finance its operations or capital requirements, and (l) any guaranty of any obligation described in subparts (a) through (k) above (for purposes of this subpart (l), the amount of any guaranty shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligations, or portion thereof, in respect of which such guaranty is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guarantor in good faith).

“Intellectual Property Security Agreement” means each Intellectual Property Security Agreement, executed and delivered on or after the Closing Date by the Borrower or a Guarantor of Payment in favor of the Administrative Agent, for the benefit of the Lenders, granting a security interest in all intellectual property owned by the Borrower or such Guarantor of Payment, as the same may from time to time be amended, restated or otherwise modified.

“Interest Adjustment Date” means the last day of each Interest Period.

“Interest Coverage Ratio” means, as determined for the most recently completed four Quarterly Reporting Periods of the Borrower, on a Consolidated basis, the ratio of (a) Consolidated EBITDA to (b) Consolidated Interest Expense.

“Interest Period” means, with respect to a Eurocurrency Loan, the period commencing on the date such Eurocurrency Loan is made and ending on the last day of such period, as selected by the Borrower pursuant to the provisions hereof, and, thereafter (unless such Eurocurrency Loan is converted to a Base Rate Loan), each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the last day of such period, as selected by the Borrower pursuant to the provisions hereof. The duration of each Interest Period for a Eurocurrency Loan shall be one month, three months or six months, in each case as the Borrower may select upon notice, as set forth in Section 2.5 hereof; provided that, if the Borrower shall fail to so select the duration of any Interest Period at least three Business Days prior to the Interest Adjustment Date applicable to such Eurocurrency Loan, the Borrower shall be deemed to have converted such Eurocurrency Loan to a Base Rate Loan at the end of the then current Interest Period.

“Inventory” means inventory, as that term is defined in the U.C.C.

“Investment Property” means investment property, as that term is defined in the U.C.C., unless the Uniform Commercial Code as in effect in another jurisdiction would govern the perfection and priority of a security interest in investment property, and, in such case, “investment property” shall be defined in accordance with the law of that jurisdiction as in effect from time to time.

“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.

“Issuing Lender” means, as to any Letter of Credit transaction hereunder, the Administrative Agent as issuer of the Letter of Credit, or, in the event that the Administrative Agent either shall be unable to issue or the Administrative Agent shall agree that another Lender may issue, a Letter of Credit, such other Lender as shall be acceptable to the Administrative Agent and shall agree to issue the Letter of Credit in its own name, but in each instance on behalf of the Lenders. KeyBank National Association shall be the “Issuing Lender” with respect to the Existing Letters of Credit.

“Landlord’s Waiver” means a landlord’s waiver or mortgagee’s waiver, each in form and substance satisfactory to the Administrative Agent, delivered by a Credit Party in connection with this Agreement, as such waiver may from time to time be amended, restated or otherwise modified.

“Lender” means that term as defined in the first paragraph of this Agreement and, as the context requires, shall include the Issuing Lender and the Swing Line Lender.

“Lender Credit Exposure” means, with respect to any Lender, the outstanding principal amount of Loans made by such Lender (other than Swing Loans made by the Swing Line Lender), plus such Lender’s pro rata share, if any, of the Letter of Credit Exposure and the Swing Line Exposure.

“Letter of Credit” means a commercial documentary letter of credit or standby letter of credit that shall be issued by the Issuing Lender for the account of the Borrower or a Guarantor of Payment, including amendments thereto, if any, and shall have an expiration date no later than the earlier of (a) three hundred sixty-four (364) days after its date of issuance (provided that such Letter of Credit may provide for the renewal thereof for additional one year periods), or (b) ten (10) days prior to the last day of the Commitment Period.

“Letter of Credit Commitment” means the commitment of the Issuing Lender, on behalf of the Lenders, to issue Letters of Credit in an aggregate face amount of up to Ten Million Dollars (\$10,000,000).

“Letter of Credit Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all issued and outstanding Letters of Credit, and (b) the aggregate of the draws made on Letters of Credit that have not been reimbursed by the Borrower or converted to a Revolving Loan pursuant to Section 2.2(b)(v) hereof.

“Letter of Credit Fee” means, with respect to any Letter of Credit, for any day, an amount equal to (a) the undrawn amount of such Letter of Credit, multiplied by (b) the Applicable

Margin for Revolving Loans that are Eurocurrency Loans in effect on such day divided by three hundred sixty (360).

“LIBOR” means the London interbank offered rate.

“Lien” means any mortgage, deed of trust, security interest, lien (statutory or other), charge, assignment, hypothecation, encumbrance on, pledge or deposit of, or conditional sale, lease (other than Operating Leases), sale with a right of redemption or other title retention agreement and any capitalized lease with respect to any property (real or personal) or asset.

“LLC” means any Person that is a limited liability company under the laws of its jurisdiction of formation.

“Loan” means a Revolving Loan or a Swing Loan.

“Loan Documents” means, collectively, this Agreement, each Note, each Guaranty of Payment, each Guaranty of Payment Joinder, all documentation relating to each Letter of Credit, each Security Document, and the Administrative Agent Fee Letter, as any of the foregoing may from time to time be amended, restated or otherwise modified or replaced, and any other document delivered pursuant thereto.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of the Companies taken as a whole, (b) the rights and remedies of the Administrative Agent or the Lenders under any Loan Document, (c) the ability of any Credit Party to perform its material obligations under any Loan Document to which it is a party, or (d) the legality, validity, binding effect or enforceability against any Credit Party of any Loan Document to which it is a party.

“Material Indebtedness Agreement” means any debt instrument, lease (capital, operating or otherwise), guaranty, contract, commitment, agreement or other arrangement evidencing or entered into in connection with any Indebtedness of any Company or the Companies equal to or in excess of the principal amount of Ten Million Dollars (\$10,000,000).

“Maximum Foreign Currency Amount” means \$25,000,000.

“Maximum Revolving Amount” means, for each Lender, the amount set forth opposite such Lender’s name under the column headed “Maximum Revolving Amount” as set forth on Schedule 1 hereto, which in the aggregate for the Lenders, as of the Fifth Amendment Effective Date, equals Six Hundred Million Dollars (\$600,000,000), with such amount being subject to (a) decreases pursuant to Section 2.9 (a) hereof, (b) increases pursuant to Section 2.9(b) hereof, and (c) assignments of interests pursuant to Section 11.10 hereof; provided, that the Maximum Revolving Amount for the Swing Line Lender shall exclude the Swing Line Commitment (other than its pro rata share), and the Maximum Revolving Amount of the Issuing Lender shall exclude the Letter of Credit Commitment (other than its pro rata share thereof).

“Maximum Rate” means that term as defined in Section 2.3(d) hereof.

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means a Pension Plan that is subject to the requirements of Subtitle E of Title IV of ERISA.

“Net Leverage Ratio” means, as determined on a Consolidated basis, the ratio of (a) the sum of (i) Consolidated Funded Indebtedness (as of the end of the most recently completed Quarterly Reporting Period), plus (ii) six multiplied by Consolidated Rent Expense (for the most recently completed four Quarterly Reporting Periods), minus (iii) the aggregate amount of unrestricted cash-on-hand and Cash Equivalents of the Borrower located in the United States in excess of Forty Million Dollars (\$40,000,000); to (b) Consolidated EBITDAR (for the most recently completed four Quarterly Reporting Periods).

“Non-Consenting Lender” means that term as defined in Section 11.3(c) hereof.

“Non-U.S. Lender” means that term as defined in Section 3.2(d) hereof.

“Note” means a Revolving Credit Note or the Swing Line Note, or any other promissory note delivered pursuant to this Agreement.

“Notice of Loan” means a Notice of Loan in the form of the attached Exhibit C.

“Obligations” means, collectively, (a) all Indebtedness and other obligations now owing or hereafter incurred by the Borrower or any other Credit Party to the Administrative Agent, the Swing Line Lender, the Issuing Lender, or any Lender pursuant to this Agreement and the other Loan Documents, and includes the principal of and interest on all Loans, and all obligations of the Borrower or any other Credit Party pursuant to Letters of Credit; (b) each extension, renewal, consolidation or refinancing of any of the foregoing, in whole or in part; (c) the commitment and other fees, and any prepayment fees, payable pursuant to this Agreement or any other Loan Document; (d) all fees and charges in connection with Letters of Credit; (e) every other liability, now or hereafter owing to the Administrative Agent or any Lender by any Company pursuant to this Agreement or any other Loan Document; and (f) all Related Expenses.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control, and any successor thereto.

“Operating Leases” means all real or personal property leases under which any Company is bound or obligated as a lessee or sublessee and which, under GAAP, are not required to be capitalized on a balance sheet of such Company; provided that Operating Leases shall not include any such lease under which any Company is also bound as the lessor or sublessor.

“Organizational Documents” means, with respect to any Person (other than an individual), such Person’s Articles (Certificate) of Incorporation, operating agreement or equivalent formation documents, and Regulations (Bylaws), or equivalent governing documents, and any amendments to any of the foregoing.

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

“Other Taxes” means any and all present or future stamp or documentary taxes or any other excise, *ad valorem* or property taxes, goods and services taxes, harmonized sales taxes and other sales taxes, use taxes, value added taxes, charges or similar taxes or levies arising from any payment made hereunder or under any other Loan Document, or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Participant” means that term as defined in Section 11.11 hereof.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA Patriot Act, Title III of Pub. L. 107-56, signed into law October 26, 2001, as amended from time to time.

“PBGC” means the Pension Benefit Guaranty Corporation, and its successor.

“Pension Plan” means an ERISA Plan that is a “pension plan” (within the meaning of ERISA Section 3(2)) that is subject to Title IV of ERISA.

“Person” means any individual, sole proprietorship, partnership, joint venture, unincorporated organization, corporation, limited liability company, unlimited liability company, institution, trust, estate, Governmental Authority or any other entity.

“Pledge Agreement” means each of the Pledge Agreements, relating to the Pledged Securities, executed and delivered by the Borrower or a Guarantor of Payment, as applicable, in favor of the Administrative Agent, for the benefit of the Lenders, dated on or after the Closing Date, as any of the foregoing may from time to time be amended, restated or otherwise modified.

“Pledged Notes” means the promissory notes payable to the Borrower, as described on Schedule 7.4 hereto, and any additional or future promissory notes that may hereafter from time to time be payable to the Borrower.

“Pledged Securities” means all of the shares of capital stock or other equity interest of a Subsidiary of a Credit Party, whether now owned or hereafter acquired or created, and all proceeds thereof; provided that Pledged Securities shall exclude (a) shares of capital stock or other equity interests of any Foreign Subsidiary that is not a first-tier Foreign Subsidiary, (b) shares of capital stock of any first-tier Foreign Subsidiary that is a Dormant Subsidiary, and (c) shares of voting capital stock or other voting equity interests in any first-tier Foreign Subsidiary in excess of sixty-five percent (65%) of the total outstanding shares of voting capital

stock or other voting equity interest of such first-tier Foreign Subsidiary. (Schedule 3 hereto lists, as of the Closing Date, all of the Pledged Securities.)

“Pounds Sterling” means the lawful currency of the United Kingdom.

“Prime Rate” means the interest rate established from time to time by the Administrative Agent (or its parent) as the Administrative Agent’s (or its parent’s) generally applicable prime rate, whether or not such rate shall be publicly announced; the Prime Rate may not be the lowest interest rate charged by the Administrative Agent (or its parent) for commercial or other extensions of credit. Each change in the Prime Rate shall be effective immediately from and after such change.

“Proceeds” means (a) proceeds, as that term is defined in the U.C.C., and any other proceeds, and (b) whatever is received upon the sale, exchange, collection or other Disposition of Collateral or proceeds, whether cash or non-cash. Cash proceeds include, without limitation, moneys, checks and Deposit Accounts. Proceeds include, without limitation, any Account arising when the right to payment is earned under a contract right, any insurance payable by reason of loss or damage to the Collateral, and any return or unearned premium upon any cancellation of insurance. Except as expressly authorized in this Agreement, the right of the Administrative Agent and the Lenders to Proceeds specifically set forth herein, or indicated in any financing statement, shall never constitute an express or implied authorization on the part of the Administrative Agent or any Lender to a Company’s sale, exchange, collection or other Disposition of any or all of the collateral securing the Obligations.

“Processor’s Waiver” means a processor’s waiver (or similar agreement), in form and substance reasonably satisfactory to the Administrative Agent, delivered by a Credit Party in connection with this Agreement, as such waiver may from time to time be amended, restated or otherwise modified.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as amended from time to time.

“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” is defined in Section 11.23.

“Quarterly Reporting Period” means the period established by the Borrower as a fiscal quarter of the Borrower, as more specifically set forth on Schedule 5.3 hereto, as such Schedule 5.3 shall from time to time be replaced pursuant to Section 5.3(g) hereof.

“Quotation Date” means, in relation to any Interest Period for which an interest rate is to be determined, (a) if the related extension of credit is denominated in Dollars, two (2) Business Days before the first day of that period, (b) if the related extension of credit is denominated in euro, two (2) TARGET Days and two (2) London Business Days (to the extent the two are not the same) before the first day of such period, (c) if the related credit extension is denominated in



Pounds Sterling, the first day of such period, and (d) for any Agreed Currency not covered in clause (a), (b) or (c), such number of days agreed to by the Borrower, the Administrative Agent and the Lenders.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Eurocurrency Rate, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not the Eurocurrency Rate, the time determined by the Administrative Agent in its reasonable discretion.

“Register” means that term as described in Section 11.10(i) hereof.

“Regularly Scheduled Payment Date” means the last day of each March, June, September and December of each year.

“Related Expenses” means any and all costs, liabilities and expenses (including, without limitation, losses, damages, penalties, claims, actions, reasonable attorneys’ fees, legal expenses, judgments, suits and disbursements): (a) incurred by the Administrative Agent, or imposed upon or asserted against the Administrative Agent or any Lender, in any attempt by the Administrative Agent or any Lender to (i) obtain, preserve, perfect or enforce any Loan Document or any security interest evidenced by any Loan Document; (ii) obtain payment, performance or observance of any and all of the Secured Obligations; or (iii) maintain, insure, audit, collect, preserve, repossess or Dispose of any of the collateral securing the Secured Obligations or any part thereof, including, without limitation, costs and expenses for appraisals, assessments and audits of any Company or any such collateral; or (b) incidental or related to subpart (a) above, including, without limitation, interest thereupon from the date incurred, imposed or asserted until paid at the Default Rate.

“Related Writing” means each Loan Document and any other assignment, mortgage, security agreement, guaranty agreement, subordination agreement, financial statement, audit report or other writing furnished by any Credit Party, or any of its officers, to the Administrative Agent or the Lenders pursuant to or otherwise in connection with this Agreement.

“Relevant Governmental Body” means 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.

“Reportable Event” means a reportable event as that term is defined in Title IV of ERISA, except actions of general applicability by the Secretary of Labor under Section 110 of such Act.

“Required Lenders” means the holders of more than fifty percent (50%), based upon each Lender’s Commitment Percentage, of an amount (the “Total Amount”) equal to (a) during the Commitment Period, the Total Commitment Amount, or (b) after the Commitment Period, the Revolving Credit Exposure; provided that (i) the portion of the Total Amount held or deemed to be held by any Defaulting Lender shall be excluded for purposes of making a determination of

Required Lenders, and (ii) if there shall be two or more Lenders (that are not Defaulting Lenders), Required Lenders shall constitute at least two Lenders.

“Requirement of Law” means, as to any Person, any law, treaty, rule or regulation or determination or policy statement or interpretation of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property.

“Reserve Percentage” means, for any day, that percentage (expressed as a decimal) that is in effect on such day, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, all basic, supplemental, marginal and other reserves and taking into account any transitional adjustments or other scheduled changes in reserve requirements) for a member bank of the Federal Reserve System, in respect of Eurocurrency Liabilities. The Eurocurrency Rate shall be adjusted automatically on and as of the effective date of any change in the Reserve Percentage. Notwithstanding the foregoing or anything to the contrary set forth herein, with respect to the CDOR Rate, such percentage shall include any other maximum reserve, liquid asset, fee or similar requirement established by any central bank, monetary authority, or other governmental authority for any category of deposits or liabilities customarily used to fund loans in Canadian Dollars.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Restricted Payment” means, with respect to any Company, (a) any Capital Distribution, (b) any amount paid by such Company in repayment, redemption, retirement or repurchase, directly or indirectly, of any Subordinated Indebtedness, or (c) any amount paid by such Company in respect of any management, consulting or other similar arrangement with any equity holder (other than (i) a Company, or (ii) customary and reasonable employment and severance arrangements and directors’ fees to directors) of a Company or an Affiliate.

“Revolving Credit Commitment” means the obligation hereunder, during the Commitment Period, of (a) the Lenders (and each Lender) to make Revolving Loans, (b) the Issuing Lender to issue, and each Lender to participate in, Letters of Credit pursuant to the Letter of Credit Commitment, and (c) the Swing Line Lender to make, and each Lender to participate in, Swing Loans pursuant to the Swing Line Commitment; up to an aggregate principal amount outstanding at any time equal to the Maximum Revolving Amount.

“Revolving Credit Exposure” means, at any time, the sum of (a) the aggregate principal amount of all Revolving Loans outstanding, (b) the Swing Line Exposure, and (c) the Letter of Credit Exposure.

“Revolving Credit Note” means a Revolving Credit Note, in the form of the attached Exhibit A-1, executed and delivered pursuant to Section 2.4(a) hereof.

“Revolving Loan” means a loan made to the Borrower by the Lenders in accordance with Section 2.2(a) hereof.

“Risk-Based Capital Guidelines” means (i) the risk-based capital guidelines in effect in the United States on the date of this Agreement, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States, including transition rules, and, in each case, any amendments to such regulations.

“Sanctions” means sanctions administered or enforced from time to time by the U.S. government, including those administered by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“SEC” means the United States Securities and Exchange Commission, or any governmental body or agency succeeding to any of its principal functions.

“Second Amendment Effective Date” means April 3, 2020.

“Secured Obligations” means, collectively, (a) the Obligations, (b) all obligations and liabilities of the Companies owing to a Lender (or an entity that is an affiliate of a then existing Lender) under Hedge Agreements, and (c) the Bank Product Obligations owing to a Lender (or an entity that is an affiliate of a then existing Lender) under Bank Product Agreements; provided that Secured Obligations of a Credit Party shall not include Excluded Swap Obligations owing from such Credit Party.

“Securities Account” means a securities account, as that term is defined in the U.C.C.

“Securities Account Control Agreement” means each Securities Account Control Agreement among a Credit Party, the Administrative Agent and a Securities Intermediary, dated on or after the Closing Date, to be in form and substance satisfactory to the Administrative Agent, as the same may from time to time be amended, restated or otherwise modified.

“Securities Intermediary” means a clearing corporation or a Person, including, without limitation, a bank or broker, that in the ordinary course of its business maintains Securities Accounts for others and is acting in that capacity.

“Security Agreement” means each Security Agreement, executed and delivered by a Guarantor of Payment in favor of the Administrative Agent, for the benefit of the Lenders, dated on or after the Closing Date, as the same may from time to time be amended, restated or otherwise modified.

“Security Agreement Joinder” means each Security Agreement Joinder, executed and delivered by a Guarantor of Payment for the purpose of adding such Guarantor of Payment as a party to a previously executed Security Agreement.

“Security Document” means each Security Agreement, each Security Agreement Joinder, each Pledge Agreement, each Intellectual Property Security Agreement, each Processor’s Waiver, each Consignee’s Waiver, each Landlord’s Waiver, each Bailee’s Waiver, each Control Agreement, each U.C.C. Financing Statement or similar filing as to a jurisdiction located outside of the United States filed in connection herewith or perfecting any interest created in any of the foregoing documents, and any other document pursuant to which any Lien is granted by a Company or any other Person to the Administrative Agent, for the benefit of the Lenders, as security for the Secured Obligations, or any part thereof, and each other agreement executed or provided to the Administrative Agent in connection with any of the foregoing, as any of the foregoing may from time to time be amended, restated or otherwise modified or replaced.

“Sleep Number Executive Investment Plan” means that certain Sleep Number Executive Investment Plan, as amended and restated on December 1, 2014, as the same may be further amended or restated from time to time.

“Sleep Number Executive Investment Plan Trust” means that certain trust established under the Non-Qualified Deferred Compensation Trust Agreement for Sleep Number effective as of September 3, 2013, by and between the Borrower and Charles Schwab Bank as trustee, as the same may be amended or restated from time to time.

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website at approximately 8:00 a.m. (New York City time), or in the case of an update to such rate by the SOFR Administrator, at approximately 2:30 p.m. (New York City time) on the immediately succeeding Business Day.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“Solvent” means, with respect to any Person, that (a) the fair value of such Person’s assets is in excess of the total amount of such Person’s debts, as determined in accordance with the Bankruptcy Code, (b) the present fair saleable value of such Person’s assets is in excess of the amount that will be required to pay such Person’s debts as such debts become absolute and matured, (c) such Person is able to realize upon its assets and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as such liabilities mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond its ability to pay as such debts and liabilities mature, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which its property would constitute an unreasonably small amount of capital. As used in this definition, the term “debts” includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent, as determined in accordance with the Bankruptcy Code.

“Standard & Poor’s” means S&P Global Ratings, a division of S&P Global Inc.

“Subordinated Indebtedness” means Indebtedness that shall have been subordinated (by written terms or written agreement being, in either case, in form and substance satisfactory to the Administrative Agent) in favor of the prior payment in full of the Obligations.

“Subsidiary” means (a) a corporation more than fifty percent (50%) of the Voting Power of which is owned, directly or indirectly, by the Borrower or by one or more other subsidiaries of the Borrower or by the Borrower and one or more subsidiaries of the Borrower, (b) a partnership, limited liability company or unlimited liability company of which the Borrower, one or more other subsidiaries of the Borrower or the Borrower and one or more subsidiaries of the Borrower, directly or indirectly, is a general partner or managing member, as the case may be, or otherwise has an ownership interest greater than fifty percent (50%) of all of the ownership interests in such partnership, limited liability company or unlimited liability company, or (c) any other Person (other than a corporation, partnership, limited liability company or unlimited liability company) in which the Borrower, one or more other subsidiaries of the Borrower or the Borrower and one or more subsidiaries of the Borrower, directly or indirectly, has at least a majority interest in the Voting Power or the power to elect or direct the election of a majority of directors or other governing body of such Person.

“Supported QFC” is defined in Section 11.23.

“Swap Agreement” means an agreement evidencing Swap Obligations.

“Swap Obligations” means, with respect to any Company, 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.

“Swing Line Commitment” means the commitment of the Swing Line Lender to make Swing Loans to the Borrower, on a discretionary basis, up to the aggregate amount at any time outstanding of Seventy-Five Million Dollars (\$75,000,000).

“Swing Line Exposure” means, at any time, the aggregate principal amount of all Swing Loans outstanding.

“Swing Line Lender” means U.S. Bank, as holder of the Swing Line Commitment.

“Swing Line Note” means the Swing Line Note, in the form of the attached Exhibit B executed and delivered pursuant to Section 2.4(b) hereof.

“Swing Loan” means a loan that shall be denominated in Dollars made to the Borrower by the Swing Line Lender under the Swing Line Commitment, in accordance with Section 2.2(c) hereof.

“Swing Loan Maturity Date” means, with respect to any Swing Loan, the earlier of (a) the date selected by the Administrative Agent, or (b) the last day of the Commitment Period.

“Taxes” means any and all present or future taxes of any kind, including, but not limited to, levies, imposts, duties, surtaxes, charges, fees, deductions or withholdings now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority (together with any interest, penalties, fines, additions to taxes or similar liabilities with respect thereto) other than Excluded Taxes.

“Term SOFR” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Term SOFR Notice” means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

“Term SOFR Transition Event” means the determination by the Administrative Agent at any time, in its sole discretion, that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent, and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement in accordance with Section 3.5(b) that is not Term SOFR.

“Total Commitment Amount” means, as of the Fifth Amendment Effective Date, the principal amount of Six Hundred Million Dollars (\$600,000,000), as such amount may be increased pursuant to Section 2.9(b) hereof, or decreased pursuant to Section 2.9(a) hereof.

“Total Leverage Ratio” means, as determined on a Consolidated basis, the ratio of (a) the sum of (i) Consolidated Funded Indebtedness (as of the end of the most recently completed Quarterly Reporting Period), plus (ii) six multiplied by Consolidated Rent Expense (for the most recently completed four Quarterly Reporting Periods), to (b) Consolidated EBITDAR (for the most recently completed four Quarterly Reporting Periods).

“U.C.C.” means the Uniform Commercial Code, as in effect from time to time in the State of New York.

“U.C.C. Financing Statement” means a financing statement filed or to be filed in accordance with the Uniform Commercial Code, as in effect from time to time, in the relevant state or states.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Undisclosed Administration” means in relation to a Lender 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 is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

“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 falling within 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.

“United States” means the United States of America.

“U.S. Bank” means U.S. Bank National Association, and its successors and assigns.

“U.S. Special Resolution Regimes” is defined in Section 11.23.

“Voting Power” means, with respect to any Person, the exclusive ability to control, through the ownership of shares of capital stock, partnership interests, membership interests or otherwise, the election of members of the board of directors or other similar governing body of such Person. The holding of a designated percentage of Voting Power of a Person means the ownership of shares of capital stock, partnership interests, membership interests or other interests of such Person sufficient to control exclusively the election of that percentage of the members of the board of directors or similar governing body of such Person.

“Welfare Plan” means an ERISA Plan that is a “welfare plan” within the meaning of ERISA Section 3(l).

“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 1.2. Accounting Terms.

(a) Any accounting term not specifically defined in this Article I shall have the meaning ascribed thereto by GAAP.

(b) If any change in the rules, regulations, pronouncements, opinions or other requirements of the Financial Accounting Standards Board (or any successor thereto or agency

with similar function) with respect to GAAP, or if the Borrower adopts the International Financial Reporting Standards, and such change or adoption results in a change in the calculation of any component (or components in the aggregate) of the financial covenants set forth in Section 5.7 hereof or the related financial definitions, at the option of the Administrative Agent, the Required Lenders or the Borrower, the parties hereto will enter into good faith negotiations to amend such financial covenants and financial definitions in such manner as the parties shall agree, each acting reasonably, in order to reflect fairly such change or adoption so that the criteria for evaluating the financial condition of the Borrower shall be the same in commercial effect after, as well as before, such change or adoption is made (in which case the method and calculating such financial covenants and definitions hereunder shall be determined in the manner so agreed); provided that, until so amended, such calculations shall continue to be computed in accordance with GAAP as in effect prior to such change or adoption. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made without giving effect to (i) any election under Accounting Standards Codification Section 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower, any other Company or any of their respective Subsidiaries at “fair value”, as defined therein, or (ii) any treatment of Indebtedness in respect of convertible debt instruments under Financial Accounting Standards Codification Subtopic 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. In addition, notwithstanding any other provision contained herein, the definitions set forth in this Agreement and any financial calculations required by the Loan Documents shall be computed to exclude any change to lease accounting rules from those in effect pursuant to Financial Accounting Standards Board Accounting Standards Codification 840 (Leases) and other related lease accounting guidance as in effect on the date hereof.

Section 1.3. Terms Generally. The foregoing definitions shall be applicable to the singular and plural forms of the foregoing defined terms. Unless otherwise defined in this Article I, terms that are defined in the U.C.C. are used herein as so defined.

Section 1.4. Foreign Exchange. For purposes of any determination of whether any borrowing, investment, payment, Lien, or other transaction is permitted under this Agreement, all amounts in currencies other than Dollars shall be translated into Dollars at the Exchange Rate (as determined by the Administrative Agent) as of the date of determination; provided that (a) if Indebtedness denominated in currencies other than Dollars is incurred to refinance other Indebtedness denominated in the same foreign currency, and such refinancing would cause the applicable Dollar denominated restriction to be exceeded if calculated at the relevant currency Exchange Rate in effect on the date of such refinancing, such Dollar denominated restriction shall 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, and (b) determinations of whether additional borrowings, investments, payments, Liens, or other transactions are permitted under this Agreement shall account for changes in any Exchange Rate



with respect to other than existing borrowings, investments, payments, Liens, or other transactions in currencies other than Dollars.

Section 1.5. LIBOR Notification. The interest rate on Loans accruing interest at the Derived Eurocurrency Rate or the Daily Eurodollar Rate is determined by reference to the Eurocurrency Rate and Daily Eurodollar Rate, respectively, which is derived from LIBOR. Section 3.5(b) provides a mechanism for (a) determining an alternative rate of interest if LIBOR is no longer available or in the other circumstances set forth in Section 3.5(b), and (b) modifying this Agreement to give effect to such alternative rate of interest. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to LIBOR or other rates in the definition of Eurocurrency Rate and Daily Eurodollar Rate, as applicable, or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation, whether any such alternative, successor or replacement reference rate, as it may or may not be adjusted pursuant to Section 3.5(b), will have the same value as, or be economically equivalent to, the Eurocurrency Rate or Daily Eurodollar Rate, as applicable.

## ARTICLE II

### AMOUNT AND TERMS OF CREDIT

#### Section 2.1. Amount and Nature of Credit.

(a) Subject to the terms and conditions of this Agreement, the Lenders, during the Commitment Period and to the extent hereinafter provided, shall make Revolving Loans to the Borrower, participate in Swing Loans made by the Swing Line Lender to the Borrower, and issue or participate in Letters of Credit at the request of the Borrower, in such aggregate amount as the Borrower shall request pursuant to the Commitment in respect of Revolving Loans, Swing Loans and Letters of Credit; provided that in no event shall (i) the aggregate principal amount of all Revolving Loans, Swing Loans and Letters of Credit outstanding under this Agreement be in excess of the Total Commitment Amount corresponding with such Loans and Letters of Credit and (ii) the aggregate principal Dollar Amount of all Loans in Agreed Currencies other than Dollars exceed the Maximum Foreign Currency Amount.

(b) Each Lender, for itself and not one for any other, agrees to make Revolving Loans, participate in Swing Loans, and issue or participate in Letters of Credit, during the Commitment Period, on such basis that, immediately after the completion of any borrowing by the Borrower or the issuance of a Letter of Credit:

(i) the aggregate outstanding principal amount of Revolving Loans made by such Lender (other than Swing Loans made by the Swing Line Lender), when combined with such Lender's pro rata share, if any, of the Letter of Credit Exposure and the Swing Line Exposure, shall not be in excess of the Maximum Revolving Amount for such Lender; and

(ii) the aggregate outstanding principal amount of Revolving Loans (other than Swing Loans) made by such Lender shall represent that percentage of the aggregate

principal amount then outstanding on all Revolving Loans (other than Swing Loans) that shall be such Lender's Commitment Percentage.

Each borrowing (other than Swing Loans which shall be risk participated on a pro rata basis) from the Lenders shall be made pro rata according to the respective Commitment Percentages of the Lenders.

(c) Loans may be made as Revolving Loans as described in Section 2.2(a) hereof, and as Swing Loans as described in Section 2.2(c) hereof, and Letters of Credit may be issued in accordance with Section 2.2(b) hereof.

Section 2.2. Revolving Credit Commitment.

(a) Revolving Loans. Subject to the terms and conditions of this Agreement, during the Commitment Period, the Lenders shall make a Revolving Loan or Revolving Loans to the Borrower in such amount or amounts as the Borrower, through an Authorized Officer, may from time to time request, but not exceeding in aggregate principal amount at any time outstanding hereunder the Revolving Credit Commitment, when such Revolving Loans are combined with the Letter of Credit Exposure and the Swing Line Exposure. The Borrower shall have the option, subject to the terms and conditions set forth herein, to borrow Revolving Loans, maturing on the last day of the Commitment Period, by means of any combination of Base Rate Loans or Eurocurrency Loans. Subject to the provisions of this Agreement, the Borrower shall be entitled under this Section 2.2(a) to borrow Revolving Loans, repay the same in whole or in part and re-borrow Revolving Loans hereunder at any time and from time to time during the Commitment Period. The aggregate outstanding amount of all Revolving Loans shall be payable in full on the last day of the Commitment Period. Subject to the terms of this Agreement, Loans made in Agreed Currencies other than Dollars shall be repaid in the applicable Agreed Currency. Interest on such Loans also shall be paid in the applicable Agreed Currency.

(b) Letters of Credit.

(i) Generally. Subject to the terms and conditions of this Agreement, during the Commitment Period, the Issuing Lender shall, in its own name, on behalf of the Lenders, issue such Letters of Credit for the account of the Borrower or a Guarantor of Payment, as the Borrower may from time to time request. All Letters of Credit shall be denominated in Dollars, and all reimbursement amounts in respect of Letters of Credit, as well as fees and expenses owing in respect of Letters of Credit, shall be paid in Dollars. The Borrower shall not request any Letter of Credit (and the Issuing Lender shall not be obligated to issue any Letter of Credit) if, after giving effect thereto, (A) the Letter of Credit Exposure would exceed the Letter of Credit Commitment, or (B) the Revolving Credit Exposure would exceed the Revolving Credit Commitment. The issuance of each Letter of Credit shall confer upon each Lender the benefits and liabilities of a participation consisting of an undivided pro rata interest in the Letter of Credit to the extent of such Lender's Commitment Percentage. Notwithstanding the foregoing or anything to the contrary set forth herein, the letters of credit issued pursuant to the Existing Credit Agreement and identified on Schedule 2.2(b) (the "Existing Letters of Credit") shall be deemed to be "Letters of Credit" for all purposes of the Loan Documents.

(ii) Request for Letter of Credit. Each request for a Letter of Credit shall be delivered to the Administrative Agent (and to the Issuing Lender, if the Issuing Lender is a Lender other than the Administrative Agent) by an Authorized Officer not later than 11:00 A.M. (Eastern time) three Business Days prior to the date of the proposed issuance of the Letter of Credit. Each such request shall be in a form acceptable to the Administrative Agent (and the Issuing Lender, if the Issuing Lender is a Lender other than the Administrative Agent) and shall specify the face amount thereof, whether such Letter of Credit is a commercial documentary or a standby Letter of Credit, the account party, the beneficiary, the requested date of issuance, amendment, renewal or extension, the expiry date thereof, and the nature of the transaction or obligation to be supported thereby. Concurrently with each such request, the Borrower, and any Guarantor of Payment for whose account the Letter of Credit is to be issued, shall execute and deliver to the Issuing Lender an appropriate application and agreement, being in the standard form of the Issuing Lender for such letters of credit, as amended to conform to the provisions of this Agreement if required by the Administrative Agent. The Administrative Agent shall give the Issuing Lender and each Lender notice of each such request for a Letter of Credit.

(iii) Commercial Documentary Letters of Credit Fees. With respect to each Letter of Credit that shall be a commercial documentary letter of credit and the drafts thereunder, whether issued for the account of the Borrower or a Guarantor of Payment, the Borrower agrees to (A) pay to the Administrative Agent, for the pro rata benefit of the Lenders, a non-refundable commission based upon the undrawn amount of such Letter of Credit, which shall be paid quarterly in arrears, on each Regularly Scheduled Payment Date, in an amount equal to the aggregate sum of the Letter of Credit Fee for such Letter of Credit for each day of such quarter; (B) pay to the Administrative Agent, for the sole benefit of the Issuing Lender, a Letter of Credit fee, which shall be paid on the date that such Letter of Credit is issued, amended or renewed, at the rate of one-fourth percent (1/4%) of the face amount of such Letter of Credit; and (C) pay to the Administrative Agent, for the sole benefit of the Issuing Lender, such other issuance, amendment, renewal, negotiation, draw, acceptance, facsimile, courier, postage and similar transactional fees as are customarily charged by the Issuing Lender in respect of the issuance and administration of similar letters of credit under its fee schedule as in effect from time to time.

(iv) Standby Letters of Credit Fees. With respect to each Letter of Credit that shall be a standby letter of credit and the drafts thereunder, if any, whether issued for the account of the Borrower or a Guarantor of Payment, the Borrower agrees to (A) pay to the Administrative Agent, for the pro rata benefit of the Lenders, a non-refundable commission based upon the undrawn amount of such Letter of Credit, which shall be paid quarterly in arrears, on each Regularly Scheduled Payment Date, in an amount equal to the aggregate sum of the Letter of Credit Fee for such Letter of Credit for each day of such quarter; (B) pay to the Administrative Agent, for the sole benefit of the Issuing Lender, an additional Letter of Credit fee, which shall be paid on each date that such Letter of Credit shall be issued, amended or renewed at the rate of one-fourth percent (1/4%) of the face amount of such Letter of Credit; and (C) pay to the Administrative Agent, for the sole benefit of the Issuing Lender, such other issuance, amendment, renewal, negotiation, draw, acceptance, facsimile, courier, postage and similar transactional fees as are customarily charged by the Issuing Lender in respect of the

issuance and administration of similar letters of credit under its fee schedule as in effect from time to time.

(v) Refunding of Letters of Credit with Revolving Loans. Whenever a Letter of Credit shall be drawn, the Borrower shall promptly reimburse the Issuing Lender for the amount drawn (with prompt notice of each such reimbursement to be provided by the applicable Issuing Lender to the Administrative Agent if the Issuing Lender is a Lender other than the Administrative Agent). In the event that the amount drawn shall not have been reimbursed by the Borrower within one Business Day of the drawing of such Letter of Credit, at the sole option of the Administrative Agent (and the Issuing Lender, if the Issuing Lender is a Lender other than the Administrative Agent), the Borrower shall be deemed to have requested a Revolving Loan denominated in Dollars, subject to the provisions of Sections 2.2(a) and 2.5 hereof (other than the requirement set forth in Section 2.5(d) hereof), in the amount drawn. Such Revolving Loan shall be evidenced by the Revolving Credit Notes (or, if a Lender has not requested a Revolving Credit Note, by the records of the Administrative Agent and such Lender). Each Lender agrees to make a Revolving Loan on the date of such notice, subject to no conditions precedent whatsoever. Each Lender acknowledges and agrees that its obligation to make a Revolving Loan pursuant to Section 2.2(a) hereof when required by this Section 2.2(b)(v) shall be absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, the occurrence and continuance of a Default or Event of Default, and that its payment to the Administrative Agent, for the account of the Issuing Lender, of the proceeds of such Revolving Loan shall be made without any offset, abatement, recoupment, counterclaim, withholding or reduction whatsoever and whether or not the Revolving Credit Commitment shall have been reduced or terminated. The Borrower irrevocably authorizes and instructs the Administrative Agent to apply the proceeds of any borrowing pursuant to this Section 2.2(b)(v) to reimburse, in full (other than the Issuing Lender's pro rata share of such borrowing), the Issuing Lender for the amount drawn on such Letter of Credit. Each such Revolving Loan shall be deemed to be a Base Rate Loan unless otherwise requested by and available to the Borrower hereunder. Each Lender is hereby authorized to record on its records relating to its Revolving Credit Note (or, if such Lender has not requested a Revolving Credit Note, its records relating to Revolving Loans) such Lender's pro rata share of the amounts paid and not reimbursed on the Letters of Credit.

(vi) Participation in Letters of Credit. If, for any reason, the Administrative Agent (and the Issuing Lender if the Issuing Lender is a Lender other than the Administrative Agent) shall be unable to or, in the opinion of the Administrative Agent, it shall be impracticable to, convert any amount drawn under a Letter of Credit to a Revolving Loan pursuant to the preceding subsection, the Administrative Agent (and the Issuing Lender if the Issuing Lender is a Lender other than the Administrative Agent) shall have the right to request that each Lender fund a participation in the amount due with respect to such Letter of Credit, and the Administrative Agent shall promptly notify each Lender thereof (by facsimile or email (confirmed by telephone) or telephone (confirmed in writing)). Upon such notice, but without further action, the Issuing Lender hereby agrees to grant to each Lender, and each Lender hereby agrees to acquire from the Issuing Lender, an undivided participation interest in the amount due with respect to such Letter of Credit in an amount equal to such Lender's Commitment

Percentage of the principal amount due with respect to such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Issuing Lender, such Lender's ratable share of the amount due with respect to such Letter of Credit (determined in accordance with such Lender's Commitment Percentage). Each Lender acknowledges and agrees that its obligation to acquire participations in the amount due under any Letter of Credit that is drawn but not reimbursed by the Borrower pursuant to this Section 2.2(b)(vi) shall be absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, the occurrence and continuance of a Default or Event of Default, and that each such payment shall be made without any offset, abatement, recoupment, counterclaim, withholding or reduction whatsoever and whether or not the Revolving Credit Commitment shall have been reduced or terminated. Each Lender shall comply with its obligation under this Section 2.2(b)(vi) by wire transfer of immediately available funds, in the same manner as provided in Section 2.5 hereof with respect to Revolving Loans. Each Lender is hereby authorized to record on its records such Lender's pro rata share of the amounts paid and not reimbursed on the Letters of Credit.

(vii) Auto-Renewal Letters of Credit. If the Borrower so requests, a Letter of Credit shall have an automatic renewal provision; provided that any Letter of Credit that has an automatic renewal provision must permit the Administrative Agent (or the applicable Issuing Lender if the Issuing Lender is a Lender other than the Administrative Agent) to prevent any such renewal by giving prior notice to the beneficiary thereof at least thirty (30) days prior to the renewal date of such Letter of Credit (or such other period as agreed to by the Administrative Agent and the Issuing Lender). Once any such Letter of Credit that has automatic renewal provisions has been issued, the Revolving Lenders shall be deemed to have authorized (but may not require) the Administrative Agent (and the Issuing Lender) to permit at any time the renewal of such Letter of Credit to an expiry date not later than one year after the last day of the Commitment Period.

(viii) Letters of Credit Outstanding Beyond the Commitment Period. If any Letter of Credit is outstanding upon the termination of the Commitment, then, upon such termination, the Borrower shall deposit with the Administrative Agent, for the benefit of the Issuing Lender, with respect to all outstanding Letters of Credit, cash denominated in Dollars in an amount equal to one hundred five percent (105%) of the undrawn amount of the outstanding Letters of Credit, which cash shall be free and clear of all rights and claims of third parties. The cash shall be deposited in an escrow account at a financial institution designated by the Issuing Lender. The Issuing Lender shall be entitled to withdraw amounts necessary to reimburse the Issuing Lender for payments to be made under the Letters of Credit and any fees and expenses associated with such Letters of Credit, or incurred pursuant to the reimbursement agreements with respect to such Letters of Credit. The Borrower shall also execute such documentation as the Administrative Agent or the Issuing Lender may reasonably require in connection with the survival of the Letters of Credit beyond the Commitment or this Agreement. After expiration of all undrawn Letters of Credit, the remainder of the cash, if any, shall promptly be returned to the Borrower.

(c) Swing Loans.

(i) Generally. Subject to the terms and conditions of this Agreement, during the Commitment Period, the Swing Line Lender may, but shall not be required to, make a Swing Loan or Swing Loans to the Borrower in such amount or amounts as the Borrower, through an Authorized Officer, may from time to time request and to which the Swing Line Lender may agree; provided that the Borrower shall not request any Swing Loan if, after giving effect thereto, (A) the Revolving Credit Exposure would exceed the Revolving Credit Commitment, or (B) the Swing Line Exposure would exceed the Swing Line Commitment. Each Swing Loan shall be due and payable on the Swing Loan Maturity Date applicable thereto. Each Swing Loan shall be made in Dollars. All amounts due and payable in respect of Swing Loans (including principal, interest and fees) shall be paid in Dollars.

(ii) Refunding of Swing Loans. If the Swing Line Lender so elects, by giving notice to the Borrower and the Lenders, the Borrower agrees that the Swing Line Lender shall have the right, in its sole discretion, to require that the then outstanding Swing Loans be refinanced as a Revolving Loan. Such Revolving Loan shall be a Base Rate Loan unless otherwise requested by and available to the Borrower hereunder. Upon receipt of such notice by the Borrower and the Lenders, the Borrower shall be deemed, on such day, to have requested a Revolving Loan in the principal amount of such Swing Loan in accordance with Sections 2.2(a) and 2.5 hereof (other than the requirement set forth in Section 2.5(d) hereof). Such Revolving Loan shall be evidenced by the Revolving Credit Notes (or, if a Lender has not requested a Revolving Credit Note, by the records of the Administrative Agent and such Lender). Each Lender agrees to make a Revolving Loan on the date of such notice, subject to no conditions precedent whatsoever. Each Lender acknowledges and agrees that such Lender's obligation to make a Revolving Loan pursuant to Section 2.2(a) hereof when required by this Section 2.2(c)(ii) is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, the occurrence and continuance of a Default or Event of Default, and that its payment to the Administrative Agent, for the account of the Swing Line Lender, of the proceeds of such Revolving Loan shall be made without any offset, abatement, recoupment, counterclaim, withholding or reduction whatsoever and whether or not the Revolving Credit Commitment shall have been reduced or terminated. The Borrower irrevocably authorizes and instructs the Administrative Agent to apply the proceeds of any borrowing pursuant to this Section 2.2(c)(ii) to repay in full such Swing Loan. Each Lender is hereby authorized to record on its records relating to its Revolving Credit Note (or, if such Lender has not requested a Revolving Credit Note, its records relating to Revolving Loans) such Lender's pro rata share of the amounts paid to refund such Swing Loan.

(iii) Participation in Swing Loans. If, for any reason, the Swing Line Lender is unable to or, in the opinion of the Administrative Agent, it is impracticable to, convert any Swing Loan to a Revolving Loan pursuant to the preceding Section 2.2(c)(ii), then on any day that a Swing Loan is outstanding (whether before or after the maturity thereof), the Administrative Agent shall have the right to request that each Lender fund a participation in such Swing Loan, and the Administrative Agent shall promptly notify each Lender thereof (by facsimile or email (confirmed by telephone) or telephone (confirmed in writing)). Upon such

notice, but without further action, the Swing Line Lender hereby agrees to grant to each Lender, and each Lender hereby agrees to acquire from the Swing Line Lender, an undivided participation interest in the right to share in the payment of such Swing Loan in an amount equal to such Lender's Commitment Percentage of the principal amount of such Swing Loan. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the benefit of the Swing Line Lender, such Lender's ratable share of such Swing Loan (determined in accordance with such Lender's Commitment Percentage). Each Lender acknowledges and agrees that its obligation to acquire participations in Swing Loans pursuant to this Section 2.2(c)(iii) is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, the occurrence and continuance of a Default or an Event of Default, and that each such payment shall be made without any offset, abatement, recoupment, counterclaim, withholding or reduction whatsoever and whether or not the Revolving Credit Commitment shall have been reduced or terminated. Each Lender shall comply with its obligation under this Section 2.2(c)(iii) by wire transfer of immediately available funds, in the same manner as provided in Section 2.5 hereof with respect to Revolving Loans to be made by such Lender.

Section 2.3. Interest.

(a) Loans.

(i) Base Rate Loan. The Borrower shall pay interest on the unpaid principal amount of a Loan that is a Base Rate Loan outstanding from time to time from the date thereof until paid at the Derived Base Rate from time to time in effect. Interest on such Base Rate Loan shall be payable, commencing March 31, 2018, and continuing on each Regularly Scheduled Payment Date thereafter and at the maturity thereof.

(ii) Eurocurrency Loans. The Borrower shall pay interest on the unpaid principal amount of each Loan that is a Eurocurrency Loan outstanding from time to time, with the interest rate to be fixed in advance on the first day of the Interest Period applicable thereto through the last day of the Interest Period applicable thereto (but subject to changes in the Applicable Margin for Eurocurrency Loans), at the Derived Eurocurrency Rate. Interest on such Eurocurrency Loan shall be payable on each Interest Adjustment Date with respect to an Interest Period (provided that, if an Interest Period shall exceed three months, the interest must also be paid every three months, commencing three months from the beginning of such Interest Period).

(b) Swing Loans. The Borrower shall pay interest to the Administrative Agent, for the sole benefit of the Swing Line Lender (and any Lender that shall have funded a participation in such Swing Loan), on the unpaid principal amount of each Swing Loan outstanding from time to time from the date thereof until paid at either (i) the Derived Base Rate from time to time in effect or (ii) the Daily Eurodollar Rate plus the Applicable Margin for Revolving Loans that are Eurocurrency Loans, in each case as selected by the Borrower (with such election being made by the Borrower together with the request for such Swing Loan). Interest on each Swing Loan shall be payable on each Regularly Scheduled Payment Date and on

the Swing Loan Maturity Date applicable thereto. Each Swing Loan shall bear interest for a minimum of one day.

(c) Default Rate. Anything herein to the contrary notwithstanding, if an Event of Default shall occur and be continuing, upon the election of the Administrative Agent or the Required Lenders (i) the principal of each Loan and the unpaid interest thereon shall bear interest, until paid, at the Default Rate, (ii) the fee for the aggregate undrawn amount of all issued and outstanding Letters of Credit shall be increased by two percent (2%) in excess of the rate otherwise applicable thereto, and (iii) in the case of any other amount not paid when due from the Borrower hereunder or under any other Loan Document, such amount shall bear interest at the Default Rate; provided that, during an Event of Default under Section 8.1 or 8.11 hereof, the applicable Default Rate shall apply without any election or action on the part of the Administrative Agent or any Lender, and shall no longer apply when no Event of Default is continuing.

(d) Limitation on Interest. In no event shall the rate of interest hereunder exceed the maximum rate allowable by law. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (i) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (ii) exclude voluntary prepayments and the effects thereof, and (iii) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations.

Section 2.4. Noteless Agreement; Evidence of Indebtedness.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Administrative Agent shall also maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Agreed Currency for such Loan and the Interest Period with respect thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder, (iii) the original stated amount of each Letter of Credit and the amount of obligations in respect thereof outstanding at any time, and (iv) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(c) The entries maintained in the accounts maintained pursuant to paragraphs (a) and (b) above shall be *rebuttably presumptive* evidence of the existence and amounts of the



Obligations therein recorded; provided, however, that the failure of the Administrative Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Obligations in accordance with their terms.

(d) Any Lender (including the Swing Line Lender) may request that its Loans be evidenced by a Note. Notes related to Revolving Loans shall be substantially in the form of Exhibit A-1 hereto, and Notes related to Swing Loans shall be substantially in the form of Exhibit B hereto. The Borrower shall prepare, execute and deliver to such Lender such Note or Notes in favor of such Lender as supplied by the Administrative Agent. Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (prior to any assignment pursuant to Section 12.3) be represented by one or more Notes in favor of the payee named therein, except to the extent that any such Lender subsequently returns any such Note for cancellation and requests that such Loans once again be evidenced as described in clauses (b) (i) and (ii) above.

Section 2.5. Notice of Loans and Credit Events; Funding of Loans.

(a) Notice of Loans and Credit Events. The Borrower, through an Authorized Officer, shall provide to the Administrative Agent a Notice of Loan prior to (i) 12:00 P.M. (Eastern time) on the proposed date of borrowing of, or conversion of a Loan to, a Base Rate Loan, (ii) 12:00 P.M. (Eastern time) three Business Days prior to the proposed date of borrowing of, continuation of, or conversion of a Loan to, a Eurocurrency Loan denominated in Dollars, (iii) 12:00 P.M. (Eastern time) four Business Days prior to the proposed date of borrowing of, continuation of, or conversion of a Loan to, a Eurocurrency Loan denominated in an Agreed Currency other than Dollars, and (iii) 4:30 P.M. (Eastern time) on the proposed date of borrowing of a Swing Loan (or such later time as agreed to from time to time by the Swing Line Lender). An Authorized Officer of the Borrower may verbally request a Loan, so long as a Notice of Loan is received by the end of the same Business Day, and, if the Administrative Agent or any Lender provides funds or initiates funding based upon such verbal request, the Borrower shall bear the risk with respect to any information regarding such funding that is later determined to have been incorrect. The Borrower shall comply with the notice provisions set forth in Section 2.2(b) hereof with respect to Letters of Credit.

(b) Funding of Loans. The Administrative Agent shall notify each Lender of the date, amount, Agreed Currency, and Interest Period (if applicable) promptly upon the receipt of a Notice of Loan (other than for a Swing Loan, or a Revolving Loan to be funded as a Swing Loan), and, in any event, by 2:00 P.M. (Eastern time) on the date such Notice of Loan is received. On the date that the Credit Event set forth in such Notice of Loan is to occur, each such Lender shall provide to the Administrative Agent, not later than 3:00 P.M. (Eastern time), the amount in the applicable Agreed Currency, in federal or other immediately available funds, required of it. If the Administrative Agent shall elect to advance the proceeds of such Loan prior to receiving funds from such Lender, the Administrative Agent shall have the right, upon prior notice to the Borrower, to debit any account of the Borrower or otherwise receive such amount from the Borrower, promptly after demand, in the event that such Lender shall fail to reimburse the Administrative Agent in accordance with this subsection (b). The Administrative Agent shall also have the right to receive interest from such Lender at the Federal Funds Effective Rate in the

event that such Lender shall fail to provide its portion of the Loan on the date requested and the Administrative Agent shall elect to provide such funds.

(c) Conversion and Continuation of Loans.

(i) At the request of the Borrower to the Administrative Agent, subject to the notice and other provisions of this Agreement, the Lenders shall convert a Base Rate Loan to one or more Eurocurrency Loans at any time and shall convert a Eurocurrency Loan to a Base Rate Loan on any Interest Adjustment Date applicable thereto; provided, that any Loan denominated in an Agreed Currency other than Dollars shall be converted into a Loan denominated in Dollars (using the then applicable Exchange Rate as determined by the Administrative Agent) prior to such Loan becoming a Base Rate Loan. Swing Loans may be converted by the Swing Line Lender to Revolving Loans in accordance with Section 2.2(c)(ii) hereof.

(ii) At the request of the Borrower to the Administrative Agent, subject to the notice and other provisions of this Agreement, the Lenders shall continue one or more Eurocurrency Loans as of the end of the applicable Interest Period as a new Eurocurrency Loan with a new Interest Period; provided, that any such Loan shall be continued in the same Agreed Currency in which it was initially made.

Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or roll over all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

(d) Minimum Amount for Loans. Each request for:

(i) a Base Rate Loan shall be in an amount of not less than Five Hundred Thousand Dollars (\$500,000), increased by increments of One Hundred Thousand Dollars (\$100,000);

(ii) a Eurocurrency Loan shall be in an amount of not less than Five Hundred Thousand Dollars (\$500,000), increased by increments of One Hundred Thousand Dollars (\$100,000) (or the Approximate Equivalent Amount thereof, as applicable); and

(iii) a Swing Loan shall be in an amount of not less than Five Hundred Thousand Dollars (\$500,000), or such lower amount as may be agreed by the Swing Line Lender.

(e) Interest Periods. The Borrower shall not request that Eurocurrency Loans be outstanding for more than fifteen (15) different Interest Periods at the same time.

(f) Additional Provisions with Respect to Affected Lenders.

(i) Advancing of Non Pro-Rata Revolving Loans. Notwithstanding anything in this Agreement to the contrary, if the Borrower requests a Revolving Loan pursuant to Section 2.5(a) hereof (and all conditions precedent set forth in Section 4.1 hereof are met) at a time when one or more Lenders are Affected Lenders, the Administrative Agent shall have the option, in its sole discretion, to require (and, at the request of the Borrower, shall require) the non-Affected Lenders to honor such request by making a non pro-rata Revolving Loan to the Borrower; provided that in no event shall the Lender Credit Exposure of any Lender exceed the Maximum Revolving Amount of such Lender after giving effect to the making of such Revolving Loan.

(ii) Reallocation of Participations; Cash Collateralization and Repayment. Notwithstanding anything in this Agreement to the contrary, if any Lender becomes an Affected Lender, then, until such time as such Lender is no longer an Affected Lender, to the extent permitted by applicable law, (A) all or any part of such Affected Lender's participation interest in Letters of Credit (pursuant to Section 2.2(b)(vi) hereof) and Swing Loans (pursuant to Section 2.2(c)(iii) hereof) shall be reallocated among the non-Affected Lenders in accordance with their respective Commitment Percentages (calculated as if such Affected Lender did not have a Commitment Percentage of the Commitment) but only to the extent that such reallocation does not cause the aggregate Lender Credit Exposure of any non-Affected Lender to exceed the Maximum Revolving Amount of such non-Affected Lender; provided that no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against an Affected Lender arising from that Lender having become an Affected Lender, including any claim of a non-Affected Lender as a result of such non-Affected Lender's increased exposure following such reallocation, and (B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, the Borrower shall, within one Business Day following the written request of the Administrative Agent (or the Swing Line Lender or Issuing Lender), and without prejudice to any right or remedy available to it hereunder or under law, (1) first, prepay Swing Loans in an amount equal to the Swing Line Lender's exposure with respect to such Affected Lender's Commitment Percentage of outstanding Swing Loans (other than Swing Loans as to which such Affected Lender's participation obligation has been reallocated to other Lenders) and (2) second, cash collateralize the Issuing Lender's exposure with respect to issued Letters of Credit (other than those Letter of Credit obligations as to which such Affected Lender's participation obligation has been reallocated to other Lenders or cash collateralized in accordance with the terms hereof).

(iii) New Swing Loans and Letters of Credit. So long as any Lender is an Affected Lender, (A) the Swing Line Lender shall not be required to fund any Swing Loans unless it is satisfied that it will have no exposure with respect to such Affected Lender's Commitment Percentage of outstanding Swing Loans (other than Swing Loans as to which such Affected Lender's participation obligation has been reallocated to other Lenders) after giving effect to such Swing Loan, and (B) the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no exposure with

respect to issued Letters of Credit (other than those Letter of Credit obligations as to which such Affected Lender's participation obligation has been reallocated to other Lenders or cash collateralized in accordance with the terms hereof) after giving effect thereto.

(g) Determination of Dollar Amounts. The Administrative Agent will determine the Dollar Amount of: (a) each Loan as of the date three (3) Business Days prior to the date on which such Loan is to be made or, if applicable, date of conversion/continuation of such Loan, and (b) all outstanding Loans on and as of the last Business Day of each calendar quarter and on any other Business Day elected by the Administrative Agent in its discretion or upon instruction by the Required Lenders. Each day upon or as of which the Administrative Agent determines Dollar Amounts as described in the preceding clauses (a) and (b) is herein described as a "Computation Date" with respect to each Loan for which a Dollar Amount is determined on or as of such day. If at any time the Dollar Amount of (i) the aggregate principal amount of outstanding Revolving Loans exceeds the Total Commitment Amount, or (ii) the aggregate outstanding principal Dollar Amount of all Loans in Agreed Currencies other than Dollars exceeds the Maximum Foreign Currency Amount, the Borrower shall immediately make a payment on the Loans sufficient to eliminate such excess.

#### Section 2.6. Payment on Loans and Other Obligations.

(a) Payments Generally. Each payment made hereunder by a Credit Party shall be made without any offset, abatement, recoupment, counterclaim, withholding (except as required or permitted under Section 3.2 hereof) or reduction whatsoever.

(b) Payments from Borrower. All payments (including prepayments) to the Administrative Agent of the principal of or interest on each Loan or other payment, including but not limited to principal, interest, fees or any other amount owed by the Borrower under this Agreement, shall be made in Dollars unless otherwise specified herein. All payments described in this subsection (b) shall be remitted to the Administrative Agent, at the address of the Administrative Agent for notices referred to in Section 11.4 hereof for the account of the Lenders (or the Issuing Lender or the Swing Line Lender, as appropriate) not later than 3:00 P.M. (Eastern time) on the due date thereof with respect to payments other than for application to Swing Line Loans, and not later than 4:30 P.M. (Eastern time) on the due date thereof with respect to payments for application to Swing Line Loans, in each case in immediately available funds. Any such payments received by the Administrative Agent (or the Issuing Lender or the Swing Line Lender) after the time required above shall be deemed to have been made and received on the next Business Day.

(c) Payments to Lenders. Upon the Administrative Agent's receipt of payments hereunder, the Administrative Agent shall immediately distribute to the Lenders (except with respect to Swing Loans, which shall be paid to the Swing Line Lender and any Lender that has funded a participation in the Swing Loans, or, with respect to Letters of Credit, certain of which payments shall be paid to the Issuing Lender) their respective ratable shares, if any, of the amount of principal, interest, and commitment and other fees received by the Administrative Agent for the account of such Lender. Payments received by the Administrative Agent shall be delivered to the Lenders in immediately available funds. Each Lender shall

record any principal, interest or other payment, the principal amounts of Base Rate Loans, Eurocurrency Loans, Swing Loans and Letters of Credit, all prepayments and the applicable dates, including Interest Periods and Agreed Currencies, with respect to the Loans made, and payments received by such Lender, by such method as such Lender may generally employ; provided that failure to make any such entry shall in no way detract from the obligations of the Borrower under this Agreement or any Note. The aggregate unpaid amount of Loans, types of Loans, Interest Periods, Agreed Currencies, and similar information with respect to the Loans and Letters of Credit set forth on the records of the Administrative Agent shall be rebuttably presumptive evidence with respect to such information, including the amounts of principal, interest and fees owing to each Lender.

(d) Timing of Payments. Whenever any payment to be made hereunder, including, without limitation, any payment to be made on any Loan, shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next Business Day and such extension of time shall in each case be included in the computation of the interest payable on such Loan; provided that, with respect to a Eurocurrency Loan, if the next Business Day shall fall in the succeeding calendar month, such payment shall be made on the preceding Business Day and the relevant Interest Period shall be adjusted accordingly.

(e) Affected Lenders; Application of Certain Cash Collateral. To the extent that the Administrative Agent receives any payments or other amounts for the account of an Affected Lender, at the discretion of the Administrative Agent, such Affected Lender shall be deemed to have requested that the Administrative Agent use such payment or other amount (or any portion thereof, at the discretion of the Administrative Agent) first, to cash collateralize its unfunded risk participation in Swing Loans and the Letters of Credit, and, with respect to any Defaulting Lender, second, to fulfill its obligations to make Loans. Notwithstanding anything to the contrary contained in this Agreement, any cash collateral provided for in this Agreement in respect of Letters of Credit shall be applied to the satisfaction of the applicable Affected Lender's obligation to fund participations in respect of Letters of Credit (including, as to cash collateral provided by a Affected 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.

(f) Payment of Non Pro-Rata Loans and Letters of Credit. Notwithstanding anything in this Agreement to the contrary, at the sole discretion of the Administrative Agent, any payment of principal, interest, fees or other amounts hereunder may first be applied to such Loans, Letters of Credit and other obligations that were not advanced or participated pro rata hereunder.

(g) Notwithstanding the foregoing provisions of this Section, if, after the making of any Loan in any currency other than Dollars, currency control or exchange regulations are imposed in the country which issues such currency, or any other event occurs, in each case with the result that the type of currency in which the Loan was made (the "Original Currency") no longer exists or would no longer be an Eligible Currency or the Borrower is not able to make payment to the Administrative Agent for the account of the Lenders in such Original Currency,

then all payments to be made by the Borrower hereunder in such currency shall instead be made when due in Dollars in an amount equal to the Dollar Amount (as of the date of repayment) of such payment due, it being the intention of the parties hereto that the Borrower take all risks of the imposition of any such currency control or exchange regulations.

Section 2.7. Prepayment.

(a) Right to Prepay.

(i) The Borrower shall have the right at any time or from time to time to prepay, on a pro rata basis for all of the Lenders (except with respect to Swing Loans, which shall be paid to the Swing Line Lender and any Lender that has funded a participation in such Swing Loan), all or any part of the principal amount of the Revolving Loans then outstanding, as applicable, as designated by the Borrower. Such payment shall include interest accrued on the amount so prepaid to the date of such prepayment and any amount payable under Article III hereof with respect to the amount being prepaid. Prepayments of Base Rate Loans shall be without any premium or penalty.

(ii) The Borrower shall have the right, at any time or from time to time, to prepay, for the benefit of the Swing Line Lender (and any Lender that has funded a participation in such Swing Loan), all or any part of the principal amount of the Swing Loans then outstanding, as designated by the Borrower, plus interest accrued on the amount so prepaid to the date of such prepayment.

(iii) Notwithstanding anything in this Section 2.7 or otherwise to the contrary, at the discretion of the Administrative Agent, in order to prepay Revolving Loans made to the Borrower that were not advanced pro rata by all of the Lenders, any prepayment of a Revolving Loan shall first be applied to Revolving Loans made by the Lenders during any period in which a Defaulting Lender shall exist.

(b) Notice of Prepayment. The Borrower shall give the Administrative Agent irrevocable written notice of prepayment of (i) a Base Rate Loan or Swing Loan by no later than 11:00 A.M. (Eastern time) on the Business Day on which such prepayment is to be made, and (ii) a Eurocurrency Loan by no later than 1:00 P.M. (Eastern time) three Business Days before the Business Day on which such prepayment is to be made.

(c) Minimum Amount for Eurocurrency Loans. Each prepayment of a Eurocurrency Loan shall be in the principal amount of not less than the lesser of Two Hundred Fifty Thousand Dollars (\$250,000) (or the Approximate Equivalent Amount thereof, if applicable), or the principal amount of such Loan, or, with respect to a Swing Loan, the principal balance of such Swing Loan, except in the case of a mandatory payment pursuant to Section 2.11 or Article III hereof.

Section 2.8. Commitment and Other Fees.

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent, for the ratable account of the Lenders, as a consideration for the Revolving Credit Commitment, a commitment fee, for each day from the Closing Date through the last day of the Commitment Period, in an amount equal to (i) (A) the Maximum Revolving Amount at the end of such day, minus (B) the Revolving Credit Exposure (exclusive of the Swing Line Exposure) at the end of such day, multiplied by (ii) the Applicable Commitment Fee Rate in effect on such day divided by three hundred sixty (360). The commitment fee shall be payable quarterly in arrears, commencing on March 31, 2018 and continuing on each Regularly Scheduled Payment Date thereafter, and on the last day of the Commitment Period.

(b) Other Fees. The Borrower shall pay the fees set forth in the Administrative Agent Fee Letter.

(c) Authorization to Debit Account. The Borrower hereby agrees that the Administrative Agent has the right to debit from any Deposit Account of the Borrower held by the Administrative Agent, amounts owing and then due to the Administrative Agent and the Lenders by the Borrower under this Agreement and the Loan Documents for payment of fees, expenses and other amounts incurred or owing, and in each case, then due, in connection therewith.

Section 2.9. Modifications to Commitment.

(a) Optional Reduction of Revolving Credit Commitment. The Borrower may at any time and from time to time permanently reduce in whole or ratably in part the Maximum Revolving Amount to an amount not less than the then existing Revolving Credit Exposure, by giving the Administrative Agent not fewer than three Business Days' written notice of such reduction, provided that any such partial reduction shall be in an aggregate amount, for all of the Lenders, of not less than Five Million Dollars (\$5,000,000), increased in increments of One Million Dollars (\$1,000,000). The Administrative Agent shall promptly notify each Lender of the date of each such reduction and such Lender's proportionate share thereof. After each such partial reduction, the commitment fees payable hereunder shall be calculated upon the Maximum Revolving Amount as so reduced. If the Borrower reduces in whole the Revolving Credit Commitment, on the effective date of such reduction (the Borrower having prepaid in full the unpaid principal balance, if any, of the Revolving Loans, together with all interest (if any) and commitment and other fees accrued and unpaid with respect thereto, and provided that no Letter of Credit Exposure or Swing Line Exposure shall exist), all of the Revolving Credit Notes shall be delivered to the Administrative Agent marked "Canceled" and the Administrative Agent shall redeliver such Revolving Credit Notes to the Borrower. Any partial reduction in the Maximum Revolving Amount shall be effective during the remainder of the Commitment Period. Upon each decrease of the Maximum Revolving Amount, the Total Commitment Amount shall be decreased by the same amount.

(b) Increase in Commitment.

(i) At any time during the Commitment Increase Period, the Borrower may request that the Administrative Agent increase the Total Commitment Amount by increasing the Maximum Revolving Amount; provided that the aggregate amount of all such increases made pursuant to this Section 2.9(b) shall not exceed Two Hundred Million Dollars (\$200,000,000), the entire amount of which is available as of the Fifth Amendment Effective Date. Each such request for an increase shall be in an amount of at least Ten Million Dollars (\$10,000,000), and may be made by either (A) increasing, for one or more Lenders, with their prior written consent, their respective Revolving Credit Commitments, or (B) including one or more Additional Lenders, each with a new commitment under the Revolving Credit Commitment, as a party to this Agreement (each an “Additional Commitment” and, collectively, the “Additional Commitments).

(ii) During the Commitment Increase Period, all of the Lenders agree that the Administrative Agent, in its sole discretion, may permit one or more Additional Commitments upon satisfaction of the following requirements: (A) each Additional Lender, if any, shall execute an Additional Lender Assumption Agreement, (B) each Additional Commitment from an Additional Lender, if any, shall be in an amount of at least Ten Million Dollars (\$10,000,000), (C) the Administrative Agent shall provide to the Borrower and each Lender a revised Schedule 1 to this Agreement, including revised Commitment Percentages for each of the Lenders, if appropriate, at least three Business Days prior to the date of the effectiveness of such Additional Commitments (each an “Additional Lender Assumption Effective Date”), and (D) the Borrower shall execute and deliver to the Administrative Agent and the Lenders such replacement or additional Revolving Credit Notes as shall be required by the Administrative Agent (and requested by the Lenders). The Lenders hereby authorize the Administrative Agent to execute each Additional Lender Assumption Agreement on behalf of the Lenders.

(iii) On each Additional Lender Assumption Effective Date, the Lenders shall make adjustments among themselves with respect to the Loans then outstanding and amounts of principal, interest, commitment fees and other amounts paid or payable with respect thereto as shall be necessary, in the opinion of the Administrative Agent, in order to reallocate among such Lenders such outstanding amounts, based on the revised Commitment Percentages and to otherwise carry out fully the intent and terms of this Section 2.9(b) (and the Borrower shall pay to the Lenders any amounts that would be payable pursuant to Section 3.3 hereof if such adjustments among the Lenders would cause a prepayment of one or more Eurocurrency Loans). In connection therewith, it is understood and agreed that the Maximum Revolving Amount of any Lender will not be increased (or decreased except pursuant to subsection (a) hereof) without the prior written consent of such Lender. The Borrower shall not request any increase in the Total Commitment Amount pursuant to this Section 2.9(b) if a Default or an Event of Default shall then exist, or, after giving pro forma effect to any such increase, would exist. At the time of any such increase, at the request of the Administrative Agent, the Credit Parties and the Lenders shall enter into an amendment to evidence such increase and to address related provisions as deemed necessary or appropriate by the



Administrative Agent. Upon each increase of the Maximum Revolving Amount, the Total Commitment Amount shall be increased by the same amount.

Section 2.10. Computation of Interest and Fees. Interest on Loans (other than Base Rate Loans and Loans denominated in Agreed Currencies other than Dollars where market convention does not follow a 360-day year), Letter of Credit fees, Related Expenses and commitment and other fees and charges hereunder shall be computed on the basis of a year having three hundred sixty (360) days and calculated for the actual number of days elapsed. Interest on Base Rate Loans and Loans denominated in Agreed Currencies other than Dollars where market convention is to follow a 365/366 day year shall be computed on the basis of a year having three hundred sixty-five (365) days or three hundred sixty-six (366) days, as the case may be, and calculated for the actual number of days elapsed.

Section 2.11. Mandatory Payments.

(a) Revolving Credit Exposure. If, at any time, the Revolving Credit Exposure shall exceed the Revolving Credit Commitment, the Borrower shall, as promptly as practicable, but in no event later than the next Business Day, pay an aggregate principal amount of the Revolving Loans sufficient to bring the Revolving Credit Exposure within the Revolving Credit Commitment. Prepayments resulting from foreign currency exchange rate fluctuations shall be made as contemplated by Section 2.5(g).

(b) Swing Line Exposure. If, at any time, the Swing Line Exposure shall exceed the Swing Line Commitment, the Borrower shall, as promptly as practicable, but in no event later than the next Business Day, pay an aggregate principal amount of the Swing Loans sufficient to bring the Swing Line Exposure within the Swing Line Commitment.

(c) Application of Mandatory Payments. Unless otherwise designated by the Borrower, each prepayment pursuant to Section 2.11 hereof shall be applied in the following order (i) first, on a pro rata basis for the Lenders, to outstanding Base Rate Loans, and (ii) second, on a pro rata basis for the Lenders, to outstanding Eurocurrency Loans; provided that, if the outstanding principal amount of any Eurocurrency Loan shall be reduced to an amount less than the minimum amount set forth in Section 2.5(d) hereof as a result of such prepayment, then such Eurocurrency Loan shall be converted into a Base Rate Loan on the date of such prepayment. Any prepayment of a Eurocurrency Loan or Swing Loan pursuant to this Section 2.11 shall be subject to the prepayment provisions set forth in Article III hereof.

Section 2.12. Swap Obligations Make-Well Provision. The Borrower, to the extent that it is an “eligible contract participant” as defined in the Commodity Exchange Act, hereby absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party in order for such Credit Party to honor its obligations under the Loan Documents in respect of the Swap Obligations. The obligations of the Borrower under this Section 2.12 shall remain in full force and effect until all Obligations are paid in full. The Borrower intends that this Section 2.12 constitute, and this Section 2.12 shall be deemed to constitute, a “keepwell, support, or other agreement” for the

benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

Section 2.13. Market Disruption. Notwithstanding the satisfaction of all conditions referred to in Article II and Article IV with respect to any Loan in any Agreed Currency other than Dollars, if there shall occur on or prior to the date of such Loan any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls, or any other event, in each case, which would in the reasonable opinion of the Administrative Agent or the Required Lenders make it impracticable for such Loan to be denominated in the Agreed Currency specified by the Borrower, then the Administrative Agent shall forthwith give notice thereof to the Borrower and the Lenders, and such Loan shall not be denominated in such Agreed Currency but shall be made in Dollars on the requested date for such Loan to be extended, with such Loan being made in an aggregate principal amount equal to the Dollar Amount of the aggregate principal amount specified in the related request for funding, continuation or conversion, as the case may be, as a Base Rate Loan, unless the Borrower notifies the Administrative Agent at least one (1) Business Day before such date that (i) it elects not to borrow on such date or (ii) it elects to borrow on such date in a different Agreed Currency, as the case may be, in which the denomination of such Loans would in the opinion of the Administrative Agent and the Required Lenders be practicable and in an aggregate principal amount equal to the Dollar Amount of the aggregate principal amount specified in the related request for funding, continuation or conversion, as the case may be.

Section 2.14. Judgment Currency. If for the purposes of obtaining judgment in any court it is necessary to convert a sum due from the Borrower hereunder in the currency expressed to be payable herein (the "specified currency") into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the specified currency with such other currency at the Administrative Agent's offices on the Business Day preceding that on which final, non-appealable judgment is given. The obligations of the Borrower in respect of any sum due to any Lender or the Administrative Agent hereunder shall, notwithstanding any judgment in a currency other than the specified currency, be discharged only to the extent that on the Business Day following receipt by such Lender or the Administrative Agent (as the case may be) of any sum adjudged to be so due in such other currency such Lender or the Administrative Agent (as the case may be) may in accordance with normal, reasonable banking procedures purchase the specified currency with such other currency. If the amount of the specified currency so purchased is less than the sum originally due to such Lender or the Administrative Agent, as the case may be, in the specified currency, the Borrower agrees, to the fullest extent that it may effectively do so, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender or the Administrative Agent, as the case may be, against such loss, and if the amount of the specified currency so purchased exceeds (a) the sum originally due to any Lender or the Administrative Agent, as the case may be, in the specified currency and (b) any amounts shared with other Lenders as a result of allocations of such excess as a disproportionate payment to such Lender under the requirements of this Agreement, such Lender or the Administrative Agent, as the case may be, agrees to remit such excess to the Borrower.

Section 2.15. Foreign Subsidiary Borrowers. The Borrower from time to time may request in writing that one or more of its Foreign Subsidiaries become borrowers hereunder with the ability to request and receive Loans and Letters of Credit (each, a “Foreign Subsidiary Borrower”). Each such request shall be delivered to the Administrative Agent. The Administrative Agent shall promptly circulate each such request to the Lenders. Each Lender shall notify the Administrative Agent and the Borrower no later than 20 days after its receipt of such request as to whether the applicable Foreign Subsidiary may become a party hereto as a Foreign Subsidiary Borrower. No Foreign Subsidiary shall become a Foreign Subsidiary Borrower unless approved in writing by all of the Lenders and the Administrative Agent. Any Lender that fails to respond to such a request shall be deemed to have rejected the joinder of such Foreign Subsidiary Borrower hereto. Each of the Administrative Agent and each Lender may request from the Borrower certain information in respect of such a Foreign Subsidiary in order to make such decision, including, without limitation, such Foreign Subsidiary’s jurisdiction of organization. Loans and Letters of Credit requested by a Foreign Subsidiary Borrower shall be made or issued from the United States. If the Lenders and the Administrative Agent agree with the Borrower to add a Foreign Subsidiary Borrower hereto, this Agreement (and the other Loan Documents, as relevant) shall be amended to give effect to such addition. All Lenders shall be required to make Loans to each Foreign Subsidiary Borrower, subject to any borrowing sublimits agreed to by the Borrower, the applicable Foreign Subsidiary Borrower, the Administrative Agent, and the Lenders. Each such Foreign Subsidiary Borrower shall be required to deliver, among other things (and in each case in form, scope and substance acceptable to the Administrative Agent and the Lenders), (a) amendments, joinders and other documents required by the Administrative Agent and the Lenders to give such Foreign Subsidiary Borrower the ability to receive extensions of credit hereunder, (b) collateral documents made by such Foreign Subsidiary Borrower in favor of the Administrative Agent, (c) resolutions, charter documents, incumbency certificates, opinions of counsel and other documents or information, as may be required by the Administrative Agent and the Lenders (including without limitation, information necessary to evaluate (i) any withholding tax that may arise in respect of any Loans made to or Letters of Credit issued on behalf of such Foreign Subsidiary, and (ii) the manner in which Loans may be made available to such Foreign Subsidiary, including in Dollars or the requested Agreed Currency), (d) promissory notes signed by such Foreign Subsidiary Borrower to the extent any Lender so requires, and (e) information required under “know your customer”, anti-money laundering or similar regulations to which such Lender is subject. No Foreign Subsidiary Borrower shall be joined hereto if (x) a violation of applicable law would result therefrom or (y) any Lender or the Administrative Agent objects to any adverse change in tax treatment that would result therefrom (including, without limitation, the payment of any tax gross-up or the accrual of any withholding tax). In addition, extensions of credit and other financial accommodations from the United States into the applicable jurisdiction must be permitted under applicable law. The Borrower and each Guarantor of Payment shall guaranty the Obligations of each such Foreign Subsidiary Borrower on terms and conditions acceptable to the Administrative Agent and the Lenders. Each Foreign Subsidiary that is or becomes a Foreign Subsidiary Borrower hereby irrevocably appoints the Borrower as its agent for all purposes relevant to this Agreement and each related document, including service of process.

### ARTICLE III

#### ADDITIONAL PROVISIONS RELATING TO EUROCURRENCY LOANS; INCREASED CAPITAL; TAXES

##### Section 3.1. Requirements of Law.

(a) If, after the Closing Date, (i) the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by a Governmental Authority, or (ii) the compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority:

(A) shall subject any Lender to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any Eurocurrency Loan or any Swing Loan accruing interest at the Daily Eurodollar Rate made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Taxes and Excluded Taxes which are governed by Section 3.2 hereof);

(B) shall impose, modify or hold applicable any reserve, special deposit, insurance charge, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender that is not otherwise included in the determination of the Eurocurrency Rate or the Daily Eurodollar Rate; or

(C) shall impose on such Lender any other condition;

and the result of any of the foregoing is to increase the cost to such Lender of making, converting into, continuing or maintaining Eurocurrency Loans or Swing Loans accruing interest at the Daily Eurodollar Rate or issuing or participating in Letters of Credit, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, the Borrower shall pay to such Lender, promptly after receipt of a written request therefor, any additional amounts necessary to compensate such Lender for such increased cost or reduced amount receivable. If any Lender becomes entitled to claim any additional amounts pursuant to this subsection (a), such Lender shall promptly notify the Borrower in reasonable detail (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled.

(b) If any Lender shall have determined that, after the Closing Date, the adoption of or any change in any Requirement of Law or Risk-Based Capital Guidelines regarding capital adequacy or liquidity, or liquidity requirements, or in the interpretation or application thereof by a Governmental Authority or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy or liquidity (whether or not having the force of law) from any Governmental Authority shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of its obligations hereunder, or under or in respect of any Letter of Credit, to a level below that which such Lender or such corporation could have achieved but for such adoption,

change or compliance (taking into consideration the policies of such Lender or such corporation with respect to capital adequacy and liquidity), then from time to time, upon submission by such Lender to the Borrower (with a copy to the Administrative Agent) of a written request therefor (which shall include the method for calculating such amount and reasonable detail with respect to such calculation), the Borrower shall promptly pay or cause to be paid to such Lender such additional amount or amounts as will compensate such Lender or such corporation for such reduction.

(c) For purposes of this Section 3.1 and Section 3.5(a) hereof, the Dodd-Frank Act, any requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority), and any rules, regulations, orders, requests, guidelines and directives adopted, issued, promulgated or implemented in connection with any of the foregoing, regardless of the date adopted, issued, promulgated or implemented, are deemed to have been introduced and adopted after the Closing Date.

(d) A certificate as to any additional amounts payable pursuant to this Section 3.1 together with a reasonably detailed calculation and description of such amounts contemplated by this Section 3.1, submitted by any Lender to the Borrower (with a copy to the Administrative Agent) shall be conclusive absent manifest error. In determining any such additional amounts, such Lender may use any method of averaging and attribution that it (in its sole discretion) shall deem applicable. The obligations of the Borrower pursuant to this Section 3.1 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder. The Borrower shall not be required to compensate a Lender pursuant to this Section 3.1 for any increased costs or reductions to the extent such Lender notifies the Borrower thereof more than one hundred eighty (180) days after such Lender becomes aware of such right to additional compensation (except that, if the circumstances giving rise to such increased costs or reductions are retroactive, then the one hundred eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof).

#### Section 3.2. Taxes.

(a) All payments made by any Credit Party under any Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes or Other Taxes. If any Taxes or Other Taxes are required to be deducted or withheld from any amounts payable to the Administrative Agent or any Lender hereunder, the amounts so payable to the Administrative Agent or such Lender shall be increased to the extent necessary to yield to the Administrative Agent or such Lender (after deducting, withholding and payment of all Taxes and Other Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in the Loan Documents.

(b) Whenever any Taxes or Other Taxes are required to be withheld and paid by a Credit Party, such Credit Party shall timely withhold and pay such taxes to the relevant Governmental Authorities. As promptly as possible thereafter, the Borrower shall send to the Administrative Agent for its own account or for the account of the relevant Lender, as the case may be, a certified copy of an original official receipt received by such Credit Party showing

payment thereof or other evidence of payment reasonably acceptable to the Administrative Agent or such Lender. If such Credit Party shall fail to pay any Taxes or Other Taxes when due to the appropriate Governmental Authority or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, such Credit Party and the Borrower shall indemnify the Administrative Agent and the appropriate Lenders on demand for any incremental Taxes or Other Taxes paid or payable by the Administrative Agent or such Lender as a result of any such failure.

(c) If any Lender shall be so indemnified by a Credit Party, such Lender shall use reasonable efforts to obtain the benefits of any refund, deduction or credit for any taxes or other amounts with respect to the amount paid by such Credit Party and shall reimburse such Credit Party to the extent, but only to the extent, that such Lender shall receive a refund with respect to the amount paid by such Credit Party or an effective net reduction in taxes or other governmental charges (including any taxes imposed on or measured by the total net income of such Lender) of the United States or any state or subdivision or any other Governmental Authority thereof by virtue of any such deduction or credit, after first giving effect to all other deductions and credits otherwise available to such Lender. If, at the time any audit of such Lender's income tax return is completed, such Lender determines, based on such audit, that it shall not have been entitled to the full amount of any refund reimbursed to such Credit Party as aforesaid or that its net income taxes shall not have been reduced by a credit or deduction for the full amount reimbursed to such Credit Party as aforesaid, such Credit Party, upon request of such Lender, shall promptly pay to such Lender the amount so refunded to which such Lender shall not have been so entitled, or the amount by which the net income taxes of such Lender shall not have been so reduced, as the case may be.

(d) Each Lender that is not (i) a citizen or resident of the United States, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States (or any jurisdiction thereof), or (iii) an estate or trust that is subject to federal income taxation regardless of the source of its income (any such Person, a "Non-U.S. Lender") shall deliver to the Borrower and the Administrative Agent two copies of either U.S. Internal Revenue Service Form W-8BEN, Form W-8BEN-E, Form W-8IMY or Form W-8ECI, or, in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", a statement with respect to such interest and two copies of a Form W-8BEN or Form W-8BEN-E, or any subsequent versions thereof or successors thereto, properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by Credit Parties under this Agreement and the other Loan Documents. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement or such other Loan Document. In addition, each Non-U.S. Lender shall deliver such forms or appropriate replacements promptly upon the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Each Non-U.S. Lender shall promptly notify the Borrower at any time it determines that such Lender is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this

subsection (c), a Non-U.S. Lender shall not be required to deliver any form pursuant to this subsection (c) that such Non-U.S. Lender is not legally able to deliver.

(e) Any Lender that is not a Non-U.S. Lender shall deliver to the Borrower and the Administrative Agent, upon the reasonable written request of the Borrower or the Administrative Agent, executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

(f) A Lender that is entitled to an exemption from or reduction of non-U.S. withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under any Loan Document shall use reasonable efforts to deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate; provided that (i) such Lender is legally entitled to complete, execute and deliver such documentation and in such Lender's judgment such completion, execution or submission would not materially prejudice the legal position of such Lender, and (ii) to the extent that such Lender fails to comply with the requirements of this subpart (f), such Lender shall not be entitled to additional compensation otherwise payable under this Section 3.2 if such additional compensation would not have been required had such Lender so complied.

(g) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding 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 that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

(h) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(i) The agreements in this Section 3.2 shall survive the termination of the Loan Documents and the payment of the Loans and all other amounts payable hereunder.

(j) For purposes of determining withholding Taxes imposed under FATCA, from and after the Closing Date, the Borrower and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Loans and the Letters of Credit

as not qualifying as a “grandfathered obligation” within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

Section 3.3. Funding Losses. The Borrower agrees to indemnify each Lender, promptly after receipt of a written request therefor, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurocurrency Loans after the Borrower has given a notice (including a written or verbal notice that is subsequently revoked) requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment of or conversion from Eurocurrency Loans after the Borrower has given a notice (including a written or verbal notice that is subsequently revoked) thereof in accordance with the provisions of this Agreement, (c) the making of a prepayment of a Eurocurrency Loan on a day that is not the last day of an Interest Period applicable thereto, (d) any conversion of a Eurocurrency Loan to a Base Rate Loan on a day that is not the last day of an Interest Period applicable thereto, or (e) any compulsory assignment of such Lender’s interests, rights and obligations under this Agreement pursuant to Section 11.3(c) or 11.12 hereof. Such indemnification shall be in an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amounts so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the appropriate London interbank market, along with any administration fee charged by such Lender. A certificate as to any amounts payable pursuant to this Section 3.3 submitted to the Borrower (with a copy to the Administrative Agent) by any Lender together with a reasonably detailed calculation and description of such amounts, shall be conclusive absent manifest error. The obligations of the Borrower pursuant to this Section 3.3 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 3.4. Change of Lending Office. Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 3.1 or 3.2(a) hereof with respect to such Lender, it will, if requested by the Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office (or an affiliate of such Lender, if practical for such Lender) for any Loans affected by such event with the object of avoiding the consequences of such event; provided, that such designation is made on terms that, in the sole judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage; and provided, further, that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 3.1 or 3.2(a) hereof.



Section 3.5. Eurocurrency Rate Lending Unlawful; Inability to Determine Rate.

(a) Notwithstanding anything to the contrary in this Agreement or any other Loan Document, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Required Lenders notify the Administrative Agent that the Required Lenders have determined, that:

(i) deposits of a type and maturity appropriate to match fund Eurocurrency Loans or Daily Eurodollar Loans are not available to such Lenders in the relevant market, or

(ii) the interest rate applicable to Eurocurrency Loans or Daily Eurodollar Loans is not ascertainable or available (including, without limitation, because the applicable Reuters Screen (or on any successor or substitute page on such screen) is unavailable) or does not adequately and fairly reflect the cost of making or maintaining Eurocurrency Loans or Daily Eurodollar Loans,

then the Administrative Agent shall suspend the availability of Eurocurrency Loans and Daily Eurodollar Loans, except to the extent a Benchmark Replacement Date has then previously occurred (in which case the requirements of Section 3.5(b) shall apply), and require any affected Eurocurrency Loans and Daily Eurodollar Loans to be repaid or converted to Base Rate Loans.

(b) Benchmark Replacement.

(i) Benchmark Transition Event; Early Opt-in Election. Notwithstanding anything to the contrary herein or in any other Loan Document (and any Swap Agreement shall be deemed not to be a “Loan Document” for purposes of this Section 3.5(b)), if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth Business Day after the date notice of such Benchmark Replacement is provided by the Administrative Agent to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such

time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(ii) Term SOFR Transition Event. Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that, this clause (b)(ii) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may do so in its sole discretion.

(iii) Benchmark Replacement Conforming Changes. In connection with the 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.

(iv) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes, (D) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (v) below and (E) the commencement or conclusion 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 3.5(b), 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 3.5(b).

(v) 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 Term SOFR or the Eurocurrency 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 or will be no longer representative, then the Administrative Agent may modify the definition of “Interest Period” 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 or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(vi) Benchmark Unavailability Period. Upon notice to the Borrower by the Administrative Agent in accordance with Section 11.4 of the commencement of a Benchmark Unavailability Period and until a Benchmark Replacement is determined in accordance with this Section 3.5(b), the Borrower may revoke any request for a Eurocurrency Loan, or any request for the conversion or continuation of a Eurocurrency Loan 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 Base Rate Loan or conversion to a Base Rate Loan. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

(c) If any Lender shall determine (which determination shall, upon notice thereof to the Borrower and the Administrative Agent, be conclusive and binding on the Borrower) that, after the Closing Date, (i) the introduction of or any change in or in the interpretation of any law makes it unlawful, or (ii) any Governmental Authority asserts that it is unlawful, for such Lender to make or continue any Loan as, or to convert (if permitted pursuant to this Agreement) any Loan into, a Eurocurrency Loan, the obligations of such Lender to make, continue or convert into any such Eurocurrency Loan shall, upon such determination, be suspended until such Lender shall notify the Administrative Agent that the circumstances causing such suspension no longer exist, and all outstanding Eurocurrency Loans payable to such Lender shall (i) if denominated in Dollars, automatically convert (if conversion is permitted under this Agreement) into a Base Rate Loan, or be repaid (if no conversion is permitted) at the end of the then current Interest Periods with respect thereto or sooner, if required by law or such assertion, or (ii) if denominated in an Agreed Currency other than Dollars, shall be repaid at the

end of the then current Interest Period. The foregoing also shall apply to Swing Loans accruing interest at the Daily Eurodollar Rate.

Section 3.6. Replacement of Lenders. The Borrower shall be permitted to replace any Lender that requests reimbursement for amounts owing pursuant to Section 3.1 or 3.2(a) hereof, or asserts its inability to make a Eurocurrency Loan pursuant to Section 3.5 hereof; provided that (a) such replacement does not conflict with any Requirement of Law, (b) no Default or Event of Default shall have occurred and be continuing at the time of such replacement, (c) prior to any such replacement, such Lender shall have taken no action under Section 3.4 hereof so as to eliminate the continued need for payment of amounts owing pursuant to Section 3.1 or 3.2(a) hereof or, if it has taken any action, such request has still been made, (d) the replacement financial institution shall purchase, at par, all Loans and other amounts owing to such replaced Lender on or prior to the date of replacement and assume all commitments and obligations of such replaced Lender, (e) the Borrower shall be liable to such replaced Lender under Section 3.3 hereof if any Eurocurrency Loan owing to such replaced Lender shall be purchased other than on the last day of the Interest Period relating thereto, (f) the replacement Lender, if not already a Lender, shall be satisfactory to the Administrative Agent, (g) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 11.10 hereof (provided that the Borrower (or the succeeding Lender, if such Lender is willing) shall be obligated to pay the assignment fee referred to therein), (h) until such time as such replacement shall be consummated, the Borrower shall pay all additional amounts (if any) required pursuant to Section 3.1 or 3.2(a) hereof, as the case may be; provided that a Lender shall not be required to make any such assignment if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to replace such Lender cease to apply, and (i) if more than one Lender shall request such reimbursement based on the same circumstances giving rise to such request, the Borrower shall not be permitted to replace only one of such Lenders.

Section 3.7. Discretion of Lenders as to Manner of Funding. Notwithstanding any provision of this Agreement to the contrary, each Lender shall be entitled to fund and maintain its funding of all or any part of such Lender's Loans in any manner such Lender deems to be appropriate; it being understood, however, that for the purposes of this Agreement all determinations hereunder shall be made as if such Lender had actually funded and maintained each Eurocurrency Loan during the applicable Interest Period for such Loan through the purchase of deposits having a maturity corresponding to such Interest Period and bearing an interest rate equal to the Eurocurrency Rate for such Interest Period.

#### **ARTICLE IV**

#### **CONDITIONS PRECEDENT**

Section 4.1. Conditions to Each Credit Event. The obligation of the Lenders, the Issuing Lender and the Swing Line Lender to participate in any Credit Event shall be conditioned, in the case of each Credit Event, upon the following:

(a) all conditions precedent as listed in Section 4.2 hereof required to be satisfied prior to the first Credit Event shall have been satisfied prior to or as of the first Credit Event;

(b) the Borrower shall have submitted a Notice of Loan (or with respect to a Letter of Credit, complied with the provisions of Section 2.2(b)(ii) hereof) and otherwise complied with Section 2.5 hereof;

(c) no Default or Event of Default shall then exist or immediately after such Credit Event would exist; and

(d) each of the representations and warranties contained in Article VI hereof shall be true in all material respects as if made on and as of the date of such Credit Event, except to the extent that any thereof expressly relate to an earlier date.

Each request by the Borrower for a Credit Event shall be deemed to be a representation and warranty by the Borrower as of the date of such request as to the satisfaction of the conditions precedent specified in subsections (c) and (d) above.

Section 4.2. Conditions to the First Credit Event. The Borrower shall cause the following conditions to be satisfied on or prior to the Closing Date. The obligation of the Lenders, the Issuing Lender and the Swing Line Lender to participate in the first Credit Event is subject to the Borrower satisfying each of the following conditions prior to or concurrently with such Credit Event:

(a) Notes as Requested. The Borrower shall have executed and delivered to (i) each Lender requesting a Revolving Credit Note such Lender's Revolving Credit Note, and (ii) the Swing Line Lender the Swing Line Note, if requested by the Swing Line Lender.

(b) Subsidiary Documents. Each Guarantor of Payment shall have executed and delivered to the Administrative Agent (i) a Guaranty of Payment, in form and substance satisfactory to the Administrative Agent, and (ii) a Security Agreement and such other documents or instruments, as may be required by the Administrative Agent to create or perfect the Liens of the Administrative Agent in the assets of such Guarantor of Payment, all to be in form and substance satisfactory to the Administrative Agent.

(c) Pledge Agreements. The Borrower and each Guarantor of Payment that has a Subsidiary shall have (i) executed and delivered to the Administrative Agent, for the benefit of the Lenders, a Pledge Agreement, in form and substance satisfactory to the Administrative Agent, with respect to the Pledged Securities, (ii) executed and delivered to the Administrative Agent, for the benefit of the Lenders, appropriate transfer powers for each of the Pledged Securities that are certificated, and (iii) delivered to the Administrative Agent, for the

benefit of the Lenders, the Pledged Securities (to the extent such Pledged Securities are certificated).

(d) Intellectual Property Security Agreements. The Borrower and each Guarantor of Payment that owns federally registered intellectual property shall have executed and delivered to the Administrative Agent, for the benefit of the Lenders, an Intellectual Property Security Agreement, in form and substance satisfactory to the Administrative Agent.

(e) Lien Searches. With respect to the property owned or leased by the Borrower and each Guarantor of Payment, and any other property securing the Obligations, the Borrower shall have caused to be delivered to the Administrative Agent (i) the results of Uniform Commercial Code lien searches, satisfactory to the Administrative Agent and the Lenders, (ii) the results of federal and state tax lien and judicial lien searches, satisfactory to the Administrative Agent and the Lenders, and (iii) Uniform Commercial Code termination statements reflecting termination of all U.C.C. Financing Statements previously filed by any Person and not expressly permitted pursuant to Section 5.9 hereof.

(f) Officer's Certificate, Resolutions, Organizational Documents. The Borrower shall have delivered to the Administrative Agent an officer's certificate (or comparable domestic or foreign documents) certifying the names of the officers of each Credit Party authorized to sign the Loan Documents, together with the true signatures of such officers and certified copies of (i) the resolutions of the board of directors (or comparable domestic or foreign documents) of such Credit Party evidencing approval of the execution, delivery and performance of the Loan Documents and the execution and performance of other Related Writings to which such Credit Party is a party, and the consummation of the transactions contemplated thereby, and (ii) the Organizational Documents of such Credit Party.

(g) Good Standing and Full Force and Effect Certificates. The Borrower shall have delivered to the Administrative Agent a good standing certificate or full force and effect certificate (or comparable document, if neither certificate is available in the applicable jurisdiction), as the case may be, for each Credit Party, issued on or about the Closing Date by the Secretary of State in the state or states where such Credit Party is incorporated or formed.

(h) Legal Opinion. The Borrower shall have delivered to the Administrative Agent an opinion of counsel for the Borrower and each other Credit Party, in form and substance satisfactory to the Administrative Agent and the Lenders.

(i) Borrower Investment Policy. The Borrower shall have delivered to the Administrative Agent a copy of the Borrower Investment Policy as in effect on the Closing Date.

(j) Insurance Certificates. The Borrower shall have delivered to the Administrative Agent certificates of insurance on ACORD 25 and 27 or 28 form and satisfactory to the Administrative Agent and the Lenders, providing for adequate real property, personal property and liability insurance for each Company, with the Administrative Agent, on behalf of the Lenders, lender's loss payee and additional insured, as appropriate.

(k) Pro-Forma Projections. The Borrower shall have delivered to the Administrative Agent annual pro-forma projections of financial statements (which report shall include balance sheets and statements of income (loss) and cash-flow) of the Borrower through and including the Fiscal Year ending December 30, 2023, prepared on a Consolidated basis, in form and substance satisfactory to the Administrative Agent.

(l) Fees. The Borrower shall have (i) paid all fees required to be paid to the Administrative Agent on the Closing Date, including as set forth in the Administrative Agent Fee Letter, and (ii) paid all legal fees and expenses of the Administrative Agent in connection with the preparation and negotiation of the Loan Documents.

(m) Mortgage Releases. The Administrative Agent shall have received evidence reasonably satisfactory to it that all mortgages securing obligations under the Existing Credit Agreement have been or contemporaneously with the effectiveness hereof shall be terminated.

(n) Closing Certificate. The Borrower shall have delivered to the Administrative Agent and the Lenders an officer's certificate certifying that, as of the Closing Date, (i) all conditions precedent set forth in Sections 4.1 and 4.2 have been satisfied, (ii) no Default or Event of Default exists or immediately after the first Credit Event will exist, and (iii) each of the representations and warranties contained in Article VI hereof are true and correct as of the Closing Date.

(o) Letter of Direction. The Borrower shall have delivered to the Administrative Agent a letter of direction authorizing the Administrative Agent, on behalf of the Lenders, to disburse the proceeds of the Loans, which letter of direction includes the authorization to transfer funds under this Agreement and the wire instructions that set forth the locations to which such funds shall be sent.

(p) No Material Adverse Change. No material adverse change, in the opinion of the Administrative Agent, shall have occurred in the financial condition, operations or prospects of the Companies since December 31, 2016.

(q) Miscellaneous. The Borrower shall have provided to the Administrative Agent and the Lenders such other items and shall have satisfied such other conditions as may be reasonably required by the Administrative Agent or the Lenders.

Section 4.3. Post-Closing Conditions. On or before the date specified in this Section 4.3 (unless a longer period is agreed to in writing by the Administrative Agent, in its reasonable discretion), the Borrower shall satisfy each of the following items specified in the subsections below:

(a) Insurance Endorsements. No later than forty-five (45) days after the Closing Date, the Borrower shall deliver to the Administrative Agent proof of insurance endorsements satisfactory to the Administrative Agent, evidencing, with respect to the real

property, personal property and liability insurance for each Company, the inclusion of the Administrative Agent, as lender's loss payee and additional insured, as appropriate.

(b) Control Agreements. No later than forty-five (45) days after the Closing Date, the Borrower shall use commercially reasonable efforts to deliver to the Administrative Agent an executed Control Agreement, in form and substance satisfactory to the Administrative Agent, for each Deposit Account and each Securities Account maintained by a Credit Party; provided that the Borrower shall not be required to deliver a Control Agreement with respect to any Deposit Account or Securities Account if it would not be required to deliver a Control Agreement pursuant to Section 5.21(d) hereof.

(c) Landlords'/Bailee's/Processor's Waivers. No later than sixty (60) days after the Closing Date, the Borrower shall use commercially reasonable efforts to deliver a Landlord's, Bailee's or Processor's Waiver, in form and substance satisfactory to the Administrative Agent, for each location of a Credit Party where any of the collateral securing any part of the Obligations is located, unless such location is owned by the Company that owns the collateral located there; provided that the Borrower shall not be required to deliver a Landlord's, Bailee's or Processor's Waiver with respect to any such location if it would not be required to deliver a Landlord's, Bailee's or Processor's Waiver pursuant to Section 5.21(e) hereof.

## ARTICLE V

### COVENANTS

So long as any Obligations (other than unasserted contingent indemnity obligations) remain unpaid or the Commitment remains outstanding, the Borrower will (or, as applicable, cause each other Company to) comply with the following requirements, unless the Required Lenders (or the Administrative Agent, with the consent of the Required Lenders) shall otherwise consent in writing:

Section 5.1. Insurance. Each Company (other than a Dormant Subsidiary) shall at all times maintain insurance upon its Inventory, Equipment and other personal and real property (including, if applicable, insurance required by the National Flood Insurance Reform Act of 1994) in such form, written by such companies, in such amounts, for such periods, and against such risks as may be reasonably acceptable to the Administrative Agent, with provisions satisfactory to the Administrative Agent for, with respect to Credit Parties, payment of all losses thereunder to the Administrative Agent, for the benefit of the Lenders, and such Company as their interests may appear (with lender's loss payable and additional insured endorsements, as appropriate, in favor of the Administrative Agent, for the benefit of the Lenders), and, if required by the Administrative Agent, the Borrower shall deposit the policies with the Administrative Agent. Any such policies of insurance shall provide for no fewer than thirty (30) days prior written notice of cancellation to the Administrative Agent and the Lenders. If any Event of Default then exists, any sums received by the Administrative Agent, for the benefit of the Lenders, in payment of insurance losses, returns, or unearned premiums under the policies may, at the option of the Administrative Agent or the Required Lenders, be applied upon the



Obligations whether or not the same is then due and payable, or may be delivered to the Companies for the purpose of replacing, repairing, or restoring the insured property; provided that if an Event of Default does not then exist, any such sums received by the Administrative Agent shall be delivered to the Borrower. The Administrative Agent is hereby authorized to act as attorney-in-fact for the Companies, after the occurrence and during the continuance of an Event of Default, in obtaining, adjusting, settling and canceling such insurance and indorsing any drafts. In the event of failure to provide such insurance as herein provided, the Administrative Agent may, at its option, provide such insurance and the Borrower shall pay to the Administrative Agent, upon demand, the cost thereof. Should the Borrower fail to pay such sum to the Administrative Agent upon demand, interest shall accrue thereon, from the date of demand until paid in full, at the Default Rate. Within ten days of the Administrative Agent's written request, the Borrower shall furnish to the Administrative Agent such information about the insurance of the Companies as the Administrative Agent may from time to time reasonably request, which information shall be prepared in form and detail satisfactory to the Administrative Agent and certified by a Financial Officer.

Section 5.2. Money Obligations. Each Company shall pay in full (a) prior in each case to the date when penalties would attach, all taxes, assessments and governmental charges and levies (except only those so long as and to the extent that the same shall be contested in good faith by appropriate and timely proceedings and for which adequate provisions have been established in accordance with GAAP) for which it may be or become liable or to which any or all of its properties may be or become subject; (b) all of its material wage obligations to its employees in compliance with the Fair Labor Standards Act (29 U.S.C. §§ 206-207) or any comparable provisions; and (c) all of its other material obligations calling for the payment of money (except only those so long as and to the extent that the same shall be contested in good faith and for which adequate provisions have been established in accordance with GAAP) before such payment becomes overdue.

Section 5.3. Financial Statements and Information.

(a) Quarterly Financials. The Borrower shall deliver to the Administrative Agent and the Lenders, within forty-five (45) days after the end of each of the first three Quarterly Reporting Periods of each Fiscal Year of the Borrower (or, if earlier, within five days after the date which Borrower shall be required to submit its Form 10-Q), balance sheets of the Companies as of the end of such period and statements of income (loss), stockholders' equity and cash flow for the Quarterly Reporting Period and Fiscal Year to date periods, all prepared on a Consolidated (in accordance with GAAP, except for the absence of footnotes and year-end adjustments) basis, in form and detail satisfactory to the Administrative Agent and the Lenders and certified by a Financial Officer; provided that delivery pursuant to subsection (f) below of copies of the Form 10-Q quarterly report of the Borrower for such quarterly period filed with the SEC shall be deemed to satisfy the requirements of this subsection (a).

(b) Annual Audit Report. The Borrower shall deliver to the Administrative Agent and the Lenders, within ninety (90) days after the end of each Fiscal Year of the Borrower (or, if earlier, within five days after the date which Borrower shall be required to submit its

Form 10-K), an annual audit report of the Companies for that year prepared on a Consolidated (in accordance with GAAP) basis, in form and detail satisfactory to the Administrative Agent and the Lenders and certified by an unqualified opinion of an independent public accountant satisfactory to the Administrative Agent, which report shall include balance sheets and statements of income (loss), stockholders' equity and cash-flow for that period; provided that delivery pursuant to subsection (f) below of copies of the Form 10-K annual report of the Borrower for such period filed with the SEC shall be deemed to satisfy the requirements of this subsection (b).

(c) Compliance Certificate. The Borrower shall deliver to the Administrative Agent and the Lenders, concurrently with the delivery of the financial statements set forth in subsections (a) and (b) above, a Compliance Certificate.

(d) Management Reports. The Borrower shall deliver to the Administrative Agent and the Lenders, concurrently with the delivery of the quarterly and annual financial statements set forth in subsections (a) and (b) above, a copy of any management report, letter or similar writing furnished to the Companies by the accountants in respect of the systems, operations, financial condition or properties of the Companies.

(e) Pro-Forma Projections. The Borrower shall deliver to the Administrative Agent and the Lenders, within ninety (90) days after the end of each Fiscal Year of the Borrower, annual pro-forma projections of the Companies for the then current Fiscal Year, to be in form and detail acceptable to the Administrative Agent and presented on a quarterly year-to-date basis.

(f) Shareholder and SEC Documents. The Borrower shall deliver to the Administrative Agent and the Lenders (or give notice of the availability thereof on the SEC Edgar website), as soon as available, (i) copies of Form 10-Q quarterly reports, Form 10-K annual reports and Form 8-K current reports, (ii) notice of (and upon the request of the Administrative Agent, copies of) any other filings made by the Borrower with the SEC, and (iii) notice of (and, upon the request of the Administrative Agent, copies of) any other information that is provided by the Borrower to its shareholders generally.

(g) Reporting Periods. If, at any time, the information set forth on Schedule 5.3 hereto becomes inaccurate, or does not set forth each Quarterly Reporting Period for the following Fiscal Year of the Borrower, the Borrower shall promptly deliver to the Administrative Agent a replacement Schedule 5.3 that includes such additional or corrected information, in form and substance satisfactory to Lender.

(h) Beneficial Ownership Certification. On or promptly after any time at which the Borrower or any Subsidiary becomes subject to the Beneficial Ownership Regulation, a completed Beneficial Ownership Certification in form and substance acceptable to the Administrative Agent.

(i) Financial Information of the Companies. The Borrower shall deliver to the Administrative Agent and the Lenders, within ten days of the written request of the Administrative Agent or any Lender, such other information about the financial condition,

properties and operations of any Company as the Administrative Agent or such Lender may from time to time reasonably request, which information shall be submitted in form and detail satisfactory to the Administrative Agent or such Lender and certified by a Financial Officer of the Company or Companies in question.

Section 5.4. Financial Records. Each Company shall at all times maintain true and complete records and books of account, including, without limiting the generality of the foregoing, appropriate provisions for possible losses and liabilities, all in accordance with GAAP, and at all reasonable times (during normal business hours and upon reasonable notice to such Company) permit the Administrative Agent or any Lender, or any representative of the Administrative Agent or such Lender, to examine such Company's books and records and to make excerpts therefrom and transcripts thereof.

Section 5.5. Franchises; Change in Business.

(a) Each Company (other than a Dormant Subsidiary) shall preserve and maintain at all times its existence, and its rights and franchises necessary for its business, except as otherwise permitted pursuant to Section 5.12 hereof.

(b) No Company shall engage in any business if, as a result thereof, the general nature of the business of the Companies taken as a whole would be substantially changed from the general nature of the business the Companies are engaged in on the Closing Date.

Section 5.6. ERISA Pension and Benefit Plan Compliance. No Company shall fail to satisfy any minimum funding requirements under Code Section 412 or incur any liability to the PBGC (other than premiums payable in the ordinary course), in connection with any Pension Plan in either case which would result in a Material Adverse Effect. The Borrower shall furnish to the Administrative Agent and the Lenders as soon as possible and in any event within thirty (30) days after any Company knows or has reason to know that any Reportable Event with respect to any Pension Plan has occurred, a statement of a Financial Officer of such Company, setting forth details as to such Reportable Event and the action that such Company proposes to take with respect thereto, together with a copy of the notice of such Reportable Event given to the PBGC if a copy of such notice is available to such Company. The Borrower shall promptly notify the Administrative Agent of any taxes assessed, proposed to be assessed or that the Borrower has reason to believe are likely to be assessed against a Company by the Internal Revenue Service with respect to any ERISA Plan, if any such actual, proposed or possible assessment would result in a Material Adverse Effect. As soon as practicable, and in any event within twenty (20) days, after any Company shall become aware that an ERISA Event shall have occurred that could reasonably be expected to result in a Material Adverse Effect, such Company shall provide the Administrative Agent with notice of such ERISA Event with a certificate by a Financial Officer of such Company setting forth the details of the event and the action such Company or another Controlled Group member proposes to take with respect thereto. The Borrower shall, at the reasonable request of the Administrative Agent, deliver or cause to be delivered to the Administrative Agent true and correct copies of any documents relating to the ERISA Plan of any Company.

Section 5.7. Financial Covenants.

(a) Net Leverage Ratio. The Borrower shall not suffer or permit at any time the Net Leverage Ratio, as of the end of any Quarterly Reporting Period, to exceed 4.50 to 1.00.

(b) Interest Coverage Ratio. The Borrower shall not suffer or permit at any time the Interest Coverage Ratio, as of the end of any Quarterly Reporting Period, to be less than 3.00 to 1.00.

Section 5.8. Borrowing. No Company shall create, incur or have outstanding any Indebtedness of any kind; provided that this Section 5.8 shall not apply to the following:

(a) the Loans, the Letters of Credit and any other Indebtedness under this Agreement;

(b) any loans or other credit granted to, or Capitalized Lease Obligations entered into by, any Company for the purchase or lease of fixed assets (and refinancings of such loans, credit or Capitalized Lease Obligations), which loans, credit and Capitalized Lease Obligations shall only be secured by the fixed assets being purchased or leased, so long as the aggregate principal amount of all such loans and Capitalized Lease Obligations for all Companies shall not exceed Twenty Million Dollars (\$20,000,000) at any time outstanding;

(c) the Indebtedness existing on the First Amendment Effective Date, in addition to the other Indebtedness permitted to be incurred pursuant to this Section 5.8, as set forth in Schedule 5.8 hereto (and any extension, renewal or refinancing thereof but only to the extent that the principal amount thereof does not increase after the Closing Date);

(d) loans to, and guaranties of Indebtedness of, a Company from a Company so long as each such Company is a Credit Party;

(e) loans to, and guaranties of Indebtedness of, a Foreign Subsidiary by a Credit Party in an aggregate amount not to exceed Fifteen Million Dollars (\$15,000,000) at any time outstanding;

(f) Indebtedness under any Hedge Agreement, so long as such Hedge Agreement shall have been entered into in the ordinary course of business and not for speculative purposes;

(g) [Intentionally Omitted]; and

(h) other unsecured Indebtedness, in addition to the Indebtedness listed above, in an aggregate principal amount for all Companies not to exceed Twenty Million Dollars (\$20,000,000) at any time outstanding.

Section 5.9. Liens. No Company shall create, assume or suffer to exist (upon the happening of a contingency or otherwise) any Lien upon any of its property or assets, whether now owned or hereafter acquired; provided that this Section 5.9 shall not apply to the following:

(a) Liens for taxes not yet due or that are being actively contested in good faith by appropriate proceedings and for which adequate reserves shall have been established in accordance with GAAP;

(b) other statutory Liens, including, without limitation, statutory Liens of landlords, carriers, warehousemen, utilities, mechanics, repairmen, workers and materialmen, incidental to the conduct of its business or the ownership of its property and assets that (i) were not incurred in connection with the incurring of Indebtedness or the obtaining of advances or credit, and (ii) do not in the aggregate materially detract from the value of its property or assets or materially impair the use thereof in the operation of its business;

(c) any Lien granted to the Administrative Agent, for the benefit of the Lenders (and affiliates thereof);

(d) the Liens existing on the Fifth Amendment Effective Date as set forth in Schedule 5.9 hereto and replacements, extensions, renewals, refundings or refinancings thereof, but only to the extent that the amount of debt secured thereby, and the amount and description of property subject to such Liens, shall not be increased;

(e) purchase money Liens on fixed assets securing the loans and Capitalized Lease Obligations pursuant to Section 5.8(b) hereof, provided that such Lien is limited to the purchase price and only attaches to the property being acquired, and replacements, extensions, renewals, refundings or refinancings thereof, but only to the extent that the amount of debt secured thereby, and the amount and description of property subject to such Liens, shall not be increased;

(f) easements or other minor defects or irregularities in title of real property not interfering in any material respect with the use of such property in the business of any Company;

(g) Liens securing Indebtedness of a Foreign Subsidiary permitted pursuant to Section 5.8(e) hereof; or

(h) other Liens, in addition to the Liens listed above, not incurred in connection with the incurring of Indebtedness, securing amounts, in the aggregate for all Companies, not to exceed Five Million Dollars (\$5,000,000) at any time.

No Company shall enter into any contract or agreement (other than (a) a contract or agreement entered into in connection with the purchase or lease of fixed assets that prohibits Liens on such fixed assets, (b) customary software license agreements that prohibit Liens on such agreement or the assets subject thereto or (c) other leases, licenses and other agreements (i) entered into in the ordinary course of business, (ii) with respect to which (x) the value of the assets subject thereto, (y) the consideration payable by the applicable Company thereunder, and/or (z) the value of the benefits to be received by the applicable Company in connection therewith, does not in the aggregate exceed \$5,000,000 and (iii) that contain a customary provision prohibiting Liens on such lease, license or other agreement or the assets subject

thereto; provided, that with respect to the foregoing clauses (a)-(c), such prohibition is limited to the relevant lease, license, contract or other agreement and/or the assets subject thereto, as the case may be; provided, further, that with respect to the foregoing clause (c), the applicable Company shall negotiate diligently in good faith prior to entering into any such lease, license or other agreement to remove any prohibition on Liens on such lease, license or other agreement or the assets subject thereto) that would prohibit the Administrative Agent or the Lenders from acquiring a security interest, mortgage or other Lien on, or a collateral assignment of, any of the property or assets of such Company.

Section 5.10. Regulations T, U and X. No Company shall take any action that would result in any non-compliance of the Loans or Letters of Credit with Regulations T, U or X, or any other applicable regulation, of the Board of Governors of the Federal Reserve System.

Section 5.11. Investments, Loans and Guaranties. No Company shall (a) create, acquire or hold any Subsidiary, (b) make or hold any investment in any stocks, bonds or securities of any kind, (c) be or become a party to any joint venture or other partnership, (d) make or keep outstanding any advance or loan to any Person, or (e) be or become a Guarantor of any kind (other than a Guarantor of Payment under the Loan Documents); provided that this Section 5.11 shall not apply to the following:

- (i) any endorsement of a check or other medium of payment for deposit or collection through normal banking channels or similar transaction in the normal course of business;
- (ii) any investment in direct obligations of the United States or in certificates of deposit issued by a member bank (having capital resources in excess of Five Hundred Million Dollars (\$500,000,000)) of the Federal Reserve System;
- (iii) any investment in (A) commercial paper or securities that at the time of such investment is assigned the highest quality rating in accordance with the rating systems employed by either Moody's or Standard & Poor's, (B) other Cash Equivalents, or (C) any other investment made in accordance with the Borrower Investment Policy;
- (iv) the holding of each of the Subsidiaries listed on Schedule 6.1 hereto, and the creation, acquisition and holding of and any investment in any new Subsidiary after the Closing Date so long as such new Subsidiary shall have been created, acquired or held, and investments made, in accordance with the terms and conditions of this Agreement;
- (v) loans to, investments in and guaranties of the Indebtedness (permitted under Section 5.8(d) hereof) and to the extent not in excess of \$2,500,000 at any time outstanding in the aggregate with respect to the Companies, guaranties of trade accounts payable in the ordinary course of business and guaranties of obligations under agreements by which a third party provides a drafts payable program with respect to such accounts payable for the applicable Company, in each case of, a Company from or by a Company so long as each such Company is a Credit Party;

(vi) loans to, investments in and guaranties of the Indebtedness (permitted under Section 5.8(e) hereof) of, a Foreign Subsidiary from or by a Credit Party;

(vii) investments by the Borrower and the other Companies in the capital stock of their Foreign Subsidiaries in an aggregate amount not to exceed Five Million Dollars (\$5,000,000) at any time outstanding;

(viii) any advance or loan to an officer or employee of a Company made in the ordinary course of such Company's business, so long as all such advances and loans from all Companies aggregate not more than the maximum principal sum of One Million Dollars (\$1,000,000) at any time outstanding;

(ix) advances in the form of progress payments, prepaid rent or security deposits;

(x) investments (including debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in good faith settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(xi) Investments in Hedge Agreements, so long as such Hedge Agreement shall have been entered into in the ordinary course of business and not for speculative purposes;

(xii) [Intentionally Omitted].

(xiii) other investments in an aggregate amount for all of the Companies not to exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000) during any Fiscal Year of the Borrower.

For purposes of this Section 5.11, the amount of any investment in equity interests shall be based upon the initial amount invested and shall not include any appreciation in value or return on such investment but shall take into account replacements, redemptions and return of capital.

Section 5.12. Merger and Sale of Assets. No Company shall merge, amalgamate or consolidate with any other Person, or Dispose of any assets to any Person, and whether effected pursuant to a Division or otherwise, other than in the ordinary course of business, except that, if no Default or Event of Default shall then exist or immediately thereafter shall begin to exist:

(a) a Company (other than the Borrower) may merge with (i) the Borrower (provided that the Borrower shall be the continuing or surviving Person) or (ii) any one or more Guarantors of Payment (provided that at least one Guarantor of Payment shall be the continuing or surviving Person);

(b) a Company may Dispose of any of its assets to (i) the Borrower or (ii) any Guarantor of Payment;

(c) a Company (other than a Credit Party) may merge with or otherwise Dispose of any of its assets to any other Company;

(d) a Company may Dispose of any assets that are obsolete or no longer useful in such Company's business or the subject of a condemnation or, subject to the insurance payment provisions of Section 5.1 hereof, casualty loss;

(e) a Company may transfer cash or other property or otherwise make payments in connection with transactions permitted under Sections 5.8, 5.11, 5.13 and 5.15 under this Agreement; and

(f) other Dispositions consummated by one or more of the Companies in any Fiscal Year in an aggregate amount not to exceed 10% of Consolidated Total Assets as determined as of the last day of the immediately preceding Fiscal Year.

Section 5.13. Acquisitions. No Company shall effect an Acquisition; provided, however, that a Company may effect an Acquisition so long as:

(a) [Intentionally Omitted]; or

(b) such Acquisition meets all of the following requirements:

(i) in the case of an Acquisition that involves a merger, amalgamation or other combination including the Borrower, the Borrower shall be the surviving entity;

(ii) in the case of an Acquisition that involves a merger, amalgamation or other combination including a Credit Party (other than the Borrower), a Credit Party shall be the surviving entity;

(iii) the business to be acquired shall be similar, or related to, or incidental to the lines of business of the Companies;

(iv) the Companies shall be in full compliance with the Loan Documents both prior to and after giving pro forma effect to such Acquisition;

(v) no Default or Event of Default shall exist prior to or, after giving pro forma effect to such Acquisition, thereafter shall begin to exist;

(vi) the Borrower shall have provided to the Administrative Agent and the Lenders, at least five Business Days prior to such Acquisition, in form and substance satisfactory to the Administrative Agent, historical financial statements of the target entity and a pro forma financial statement of the Companies accompanied by a certificate of a Financial Officer showing pro forma compliance with Section 5.7 hereof, both before and after giving effect to the proposed Acquisition;



(vii) such Acquisition is not actively opposed by the board of directors (or similar governing body) of the selling Persons or the Persons whose equity interests are to be acquired; and

(viii) the aggregate Consideration paid by the Companies, when added to all other Acquisitions for all Companies, would not exceed the aggregate amount of One Hundred Million Dollars (\$100,000,000) for the twelve month period ending with the month in which such Acquisition is consummated; provided, however, that the Net Leverage Ratio for the most recently ended reporting period for which the Administrative Agent has received a Compliance Certificate, immediately before and after giving pro forma effect to such Acquisition, shall be less than 3.75 to 1.00; provided, further, that each such pro forma determination shall be made as if such Acquisition (and related transactions, including the incurrence of any Indebtedness in connection therewith) was consummated on the first day of the applicable four-quarter period for which the Net Leverage Ratio is being determined.

Section 5.14. Notice. The Borrower shall cause a Financial Officer to promptly notify the Administrative Agent and the Lenders, in writing, whenever any of the following shall occur:

(a) a Default or Event of Default has occurred hereunder or any representation or warranty made in Article VI hereof or elsewhere in this Agreement or in any Related Writing is determined for any reason to have not been true and complete cease in any material respect when made;

(b) the Borrower learns of a litigation or proceeding against the Borrower before a court, administrative agency or arbitrator that, if successful, might have a Material Adverse Effect; or

(c) the Borrower learns that there has occurred or begun to exist any event, condition or thing that is reasonably likely to have a Material Adverse Effect.

Section 5.15. Restricted Payments. No Company shall make or commit itself to make any Restricted Payment at any time, except, that so long as (x) the Net Leverage Ratio would not exceed 3.75 to 1.00 (as of the date of a Capital Distribution and giving pro forma effect thereto) and (y) no Default or Event of Default exists or would result therefrom, the Companies may make Capital Distributions.

Section 5.16. Environmental Compliance. Each Company shall comply in all material respects with any and all Environmental Laws and Environmental Permits including, without limitation, all Environmental Laws in jurisdictions in which such Company owns or operates a facility or site, arranges for disposal or treatment of hazardous substances, solid waste or other wastes, accepts for transport any hazardous substances, solid waste or other wastes or holds any interest in real property or otherwise, except where the failure to comply would not result in a material expenditure or loss to such Company. The Borrower shall furnish to the Administrative Agent and the Lenders, promptly after receipt thereof, a copy of any material notice any Company may receive from any Governmental Authority or private Person, or otherwise, that any material litigation or proceeding pertaining to any environmental, health or safety matter has

been filed or is threatened against such Company, any real property in which such Company holds any interest or any past or present operation of such Company. No Company shall allow the release or disposal of hazardous waste, solid waste or other wastes on, under or to any real property in which any Company holds any ownership interest or performs any of its operations, in violation of any Environmental Law, except where the release or disposal or the failure to comply would not result in a material expenditure or loss to such Company. As used in this Section 5.16, "litigation or proceeding" means any demand, claim, notice, suit, suit in equity action, administrative action, investigation or inquiry whether brought by any Governmental Authority or private Person, or otherwise. The Borrower shall defend, indemnify and hold the Administrative Agent and the Lenders harmless against all costs, expenses, claims, damages, penalties and liabilities of every kind or nature whatsoever (including attorneys' fees) arising out of or resulting from the noncompliance of any Company with any Environmental Law. Such indemnification shall survive any termination of this Agreement.

Section 5.17. Affiliate Transactions. No Company shall, directly or indirectly, enter into or permit to exist any transaction or series of transactions (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate (other than a Company that is a Credit Party or a Foreign Subsidiary) on terms that shall be less favorable to such Company than those that might be obtained at the time in a transaction with a Person that is not an Affiliate; provided that the foregoing shall not prohibit the payment of customary and reasonable employment and severance arrangements with its employees and directors' fees to directors who are not employees of a Company or an Affiliate.

Section 5.18. Use of Proceeds. The Borrower's use of the proceeds of the Loans and its use of Letters of Credit shall be for working capital and other general corporate purposes of the Companies and for the refinancing of existing Indebtedness and for Acquisitions permitted hereunder. The Borrower will not request any Loan or Letter of Credit, and will not use, and the Borrower will ensure that the other Companies, and its or their respective directors, officers, employees and agents, shall not use, the proceeds of any Loan or Letter of Credit in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws. The Borrower will not, directly or indirectly, use the proceeds of the Loans or any Letter of Credit, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, or (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as underwriter, advisor, investor, or otherwise).

Section 5.19. Corporate Names and Locations of Collateral. No Company shall (a) change its corporate name, (b) consummate a Division or (c) change its state, province or other jurisdiction, or form of organization, or extend or continue its existence in or to any other jurisdiction (other than its jurisdiction of organization at the date of this Agreement); unless, in each case, the Borrower shall have provided the Administrative Agent and the Lenders with at least ten (10) days prior written notice thereof. The Borrower shall also:

(i) provide written notice to the Administrative Agent within forty-five (45) days after the end of each of the first three fiscal quarters of each Fiscal Year of the Borrower and within ninety (90) days after the end of each Fiscal Year of the Borrower, of any interest (including but not limited to any fee simple or leasehold interest) in any real property (including the name of any landlord (other than a retail store landlord) and the address of any such real property and whether such location will have or could reasonably be expected to have at any time Inventory and Equipment (excluding leasehold improvements) of the Credit Parties having an aggregate value in excess of Five Hundred Thousand Dollars (\$500,000)) not previously disclosed on Schedule 6.9 hereto or previously disclosed in writing by the Borrower to the Administrative Agent pursuant to this Section 5.19, and upon the Administrative Agent's receipt of such written notice from the Borrower, such interest in real property so disclosed in such written notice shall be deemed to be included on Schedule 6.9 hereto;

(ii) promptly notify the Administrative Agent of any change in the location of the office where any Company's records pertaining to its Accounts are kept; and

(iii) promptly notify the Administrative Agent any change in the location of any Company's chief executive office.

In the event of any of the foregoing or if otherwise deemed appropriate by the Administrative Agent, the Administrative Agent is hereby authorized to file new U.C.C. Financing Statements describing the Collateral and otherwise in form and substance sufficient for recordation wherever necessary or appropriate, as determined in the Administrative Agent's sole discretion, to perfect or continue perfected the security interest of the Administrative Agent, for the benefit of the Lenders, in the Collateral. The Borrower shall pay all filing and recording fees and taxes in connection with the filing or recordation of such U.C.C. Financing Statements and security interests and shall promptly reimburse the Administrative Agent therefor if the Administrative Agent pays the same. Such amounts not so paid or reimbursed shall be Related Expenses hereunder.

Section 5.20. Subsidiary Guaranties, Security Documents and Pledge of Stock or Other Ownership Interest.

(a) Guaranties and Security Documents. Each Domestic Subsidiary (that is not a Dormant Subsidiary) created, acquired or held subsequent to the Closing Date (including as a result of a Division, with respect to each applicable Division Successor), shall promptly execute and deliver to the Administrative Agent, for the benefit of the Lenders, a Guaranty of Payment (or a Guaranty of Payment Joinder) of all of the Obligations and a Security Agreement (or a Security Agreement Joinder) such agreements to be prepared by the Administrative Agent and in form and substance acceptable to the Administrative Agent, along with any such other supporting documentation, Security Documents, corporate governance and authorization documents, and an opinion of counsel as may be deemed necessary or advisable by the Administrative Agent. With respect to a Subsidiary that has been classified as a Dormant Subsidiary, at such time that such Subsidiary no longer meets the requirements of a Dormant Subsidiary, the Borrower shall provide to the Administrative Agent prompt written notice

thereof, and shall provide, with respect to such Subsidiary, all of the documents referenced in the foregoing sentence.

(b) Pledge of Stock or Other Ownership Interest. With respect to the creation or acquisition of a Domestic Subsidiary or first-tier Foreign Subsidiary of the Borrower or a Domestic Subsidiary (including as a result of a Division, with respect to each applicable Division Successor), the Borrower shall deliver to the Administrative Agent, for the benefit of the Lenders, all of the share certificates (or other evidence of equity) owned by a Credit Party pursuant to the terms of a Pledge Agreement prepared by the Administrative Agent and in form and substance satisfactory to the Administrative Agent, and executed by the appropriate Credit Party; provided that no such pledge shall include (i) shares of capital stock or other equity interests of any Foreign Subsidiary that is not a first-tier Foreign Subsidiary, (ii) shares of voting capital stock or other voting equity interests in any first-tier Foreign Subsidiary in excess of sixty-five percent (65%) of the total outstanding shares of voting capital stock or other voting equity interest of such first-tier Foreign Subsidiary and (iii) shares of capital stock or other equity interests of any first-tier Foreign Subsidiary that is a Dormant Subsidiary; provided, that with respect to a first-tier Foreign Subsidiary that has been classified as a Dormant Subsidiary, at such time that such first-tier Foreign Subsidiary no longer meets the requirements of a Dormant Subsidiary, the Borrower shall provide to the Administrative Agent prompt written notice thereof, and, subject to Section 5.20(b)(ii) above, shall provide, with respect to such first-tier Foreign Subsidiary, share certificates (or other evidence of equity) and a Pledge Agreement as referenced in the foregoing sentence.

(c) Perfection or Registration of Interest in Foreign Shares. With respect to any foreign shares pledged to the Administrative Agent, for the benefit of the Lenders, on or after the Closing Date, the Administrative Agent shall at all times, in the discretion of the Administrative Agent or the Required Lenders, have the right to perfect, at the Borrower's cost, payable upon request therefor (including, without limitation, any foreign counsel, or foreign notary, filing, registration or similar, fees, costs or expenses), its security interest in such shares in the respective foreign jurisdiction. Such perfection may include the requirement that the applicable Company promptly execute and deliver to the Administrative Agent a separate pledge document (prepared by the Administrative Agent and in form and substance satisfactory to the Administrative Agent), covering such equity interests, that conforms to the requirements of the applicable foreign jurisdiction, together with an opinion of local counsel as to the perfection of the security interest provided for therein, and all other documentation necessary or desirable to effect the foregoing and to permit the Administrative Agent to exercise any of its rights and remedies in respect thereof. Notwithstanding the foregoing, if the Administrative Agent, in its reasonable discretion, after consultation with the Borrower, determines that the cost of perfecting in a foreign jurisdiction, the security interest of the Administrative Agent, for the benefit of the Lenders, in the Pledged Securities relating to any Foreign Subsidiary, (i) is impractical or cost-prohibitive or (ii) the benefits obtained by such action are outweighed by the burdens of obtaining the same, then the Administrative Agent may agree to forego (until such time as the Administrative Agent determines it is practical to so perfect such interest) the foreign perfection of such security interest.

Section 5.21. Collateral. Each Credit Party shall:

(a) at all reasonable times and, except after the occurrence and during the continuance of an Event of Default, upon reasonable notice, allow the Administrative Agent and the Lenders by or through any of the Administrative Agent's officers, agents, employees, attorneys or accountants to (i) examine, inspect and make extracts from such Credit Party's books and other records, including, without limitation, the tax returns of such Credit Party, (ii) arrange for verification of such Credit Party's Accounts, under reasonable procedures, directly with Account Debtors or by other methods, and (iii) examine and inspect such Credit Party's Inventory and Equipment, wherever located;

(b) promptly furnish to the Administrative Agent or any Lender upon request (i) additional statements and information with respect to the Collateral, and all writings and information relating to or evidencing any of such Credit Party's Accounts (including, without limitation, computer printouts or typewritten reports listing the mailing addresses of all present Account Debtors), and (ii) any other writings and information as the Administrative Agent or such Lender may request;

(c) promptly notify the Administrative Agent in writing upon the acquisition or creation of any Account (other than any tax refund), in excess of One Million Dollars (\$1,000,000) with respect to which the Account Debtor is the United States or any other Governmental Authority, or any business that is located in a foreign country;

(d) promptly notify the Administrative Agent in writing upon the acquisition or creation by any Credit Party of a Deposit Account or Securities Account not listed on the notice provided to the Administrative Agent pursuant to Section 6.19 hereof, and, prior to or simultaneously with the creation of such Deposit Account or Securities Account, provide for the execution of a Deposit Account Control Agreement or Securities Account Control Agreement with respect thereto, if required by the Administrative Agent or the Required Lenders; provided that a Control Agreement shall not be required for a Deposit Account or Securities Account (i) that constitutes Excluded Collateral, (ii) so long as no Event of Default has occurred and is continuing, that is a retail store Deposit Account provided that the aggregate amount maintained in all such retail store Deposit Accounts does not exceed Five Million Dollars (\$5,000,000) for any two consecutive Business Days during the ninety (90) day period immediately preceding such time of determination, or (iii) that is a disbursement account that automatically has a zero balance at the end of each day;

(e) subject to Section 4.3(c), with respect to any Equipment or Inventory of a Credit Party located at a location of a third party (other than another Credit Party), use commercially reasonable efforts to cause to be executed any Landlord's Waiver, Bailee's Waiver, Processor's Waiver, Consignee's Waiver or similar document or notice that may be required by the Administrative Agent or the Required Lenders; provided that a Credit Party shall not be required to deliver a Landlord's Waiver, Bailee's Waiver, Processor's Waiver, Consignee's Waiver or similar document for any Equipment or Inventory located at such location to the extent that the aggregate value of all Equipment (excluding leasehold

improvements) and Inventory of all Companies maintained at such location does not exceed Five Hundred Thousand Dollars (\$500,000);

(f) promptly notify the Administrative Agent and the Lenders in writing of any information that such Credit Party has or may receive with respect to the Collateral that might reasonably be determined to materially and adversely affect the value thereof or the rights of the Administrative Agent and the Lenders with respect thereto;

(g) maintain such Credit Party's Equipment used in its business in good operating condition and repair, ordinary wear and tear and obsolescence excepted, making all necessary replacements thereof so that the value and operating efficiency thereof shall at all times be maintained and preserved;

(h) deliver to the Administrative Agent, to hold as security for the Secured Obligations all certificated Investment Property owned by such Credit Party, to the extent not otherwise excluded from such requirements hereunder, in suitable form for transfer by delivery, or accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to the Administrative Agent, or in the event such Investment Property is in the possession of a Securities Intermediary or credited to a Securities Account, to the extent not otherwise excluded from such requirements hereunder, execute with the related Securities Intermediary a Securities Account Control Agreement over such Securities Account in favor of the Administrative Agent, for the benefit of the Lenders, in form and substance satisfactory to the Administrative Agent;

(i) provide to the Administrative Agent, when each Compliance Certificate is due (as necessary), a list of any patents, trademarks or copyrights that have been federally registered by such Credit Party since delivery of the last Compliance Certificate, and provide for the execution of an appropriate Intellectual Property Security Agreement; and

(j) upon request of the Administrative Agent, promptly take such action and promptly make, execute and deliver all such additional and further items, deeds, assurances, instruments and any other writings as the Administrative Agent may from time to time deem necessary or appropriate, including, without limitation, chattel paper, to carry into effect the intention of this Agreement, or so as to completely vest in and ensure to the Administrative Agent and the Lenders their respective rights hereunder and in or to the Collateral.

Each Credit Party hereby authorizes the Administrative Agent, on behalf of the Lenders, to file U.C.C. Financing Statements or other appropriate notices with respect to the Collateral. Such U.C.C. Financing Statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Administrative Agent may determine, in its reasonable discretion, is necessary, advisable or prudent to ensure that the perfection of the security interest in the Collateral granted to the Administrative Agent herein, including, without limitation, describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired. If certificates of title or applications for title are issued or outstanding with respect to any of the Inventory or Equipment of any Credit Party with an aggregate value in excess of Five Hundred Thousand

Dollars (\$500,000), such Credit Party shall, upon request of the Administrative Agent, (i) execute and deliver to the Administrative Agent a short form security agreement, prepared by the Administrative Agent and in form and substance satisfactory to the Administrative Agent, and (ii) deliver such certificate or application to the Administrative Agent and cause the interest of the Administrative Agent, for the benefit of the Lenders, to be properly noted thereon. Each Credit Party hereby authorizes the Administrative Agent or the Administrative Agent's designated agent (but without obligation by the Administrative Agent to do so) to incur Related Expenses (whether prior to, upon, or subsequent to any Default or Event of Default), and the Borrower shall promptly repay, reimburse, and indemnify the Administrative Agent and the Lenders for any and all Related Expenses. If any Credit Party fails to keep and maintain its Equipment (other than Equipment that is obsolete or no longer useful in such Credit Party's business) in good operating condition, ordinary wear and tear excepted, the Administrative Agent may (but shall not be required to) so maintain or repair all or any part of such Credit Party's Equipment and the cost thereof shall be a Related Expense. All Related Expenses are payable to the Administrative Agent upon demand therefor; the Administrative Agent may, at its option, debit Related Expenses directly to any Deposit Account of a Company located at the Administrative Agent or draw Revolving Loans.

Section 5.22. Property Acquired Subsequent to the Closing Date and Right to Take Additional Collateral. Except as notice therefor is otherwise provided for herein or in any Security Document, the Borrower shall provide the Administrative Agent with prompt written notice with respect to any personal property constituting Collateral (other than in the ordinary course of business and excluding Accounts, Inventory, Equipment and General Intangibles and other property acquired in the ordinary course of business) acquired by any Credit Party subsequent to the Closing Date. In addition to any other right that the Administrative Agent and the Lenders may have pursuant to this Agreement or otherwise, upon written request of the Administrative Agent, whenever made, the Borrower shall, and shall cause each Guarantor of Payment to, grant to the Administrative Agent, for the benefit of the Lenders, as additional security for the Secured Obligations, a first Lien on any personal property of the Borrower and each Guarantor of Payment constituting Collateral (other than for leased equipment or equipment subject to a purchase money security interest in which the lessor or purchase money lender of such equipment holds a first priority security interest, in which case, the Administrative Agent shall have the right to obtain a security interest junior only to such lessor or purchase money lender), including, without limitation, such property acquired subsequent to the Closing Date, in which the Administrative Agent does not have a first priority Lien. The Borrower agrees that, within twenty (20) days after the date of such written request, to secure all of the Secured Obligations by delivering to the Administrative Agent security agreements, intellectual property security agreements and pledge agreements with respect to any of the Credit Parties and relating to the Collateral. In addition, the Borrower agrees that, within thirty (30) days after the date of such written request, it will use commercially reasonable efforts to deliver to the Administrative Agent such documents, instruments or agreements or such thereof as the Administrative Agent may require with respect to any of the Credit Parties and relating to perfection of the security interest of the Administrative Agent in the Collateral. The Borrower shall pay all recordation, legal and other expenses in connection therewith.

Section 5.23. Restrictive Agreements. Except as set forth in this Agreement, the Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any Subsidiary to (a) make, directly or indirectly, any Capital Distribution to the Borrower, (b) make, directly or indirectly, loans or advances or capital contributions to the Borrower or (c) transfer, directly or indirectly, any of the properties or assets of such Subsidiary to the Borrower; except for such encumbrances or restrictions existing under or by reason of (i) applicable law, (ii) customary non-assignment provisions in license agreements, leases or other agreements entered in the ordinary course of business and consistent with past practices, or (iii) customary restrictions in license agreements, security agreements securing Indebtedness, or capital leases, of a Company to the extent such restrictions shall only restrict the transfer of the property subject to such license agreement, security agreement, mortgage or lease.

Section 5.24. Other Covenants and Provisions. In the event that any Company shall enter into, or shall have entered into, any Material Indebtedness Agreement, wherein the covenants, representations and agreements contained therein shall be more restrictive than the covenants, representations and agreements set forth herein, then the Companies shall immediately be bound hereunder (without further action) by such more restrictive covenants, representations and agreements with the same force and effect as if such covenants, representations and agreements were written herein for as long as such more restrictive provisions are applicable to such Company with respect to such Material Indebtedness Agreement. In addition to the foregoing, the Borrower shall provide prompt written notice to the Administrative Agent of the creation or existence of any Material Indebtedness Agreement that has such more restrictive provisions, and shall, within fifteen (15) days thereafter (if requested by the Administrative Agent), execute and deliver to the Administrative Agent an amendment to this Agreement that incorporates such more restrictive provisions for as long as such more restrictive provisions are applicable to such Company with respect to such Material Indebtedness Agreement, with such amendment to be in form and substance satisfactory to the Administrative Agent.

Section 5.25. Guaranty Under Material Indebtedness Agreement. No Company (other than the Borrower) shall be or become a primary obligor or Guarantor of the Indebtedness incurred pursuant to any Material Indebtedness Agreement unless such Company shall also be a Guarantor of Payment under this Agreement prior to or concurrently therewith.

Section 5.26. Amendment of Organizational Documents. Without the prior written consent of the Administrative Agent, no Company shall (a) amend its Organizational Documents in any manner adverse to the Lenders, or (b) amend its Organizational Documents to change its name or state, province or other jurisdiction of organization, or its form of organization.

Section 5.27. Fiscal Year of Borrower. The Borrower shall not change the date of its Fiscal Year-ends listed on Schedule 5.3 hereto without the prior written consent of the Administrative Agent.

Section 5.28. Further Assurances. The Borrower shall, and shall cause each other Credit Party to, promptly upon request by the Administrative Agent, or the Required Lenders through



the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or the Required Lenders through the Administrative Agent, may reasonably require from time to time in order to carry out more effectively the purposes of the Loan Documents.

Section 5.29. Contributions to the Sleep Number Executive Investment Plan Trust. The Borrower will not, and will not permit any Subsidiary to, make any contribution or other deposit of cash or other property to the Sleep Number Executive Investment Plan Trust other than the deposit of actual deferrals of compensation made by or on behalf of employees of the Borrower and the Subsidiaries who are participants in the Sleep Number Executive Investment Plan, pursuant to the terms of the Sleep Number Executive Investment Plan.

Section 5.30. Compliance with Laws. The Borrower will, and will cause each Company to, (i) comply with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which it may be subject including, without limitation, all Environmental Laws, Anti-Corruption Laws and applicable Sanctions and (ii) perform its obligations under material agreements to which it is a party, in each case under clause (i) and (ii) above to the extent a failure to do so would reasonably be expected to have a Material Adverse Effect.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES

Section 6.1. Corporate Existence; Subsidiaries; Foreign Qualification. Each Company is duly organized, validly existing, and in good standing (or comparable concept in the applicable jurisdiction) under the laws of its state or jurisdiction of incorporation or organization, and is duly qualified and authorized to do business and is in good standing (or comparable concept in the applicable jurisdiction) as a foreign entity in the jurisdictions set forth opposite its name on Schedule 6.1 hereto, which are all of the states or jurisdictions as of the Closing Date where the character of its property or its business activities makes such qualification necessary, except where a failure to so qualify would not reasonably be expected to have a Material Adverse Effect. Schedule 6.1 hereto sets forth, as of the Closing Date, each Subsidiary of the Borrower (and whether such Subsidiary is a Dormant Subsidiary), its state (or jurisdiction) of formation, its relationship to the Borrower, including the percentage of each class of stock or other equity interest owned by a Company, each Person that owns the stock or other equity interest of each Company, its tax identification number, the location of its chief executive office and its principal place of business. Except as set forth on Schedule 6.1 hereto, as of the Closing Date the Borrower, directly or indirectly, owns all of the equity interests of each of its Subsidiaries.

Section 6.2. Corporate Authority. Each Credit Party has the right and power and is duly authorized and empowered to enter into, execute and deliver the Loan Documents to which it is a party and to perform and observe the provisions of the Loan Documents. The Loan Documents to which each Credit Party is a party have been duly authorized and approved by such Credit Party's board of directors or other governing body, as applicable, and are the legal,

valid and binding obligations of such Credit Party, enforceable against such Credit Party in accordance with their respective terms, except to the extent that enforcement thereof may be limited by an applicable bankruptcy, insolvency or similar laws now or hereafter in effect affecting creditors' rights generally and by general principles of equity. The execution, delivery and performance of the Loan Documents do not conflict with, result in a breach in any of the provisions of, constitute a default under, or result in the creation of a Lien (other than Liens permitted under Section 5.9 hereof) upon any assets or property of any Company under the provisions of, such Company's Organizational Documents or any material agreement to which such Company is a party.

Section 6.3. Compliance with Laws and Contracts. Each Company:

- (a) holds permits, certificates, licenses, orders, registrations, franchises, authorizations, and other approvals from any Governmental Authority necessary for the conduct of its business and is in compliance with all applicable laws relating thereto, except where the failure to do so would not have a Material Adverse Effect;
- (b) is in compliance with all federal, state, local, or foreign applicable statutes, rules, regulations, and orders including, without limitation, those relating to environmental protection, occupational safety and health, and equal employment practices, except where the failure to be in compliance would not have a Material Adverse Effect;
- (c) is not in violation of or in default under any agreement to which it is a party or by which its assets are subject or bound, except with respect to any violation or default that would not have a Material Adverse Effect; and
- (d) is in compliance, in all material respects, with the Patriot Act.

Section 6.4. Litigation and Administrative Proceedings. Except as disclosed in writing to the Administrative Agent, there are (a) no lawsuits, actions, investigations, examinations or other proceedings pending or threatened against any Company, or in respect of which any Company may have any liability, in any court or before or by any Governmental Authority, arbitration board, or other tribunal that could reasonably be expected to have a Material Adverse Effect, (b) no orders, writs, injunctions, judgments, or decrees of any court or Governmental Authority to which any Company is a party or by which the property or assets of any Company are bound that could reasonably be expected to have a Material Adverse Effect, and (c) no grievances, disputes, or controversies outstanding with any union or other organization of the employees of any Company, or threats of work stoppage, strike, or pending demands for collective bargaining that could reasonably be expected to have a Material Adverse Effect not fully covered by insurance and which is likely to result in any material adverse change in the Borrower's or any Subsidiary's business, operations, properties or assets or its condition, financial or otherwise.

Section 6.5. Title to Assets. Each Company has good title to and ownership of all property it purports to own, which property is free and clear of all Liens, except those permitted

under Section 5.9 hereof. As of the Closing Date, the Companies own the real estate listed on Schedule 6.5 hereto.

Section 6.6. Liens and Security Interests. On and after the Closing Date, except for Liens permitted pursuant to Section 5.9 hereof, (a) there is and will be no U.C.C. Financing Statement or similar notice of Lien outstanding covering any personal property of any Company, except for any such U.C.C. Financing Statement as to which the referenced secured party has provided written authorization to be terminated; (b) there is and will be no mortgage or charge outstanding covering any real property of any Company; and (c) no real or personal property of any Company is subject to any Lien of any kind. The Administrative Agent, for the benefit of the Lenders, upon the filing of the U.C.C. Financing Statements and taking such other actions necessary to perfect its Lien against collateral of the corresponding type as authorized hereunder, will have a valid and enforceable first Lien on the collateral securing the Obligations (other than (x) with respect to Commercial Tort Claims, (y) as otherwise specifically provided pursuant to Section 5.9 hereof and (z) as enforceability may be limited by Section 9-408 of the UCC with respect to commercially available software license agreements or certain other general intangibles subject to such Section 9-408). No Company has entered into any contract or agreement (other than (a) a contract or agreement entered into in connection with the purchase or lease of fixed assets that prohibits Liens on such fixed assets, (b) customary software license agreements that prohibit Liens on such agreement or the assets subject thereto or (c) other leases, licenses and other agreements (i) entered into in the ordinary course of business, (ii) with respect to which (x) the value of the assets subject thereto, (y) the consideration payable by the applicable Company thereunder, and/or (z) the value of the benefits to be received by the applicable Company in connection therewith, does not in the aggregate exceed \$5,000,000 and (iii) that contain a customary provision prohibiting Liens on such lease, license or other agreement or the assets subject thereto; provided, that with respect to the foregoing clauses (a)-(c), such prohibition is limited to the relevant lease, license, contract or other agreement and/or the assets subject thereto, as the case may be; provided, further, that with respect to the foregoing clause (c), the applicable Company shall negotiate diligently in good faith prior to entering into any such lease, license or other agreement to remove any prohibition on Liens on such lease, license or other agreement or the assets subject thereto) that exists on or after the Closing Date that would prohibit the Administrative Agent or the Lenders from acquiring a Lien on, or a collateral assignment of, any of the property or assets of any Company.

Section 6.7. Tax Returns. All federal, state, provincial and local tax returns and other reports required by law to be filed in respect of the income, business, properties and employees of each Company have been filed and all taxes, assessments, fees and other governmental charges that are due and payable have been paid, except as otherwise permitted herein. The provision for taxes on the books of each Company is adequate for all years not closed by applicable statutes and for the current Fiscal Year.

Section 6.8. Environmental Laws. Each Company is in compliance with all Environmental Laws, including, without limitation, all Environmental Laws in all jurisdictions in which any Company owns or operates, or has owned or operated, a facility or site, arranges or has arranged for disposal or treatment of hazardous substances, solid waste or other wastes,

accepts or has accepted for transport any hazardous substances, solid waste or other wastes or holds or has held any interest in real property or otherwise, except where the release or disposal or the failure to comply would not result in a material expenditure or loss to such Company. No material litigation or proceeding arising under, relating to or in connection with any Environmental Law or Environmental Permit is pending or, to the best knowledge of each Company, threatened, against any Company, any real property in which any Company holds or has held an interest or any past or present operation of any Company. No release, threatened release or disposal of hazardous waste, solid waste or other wastes is occurring, or has occurred (other than those that are currently being remediated in accordance with Environmental Laws), on, under or to any real property in which any Company holds any interest or performs any of its operations, in violation of any Environmental Law, except where the release or disposal or the failure to comply would not result in a material expenditure or loss to such Company. As used in this Section 6.8, “litigation or proceeding” means any demand, claim, notice, suit, suit in equity, action, administrative action, investigation or inquiry whether brought by any Governmental Authority or private Person, or otherwise.

Section 6.9. Locations. Schedule 6.9 sets forth, as of the Closing Date, (x) the address of each location (including third party locations) where assets of the Companies exceed Five Hundred Thousand Dollars (\$500,000) and (y) each Company’s chief executive office. Schedule 6.9 hereto further specifies whether each location, as of the Closing Date, (a) is owned by the Companies, (b) is leased by a Company from a third party or (c) is the location of a bailee, processor or consignee of a Company, and, in the case of the foregoing clauses (b) and (c), if a Landlord’s Waiver, Bailee’s Waiver, Processor’s Waiver or Consignee’s Waiver has been requested.

Section 6.10. Continued Business. There exists no actual, pending, or, to the Borrower’s knowledge, any threatened termination, cancellation or limitation of, or any modification or change in the business relationship of any Company and any customer or supplier, or any group of customers or suppliers, whose purchases or supplies, individually or in the aggregate, are material to the business of any Company, and there exists no present condition or state of facts or circumstances that would have a Material Adverse Effect or prevent a Company from conducting such business or the transactions contemplated by this Agreement in substantially the same manner in which it was previously conducted.

Section 6.11. Employee Benefits Plans. Schedule 6.11 hereto identifies each ERISA Plan as of the Closing Date. No ERISA Event has occurred with respect to an ERISA Plan that could reasonably be expected to have a Material Adverse Effect. Except as could not reasonably be expected to have a Material Adverse Effect, (a) full payment has been made of all amounts that each Controlled Group member is required, under applicable law or under the governing documents, to have paid as a contribution to or a benefit under each ERISA Plan; (b) the liability of each Controlled Group member with respect to each ERISA Plan has been fully funded based upon reasonable and proper actuarial assumptions, has been fully insured, or has been fully reserved for on its financial statements, and (c) no changes have occurred or are expected to occur that would cause a material increase in the cost of providing benefits under the ERISA Plan. With respect to each ERISA Plan that is intended to be qualified under Code

Section 401(a), except as could not reasonably be expected to have a Material Adverse Effect, (i) the ERISA Plan and any associated trust operationally comply with the applicable requirements of Code Section 401(a); (ii) the ERISA Plan and any associated trust have been amended to comply with all such requirements as currently in effect, other than those requirements for which a retroactive amendment can be made within the “remedial amendment period” available under Code Section 401(b) (as extended under Treasury Regulations and other Treasury pronouncements upon which taxpayers may rely); (iii) the ERISA Plan and any associated trust have received a favorable determination letter from the Internal Revenue Service or is in the form of a prototype or volume submitter plan that is the subject of a favorable opinion letter from the Internal Revenue Service, unless the ERISA Plan was first adopted at a time for which the above-described “remedial amendment period” has not yet expired and subject to changes the Internal Revenue Service makes to the determination letter process; (iv) the ERISA Plan currently satisfies the requirements of Code Section 410(b); and (v) no contribution made to the ERISA Plan is subject to an excise tax under Code Section 4972. With respect to any Pension Plan, the “accumulated benefit obligation” of Controlled Group members with respect to the Pension Plan (as determined in accordance with Statement of Accounting Standards No. 87, “Employers’ Accounting for Pensions”, as amended) does not exceed the fair market value of Pension Plan assets by an amount that would reasonably be expected to have a Material Adverse Effect. The Borrower represents that, as of the date hereof and throughout the term of this Agreement, no Credit Party is (1) an employee benefit plan subject to Title I of ERISA, (2) a plan or account subject to Section 4975 of the Code; (3) an entity deemed to hold “plan assets” of any such plans or accounts for purposes of ERISA or the Code; or (4) a “governmental plan” within the meaning of ERISA.

Section 6.12. Consents or Approvals. No consent, approval or authorization of, or filing (other than any filing or recording necessary to perfect any Lien granted to the Lenders hereunder) registration or qualification with, any Governmental Authority or any other Person is required to be obtained or completed by any Company in connection with the execution, delivery or performance of any of the Loan Documents, that has not already been obtained or completed.

Section 6.13. Solvency. The Borrower has received consideration that is the reasonably equivalent value of the obligations and liabilities that the Borrower has incurred to the Administrative Agent and the Lenders. The Borrower is not insolvent as defined in any applicable state, federal or relevant foreign statute, nor will the Borrower be rendered insolvent by the execution and delivery of the Loan Documents to the Administrative Agent and the Lenders. The Borrower is not engaged or about to engage in any business or transaction for which the assets retained by it are or will be an unreasonably small amount of capital, taking into consideration the obligations to the Administrative Agent and the Lenders incurred hereunder. The Borrower does not intend to, nor does it believe that it will, incur debts beyond its ability to pay such debts as they mature. Each Company is Solvent.

Section 6.14. Financial Statements. The audited Consolidated financial statements of the Borrower for the Fiscal Year ended December 31, 2016, and the unaudited Consolidated financial statements of the Borrower for the Quarterly Reporting Period ended September 30, 2017, furnished to the Administrative Agent and the Lenders, are true and complete, have been

prepared in accordance with GAAP, and fairly present the financial condition of the Companies as of the dates of such financial statements and the results of their operations for the periods then ending. Since the dates of such statements, there has been no material adverse change in any Company's financial condition, properties or business or, except as required by GAAP, any change in any Company's accounting procedures.

Section 6.15. Regulations. No Company is engaged principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any "margin stock" (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System of the United States). Neither the granting of any Loan (or any conversion thereof) or Letter of Credit nor the use of the proceeds of any Loan or Letter of Credit will violate, or be inconsistent with, the provisions of Regulation T, U or X or any other Regulation of such Board of Governors.

Section 6.16. Material Agreements. Except as disclosed on Schedule 6.16 hereto, as of the Closing Date, no Company is a party to any (a) debt instrument (excluding the Loan Documents); (b) lease (capital, operating or otherwise), whether as lessee or lessor thereunder; (c) contract, commitment, agreement, or other arrangement involving the purchase or sale of any inventory by it, or the license of any right to or by it; (d) contract, commitment, agreement, or other arrangement with any of its "Affiliates" (as such term is defined in the Exchange Act) other than a Company; (e) management or employment contract or contract for personal services with any of its Affiliates that is not otherwise terminable at will or on less than ninety (90) days' notice without liability; (f) collective bargaining agreement; or (g) other contract, agreement, understanding, or arrangement with a third party; that, as to subparts (a) through (g) above, if violated, breached, or terminated for any reason, would have or would be reasonably expected to have a Material Adverse Effect.

Section 6.17. Intellectual Property. Each Company owns, or has the right to use, all of the patents, patent applications, industrial designs, designs, trademarks, service marks, copyrights and licenses, and rights with respect to the foregoing, necessary for the conduct of its business without any known material infringement of valid rights of others to any of the foregoing. Schedule 6.17 hereto sets forth all patents, trademarks, copyrights and service marks owned by each Company which are federally registered as of the Closing Date and all material license agreements of any the foregoing by any Company to another party, as of the Closing Date.

Section 6.18. Insurance. Each Company maintains with financially sound and reputable insurers insurance with coverage (including, if applicable, insurance required by the National Flood Insurance Reform Act of 1994) and limits as required by law and as is customary with Persons engaged in the same businesses as the Companies. Schedule 6.18 hereto sets forth all insurance carried by the Companies on the Closing Date, setting forth in detail the amount and type of such insurance.

Section 6.19. Deposit Accounts and Securities Accounts. The Borrower has provided to the Administrative Agent a list of all banks, other financial institutions and Securities Intermediaries at which any Credit Party maintains Deposit Accounts or Securities Accounts as

of the Closing Date, which list correctly identifies the name, address and telephone number of each such financial institution or Securities Intermediary, the name in which the account is held, a description of the purpose of the account, and the complete account number therefor.

Section 6.20. Accurate and Complete Statements. Neither the Loan Documents nor any written statement made by any Company in connection with any of the Loan Documents contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein or in the Loan Documents not misleading. After due inquiry by the Borrower, there is no known fact that any Company has not disclosed to the Administrative Agent and the Lenders that has or is likely to have a Material Adverse Effect.

Section 6.21. Investment Company; Other Restrictions. No Company is (a) an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended, or (b) subject to any foreign, federal, state or local statute or regulation limiting its ability to incur Indebtedness.

Section 6.22. Defaults. No Default or Event of Default exists, nor will any begin to exist immediately after the execution and delivery hereof.

Section 6.23. Anti-Corruption Laws; Sanctions. Each of the Companies and its respective officers and employees, and to the knowledge of the Borrower, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions, except where the failure to be in compliance would not have a Material Adverse Effect. The Borrower has implemented and maintains in effect for itself, and the other Companies policies and procedures designed to promote compliance by the Borrower, and the other Companies, and their respective officers, employees, directors, and agents, with Anti-Corruption Laws and applicable Sanctions. None of the Companies, or to the knowledge of the Borrower, any directors, officer, employee, agent, or affiliate of a Company is an individual or entity that is, or is 50% or more owned (individually or in the aggregate, directly or indirectly) or controlled by individuals or entities (including any agency, political subdivision or instrumentality of any government) that are (i) the target of any Sanctions or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions (as of the date hereof, Crimea, Cuba, Iran, North Korea and Syria).

Section 6.24. Anti-Money Laundering Compliance. The Borrower shall, and shall cause each other Company to, provide such information and take such actions as are reasonably requested by the Administrative Agent or any Lender in order to assist the Administrative Agent and the Lenders in maintaining compliance with anti-money laundering laws and regulations.

Section 6.25. Affected Financial Institution. No Credit Party is an Affected Financial Institution.

## ARTICLE VII

### SECURITY

Section 7.1. Security Interest in Collateral. In consideration of and as security for the full and complete payment of all of the Secured Obligations, the Borrower hereby grants to the Administrative Agent, for the benefit of the Lenders (and affiliates thereof that hold Secured Obligations), a security interest in the Collateral.

Section 7.2. Collections and Receipt of Proceeds by Borrower.

(a) Prior to the exercise by the Administrative Agent and the Required Lenders of their rights under Article IX hereof, both (i) the lawful collection and enforcement of all of the Borrower's Accounts, and (ii) the lawful receipt and retention by the Borrower of all Proceeds of all of the Borrower's Accounts and Inventory shall be as the agent of the Administrative Agent and the Lenders.

(b) Upon written notice to the Borrower from the Administrative Agent after the occurrence and during the continuance of an Event of Default, a Cash Collateral Account shall be opened by the Borrower at the main office of the Administrative Agent (or such other office as shall be designated by the Administrative Agent) and all such lawful collections of the Borrower's Accounts and such Proceeds of the Borrower's Accounts and Inventory shall be remitted daily by the Borrower to the Administrative Agent in the form in which they are received by the Borrower, either by mailing or by delivering such collections and Proceeds to the Administrative Agent, appropriately endorsed for deposit in the Cash Collateral Account. In the event that such notice is given to the Borrower from the Administrative Agent, the Borrower shall not commingle such collections or Proceeds with any of the Borrower's other funds or property, but shall hold such collections and Proceeds separate and apart therefrom upon an express trust for the Administrative Agent, for the benefit of the Lenders. In such case, the Administrative Agent may, in its sole discretion, and shall, at the request of the Required Lenders, at any time and from time to time after the occurrence and during the continuance of an Event of Default, apply all or any portion of the account balance in the Cash Collateral Account as a credit against (i) the outstanding principal or interest of the Loans, or (ii) any other Secured Obligations in accordance with this Agreement. If any remittance shall be dishonored, or if, upon final payment, any claim with respect thereto shall be made against the Administrative Agent on its warranties of collection, the Administrative Agent may charge the amount of such item against the Cash Collateral Account or any other Deposit Account maintained by the Borrower with the Administrative Agent or with any other Lender, and, in any event, retain the same and the Borrower's interest therein as additional security for the Secured Obligations. The Administrative Agent may, in its sole discretion, at any time and from time to time, release funds from the Cash Collateral Account to the Borrower for use in the Borrower's business. The balance in the Cash Collateral Account may be withdrawn by the Borrower upon termination of this Agreement and payment in full of all of the Secured Obligations (other than unasserted contingent indemnity obligations).

(c) After the occurrence and during the continuance of an Event of Default, at the Administrative Agent's written request, the Borrower shall cause all remittances representing collections and Proceeds of Collateral to be mailed to a lockbox at a location acceptable to the Administrative Agent, to which the Administrative Agent shall have access for the processing of



such items in accordance with the provisions, terms and conditions of the customary lockbox agreement of the Administrative Agent.

(d) The Administrative Agent, or the Administrative Agent's designated agent, is hereby constituted and appointed attorney-in-fact for the Borrower with authority and power to endorse, after the occurrence and during the continuance of an Event of Default, any and all instruments, documents, and chattel paper upon the failure of the Borrower to do so. Such authority and power, being coupled with an interest, shall be (i) irrevocable until all of the Secured Obligations (other than unasserted contingent indemnity obligations) are paid, (ii) exercisable by the Administrative Agent at any time and without any request upon the Borrower by the Administrative Agent to so endorse, and (iii) exercisable in the name of the Administrative Agent or the Borrower. The Borrower hereby waives presentment, demand, notice of dishonor, protest, notice of protest, and any and all other similar notices with respect thereto, regardless of the form of any endorsement thereof. Neither the Administrative Agent nor the Lenders shall be bound or obligated to take any action to preserve any rights therein against prior parties thereto.

Section 7.3. Collections and Receipt of Proceeds by Administrative Agent. The Borrower hereby constitutes and appoints the Administrative Agent, or the Administrative Agent's designated agent, as the Borrower's attorney-in-fact to exercise, at any time, after the occurrence and during the continuance of an Event of Default, all or any of the following powers which, being coupled with an interest, shall be irrevocable until the complete and full payment of all of the Secured Obligations (other than unasserted contingent indemnity obligations):

(a) to receive, retain, acquire, take, endorse, assign, deliver, accept, and deposit, in the name of the Administrative Agent or the Borrower, any and all of the Borrower's cash, instruments, chattel paper, documents, Proceeds of Accounts, Proceeds of Inventory, collection of Accounts, and any other writings relating to any of the Collateral. The Borrower hereby waives presentment, demand, notice of dishonor, protest, notice of protest, and any and all other similar notices with respect thereto, regardless of the form of any endorsement thereof. The Administrative Agent shall not be bound or obligated to take any action to preserve any rights therein against prior parties thereto;

(b) to transmit to Account Debtors, on any or all of the Borrower's Accounts, notice of assignment to the Administrative Agent, for the benefit of the Lenders, thereof and the security interest therein, and to request from such Account Debtors at any time, in the name of the Administrative Agent or the Borrower, information concerning the Borrower's Accounts and the amounts owing thereon;

(c) to transmit to purchasers of any or all of the Borrower's Inventory (other than with respect to individual consumers), notice of the Administrative Agent's security interest therein, and to request from such purchasers at any time, in the name of the Administrative Agent or the Borrower, information concerning the Borrower's Inventory and the amounts owing thereon by such purchasers;

(d) to notify and require Account Debtors on the Borrower's Accounts and purchasers of the Borrower's Inventory on credit granted by the Borrower to make payment of their obligations to the Borrower directly to the Administrative Agent;

(e) to enter into or assent to such amendment, compromise, extension, release or other modification of any kind of, or substitution for, the Accounts, or any thereof, as the Administrative Agent, in its sole discretion, may deem to be advisable;

(f) to enforce the Accounts or any thereof, or any other Collateral, by suit or otherwise, to maintain any such suit or other proceeding in the name of the Administrative Agent or the Borrower, and to withdraw any such suit or other proceeding. The Borrower agrees to lend every assistance requested by the Administrative Agent in respect of the foregoing, all at no cost or expense to the Administrative Agent and including, without limitation, the furnishing of such witnesses and of such records and other writings as the Administrative Agent may require in connection with making legal proof of any Account. The Borrower agrees to reimburse the Administrative Agent in full for all court costs and attorneys' fees and every other cost, expense or liability, if any, incurred or paid by the Administrative Agent in connection with the foregoing, which obligation of the Borrower shall constitute Obligations, shall be secured by the Collateral and shall bear interest, until paid, at the Default Rate;

(g) to take or bring, in the name of the Administrative Agent or the Borrower, all steps, actions, suits, or proceedings deemed by the Administrative Agent necessary or desirable to effect the receipt, enforcement, and collection of the Collateral; and

(h) to accept all collections in any form relating to the Collateral, including remittances that may reflect deductions, and to deposit the same into the Cash Collateral Account or, at the option of the Administrative Agent, to apply them as a payment against the Loans or any other Secured Obligations in accordance with this Agreement.

Section 7.4. Administrative Agent's Authority Under Pledged Notes. For the better protection of the Administrative Agent and the Lenders hereunder, the Borrower has executed (or will execute, with respect to future Pledged Notes) an appropriate endorsement on (or separate from) each Pledged Note and has deposited (or will promptly deposit, but in any event within 30 days after the date of receipt thereof) such Pledged Note with the Administrative Agent, for the benefit of the Lenders. The Borrower irrevocably authorizes and empowers the Administrative Agent, for the benefit of the Lenders, to, after the occurrence and during the continuance of an Event of Default, (a) ask for, demand, collect and receive all payments of principal of and interest on the Pledged Notes; (b) compromise and settle any dispute arising in respect of the foregoing; (c) execute and deliver vouchers, receipts and acquittances in full discharge of the foregoing; (d) exercise, in the Administrative Agent's discretion, any right, power or privilege granted to the holder of any Pledged Note by the provisions thereof including, without limitation, the right to demand security or to waive any default thereunder; (e) endorse the Borrower's name to each check or other writing received by the Administrative Agent as a payment or other proceeds of or otherwise in connection with any Pledged Note; (f) enforce delivery and payment of the principal and/or interest on the Pledged Notes, in each case by suit or otherwise as the Administrative Agent may desire; and (g) enforce the security, if any, for the

Pledged Notes by instituting foreclosure proceedings, by conducting public or other sales or otherwise, and to take all other steps as the Administrative Agent, in its discretion, may deem advisable in connection with the forgoing; provided, however, that nothing contained or implied herein or elsewhere shall obligate the Administrative Agent to institute any action, suit or proceeding or to make or do any other act or thing contemplated by this Section 7.4 or prohibit the Administrative Agent from settling, withdrawing or dismissing any action, suit or proceeding or require the Administrative Agent to preserve any other right of any kind in respect of the Pledged Notes and the security, if any, therefor.

Section 7.5. Commercial Tort Claims. The Borrower has provided to the Administrative Agent a list of all Commercial Tort Claims of the Companies in existence as of the Closing Date. If the Borrower shall at any time hold or acquire a Commercial Tort Claim, the Borrower shall, no later than the date the next Compliance Certificate is due, notify the Administrative Agent thereof in a writing signed by the Borrower, that sets forth the details thereof and grants to the Administrative Agent (for the benefit of the Lenders) a Lien thereon and on the Proceeds thereof, all upon the terms of this Agreement, with such writing to be prepared by and in form and substance reasonably satisfactory to the Administrative Agent.

Section 7.6. Use of Inventory and Equipment. Until the exercise by the Administrative Agent and the Required Lenders of their rights under Article IX hereof, the Borrower may (a) retain possession of and use its Inventory and Equipment in any lawful manner not inconsistent with this Agreement or with the terms, conditions, or provisions of any policy of insurance thereon; (b) sell or lease its Inventory in the ordinary course of business or as otherwise permitted by this Agreement; and (c) use and consume any raw materials or supplies, the use and consumption of which are necessary in order to carry on the Borrower's business.

## ARTICLE VIII

### EVENTS OF DEFAULT

Any of the following specified events shall constitute an Event of Default (each an "Event of Default"):

Section 8.1. Payments. If (a) the interest on any Loan, any commitment or other fee, or any other Obligation not listed in subpart (b) hereof, shall not be paid in full when due and payable or within three Business Days thereafter, or (b) the principal of any Loan, any reimbursement obligation under any Letter of Credit that has been drawn, or any amount owing pursuant to Section 2.11(a) or (b) hereof shall not be paid in full when due and payable.

Section 8.2. Special Covenants. If any Company shall fail or omit to perform and observe Section 5.3, 5.5 (with respect to the Borrower) 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 5.18, 5.19, 5.20, 5.21, 5.22, 5.23, 5.24, 5.25, 5.26, 5.27, 5.28 or 5.30 hereof.

Section 8.3. Other Covenants. If any Company shall fail or omit to perform and observe any agreement or other provision (other than those referred to in Section 8.1 or 8.2 hereof) contained or referred to in this Agreement or any other Related Writing that is on such

Company's part to be complied with, and that Default shall not have been fully corrected within fifteen (15) days after the earlier of (a) any Financial Officer of such Company becomes aware of the occurrence thereof, or (b) the giving of written notice thereof to the Borrower by the Administrative Agent or the Required Lenders that the specified Default is to be remedied.

Section 8.4. Representations and Warranties. If any representation, warranty or statement made in or pursuant to this Agreement or any other Related Writing or any other material information furnished by any Company to the Administrative Agent or the Lenders, or any thereof, shall be false or erroneous.

Section 8.5. Cross Default. If any Company shall default in the payment of principal or interest due and owing under any Material Indebtedness Agreement beyond any period of grace provided with respect thereto or in the performance or observance of any other agreement, term or condition contained in any agreement under which such obligation is created, if the effect of such default is to allow the acceleration of the maturity of such Indebtedness or to permit the holder thereof to cause such Indebtedness to become due prior to its stated maturity.

Section 8.6. ERISA Default. The occurrence of one or more ERISA Events that (a) the Required Lenders determine could reasonably be expected to have a Material Adverse Effect, or (b) results in a Lien on any of the assets of any Company.

Section 8.7. Change in Control. If any Change in Control shall occur.

Section 8.8. Judgments. There is entered against any Company a final judgment or order for the payment of money by a court of competent jurisdiction, that remains unpaid or unstayed and undischarged for a period (during which execution shall not be effectively stayed) of thirty (30) days after the date on which the right to appeal has expired, provided that such occurrence shall constitute an Event of Default only if the aggregate of all such judgments for all such Companies, shall exceed Ten Million Dollars (\$10,000,000) (less any amount that will be covered by the proceeds of insurance and is not subject to dispute by the insurance provider).

Section 8.9. Security. If any Lien granted in this Agreement or any other Loan Document in favor of the Administrative Agent, for the benefit of the Lenders, shall be determined to be (a) void, voidable or invalid, or is subordinated or not otherwise given the priority contemplated by this Agreement and the Borrower (or the appropriate Credit Party) has failed to promptly execute appropriate documents to correct such matters, or (b) unperfected as to any material amount of Collateral (as determined by the Administrative Agent, in its reasonable discretion) and the Borrower (or the appropriate Credit Party) has failed to promptly execute appropriate documents to correct such matters.

Section 8.10. Validity of Loan Documents. If (a) any material provision, in the sole opinion of the Administrative Agent, of any Loan Document shall at any time cease to be valid, binding and enforceable against any Credit Party; (b) the validity, binding effect or enforceability of any Loan Document against any Credit Party shall be contested by any Credit Party; (c) any Credit Party shall deny that it has any or further liability or obligation under any Loan Document; or (d) any Loan Document shall be terminated, invalidated or set aside, or be

declared ineffective or inoperative or in any way cease to give or provide to the Administrative Agent and the Lenders the benefits purported to be created thereby.

Section 8.11. Solvency. If any Company (other than a Dormant Subsidiary) shall (a) except as permitted pursuant to Section 5.12 hereof, discontinue business; (b) generally not pay its debts as such debts become due; (c) make a general assignment for the benefit of creditors; (d) apply for or consent to the appointment of an interim receiver, a receiver, a receiver and manager, an administrator, a sequestrator, a monitor, a custodian, a trustee, an interim trustee, a liquidator, an agent or any other similar official of all or a substantial part of its assets or of such Company; (e) be adjudicated a debtor or insolvent or have entered against it an order for relief under the Bankruptcy Code, or under any other bankruptcy insolvency, liquidation, winding-up, corporate or similar statute or law, foreign, federal, state or provincial, in any applicable jurisdiction, now or hereafter existing, as any of the foregoing may be amended from time to time, or other applicable statute for jurisdictions outside of the United States, as the case may be; (f) file a voluntary petition under the Bankruptcy Code or seek relief under any bankruptcy or insolvency or analogous law in any jurisdiction outside of the United States, or file a proposal or notice of intention to file such petition; (g) have an involuntary proceeding under the Bankruptcy Code filed against it and the same shall not be controverted within ten days, or shall continue undismissed for a period of sixty (60) days from commencement of such proceeding or case; (h) file a petition, an answer, an application or a proposal seeking reorganization or an arrangement with creditors or seeking to take advantage of any other law (whether federal, provincial or state, or, if applicable, other jurisdiction) relating to relief of debtors, or admit (by answer, by default or otherwise) the material allegations of a petition filed against it in any bankruptcy, reorganization, insolvency or other proceeding (whether federal, provincial or state, or, if applicable, other jurisdiction) relating to relief of debtors; (i) suffer or permit to continue unstayed and in effect for sixty (60) consecutive days any judgment, decree or order entered by a court of competent jurisdiction, that approves a petition or an application or a proposal seeking its reorganization or appoints an interim receiver, a receiver and manager, an administrator, custodian, trustee, interim trustee or liquidator of all or a substantial part of its assets, or of such Company; (j) have an administrative receiver appointed over the whole or substantially the whole of its assets, or of such Company; (k) have assets, the value of which is less than its liabilities; or (l) have a moratorium declared in respect of any of its Indebtedness, or any analogous procedure or step is taken in any jurisdiction.

## **ARTICLE IX**

### **REMEDIES UPON DEFAULT**

Notwithstanding any contrary provision or inference herein or elsewhere:

Section 9.1. Optional Defaults. If any Event of Default referred to in Section 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9 or 8.10 hereof shall occur, the Administrative Agent may, with the consent of the Required Lenders, and shall, at the written request of the Required Lenders, give written notice to the Borrower to:

(a) terminate the Commitment, if not previously terminated, and, immediately upon such election, the obligations of the Lenders, and each thereof, to make any further Loan,

and the obligation of the Issuing Lender to issue any Letter of Credit, immediately shall be terminated; and/or

(b) accelerate the maturity of all of the Obligations (if the Obligations are not already due and payable), whereupon all of the Obligations shall become and thereafter be immediately due and payable in full without any presentment or demand and without any further or other notice of any kind, all of which are hereby waived by the Borrower.

Section 9.2. Automatic Defaults. If any Event of Default referred to in Section 8.11 hereof shall occur:

(a) all of the Commitment shall automatically and immediately terminate, if not previously terminated, and no Lender thereafter shall be under any obligation to grant any further Loan, nor shall the Issuing Lender be obligated to issue any Letter of Credit; and

(b) the principal of and interest then outstanding on all of the Loans, and all of the other Obligations, shall thereupon become and thereafter be immediately due and payable in full (if the Obligations are not already due and payable), all without any presentment, demand or notice of any kind, which are hereby waived by the Borrower.

Section 9.3. Letters of Credit. If the maturity of the Obligations shall be accelerated pursuant to Section 9.1 or 9.2 hereof, the Borrower shall immediately deposit with the Administrative Agent, as security for the obligations of the Borrower and any Guarantor of Payment to reimburse the Administrative Agent and the Lenders for any then outstanding Letters of Credit, cash in Dollars equal to one hundred five percent (105%) of the sum of the aggregate undrawn balance of any then outstanding Letters of Credit. The Administrative Agent and the Lenders are hereby authorized, at their option, to deduct any and all such amounts from any deposit balances then owing by any Lender (or any affiliate of such Lender, wherever located) to or for the credit or account of any Company, as security for the obligations of the Borrower and any Guarantor of Payment to reimburse the Administrative Agent and the Lenders for any then outstanding Letters of Credit.

Section 9.4. Offsets.

(a) If there shall occur or exist any Event of Default referred to in Section 8.11 hereof or if the maturity of the Obligations is accelerated pursuant to Section 9.1 or 9.2 hereof, each Lender shall have the right at any time to set off against, and to appropriate and apply toward the payment of, any and all of the Obligations then owing by the Borrower or a Guarantor of Payment to such Lender (including, without limitation, any participation purchased or to be purchased pursuant to Section 2.2(b), 2.2(c) or 9.5 hereof), whether or not the same shall then have matured, any and all deposit (general or special) balances and all other indebtedness then held or owing by such Lender (including, without limitation, by branches and agencies or any affiliate of such Lender, wherever located) to or for the credit or account of the Borrower or any Guarantor of Payment, all without notice to or demand upon the Borrower or any other Person, all such notices and demands being hereby expressly waived by the Borrower.

(b) Notwithstanding anything in this Agreement to the contrary, if a Lender acts as a Securities Intermediary or a depository institution for a Credit Party, and the applicable Securities Accounts or Deposit Accounts of such Credit Party with such Lender (or an affiliate of a Lender) are not subject to a Control Agreement, then such Lender agrees that such accounts are subject to the Lien of the Administrative Agent (to the extent granted pursuant to the Security Documents) and it will not set off against or appropriate toward the payment of, any Indebtedness owing to such Lender that does not constitute Obligations (other than Customary Setoffs with respect to such Deposit Accounts or Securities Accounts).

Section 9.5. Equalization Provisions. Each Lender agrees with the other Lenders that, if it at any time shall obtain any Advantage over the other Lenders, or any thereof, in respect of the Obligations (except as to Swing Loans and Letters of Credit prior to the Administrative Agent's giving of notice to participate and except under Article III hereof), it shall purchase from the other Lenders, for cash and at par, such additional participation in the Obligations as shall be necessary to nullify such Advantage. If any such Advantage resulting in the purchase of an additional participation as aforesaid shall be recovered in whole or in part from the Lender receiving such Advantage, each such purchase shall be rescinded, and the purchase price restored (but without interest unless the Lender receiving such Advantage is required to pay interest on such Advantage to the Person recovering such Advantage from such Lender) ratably to the extent of the recovery. Each Lender further agrees with the other Lenders that (a) if it at any time shall receive any payment for or on behalf of the Borrower (or through any Guarantor of Payment) on any Indebtedness owing by the Borrower pursuant to this Agreement (whether by voluntary payment, by realization upon security, by reason of offset of any deposit or other indebtedness, by counterclaim or cross-action, by the enforcement of any right under any Loan Document, or otherwise), or (b) if any Lender (or affiliate of a Lender) (i) maintains Deposit Accounts or Securities Accounts of the Borrower or any Domestic Subsidiary, and (ii) exercises a right of offset or takes other action against such Deposit Accounts or Securities Accounts; then such Lender will apply such payment (other than Customary Setoffs with respect to the Deposit Accounts or Securities Accounts referenced in subpart (b) above) first to any and all Obligations owing by the Borrower to that Lender (including, without limitation, any participation purchased or to be purchased pursuant to this Section 9.5 or any other section of this Agreement). Each Credit Party agrees that any Lender so purchasing a participation from the other Lenders or any thereof pursuant to this Section 9.5 may exercise all of its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were a direct creditor of such Credit Party in the amount of such participation.

Section 9.6. Collateral. The Administrative Agent and the Lenders shall at all times have the rights and remedies of a secured party under the U.C.C., in addition to the rights and remedies of a secured party provided elsewhere within this Agreement, in any other Related Writing executed by the Borrower or otherwise provided in law or equity. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may require the Borrower to assemble the collateral securing the Obligations, which the Borrower agrees to do, and make it available to the Administrative Agent and the Lenders at a reasonably convenient place to be designated by the Administrative Agent. The Administrative Agent may, with or without notice to or demand upon the Borrower and with or without the aid of legal process,

make use of such force as may be necessary to enter any premises where such collateral, or any thereof, may be found and to take possession thereof (including anything found in or on such collateral that is not specifically described in this Agreement, each of which findings shall be considered to be an accession to and a part of such collateral) and for that purpose may pursue such collateral wherever the same may be found, without liability for trespass or damage caused thereby to the Borrower. After any delivery or taking of possession of the collateral securing the Obligations, or any thereof, pursuant to this Agreement, then, with or without resort to the Borrower personally or any other Person or property, all of which the Borrower hereby waives, and upon such terms and in such manner as the Administrative Agent may deem advisable, the Administrative Agent, in its discretion, may sell, assign, transfer and deliver any of such collateral at any time, or from time to time. The Administrative Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. No prior notice need be given to the Borrower or to any other Person in the case of any sale of such collateral that the Administrative Agent determines to be perishable or to be declining speedily in value or that is customarily sold in any recognized market, but in any other case the Administrative Agent shall give the Borrower not fewer than ten days' prior notice of either the time and place of any public sale of such collateral or of the time after which any private sale or other intended disposition thereof is to be made. The Borrower waives advertisement of any such sale and (except to the extent specifically required by the preceding sentence) waives notice of any kind in respect of any such sale. At any such public sale, the Administrative Agent or the Lenders may purchase such collateral, or any part thereof, free from any right of redemption, all of which rights the Borrower hereby waives and releases. After deducting all Related Expenses, and after paying all claims, if any, secured by Liens having precedence over this Agreement, the Administrative Agent may apply the net proceeds of each such sale to or toward the payment of the Secured Obligations, whether or not then due, in such order and by such division as the Administrative Agent, in its sole discretion, may deem advisable. Any excess, to the extent permitted by law, shall be paid to the Borrower, and the Borrower shall remain liable for any deficiency. In addition, the Administrative Agent shall at all times have the right to obtain new appraisals of the Borrower or any collateral securing the Obligations, the cost of which shall be paid by the Borrower.

Section 9.7. Other Remedies. The remedies in this Article IX are in addition to, and not in limitation of, any other right, power, privilege, or remedy, either in law, in equity, or otherwise, to which the Lenders may be entitled. The Administrative Agent shall exercise the rights under this Article IX and all other collection efforts on behalf of the Lenders and no Lender shall act independently with respect thereto, except as otherwise specifically set forth in this Agreement. In addition, the Administrative Agent shall be entitled to exercise remedies, pursuant to the Loan Documents, against collateral securing the Secured Obligations, on behalf of any Affiliate of a Lender that holds Secured Obligations, and no Affiliate of a Lender shall act independently with respect thereto, except as otherwise specifically set forth in this Agreement.

Section 9.8. Application of Proceeds.

(a) Payments Prior to Exercise of Remedies. Prior to the exercise by the Administrative Agent, on behalf of the Lenders, of remedies under this Agreement or the other Loan Documents, all monies received by the Administrative Agent in connection with the



Revolving Credit Commitment shall be applied, unless otherwise required by the terms of the other Loan Documents or by applicable law, to the Loans and Letters of Credit, as appropriate; provided that the Administrative Agent shall have the right at all times to apply any payment received from the Borrower first to the payment of all obligations (to the extent not paid by the Borrower) incurred by the Administrative Agent pursuant to Sections 11.5 and 11.6 hereof and to the payment of Related Expenses.

(b) Payments Subsequent to Exercise of Remedies. After the exercise by the Administrative Agent or the Required Lenders of remedies under this Agreement or the other Loan Documents, all monies received by the Administrative Agent shall be applied, unless otherwise required by the terms of the other Loan Documents or by applicable law, as follows:

(i) first, to the payment of all obligations (to the extent not paid by the Borrower) incurred by the Administrative Agent pursuant to Sections 11.5 and 11.6 hereof and to the payment of Related Expenses to the Administrative Agent;

(ii) second, to the payment pro rata of (A) interest then accrued and payable on the outstanding Loans, (B) any fees then accrued and payable to the Administrative Agent, (C) any fees then accrued and payable to the Issuing Lender or the holders of the Letter of Credit Commitment in respect of the Letter of Credit Exposure, (D) any commitment fees, amendment fees and similar fees shared pro rata among the Lenders under this Agreement that are then accrued and payable, and (E) to the extent not paid by the Borrower, to the obligations incurred by the Lenders (other than the Administrative Agent) pursuant to Sections 11.5 and 11.6 hereof;

(iii) third, for payment of (A) principal outstanding on the Loans and the Letter of Credit Exposure, on a pro rata basis to the Lenders, based upon each such Lender's Commitment Percentage, provided that the amounts payable in respect of the Letter of Credit Exposure shall be held and applied by the Administrative Agent as security for the reimbursement obligations in respect thereof, and, if any Letter of Credit shall expire without being drawn, then the amount with respect to such Letter of Credit shall be distributed to the Lenders, on a pro rata basis in accordance with this subpart (iii), (B) the Indebtedness under any Hedge Agreement with a Lender (or an entity that is an affiliate of a then existing Lender), such amount to be based upon the net termination obligation of the Borrower under such Hedge Agreement, and (C) the Bank Product Obligations owing to a Lender (or an entity that is an affiliate of a then existing Lender) under Bank Product Agreements; with such payment to be pro rata among (A), (B) and (C) of this subpart (iii);

(iv) fourth, to any remaining Secured Obligations (other than unasserted contingent indemnity obligations);  
and

(v) finally, any remaining surplus after all of the Secured Obligations (other than unasserted contingent indemnity obligations) have been paid in full, to the Borrower or to whomsoever shall be lawfully entitled thereto.

Each Lender hereby agrees to promptly provide all information reasonably requested by the Administrative Agent regarding any Bank Product Obligations owing to such Lender (or affiliate of such Lender) or any Hedge Agreement entered into by a Company with such Lender (or affiliate of such Lender), and each such Lender, on behalf of itself and any of its affiliates, hereby agrees to promptly provide notice to the Administrative Agent upon such Lender (or any of its affiliates) entering into any such Hedge Agreement or cash management services agreement.

## **ARTICLE X**

### **THE ADMINISTRATIVE AGENT**

KeyBank National Association acted as administrative agent under the Existing Credit Agreement. Pursuant to Section 11.23 hereof, KeyBank National Association has resigned as administrative agent and U.S. Bank has agreed to act as administrative agent. The Lenders authorize U.S. Bank and U.S. Bank hereby agrees to act as agent for the Lenders in respect of this Agreement upon the terms and conditions set forth elsewhere in this Agreement, and upon the following terms and conditions:

Section 10.1. Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers hereunder as are delegated to the Administrative Agent by the terms hereof, together with such powers as are reasonably incidental thereto. Neither the Administrative Agent nor any of its affiliates, directors, officers, attorneys or employees shall (a) be liable for any action taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own gross negligence or willful misconduct (as determined by a final non-appealable judgment of a court of competent jurisdiction), or be responsible in any manner to any of the Lenders for the effectiveness, enforceability, genuineness, validity or due execution of this Agreement or any other Loan Documents, (b) be under any obligation to any Lender to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions hereof or thereof on the part of the Borrower or any other Company, or the financial condition of the Borrower or any other Company, or (c) be liable to any of the Companies for consequential damages resulting from any breach of contract, tort or other wrong in connection with the negotiation, documentation, administration or collection of the Loans or Letters of Credit or any of the Loan Documents. Notwithstanding any provision to the contrary contained in this Agreement or in any other Loan Document, the Administrative Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in other Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market

custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

Section 10.2. ERISA Matters. Each Lender as of the date hereof represents and warrants as of the date hereof to the Administrative Agent and its Affiliates, and not, for the avoidance of doubt, for the benefit of the Borrower or any other Credit Party, that such Lender is not and will not be (1) an employee benefit plan subject to Title I of ERISA, (2) a plan or account subject to Section 4975 of the Code; (3) an entity deemed to hold “plan assets” of any such plans or accounts for purposes of ERISA or the Code; or (4) a “governmental plan” within the meaning of ERISA.

Section 10.3. Consultation With Counsel. The Administrative Agent may consult with legal counsel selected by the Administrative Agent and shall not be liable for any action taken or suffered in good faith by the Administrative Agent in accordance with the opinion of such counsel.

Section 10.4. Documents. The Administrative Agent shall not be under any duty to examine into or pass upon the validity, effectiveness, genuineness or value of any Loan Document or any other Related Writing furnished pursuant hereto or in connection herewith or the value of any collateral obtained hereunder, and the Administrative Agent shall be entitled to assume that the same are valid, effective and genuine and what they purport to be.

Section 10.5. Administrative Agent and Affiliates. U.S. Bank and its affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Companies and Affiliates as though U.S. Bank were not the Administrative Agent hereunder and without notice to or consent of any Lender. Each Lender acknowledges that, pursuant to such activities, U.S. Bank or its affiliates may receive information regarding any Company or any Affiliate (including information that may be subject to confidentiality obligations in favor of such Company or such Affiliate) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to other Lenders. With respect to Loans and Letters of Credit (if any), U.S. Bank and its affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though U.S. Bank were not the Administrative Agent, and the terms “Lender” and “Lenders” include U.S. Bank and its affiliates, to the extent applicable, in their individual capacities.

Section 10.6. Knowledge or Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received written notice from a Lender or the Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders (or, if so specified by this Agreement, all Lenders); provided that, unless and until the Administrative Agent shall have received such directions, the Administrative

Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable, in its discretion, for the protection of the interests of the Lenders.

Section 10.7. Action by Administrative Agent. Subject to the other terms and conditions hereof, so long as the Administrative Agent shall be entitled, pursuant to Section 10.6 hereof, to assume that no Default or Event of Default shall have occurred and be continuing, the Administrative Agent shall be entitled to use its discretion with respect to exercising or refraining from exercising any rights that may be vested in it by, or with respect to taking or refraining from taking any action or actions that it may be able to take under or in respect of, this Agreement. The Administrative Agent shall incur no liability under or in respect of this Agreement by acting upon any notice, certificate, warranty or other paper or instrument believed by it to be genuine or authentic or to be signed by the proper party or parties, or with respect to anything that it may do or refrain from doing in the reasonable exercise of its judgment, or that may seem to it to be necessary or desirable in the premises. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent's acting or refraining from acting hereunder in accordance with the instructions of the Required Lenders.

Section 10.8. Release of Collateral or Guarantor of Payment. In the event of a merger, transfer of assets or other transaction permitted pursuant to Section 5.12 hereof (or otherwise permitted pursuant to this Agreement) where the proceeds of such merger, transfer or other transaction are applied in accordance with the terms of this Agreement to the extent required to be so applied, or in the event of a merger, consolidation, dissolution or similar event, permitted pursuant to this Agreement, the Administrative Agent, at the request and expense of the Borrower, is hereby authorized by the Lenders to (a) release the relevant Collateral (and any other collateral securing the Obligations) from this Agreement or any other Loan Document, (b) release a Guarantor of Payment in connection with such permitted transfer or event, and (c) duly assign, transfer and deliver to the affected Person (without recourse and without any representation or warranty) such Collateral (and any other collateral securing the Obligations) as is then (or has been) so transferred or released and as may be in the possession of the Administrative Agent and has not theretofore been released pursuant to this Agreement.

Section 10.9. Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct, as determined by a final and non-appealable judgment of a court of competent jurisdiction.

Section 10.10. Indemnification of Administrative Agent. The Lenders agree to indemnify the Administrative Agent (to the extent not reimbursed by the Borrower) ratably, according to their respective Commitment Percentages, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees

and expenses) or disbursements of any kind or nature whatsoever that may be imposed on, incurred by or asserted against the Administrative Agent in its capacity as agent in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted by the Administrative Agent with respect to this Agreement or any other Loan Document, provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees and expenses) or disbursements resulting from the Administrative Agent's gross negligence or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction, or from any action taken or omitted by the Administrative Agent in any capacity other than as agent under this Agreement or any other Loan Document. No action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 10.10. The undertaking in this Section 10.10 shall survive repayment of the Loans, cancellation of the Notes, if any, expiration or termination of the Letters of Credit, termination of the Commitment, any foreclosure under, or modification, release or discharge of, any or all of the Loan Documents, termination of this Agreement and the resignation or replacement of the agent.

Section 10.11. Successor Administrative Agent. The Administrative Agent may resign as agent hereunder by giving not fewer than thirty (30) days prior written notice to the Borrower and the Lenders. If the Administrative Agent shall resign under this Agreement, then either (a) the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders (with the consent of the Borrower so long as an Event of Default does not exist and which consent shall not be unreasonably withheld), or (b) if a successor agent shall not be so appointed and approved within the thirty (30) day period following the Administrative Agent's notice to the Lenders of its resignation, then the Administrative Agent shall appoint a successor agent that shall serve as agent until such time as the Required Lenders appoint a successor agent. If no successor agent has accepted appointment as the Administrative Agent by the date that is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. Upon its appointment, such successor agent shall succeed to the rights, powers and duties as agent, and the term "Administrative Agent" means such successor effective upon its appointment, and the former agent's rights, powers and duties as agent shall be terminated without any other or further act or deed on the part of such former agent or any of the parties to this Agreement. After any retiring Administrative Agent's resignation as the Administrative Agent, the provisions of this Article X shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement and the other Loan Documents.

Section 10.12. Issuing Lender. The Issuing Lender shall act on behalf of the Lenders with respect to any Letters of Credit issued by the Issuing Lender and the documents associated therewith. The Issuing Lender shall have all of the benefits and immunities (a) provided to the Administrative Agent in this Article X with respect to any acts taken or omissions suffered by the Issuing Lender in connection with the Letters of Credit and the applications and agreements

for letters of credit pertaining to such Letters of Credit as fully as if the term “Administrative Agent”, as used in this Article X, included the Issuing Lender with respect to such acts or omissions, and (b) as additionally provided in this Agreement with respect to the Issuing Lender.

Section 10.13. Swing Line Lender. The Swing Line Lender shall act on behalf of the Lenders with respect to any Swing Loans. The Swing Line Lender shall have all of the benefits and immunities (a) provided to the Administrative Agent in this Article X with respect to any acts taken or omissions suffered by the Swing Line Lender in connection with the Swing Loans as fully as if the term “Administrative Agent”, as used in this Article X, included the Swing Line Lender with respect to such acts or omissions, and (b) as additionally provided in this Agreement with respect to the Swing Line Lender.

Section 10.14. Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Credit Party, (a) the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise, to (i) file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent) allowed in such judicial proceedings, and (ii) collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and (b) any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent. Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 10.15. No Reliance on Administrative Agent’s Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its affiliates, participants or assignees, may rely on the Administrative Agent to carry out such Lender’s or its affiliate’s, participant’s or assignee’s customer identification program, or other obligations required or imposed under or pursuant to the Patriot Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the “CIP Regulations”), or any other anti-terrorism law, including any programs involving any of the

following items relating to or in connection with the Borrower, its Affiliates or agents, the Loan Documents or the transactions hereunder: (a) any identity verification procedures, (b) any record keeping, (c) any comparisons with government lists, (d) any customer notices or (e) any other procedures required under the CIP Regulations or such other laws.

Section 10.16. Other Agents. The Administrative Agent shall have the continuing right, in consultation with the Borrower, from time to time to designate one or more Lenders (or its or their affiliates) as “syndication agent”, “co-syndication agent”, “documentation agent”, “co-other designations for purposes hereof. Any such designation referenced in the previous sentence or listed on the cover of this Agreement shall have no substantive effect, and any such Lender and its affiliates so referenced or listed shall have no additional powers, duties, responsibilities or liabilities as a result thereof, except in its capacity, as applicable, as the Administrative Agent, a Lender, the Swing Line Lender or the Issuing Lender hereunder.

## ARTICLE XI

### MISCELLANEOUS

Section 11.1. Lenders’ Independent Investigation. Each Lender, by its signature to this Agreement, acknowledges and agrees that the Administrative Agent has made no representation or warranty, express or implied, with respect to the creditworthiness, financial condition, or any other condition of any Company or with respect to the statements contained in any information memorandum furnished in connection herewith or in any other oral or written communication between the Administrative Agent and such Lender. Each Lender represents that it has made and shall continue to make its own independent investigation of the creditworthiness, financial condition and affairs of the Companies in connection with the extension of credit hereunder, and agrees that the Administrative Agent has no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto (other than such notices as may be expressly required to be given by the Administrative Agent to the Lenders hereunder), whether coming into its possession before the first Credit Event hereunder or at any time or times thereafter. Each Lender further represents that it has reviewed each of the Loan Documents.

Section 11.2. No Waiver; Cumulative Remedies. No omission or course of dealing on the part of the Administrative Agent, any Lender or the holder of any Note (or, if there is no Note, the holder of the interest as reflected on the books and records of the Administrative Agent) in exercising any right, power or remedy hereunder or under any of the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or under any of the Loan Documents. The remedies herein provided are cumulative and in addition to any other rights, powers or privileges held under any of the Loan Documents or by operation of law, by contract or otherwise.

Section 11.3. Amendments, Waivers and Consents.

(a) General Rule. No amendment, modification, termination, or waiver of any provision of any Loan Document nor consent to any variance therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) Exceptions to the General Rule. Notwithstanding the provisions of subsection (a) of this Section 11.3:

(i) Consent of Affected Lenders Required. No amendment, modification, waiver or consent shall (A) extend or increase the Commitment of any Lender without the written consent of such Lender, (B) extend the date scheduled for payment of any principal (excluding mandatory prepayments) of or interest on the Loans or Letter of Credit reimbursement obligations or commitment fees payable hereunder without the written consent of each Lender directly affected thereby, (C) reduce the principal amount of any Loan, the stated rate of interest thereon (provided that the institution of the Default Rate or post default interest and a subsequent removal of the Default Rate or post default interest shall not constitute a decrease in interest rate pursuant to this Section 11.3) or the stated rate of commitment fees payable hereunder, without the consent of each Lender directly affected thereby, (D) change the manner of pro rata application of any payments made by the Borrower to the Lenders hereunder, without the consent of each Lender directly affected thereby, (E) without the unanimous consent of the Lenders, change any percentage voting requirement, voting rights, or the Required Lenders definition in this Agreement, (F) without the unanimous consent of the Lenders, release the Borrower or any Guarantor of Payment or of any material amount of collateral securing the Secured Obligations, except in connection with a transaction specifically permitted hereunder as provided in Section 10.8 hereof, or (G) without the unanimous consent of the Lenders, amend the definition of “Agreed Currency”, this Section 11.3, or Section 2.13, 9.5 or 9.8 hereof.

(ii) Provisions Relating to Special Rights and Duties. No provision of this Agreement affecting the Administrative Agent in its capacity as such shall be amended, modified or waived without the consent of the Administrative Agent. The Administrative Agent Fee Letter may be amended or modified by the Administrative Agent and the Borrower without the consent of any other Lender. No provision of this Agreement relating to the rights or duties of the Issuing Lender in its capacity as such shall be amended, modified or waived without the consent of the Issuing Lender. No provision of this Agreement relating to the rights or duties of the Swing Line Lender in its capacity as such shall be amended, modified or waived without the consent of the Swing Line Lender.

(iii) Technical and Conforming Modifications. Notwithstanding the foregoing, technical and conforming modifications to the Loan Documents may be made with the consent of the Borrower and the Administrative Agent (A) if such modifications are not adverse to the Lenders and are requested by Governmental Authorities, (B) to cure any ambiguity, defect or inconsistency, or (C) to the extent necessary to integrate any increase in the Commitment or new Loans pursuant to Section 2.9(b) hereof.



(c) Replacement of Non-Consenting Lender. If, in connection with any proposed amendment, waiver or consent hereunder, the consent of all Lenders is required, but only the consent of Required Lenders is obtained, (any Lender withholding consent as described in this subsection (c) being referred to as a “Non-Consenting Lender”), then, so long as the Administrative Agent is not the Non-Consenting Lender, the Administrative Agent may (and shall, if requested by the Borrower), at the sole expense of the Borrower, upon notice to such Non-Consenting Lender and the Borrower, require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with the restrictions contained in Section 11.10 hereof) all of its interests, rights and obligations under this Agreement to a financial institution acceptable to the Administrative Agent and the Borrower that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that such Non-Consenting Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from such financial institution (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including any breakage compensation under Article III hereof).

(d) Generally. Notice of amendments, waivers or consents ratified by the Lenders hereunder shall be forwarded by the Administrative Agent to all of the Lenders. Each Lender or other holder of a Note, or if there is no Note, the holder of the interest as reflected on the books and records of the Administrative Agent (or interest in any Loan or Letter of Credit) shall be bound by any amendment, waiver or consent obtained as authorized by this Section 11.3, regardless of its failure to agree thereto.

Section 11.4. Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing and:

(a) if to the Borrower, mailed or delivered to it, addressed to it at the address specified on the signature pages of this Agreement;

(b) if to the Administrative Agent, mailed or delivered to it at U.S. Bank National Association, 800 Nicollet Mall, BC-MN-H03L, Minneapolis, MN 55402, Attention: Beth Correll, Agent Deal Administrator, Facsimile: 612-303-3851, Email: elizabeth.correll@usbank.com with a copy to U.S. Bank National Association, 800 Nicollet Mall, BC-MN-H03N, Minneapolis, MN 55402, Attention: Tim Landro, Vice President and Portfolio Manager, Facsimile: 612-303-2265, Email: timothy.landro@usbank.com;

(c) if to U.S. Bank National Association, in its capacity as Issuing Lender, mailed or delivered to it at U.S. Bank National Association, 800 Nicollet Mall, BC-MN-H03L, Minneapolis, MN 55402, Attention: Julie M. Seaton, International Banking Officer, Facsimile: 612.303.5226, Email: julie.seaton@usbank.com;

(d) if to a Lender, mailed or delivered to it at its address (or facsimile number) set forth in its Administrative Questionnaire;

or, as to each party, at such other address as shall be designated by such party in a written notice to each of the other parties.

All notices, statements, requests, demands and other communications provided for hereunder shall be deemed to be given or made when delivered (if received during normal business hours on a Business Day, such Business Day or otherwise the following Business Day), or two Business Days after being deposited in the mails with postage prepaid by registered or certified mail, addressed as aforesaid, or sent by facsimile or electronic communication, in each case of facsimile or electronic communication with telephonic confirmation of receipt. All notices pursuant to any of the provisions hereof shall not be effective until received. For purposes of Article II hereof, the Administrative Agent shall be entitled to rely on telephonic instructions from any person that the Administrative Agent in good faith believes is an Authorized Officer, and the Borrower shall hold the Administrative Agent and each Lender harmless from any loss, cost or expense resulting from any such reliance.

Section 11.5. Costs, Expenses and Documentary Taxes. The Borrower agrees to pay on demand all costs and expenses of the Administrative Agent and all Related Expenses, including but not limited to (a) syndication, administration, travel and out-of-pocket expenses, including but not limited to attorneys' fees and expenses, of the Administrative Agent in connection with the preparation, negotiation and closing of the Loan Documents and the administration of the Loan Documents, and the collection and disbursement of all funds hereunder and the other instruments and documents to be delivered hereunder, (b) out-of-pocket expenses of the Administrative Agent in connection with the administration of the Loan Documents and the other instruments and documents to be delivered hereunder, and (c) the reasonable fees and expenses of special counsel for the Administrative Agent, with respect to the foregoing, and of local counsel, if any, who may be retained by said special counsel with respect thereto. The Borrower also agrees to pay on demand all costs and expenses (including Related Expenses) of the Administrative Agent and the Lenders, including reasonable attorneys' fees and expenses, in connection with the restructuring, workout or enforcement of the Obligations, this Agreement or any other Related Writing. In addition, the Borrower shall pay any and all stamp, transfer, documentary and other taxes, assessments, charges and fees payable or determined to be payable in connection with the execution and delivery of the Loan Documents, and the other instruments and documents to be delivered hereunder, and agrees to hold the Administrative Agent and each Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or failure to pay such taxes or fees. All obligations provided for in this Section 11.5 shall survive any termination of this Agreement.

Section 11.6. Indemnification. The Borrower agrees to defend, indemnify and hold harmless the Administrative Agent and the Lenders (and their respective affiliates, officers, directors, attorneys, agents and employees) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees) or disbursements of any kind or nature whatsoever that may be imposed on, incurred by or asserted against the Administrative Agent or any Lender in connection with any investigative, administrative or judicial proceeding (whether or not such Lender or the Administrative Agent shall be designated a party thereto) or any other claim by any Person relating to or arising out of

any Loan Document (including the execution of any Loan Document using an electronic signature platform not provided by the Administrative Agent) or any actual or proposed use of proceeds of the Loans or any of the Obligations, or any activities of any Company or its Affiliates; provided that no Lender nor the Administrative Agent or any other party shall have the right to be indemnified under this Section 11.6 for (a) its own gross negligence or willful misconduct, as determined by a final judgment of a court of competent jurisdiction, (b) such party's material breach of its obligations under this Agreement or any other Loan Document or Related Writing or (c) disputes solely among such parties not arising from or in connection with any action or omission of any Company or any of their Affiliates. All obligations provided for in this Section 11.6 shall survive any termination of this Agreement.

Section 11.7. Obligations Several; No Advisory or Fiduciary Obligations. The obligations of the Lenders hereunder are several and not joint. Nothing contained in this Agreement and no action taken by the Administrative Agent or the Lenders pursuant hereto shall be deemed to constitute the Administrative Agent or the Lenders a partnership, association, joint venture or other entity. No default by any Lender hereunder shall excuse the other Lenders from any obligation under this Agreement; but no Lender shall have or acquire any additional obligation of any kind by reason of such default. The relationship between the Borrower and the Lenders with respect to the Loan Documents and the other Related Writings is and shall be solely that of debtor and creditors, respectively, and neither the Administrative Agent nor any Lender shall have any fiduciary obligation toward any Credit Party with respect to any such documents or the transactions contemplated thereby. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, any arranger and any book runner and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, any arranger and any book runner and the Lenders, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Administrative Agent, any arranger and any book runner and the Lenders is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent, any arranger and any book runner 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 (iii) the Administrative Agent, any arranger and any book runner and each of the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent, any arranger and any book runner nor any Lender has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent, any arranger

and any book runner and each of the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 11.8. Execution in Counterparts; Electronic Execution of Assignments; Electronic Records.

(a) This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, and by facsimile or other electronic signature, each of which counterparts when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

(b) The words “execution,” “signed,” “signature,” and words of like import in any assignment and assumption agreement 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, or any other state laws based on the Uniform Electronic Transactions Act.

(c) The Borrower hereby acknowledges the receipt of a copy of this Agreement and all other Loan Documents. The Administrative Agent and each Lender may, on behalf of the Borrower, create a microfilm or optical disk or other electronic image of this Agreement and any or all of the Loan Documents. The Administrative Agent and each Lender may store the electronic image of this Agreement and Loan Documents in its electronic form and then destroy the paper original as part of the Administrative Agent’s and each Lender’s normal business practices, with the electronic image deemed to be an original and of the same legal effect, validity and enforceability as the paper originals. The Administrative Agent and each Lender are authorized, when appropriate, to convert any note into a “transferable record” under the Uniform Electronic Transactions Act.

Section 11.9. Binding Effect; Borrower’s Assignment. This Agreement shall become effective when it shall have been executed by the Borrower, the Administrative Agent and each Lender and thereafter shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent and each of the Lenders and their respective successors and permitted assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Administrative Agent and all of the Lenders.

Section 11.10. Lender Assignments.

(a) Assignments of Commitments. Each Lender shall have the right at any time or times to assign to an Eligible Transferee (other than to a Defaulting Lender), without recourse, all or a percentage of all of the following: (i) such Lender’s Commitment, (ii) all Loans made by that Lender, (iii) such Lender’s Notes, and (iv) such Lender’s interest in any Letter of Credit or Swing Loan, and any participation purchased pursuant to Section 2.2(b) or (c) or Section 9.5 hereof.

(b) Prior Consent. No assignment may be consummated pursuant to this Section 11.10 without the prior written consent of the Borrower and the Administrative Agent (other than an assignment by any Lender to any affiliate of such Lender which affiliate is an Eligible Transferee and either wholly-owned by a Lender or is wholly-owned by a Person that wholly owns, either directly or indirectly, such Lender, or to another Lender), which consent of the Borrower and the Administrative Agent shall not be unreasonably withheld; provided that (i) the consent of the Borrower shall not be required if, at the time of the proposed assignment, any Default or Event of Default shall then exist and (ii) the Borrower shall be deemed to have granted its consent unless the Borrower has expressly objected to such assignment within three Business Days after notice thereof. Anything herein to the contrary notwithstanding, any Lender may at any time make a pledge or collateral assignment of all or any portion of its rights under the Loan Documents to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank, as applicable, provided that no such pledge or assignment shall release such assigning Lender from its obligations hereunder or substitute such pledgee or assignee for such Lender as a party hereto.

(c) Minimum Amount. Each such assignment shall be in a minimum amount of the lesser of Five Million Dollars (\$5,000,000) of the assignor's Commitment, and interest herein, or the entire amount of the assignor's Commitment and interest herein.

(d) Assignment Fee. Unless the assignment shall be to an affiliate of the assignor or the assignment shall be due to merger of the assignor or for regulatory purposes, either the assignor or the assignee shall remit to the Administrative Agent, for its own account, an administrative fee of Three Thousand Five Hundred Dollars (\$3,500).

(e) Assignment Agreement. Unless the assignment shall be due to merger of the assignor or a collateral assignment for regulatory purposes, the assignor shall (i) cause the assignee to execute and deliver to the Borrower and the Administrative Agent an Assignment Agreement, and (ii) execute and deliver, or cause the assignee to execute and deliver, as the case may be, to the Administrative Agent such additional amendments, assurances and other writings as the Administrative Agent may reasonably require.

(f) Non-U.S. Assignee. If the assignment is to be made to an assignee that is organized under the laws of any jurisdiction other than the United States or any state thereof, the assignor Lender shall cause such assignee, at least five Business Days prior to the effective date of such assignment, (i) to represent to the assignor Lender (for the benefit of the assignor Lender, the Administrative Agent and the Borrower) that under applicable law and treaties no taxes will be required to be withheld by the Administrative Agent, the Borrower or the assignor with respect to any payments to be made to such assignee in respect of the Loans hereunder, (ii) to furnish to the assignor Lender (and, in the case of any assignee registered in the Register (as defined below), the Administrative Agent and the Borrower) either U.S. Internal Revenue Service Form W-8ECI, Form W-8IMY, Form W-8BEN, or Form W-8BEN-E, as applicable (wherein such assignee claims entitlement to complete exemption from U.S. federal withholding tax on all payments hereunder), and (iii) to agree (for the benefit of the assignor, the Administrative Agent and the Borrower) to provide to the assignor Lender (and, in the case of

any assignee registered in the Register, to the Administrative Agent and the Borrower) a new Form W-8ECI, Form W-8IMY, Form W-8BEN, or Form W-8BEN-E, as applicable, upon the expiration or obsolescence of any previously delivered form and comparable statements in accordance with applicable U.S. laws and regulations and amendments duly executed and completed by such assignee, and to comply from time to time with all applicable U.S. laws and regulations with regard to such withholding tax exemption.

(g) Deliveries by Borrower. Upon satisfaction of all applicable requirements specified in subsections (a) through (f) above, the Borrower shall execute and deliver (i) to the Administrative Agent, the assignor and the assignee, any consent or release (of all or a portion of the obligations of the assignor) required to be delivered by the Borrower in connection with the Assignment Agreement, and (ii) to the assignee, if requested, and the assignor, if applicable, an appropriate Note or Notes. After delivery of the new Note or Notes, the assignor's Note or Notes, if any, being replaced shall be returned to the Borrower marked "replaced".

(h) Effect of Assignment. Upon satisfaction of all applicable requirements set forth in subsections (a) through (g) above, and any other condition contained in this Section 11.10, (i) the assignee shall become and thereafter be deemed to be a "Lender" for the purposes of this Agreement, (ii) the assignor shall be released from its obligations hereunder to the extent that its interest has been assigned, (iii) in the event that the assignor's entire interest has been assigned, the assignor shall cease to be and thereafter shall no longer be deemed to be a "Lender" and (iv) the signature pages hereto and Schedule 1 hereto shall be automatically amended, without further action, to reflect the result of any such assignment.

(i) Administrative Agent to Maintain Register. Administrative Agent shall maintain at the address for notices referred to in Section 11.4 hereof a copy of each Assignment Agreement delivered to it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount (and stated interest) of the Loans owing to, each Lender from time to time. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register as the owner of the Loan recorded therein for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

Section 11.11. Sale of Participations. Any Lender may, in the ordinary course of its commercial banking business and in accordance with applicable law, at any time sell participations to one or more Eligible Transferees (each a "Participant") in all or a portion of its rights or obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of the Commitment and the Loans and participations owing to it and the Note, if any, held by it); provided that:

- (a) any such Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged;

(b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations;

(c) the parties hereto shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and each of the other Loan Documents;

(d) such Participant shall be bound by the provisions of Section 9.5 hereof, and the Lender selling such participation shall obtain from such Participant a written confirmation of its agreement to be so bound; and

(e) no Participant (unless such Participant is itself a Lender) shall be entitled to require such Lender to take or refrain from taking action under this Agreement or under any other Loan Document, except that such Lender may agree with such Participant that such Lender will not, without such Participant's consent, take action of the type described as follows:

(i) increase the portion of the participation amount of any Participant over the amount thereof then in effect, or extend the Commitment Period, without the written consent of each Participant affected thereby; or

(ii) reduce the principal amount of or extend the time for any payment of principal of any Loan, or reduce the rate of interest or extend the time for payment of interest on any Loan, or reduce the commitment fee, without the written consent of each Participant affected thereby.

The Borrower agrees that any Lender that sells participations pursuant to this Section 11.11 shall still be entitled to the benefits of Article III hereof, notwithstanding any such transfer; provided that the obligations of the Borrower shall not increase as a result of such transfer and the Borrower shall have no obligation to any Participant.

Section 11.12. Replacement of Affected Lenders. Each Lender agrees that, during the time in which any Lender is an Affected Lender, the Administrative Agent shall have the right (and the Administrative Agent shall, if requested by the Borrower), at the sole expense of the Borrower, upon notice to such Affected Lender and the Borrower, to require that such Affected Lender assign and delegate, without recourse (in accordance with the restrictions contained in Section 11.10 hereof), all of its interests, rights and obligations under this Agreement to an Eligible Transferee, approved by the Borrower (unless an Event of Default shall exist) and the Administrative Agent, that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that such Affected Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder (recognizing that any Affected Lender may have given up its rights under this Agreement to receive payment of fees and other amounts pursuant to Section 2.6(e) and (f) hereof), from such Eligible Transferee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including any breakage compensation under Article III hereof).

Section 11.13. Patriot Act Notice. Each Lender, and the Administrative Agent (for itself and not on behalf of any other party), hereby notifies the Credit Parties that, pursuant to the requirements of the Patriot Act, such Lender and the Administrative Agent are required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of each of the Credit Parties and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Credit Parties in accordance with the Patriot Act. The Borrower shall provide, to the extent commercially reasonable, such information and take such actions as are reasonably requested by the Administrative Agent or a Lender in order to assist the Administrative Agent or such Lender in maintaining compliance with the Patriot Act.

Section 11.14. Severability of Provisions; Captions; Attachments. Any provision of this Agreement that shall be 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 or affecting the validity or enforceability of such provision in any other jurisdiction. The several captions to sections and subsections herein are inserted for convenience only and shall be ignored in interpreting the provisions of this Agreement. Each schedule or exhibit attached to this Agreement shall be incorporated herein and shall be deemed to be a part hereof.

Section 11.15. Investment Purpose. Each of the Lenders represents and warrants to the Borrower that such Lender is entering into this Agreement with the present intention of acquiring any Note issued pursuant hereto (or, if there is no Note, the interest as reflected on the books and records of the Administrative Agent) for investment purposes only and not for the purpose of distribution or resale, it being understood, however, that each Lender shall at all times retain full control over the disposition of its assets.

Section 11.16. Entire Agreement. This Agreement, any Note and any other Loan Document or other agreement, document or instrument attached hereto or executed on or as of the Closing Date integrate all of the terms and conditions mentioned herein or incidental hereto and supersede all oral representations and negotiations and prior writings with respect to the subject matter hereof (except with respect to any provisions of the Administrative Agent Fee Letter, that by their terms survive the termination thereof, in each case, which shall remain in full force and effect after the Closing Date).

Section 11.17. Limitations on Liability of the Issuing Lender. The Borrower assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letters of Credit. Neither the Issuing Lender nor any of its officers or directors shall be liable or responsible for (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Issuing Lender against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to such Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make



payment under any Letter of Credit, except that the account party on such Letter of Credit shall have a claim against the Issuing Lender, and the Issuing Lender shall be liable to such account party, to the extent of any direct, but not consequential, damages suffered by such account party that such account party proves were caused by (i) the Issuing Lender's willful misconduct or gross negligence (as determined by a final judgment of a court of competent jurisdiction) in determining whether documents presented under a Letter of Credit comply with the terms of such Letter of Credit, or (ii) the Issuing Lender's willful failure to make lawful payment under any Letter of Credit after the presentation to it of documentation strictly complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, the Issuing Lender may accept documents that appear on their face to be in order, without responsibility for further investigation.

Section 11.18. General Limitation of Liability. No claim may be made by any Credit Party or any other Person against any Company, the Administrative Agent, the Issuing Lender, or any other Lender or the affiliates, directors, officers, employees, attorneys or agents of any of them for any damages other than actual compensatory damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or any of the other Loan Documents, or any act, omission or event occurring in connection therewith; and the Borrower, each Lender, the Administrative Agent and the Issuing Lender hereby, to the fullest extent permitted under applicable law, waive, release and agree not to sue or counterclaim 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 their favor and regardless of whether any Company, any Lender, Issuing Lender, or the Administrative Agent has been advised of the likelihood of such loss of damage.

Section 11.19. No Duty. All attorneys, accountants, appraisers, consultants and other professional persons (including the firms or other entities on behalf of which any such Person may act) retained by the Administrative Agent or any Lender with respect to the transactions contemplated by the Loan Documents shall have the right to act exclusively in the interest of the Administrative Agent or such Lender, as the case may be, and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to the Borrower, any other Companies, or any other Person, with respect to any matters within the scope of such representation or related to their activities in connection with such representation. The Borrower agrees, on behalf of itself and its Subsidiaries, not to assert any claim or counterclaim against any such persons with regard to such matters, all such claims and counterclaims, now existing or hereafter arising, whether known or unknown, foreseen or unforeseeable, being hereby waived, released and forever discharged.

Section 11.20. Legal Representation of Parties. The Loan Documents were negotiated by the parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement or any other Loan Document to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

Section 11.21. Governing Law; Submission to Jurisdiction.

(a) **GOVERNING LAW.** THE LOAN DOCUMENTS (OTHER THAN THOSE CONTAINING A CONTRARY EXPRESS CHOICE OF LAW PROVISION) SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS) OF THE STATE OF NEW YORK, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.

(b) **SUBMISSION TO JURISDICTION.** THE BORROWER HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN NEW YORK, NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS AND THE BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE ADMINISTRATIVE AGENT, THE ISSUING LENDER OR ANY LENDER TO BRING PROCEEDINGS AGAINST THE BORROWER OR TO ENFORCE RIGHTS AND REMEDIES IN RESPECT OF COLLATERAL IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY THE BORROWER AGAINST THE ADMINISTRATIVE AGENT, ISSUING LENDER OR ANY LENDER OR ANY AFFILIATE OF THE ADMINISTRATIVE AGENT, THE ISSUING LENDER OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN NEW YORK, NEW YORK.

(c) **WAIVER OF JURY TRIAL.** THE BORROWER, THE ADMINISTRATIVE AGENT, THE ISSUING LENDER AND EACH LENDER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.

Section 11.22. 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 Credit 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 Letters of Credit, the Commitments or this Agreement;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (i) clause (i) of Section 11.22(a) is true with respect to a Lender or (ii) a Lender has provided another representation, warranty and covenant in accordance with clause (iv) of Section 11.22(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 Credit Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of

any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

Section 11.23. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Obligations 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):

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 11.24. 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 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 a 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 a Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto 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 any Resolution Authority.

Section 11.25. Erroneous Payments.

(a) If the Administrative Agent notifies a Lender, Issuing Lender or other holder of any Obligations (each, a “Lender Party”) or any Person who has received funds on behalf of a Lender Party (any such Lender Party or other recipient, a “Payment Recipient”), that the Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates were erroneously transmitted to, or otherwise erroneously received by, such Payment Recipient (whether or not such error is known to any Payment Recipient) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an “Erroneous Payment”) and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Payment Recipient shall promptly, but in no event later than two Business Days thereafter, 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 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 Effective 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), if any Payment Recipient 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) that (x) is in a different amount than, or on

a different date from, that specified 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) 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) such Payment Recipient otherwise becomes aware was transmitted, or received, in error (in whole or in part):

(i) (A) in the case of immediately preceding clause (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (B) in the case of immediately preceding clause (z), an error has been made, in each case, with respect to such payment, prepayment or repayment; and

(ii) such Payment Recipient shall promptly (and, in all events, within one Business Day of its knowledge of such error) 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 11.25(b).

(c) Each Lender Party hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Lender Party under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Lender Party from any source, against any amount due to the Administrative Agent under immediately preceding clause (a) or under the indemnification provisions of this Agreement.

(d) An Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations, except to the extent such Erroneous Payment comprises funds received by the Administrative Agent from a Credit Party for the purpose of making such Erroneous Payment.

(e) To the extent permitted by applicable law, each Payment Recipient hereby agrees not to 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, including without limitation any defense based on “discharge for value” or any similar doctrine, with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment.

(f) Each party’s agreements under this Section 11.25 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 Lender, the termination of the Commitments, or the repayment, satisfaction or discharge of any or all Obligations.

Section 11.26. Amendment and Restatement; Agency Transfer; New Lenders.

(a) The parties to this Agreement agree that, upon (i) the execution and delivery by each of the parties hereto of this Agreement and (ii) satisfaction of the conditions set forth in Section 4.2, the terms and provisions of the Existing Credit Agreement shall be and hereby are amended, superseded and restated in their entirety by the terms and provisions of this Agreement. This Agreement is not intended to and shall not constitute a novation. All Loans made and Obligations incurred under the Existing Credit Agreement which are outstanding on the Closing Date shall continue as Loans and Obligations under (and shall be governed by the terms of) this Agreement and the other Loan Documents. Without limiting the foregoing, upon the effectiveness hereof: (a) all references in the “Loan Documents” (as defined in the Existing Credit Agreement) to the “Administrative Agent”, the “Credit Agreement” and the “Loan Documents” shall be deemed to refer to the Administrative Agent, this Agreement and the Loan Documents, (b) all obligations constituting “Obligations” with any Lender or any affiliate of any Lender which are outstanding on the Closing Date shall continue as Obligations under this Agreement and the other Loan Documents, (c) the Administrative Agent shall make such reallocations, sales, assignments or other relevant actions in respect of each Lender’s credit exposure under the Existing Credit Agreement as are necessary in order that each such Lender’s credit exposure and outstanding Loans hereunder reflects such Lender’s ratable share of the outstanding aggregate credit exposure on the Closing Date and (d) the Borrower hereby agrees to compensate each Lender for any and all losses, costs and expenses incurred by such Lender in connection with the sale and assignment of any Eurocurrency Loans (including the “Eurodollar Loans” under the Existing Credit Agreement) and such reallocation described above, in each case on the terms and in the manner set forth in Section 3.3 hereof.

(b) Each of the parties hereto agrees that, notwithstanding the requirements of Article X of this Agreement, effective as of the Closing Date, but subject to the satisfaction of the conditions precedent set forth in Section 4.2, (a) KeyBank National Association has resigned as Administrative Agent under this Agreement and the other Loan Documents, and (b) U.S. Bank is hereby appointed (and U.S. Bank accepts such appointment) as Administrative Agent under this Agreement and the other Loan Documents. KeyBank National Association is discharged from its duties and obligations under this Agreement and under the other Loan Documents as Administrative Agent; provided that, notwithstanding the effectiveness of such resignation, the provisions of Article X of this Agreement and similar provisions in the other Loan Documents shall continue in effect for KeyBank National Association in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent under the Existing Credit Agreement. U.S. Bank, acting as Administrative Agent, shall bear no responsibility for any actions taken or omitted to be taken by KeyBank National Association while it served as Administrative Agent under or in connection with the Existing Credit Agreement, and KeyBank National Association shall bear no responsibility for any actions taken or omitted to be taken by U.S. Bank acting as Administrative Agent on and after the Closing Date. The parties hereto agree that all Liens in favor of the Administrative Agent run in favor of U.S. Bank acting in such capacity upon the effectiveness hereof.

(c) By its execution hereof, each of the following is becoming a party to this Agreement as a Lender: Bank of America, N.A. and Fifth Third Bank (each a “New Lender”). Each New Lender agrees that it constitutes a Lender under this Agreement and the other Loan

Documents and shall be bound by the provisions of this Agreement and the other Loan Documents. Each New Lender's Revolving Credit Commitment appears in Schedule 1 hereto. Each New Lender acknowledges and agrees that it has received a copy of this Agreement, together with copies of financial statements and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Agreement and to become a Lender, which analysis and decision has been made independently of and without reliance upon the Administrative Agent or any other Lender. Each New Lender confirms it will, independently and without reliance on the Administrative Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the Loan Documents, and it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

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**FORM OF NON-STATUTORY STOCK OPTION AGREEMENT  
(CEO and Senior Team)**

THIS AGREEMENT is entered into and effective as of \_\_\_\_\_, 20\_\_ (the "Date of Grant"), by and between Sleep Number Corporation (the "Company") and \_\_\_\_ (the "Grantee").

Unless defined in this Agreement, capitalized terms used in this Agreement shall have the meanings established in the Sleep Number Corporation 2020 Equity Incentive Plan (the "Plan").

The Company has adopted the Plan, which authorizes the grant of Non-Statutory Stock Options to Employees. The Company desires to give the Grantee, an Employee, a proprietary interest in the Company and its Subsidiaries in recognition of the Grantee's contributions and as an added incentive to advance the interests of the Company and its Subsidiaries by granting to the Grantee Non-Statutory Stock Options pursuant to the Plan.

Accordingly, the parties agree as follows:

1. Terms of Grant of Options.

1.1 Type of Option. The Company hereby grants to the Grantee Non-Statutory Stock Options in the quantity and at the price listed below, subject to the vesting provisions and other terms and conditions of this Agreement (the "Options").

1.2 Total Shares of Common Stock. The grant of Options gives the Grantee the right to purchase up to \_\_\_\_\_ shares of the Company's common stock, par value \$0.01 per share (the "Common Stock").

1.3 Exercise Price of Option. The exercise price of the Options is \$ \_\_\_\_\_ per share.

1.4 Vesting Schedule. The Options granted under this Agreement will become exercisable, or "vest," in installments of one-third (1/3) of the total number of Options on each of the first three (3) anniversaries of the Date of Grant (the "Vesting Period"), subject to the Grantee remaining in continuous employment or service with the Company through each of such vesting dates during the Vesting Period; provided, however, that such restrictions (the "Restrictions") will lapse and terminate prior to the end of the Vesting Period as set forth in Section 3 and Section 4 below (or as otherwise set forth in the Plan for any circumstance not contemplated by the terms of Section 3 and Section 4).

1.5 Expiration of Options. The Grantee's right to exercise the Options will terminate as to all unexercised Options at 5:00 p.m., Central Time, on \_\_\_\_\_, 20\_\_ (the "Expiration Date"), subject to earlier termination as described below or in the Plan.

1.6 Fractional Shares. The Grantee acknowledges that the Company will not issue or deliver fractional shares of Common Stock under this Agreement. All fractional shares will be rounded up to the nearest whole share.

2. Non-Compete Agreement as Consideration. In consideration for the grant of Options contemplated by Section 1 of this Agreement, the Grantee agrees to execute and be bound by the terms of the Employee Inventions, Confidentiality, Non-Compete and Mutual Arbitration Agreement (the “Non-Compete Agreement”) attached hereto. Failure to execute the Non-Compete Agreement will cause the Options to automatically terminate and be forfeited without any further action.

3. Death, Disability, or other Termination of Employment or Service. The vesting and termination provisions of the Options granted hereby will be impacted by the termination of the Grantee’s employment, depending on the reason for termination of the Grantee’s employment, as set forth below.

3.1 Death or Disability. In the event that the Grantee’s employment or service is terminated prior to the end of the Vesting Period due to the Grantee’s death or Disability, the Restrictions applicable to the Options will immediately lapse and terminate, and the Options will become immediately exercisable in full and will remain exercisable for up to two (2) years, but not beyond the Expiration Date.

3.2 Termination Due to Retirement.

(a) In the event that the Grantee’s employment or other service with the Company and all Subsidiaries is terminated prior to the end of the Vesting Period by reason of the Grantee’s retirement at or beyond age fifty-five (55) and the Grantee has five (5) or more years of service with the Company prior to such retirement, then the Grantee will have one (1) year, but not beyond the Expiration Date, to exercise the sum of (i) Options that had vested (if any) through the effective retirement date according to Section 1.4, plus (ii) a pro rata portion of Options that vest, pursuant to this provision, based on the number of calendar days elapsed since the most recent anniversary of the Date of Grant as of the date of retirement, divided by the total number of calendar days in the Vesting Period (collectively, the “Pro Rata Options”). The remaining unvested Options will immediately terminate and be forfeited without notice of any kind.

For example, if the Grantee was granted 1,200 Options and retirement occurs 548 calendar days into the Vesting Period, assuming the Vesting Period contains 1,095 calendar days, the Grantee would have (i)  $1,200/3 = 400$  Options vested pursuant to Section 1.4, plus (ii)  $1,200 \times (183/1,095) = 201$  Pro Rata Options.

(b) In the event that the Grantee’s employment or other service with the Company and all Subsidiaries is terminated prior to the end of the Vesting Period by reason of the Grantee’s retirement prior to age fifty-five (55) or the Grantee has fewer than five (5) years of service with the Company prior to retirement, all rights of the Grantee under the Plan and this Agreement relating to all Options with respect to which the Restrictions have not lapsed will immediately terminate and be forfeited without notice of any kind.

(c) In the event that the Grantee’s employment or other service with the Company and all Subsidiaries is terminated prior to the end of the Vesting Period by reason of the Grantee’s retirement at or beyond age sixty (60) and the Grantee has five

(5) or more years of service with the Company prior to retirement, the Grantee will become fully vested in, and have three (3) years, but not beyond the Expiration Date, to exercise all Options awarded pursuant to this Agreement if the following criteria are met: (i) the Grantee provides written notice of the Grantee's intention to retire one (1) year before the Grantee's actual retirement date, and (ii) the Grantee's actual retirement date is at least one (1) year after the Date of Grant.

3.3 Voluntary Termination other than upon Retirement. If the Grantee voluntarily terminates his or her employment or service with the Company prior to the end of the Vesting Period (other than as set forth in Section 3.2(a) or Section 3.2(c)), any Options that have vested pursuant to Section 1.4 as of the date of the Grantee's termination of employment or service will remain exercisable for up to three (3) months, but not beyond the Expiration Date, after the Grantee's employment or service ends. The Options that have not vested as of the date of the Grantee's termination of employment or service will immediately terminate and be forfeited without notice of any kind.

3.4 Termination by the Company other than for Cause or Adverse Action. If the Grantee's employment or service is terminated by the Company prior to the end of the Vesting Period (other than for Cause or Adverse Action), Options that have already vested pursuant to Section 1.4 as of the date of the Grantee's termination of employment or service will remain exercisable for up to three (3) months, but not beyond the Expiration Date, after the Grantee's employment or service ends. The Options that have not vested as of the date of the Grantee's termination of employment or service will immediately terminate and be forfeited without notice of any kind.

3.5 Termination by the Company for Cause or Adverse Action. If the Grantee's employment or service is terminated by the Company or a Subsidiary prior to the end of the Vesting Period for Cause or Adverse Action, all of the Grantee's rights under the Plan, this Agreement, and the Options granted hereby will immediately terminate and be forfeited without notice of any kind.

4. Forfeiture, Clawback, or Recoupment. The Options are subject to the forfeiture and clawback provisions pursuant to the Plan. Additionally, the Grantee may be subject to the Company's policy regarding clawback and forfeiture of certain compensation, as in effect at such time. In addition to the other rights set forth in the Plan belonging to the Committee, if it is determined by the Committee, acting in its sole discretion, that the Grantee has taken any action that would constitute Cause or Adverse Action or that is subject to any other or additional "clawback," forfeiture, or recoupment policy adopted by the Company, either prior to or after the date of this Agreement, or that the Grantee has violated the Non-Compete Agreement, as set forth in Section 2, (i) all of the Grantee's rights under the Plan and any agreements evidencing options granted under the Plan, including the Options evidenced by this Agreement, then held shall terminate upon the effectiveness of such Committee action without notice of any kind and will be forfeited; and (ii) the Committee, in its sole discretion, may require the Grantee to surrender and return, transfer, or assign to the Company all or any portion of the shares of Common Stock received, or to disgorge all or any profits or any other economic value (however defined by the Committee) made or realized by the Grantee or the Grantee's affiliate, during the period beginning two (2) years prior to the Grantee's termination of employment or service with

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the Company, in connection with any options granted under the Plan, including the Options, or any shares of Common Stock issued upon the exercise or vesting of any Non-Statutory Stock Options granted under the Plan, including the Options. This Section 4 shall not apply and shall automatically become void *ab initio* following a Change in Control.

5. Notice. The Company is not required to give the Grantee notice of the termination of the Grantee's Options.

6. Exercise.

6.1 Manner of Exercise. An Option may be exercised by the Grantee in whole or in part from time to time, subject to the conditions contained in this Agreement and the Plan. The Options may be exercised by delivery in person, by facsimile or electronic transmission, or through the mail of written notice of exercise to the Company at its principal executive office in Minneapolis, Minnesota (or to the Company's designee, as may be established from time to time by the Company and communicated to the Grantee), and by paying in full the total exercise price for the shares of Common Stock underlying the Options.

6.2 Payment of Exercise Price. The total purchase price of the shares of Common Stock to be purchased upon exercise of an Option will be paid in cash, including check, bank draft, or money order, unless otherwise determined by the Committee or as otherwise provided for in the Plan.

7. Rights of the Grantee.

7.1 Limitations on Transfer. Except pursuant to testamentary will or the laws of descent and distribution, or as otherwise permitted by the Plan, prior to the exercise or vesting of Options, Options issued under the Plan will not be assignable or transferable by the Grantee or subjected to any lien, during the lifetime of the Grantee, either voluntarily or involuntarily, directly or indirectly, by operation of law or otherwise. The Grantee may, however, designate a beneficiary, as provided for in the Plan.

7.2 Rights as a Shareholder. The Grantee will have no rights as a shareholder until the Grantee becomes the holder of record of shares of Common Stock issued upon the Grantee's exercise of the Options. As soon as reasonably possible after the satisfaction of any conditions to the effective issuance of shares of Common Stock in settlement of the Options, the shares will be issued by the Company.

7.3 Shares Purchased. Following the Grantee's exercise of the Grantee's rights to purchase shares of Common Stock under this Agreement, the shares of Common Stock purchased by the Grantee will be freely tradable, subject to the Company's policies and the Securities and Exchange Commission ("SEC") rules regarding insider trading. Executive officers and members of the Board are required to comply with SEC Rule 144 and with the Company's policies with respect to insider trading in connection with any sale of shares received upon the exercise of any stock options.

7.4 Employment or Service. Nothing in this Agreement will interfere with or limit in any way the right of the Company or any Subsidiary to terminate the employment or service of

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the Grantee at any time, nor confer upon the Grantee any right to continue in the employment or service with the Company or any Subsidiary at any particular position or rate of pay or for any particular period of time.

8. Taxes.

8.1 Withholding Taxes. The Company is entitled to (i) withhold and deduct from future wages of the Grantee (or from other amounts that may be due and owing to the Grantee from the Company), or make other arrangements for the collection of all amounts the Company determines are legally required to satisfy any federal, state, or local withholding and employment-related tax requirements attributable to the exercise of the Options, or (ii) require the Grantee promptly to remit the amount of such withholding to the Company. In the event that the Company is unable to withhold such amounts, for whatever reason, the Grantee agrees to pay to the Company an amount equal to the amount the Company would otherwise be required to withhold under federal, state, or local law.

8.2 Income Tax Implications. There may be income tax consequences resulting from the exercise of the Options and/or sale of the shares of Common Stock received upon the exercise of the Options. The Grantee is urged to consult with his or her individual tax advisor regarding any tax consequences relating to these transactions. The Company accepts no responsibility for the income tax implications of the transactions resulting from this Agreement, except as set forth in Section 8.1.

9. Adjustments. In the event of any reorganization, merger, consolidation, recapitalization, liquidation, reclassification, stock dividend, stock split, combination of shares, rights offering, or divestiture (including a spin-off), or any other change in the corporate structure or shares of the Company, the Committee (or, if the Company is not the surviving corporation in any such transaction, the board of directors of the surviving corporation), in order to prevent dilution or enlargement of the rights of the Grantee, will make appropriate adjustment (which determination will be conclusive) as to the number and kind of securities or other property (including cash) subject to this Agreement.

10. Subject to Plan. The Options granted pursuant to this Agreement have been granted under the Plan and, except as otherwise expressly provided in this Agreement, are subject to all of the terms and conditions of the Plan. In addition, the Grantee, by execution hereof, acknowledges having received a copy of the Plan and acknowledges that the Company, or a third party vendor designated by the Company, may deliver to the Grantee any documents related to the Grantee's participation in the Plan by electronic means, including through email, the Company's website, and through the website of the third party vendor designated by the Company. The provisions of this Agreement will be interpreted as to be consistent with the Plan, and any ambiguities in this Agreement will be interpreted by reference to the Plan. In the event that any provision of this Agreement is not authorized under the Plan, the terms of the Plan will prevail.

11. Nature of Grant. By accepting the Options, the Grantee acknowledges, understands, and agrees that:

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11.1 The grant of Options under this Agreement is made voluntarily by the Company under the Plan, which is established by and subject to the discretion of the Committee, and the Grantee's participation in the Plan is voluntary.

11.2 The Options granted under this Agreement are not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, resignation, termination, redundancy, end of service payments, bonuses, long-service awards, pension, or retirement benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company.

11.3 The future value of the Options or Common Stock underlying the Options is uncertain and cannot be predicted. If the underlying shares of Common Stock do not increase in value, the Option will have no value.

11.4 Other than provided in the Plan or in this Agreement, the Options granted to the Grantee do not create any claim or entitlement to compensation or damages arising from forfeiture of the Options.

## 12. Miscellaneous.

12.1 Binding Effect. This Agreement will be binding upon the heirs, executors, administrators, and successors of the parties to this Agreement.

12.2 Governing Law. This Agreement and all rights and obligations under this Agreement will be construed in accordance with the Plan and governed by the laws of the State of Minnesota, without regard to conflicts of laws provisions. Any legal proceeding related to this Agreement will be brought in an appropriate Minnesota court, and the parties to this Agreement consent to the exclusive jurisdiction of the court for this purpose.

12.3 Entire Agreement. This Agreement and the Plan set forth the entire agreement and understanding of the parties to this Agreement with respect to the grant and vesting of the Options and the administration of the Plan and supersede all prior agreements, arrangements, plans, and understandings relating to the grant and vesting of the Options and the administration of the Plan.

12.4 Amendment and Waiver. Other than as provided in the Plan, this Agreement may be amended, waived, modified, or canceled only by a written instrument executed by the parties to this Agreement or, in the case of a waiver, by the party waiving compliance.

12.5 Code Section 409A. Payments of amounts under this Agreement are intended to be exempt from the requirements of Code section 409A, and this Agreement shall in all respects be administered and construed to give effect to such intent.

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The parties hereto have executed this Agreement effective the day and year first above written.

SLEEP NUMBER CORPORATION

*Shelly Ibach*

Shelly Ibach  
President and CEO

By execution of this Agreement, GRANTEE  
the Grantee acknowledges having  
received a copy of the Plan.

(Signature)

(Name and Address)

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**FORM OF PERFORMANCE ADJUSTED  
RESTRICTED STOCK UNIT AWARD AGREEMENT  
(CEO and Senior Team)**

THIS AGREEMENT is entered into and effective as of \_\_\_\_\_, 20\_\_ (the “Date of Grant”), by and between Sleep Number Corporation (the “Company”) and \_\_\_\_ (the “Grantee”).

Unless defined in this Agreement, capitalized terms used in this Agreement shall have the meanings established in the Sleep Number Corporation 2020 Equity Incentive Plan (the “Plan”).

The Company has adopted the Plan, which authorizes the grant of Restricted Stock Unit Awards to Employees, Non-Employee Directors, and Consultants. The Company desires to give the Grantee a proprietary interest in the Company and its Subsidiaries in recognition of the Grantee’s contributions and as an added incentive to advance the interests of the Company and its Subsidiaries by granting to the Grantee a Restricted Stock Unit Award pursuant to the Plan.

Accordingly, the parties agree as follows:

1. Grant of Award Units and Performance Adjustments.

1.1 Grant of Award Units. The Company hereby grants to the Grantee a Restricted Stock Unit Award (the “Award”) consisting of \_\_\_\_\_ units (the “Award Units”) that will be settled in shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), subject to the terms, conditions, and restrictions set forth below and in the Plan. Reference in this Agreement to the Award Units or the Adjusted Award Units (as defined in Section 1.2 of this Agreement) will be deemed to include the Dividend Proceeds (as defined in Section 3.3 of this Agreement) with respect to such Award Units or Adjusted Award Units as provided in Section 3.3 of this Agreement.

1.2 Performance Adjustments. The number of Award Units granted hereunder is subject to adjustment based on the Company’s level of achievement versus annual Net Sales growth goals and annual NOP growth goals for the 20\_\_, 20\_\_, and 20\_\_ fiscal years (the “Performance Period”). (For purposes of this Agreement, “NOP” will be defined as Net Operating Income). The Net Sales growth goals and NOP growth goals will be equally weighted.

The annual Net Sales growth goals, the annual NOP growth goals and the corresponding performance adjustment multiples are as follows:

	Annual Growth Goals over the Performance Period (20__ thru 20__ fiscal years)		Payout – as Multiple of Award Units to Vest
	Net Sales (50%)	NOP (50%)	
Threshold			0.5X
Target			1.0X
Maximum			2.0X



The calculation of the “Adjusted Award Units” based on performance versus these growth goals will be determined as follows:

- (a) The Company’s actual annual growth will be measured for each of the two (2) performance goals and for each of the three (3) fiscal years of the Performance Period;
- (b) A payout multiple will be determined for each performance goal and for each fiscal year, based on interpolation between the performance goals in the foregoing table (performance relative to a performance goal that is below the threshold for a fiscal year will result in a payout multiple of zero (0) for that performance goal for that fiscal year); and
- (c) The mean, or average, of the resulting six (6) payout multiples will be applied to the number of Award Units to determine the number of “Adjusted Award Units.”

For example, if the annual Net Sales growth rate in 20\_\_ is 5%, the multiple for that performance goal for that year will be 1.0X; and if the annual NOP growth rate in 20\_\_ is 12%, the multiple for that performance goal for that year will be 1.5X. Similar multiples will be determined for each performance goal and for each of the following fiscal years. The resulting six (6) payout multiples will then be averaged to determine the final payout multiple. This final payout multiple times the number of Award Units originally granted results in the number of Adjusted Award Units that would vest, subject to all of the other proration and vesting provisions set forth in this Agreement.

In order to reduce the potential impact of volatility in NOP results, the annual NOP percentage growth rate will not in any case be determined from a base NOP level that is less than 50% of the 20\_\_ NOP level. For example, if 20\_\_ NOP is less than 50% of the 20\_\_ NOP level, then the annual NOP percentage growth rate for 20\_\_ will be determined from a base of 50% of the 20\_\_ NOP level, rather than from the actual 20\_\_ NOP level.

The “Adjusted Award Units” will be subject to reduction for failure to generate Return on Invested Capital (“ROIC”) that exceeds Weighted Average Cost of Capital by at least 300 basis points (“bps”), as outlined in the table below. The measurement will be based on an average of the basis points difference between annual ROIC and WACC for the three fiscal years 20\_\_, 20\_\_, and 20\_\_.

<b>ROIC Basis Points difference versus WACC</b> (e.g., ROIC of 12% vs. WACC of 10% = +200 bps)	<b>Reduction to Final Payout</b>
__ bps or lower (i.e., ROIC at or below WACC)	-20% of target award
__ to __ bps	-15% of target award
__ to __ bps	-10% of target award
__ to __ bps	-5% of target award
__ bps or greater	No reduction

For the purpose of this calculation, ROIC shall be defined as detailed in the annual 10-K disclosure.

For the purpose of this calculation, WACC shall be defined as detailed in Attachment A.

The Company's actual performance relative to the performance goals set forth above and the calculation of the Adjusted Award Units shall be determined by the Management Development and Compensation Committee (the "Committee") of the Board of Directors following the conclusion of the Performance Period. The Committee's determination shall be final and conclusive for all purposes under this Agreement. The number of Award Units resulting after adjustment as described above will be referred to herein as the "Adjusted Award Units."

1.3 Restrictive Covenant Agreement. In consideration for the grant of this Award, the Grantee agrees to execute and be bound by the terms of the Employee Inventions, Confidentiality, Non-Compete and Mutual Arbitration Agreement (the "Non-Compete Agreement") attached hereto, and the Grantee acknowledges that the Grantee's failure to execute the Non-Compete Agreement will cause this Award to automatically terminate and be forfeited without any further action.

## 2. Grant Restriction.

2.1 Restriction and Forfeiture. The Grantee's right to the Award Units or the Adjusted Award Units and the shares of Common Stock issuable under the Award Units or Adjusted Award Units will be subject to the Grantee remaining in continuous employment or service with the Company or any Subsidiary for a period of three (3) years (the "Vesting Period") following the Date of Grant; provided, however, that such employment or service period restrictions (the "Restrictions") will lapse and terminate prior to end of the Vesting Period as set forth in Section 2.2 below (or as otherwise set forth in the Plan for any circumstance not contemplated by the terms of Section 2.2).

### 2.2 Death, Disability, or other Termination of Employment or Service.

(a) Death. In the event that the Grantee's employment or service is terminated prior to the end of the Vesting Period due to the Grantee's death, the Restrictions applicable to the Award Units or Adjusted Award Units will immediately lapse and terminate, and the shares of Common Stock to be issued in settlement of the Award Units will be issued within 90 days of the Grantee's death, with the performance adjustment determination related to any incomplete fiscal year(s) within the Performance Period deemed to be satisfied at the target level, with no reduction based on ROIC performance.

(b) Disability. In the event that the Grantee's employment or service is terminated prior to the end of the Vesting Period due to the Grantee's Disability, the Grantee will become fully vested in the Award Units pending completion of the Performance Period and final determination of the Adjusted Award Units. The shares of Common Stock to be issued in settlement of the Adjusted Award Units will be retained

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and held by the Company pending the final determination of the Adjusted Award Units and will be issued within 90 days of the end of the Vesting Period.

(c) Termination Due to Retirement.

(i) In the event that the Grantee's employment or other service is terminated prior to the end of the Vesting Period by reason of the Grantee's retirement at or beyond age fifty-five (55) and the Grantee has five (5) or more years of service with the Company prior to such retirement, the Grantee will become vested in a pro rata portion of Award Units based on the number of calendar days elapsed in the Vesting Period as of the date of retirement (*e.g.*, If the Grantee was granted 1,200 Award Units, and if retirement occurs 730 calendar days into the 1,095 calendar days vesting period, then the Grantee will become vested with respect to an aggregate of 800 Award Units and the remaining 400 Award Units will immediately terminate and be forfeited without notice of any kind) pending completion of the Performance Period and final determination of the Adjusted Award Units.

(ii) In the event that the Grantee's employment or other service with the Company and all Subsidiaries is terminated prior to the end of the Vesting Period by reason of the Grantee's retirement prior to age fifty-five (55) or the Grantee has fewer than five (5) years of service with the Company prior to retirement, all rights of the Grantee under the Plan and this Agreement relating to all Award Units with respect to which the Restrictions have not lapsed will immediately terminate and be forfeited without notice of any kind.

(iii) In the event that the Grantee's employment or other service with the Company and all Subsidiaries is terminated prior to the end of the Vesting Period by reason of the Grantee's retirement at or beyond age sixty (60) and the Grantee has five (5) or more years of service with the Company prior to retirement, the Grantee will become fully vested in the Award Units pending completion of the Performance Period and final determination of the Adjusted Award Units if the following criteria are met: a) Grantee provides written notice of Grantee's intention to retire one year before Grantee's actual retirement date, and b) Grantee's actual retirement date is at least one year after the Date of Grant.

(iv) The shares of Common Stock to be issued in settlement of the Adjusted Award Units pursuant to paragraphs (i) or (iii) above will be retained and held by the Company pending the final determination of the Adjusted Award Units and will be issued within 90 days of the end of the Vesting Period.

(d) Termination for Reasons other than Death, Disability, or Retirement. In the event the Grantee's employment or other service with the Company and all Subsidiaries is terminated prior to the end of the Vesting Period for any reason other than death, Disability, or retirement as provided above, or if the Grantee is in the employ or service of a Subsidiary and the Subsidiary ceases to be a Subsidiary of the Company (unless the Grantee continues in the employ or service of the Company or another Subsidiary), all rights of the Grantee under this Agreement relating to Award Units with

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respect to which the Restrictions have not lapsed will immediately terminate and be forfeited without notice of any kind.

3. Issuance of Shares.

3.1 Timing. Vested Award Units or Adjusted Award Units shall be converted to shares of Common Stock on a one-for-one basis, and such shares shall be issued as soon as reasonably possible, but not more than 90 days, after the end of the Vesting Period, subject to the provisions set forth above applicable to vesting events that occur prior to the end of the Vesting Period.

3.2 Limitations on Transfer. Award Units or Adjusted Award Units will not be assignable or transferable by the Grantee, either voluntarily or involuntarily, and may not be subjected to any lien, directly or indirectly, by operation of law or otherwise. Any attempt to transfer, assign, or encumber the Award Units or Adjusted Award Units, other than in accordance with this Agreement and the Plan, will be null and void and will void the Award, and all Award Units or Adjusted Award Units for which the Restrictions have not lapsed will be forfeited and immediately returned to the Company.

3.3 Dividends and Other Distributions. The Award Units are being granted with an equal number of dividend equivalents. Accordingly, the Grantee is entitled to receive an additional award unit with a value equal to any dividends or distributions (including, without limitation, any cash dividends, stock dividends or dividends in kind, the proceeds of any stock split, or the proceeds resulting from any changes or exchanges described in Section 6 of this Agreement, all of which are referred to herein collectively as the "Dividend Proceeds") that are paid or payable with respect to one share of Common Stock for each Award Unit, which will be subject to the same rights, restrictions, and performance adjustments under this Agreement as the Award Units to which such dividends or distributions relate. The number of additional award units to be received as dividend equivalents for each Award Unit shall be determined by dividing the cash dividend per share by the Fair Market Value of one share of Common Stock on the dividend or distribution payment date. All such additional award units received as dividend equivalents will be subject to the same restrictions and performance adjustments as the Award Units to which such Dividend Proceeds relate.

3.4 Fractional Shares. The Grantee acknowledges that the Company will not issue or deliver fractional shares of Common Stock under this Agreement. All fractional shares will be rounded up to the nearest whole share.

4. Rights of Grantee.

4.1 Employment or Service. Nothing in this Agreement will interfere with or limit in any way the right of the Company or any Subsidiary to terminate the employment or service of the Grantee at any time, nor confer upon the Grantee any right to continue in the employment or service with the Company or any Subsidiary at any particular position or rate of pay or for any particular period of time.

4.2 Rights as a Shareholder. The Grantee will have no rights as a shareholder until the Grantee becomes the holder of record of shares of Common Stock issued in settlement of the

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Adjusted Award Units. As soon as reasonably possible after the satisfaction of any conditions to the effective issuance of shares of Common Stock in settlement of the Adjusted Award Units, the shares will be issued by the Company.

5. Withholding Taxes. The Company is entitled to (i) withhold and deduct from future wages of the Grantee (or from other amounts that may be due and owing to the Grantee from the Company), or to withhold from the shares of Common Stock that would otherwise be determined to be paid to the Company out of Dividend Proceeds, or make other arrangements for the collection of all amounts the Company determines are legally required to satisfy any federal, state, or local withholding and employment-related tax requirements attributable to the receipt of the Award, the receipt of dividends or distributions on Award Units or Adjusted Award Units, or the lapse or termination of the Restrictions applicable to Award Units or Adjusted Award Units, or (ii) require the Grantee promptly to remit the amount of such withholding to the Company. In the event that the Company is unable to withhold such amounts, for whatever reason, the Grantee agrees to pay to the Company an amount equal to the amount the Company would otherwise be required to withhold under federal, state, or local law.

6. Adjustments. In the event of any reorganization, merger, consolidation, recapitalization, liquidation, reclassification, stock dividend, stock split, combination of shares, rights offering, or divestiture (including a spin-off), or any other change in the corporate structure or shares of the Company, the Committee (or, if the Company is not the surviving corporation in any such transaction, the board of directors of the surviving corporation), in order to prevent dilution or enlargement of the rights of the Grantee, will make appropriate adjustment (which determination will be conclusive) as to the number and kind of securities or other property (including cash) subject to this Award.

7. Subject to Plan. The Award and the Award Units granted pursuant to this Agreement have been granted under the Plan and, except as otherwise expressly provided in this Agreement, are subject to all of the terms and conditions of the Plan. In addition, the Grantee, by execution hereof, acknowledges having received a copy of the Plan and acknowledges that the Company, or a third party vendor designated by the Company, may deliver to the Grantee any documents related to the Grantee's participation in the Plan by electronic means, including through email, the Company's website, and through the website of the third party vendor designated by the Company. The provisions of this Agreement will be interpreted as to be consistent with the Plan, and any ambiguities in this Agreement will be interpreted by reference to the Plan. In the event that any provision of this Agreement is not authorized under the Plan, the terms of the Plan will prevail.

8. Forfeiture, Clawback or Recoupment. This Award is subject to the forfeiture and clawback provisions pursuant to the Plan. Additionally, the Grantee may be subject to the Company's policy regarding clawback and forfeiture of certain compensation, as in effect at such time. In addition to the other rights of the Committee under the Plan, if Grantee is determined by the Committee, acting in its sole discretion, to have taken any action that would constitute Adverse Action or Cause or that is subject to any other or additional "clawback," forfeiture, or recoupment policy adopted by the Company, either prior to or after the date of this Agreement, or to have violated the Non-Compete Agreement, as defined in Section 1.3, (i) all of Grantee's rights under the Plan and any agreements evidencing an award granted under the Plan, including

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this Agreement evidencing this Award, then held by Grantee shall terminate and be forfeited upon the effectiveness of such Committee action, and without notice of any kind, and (ii) the Committee, in its sole discretion may require Grantee to surrender and return, transfer, or assign to the Company all or any portion of the shares of Common Stock received, or to disgorge all or any profits or any other economic value (however defined by the Committee) made or realized by Grantee or Grantee's affiliate, during the period beginning two (2) years prior to your termination of employment or service with the Company, in connection with any awards granted under the Plan, including this Award, or any shares of Common Stock issued upon the exercise or vesting of any awards, including this Award. This Section 8 shall not apply and shall automatically become void *ab initio* following a Change of Control.

9. Miscellaneous.

9.1 Binding Effect. This Agreement will be binding upon the heirs, executors, administrators, and successors of the parties to this Agreement.

9.2 Governing Law. This Agreement and all rights and obligations under this Agreement will be construed in accordance with the Plan and governed by the laws of the State of Minnesota, without regard to conflicts of laws provisions. Any legal proceeding related to this Agreement will be brought in an appropriate Minnesota court, and the parties to this Agreement consent to the exclusive jurisdiction of the court for this purpose.

9.3 Entire Agreement. This Agreement and the Plan set forth the entire agreement and understanding of the parties to this Agreement with respect to the grant and vesting of this Award and the administration of the Plan and supersede all prior agreements, arrangements, plans, and understandings relating to the grant and vesting of this Award and the administration of the Plan.

9.4 Amendment and Waiver. Other than as provided in the Plan, this Agreement may be amended, waived, modified, or canceled only by a written instrument executed by the parties to this Agreement or, in the case of a waiver, by the party waiving compliance.

9.5 Code Section 409A. Payments of amounts under this Agreement are intended to comply with the requirements of Code section 409A, and this Agreement shall in all respects be administered and construed to give effect to such intent. The Committee, in its sole discretion, may accelerate or delay distribution of any shares in payment of amounts due under this Agreement if and to the extent allowed under Code section 409A.

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The parties hereto have executed this Agreement effective the day and year first above written.

SLEEP NUMBER CORPORATION



Shelly Ibach  
President and CEO

By execution of this Agreement, GRANTEE

the Grantee acknowledges having  
received a copy of the Plan.

(Signature)

(Name and Address)

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## ATTACHMENT A: Definition for the Company's Weighted Average Cost of Capital (WACC)

## Formula:

$$\text{WACC} = \frac{D}{V}r_D(1 - T) + \frac{E}{V}r_E$$

$D$  = Market value of all debt

$E$  = Market value of all common stock

$V = D + E$  = Market value of the entire firm

$r_D$  = Cost of debt

$r_E$  = Cost of equity

$T$  = Marginal corporate tax rate

WACC is an approximation of the average rate of return a company expects to compensate all of its different investors. The WACC formula and key assumptions used in the Company's WACC calculation are outlined below:

- The market value of all debt reflects the capitalization of our operating leases as debt, plus any other outstanding debt. We calculate our capitalized operating lease obligations as part of our Return on Invested Capital (ROIC) calculation. The market value of all debt (including capitalized operating lease obligations) for each fiscal year within the Performance Period will equal the amounts included in our publicly reported ROIC calculations
  - The market value of all common stock for each fiscal year within the Performance Period is calculated based on the 5-quarter average (the first day of the first quarter and the last day of each of the 4 quarters) of our common shares outstanding multiplied by the respective closing share price at the end of each quarter
  - Cost of debt is the effective interest rate a company would pay for its debt. Our research indicates our debt would receive a rating of approximately BB (high-yield corporate debt). We base our cost of debt on the FINRA/Bloomberg Active U.S. High Yield Corporate Bond Index rates computed on a five-quarter average (the first day of the first quarter and the last day of each of the 4 quarters) for each fiscal year within the Performance Period as reported on Bloomberg.com
  - Cost of equity
    - Risk-free rate is the theoretical rate of return of an investment with no risk of financial loss. In practice, a bond issued by a government with a negligible risk of default is used. We base our risk-free rate on the average daily 10-year U.S. treasury bill rate during each fiscal year within the Performance Period
    - Risk premium is the return in excess of the risk-free rate that an investment (as adjusted for risk) is expected to yield. We use the risk premium by industry/sector as annually reported by the Stern School of Business at New York University. For the purposes of this calculation, we use the average of the annual risk premium estimates for the Furniture/Home Furnishings and Retail (Special Lines) industry sectors for the period that most closely corresponds to each fiscal year within the Performance Period
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- Marginal corporate tax rate is our effective tax rate before discrete adjustments for each fiscal year within the Performance Period

If any benchmark or index referenced above is unavailable at the time of the performance measurement, we will substitute with a substantially similar benchmark or index approved by the Compensation Committee.

**FORM OF RESTRICTED STOCK UNIT AWARD AGREEMENT**  
**(Sleep Number Labs)**

THIS AGREEMENT is entered into and effective as of \_\_\_\_\_, 20\_\_ (the “Date of Grant”), by and between Sleep Number Corporation (the “Company”) and \_\_\_\_\_ (the “Grantee”).

Unless defined in this Agreement, capitalized terms used in this Agreement shall have the meanings established in the Sleep Number Corporation 2020 Equity Incentive Plan (the “Plan”).

The Company has adopted the Plan, which authorizes the grant of Restricted Stock Unit Awards to Employees, Non-Employee Directors, and Consultants. The Company desires to give the Grantee a proprietary interest in the Company and its Subsidiaries in recognition of the Grantee’s contributions and as an added incentive to advance the interests of the Company and its Subsidiaries by granting to the Grantee a Restricted Stock Unit Award pursuant to the Plan.

Accordingly, the parties agree as follows:

1. Grant of Award Units.

1.1 Grant. The Company hereby grants to the Grantee a Restricted Stock Unit Award (the “Award”) consisting of \_\_\_\_\_ units (the “Award Units”) that will be settled in shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), subject to the terms, conditions, and restrictions set forth below and in the Plan. Reference in this Agreement to the Award Units will be deemed to include the Dividend Proceeds (as defined in Section 3.3 of this Agreement) with respect to such Award Units that are retained and held by the Company as provided in Section 3.3 of this Agreement.

1.2 In consideration for the grant of this Award, the Grantee agrees to execute and be bound by the terms of the Confidential Information and Invention Assignment Agreement (the “Confidentiality Agreement”) attached hereto, and the Grantee acknowledges that the Grantee’s failure to execute the Confidentiality Agreement will cause this Award to automatically terminate and be forfeited without any further action.

2. Grant Restriction.

2.1 Restriction and Forfeiture. The Grantee’s right to the Award Units and the shares of Common Stock issuable under the Award Units will vest in three (3) as nearly equal as possible installments (rounding down to the nearest whole share if necessary) on each of the first three (3) anniversaries of the Date of Grant (the “Vesting Period”), subject to the Grantee remaining in continuous employment or service with the Company or any Subsidiary during the Vesting Period; provided, however, that such employment or service period restrictions (the “Restrictions”) will lapse and terminate prior to end of the Vesting Period as set forth in Section 2.2 below (or as otherwise set forth in the Plan for any circumstance not contemplated by the terms of Section 2.2).

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## 2.2 Death, Disability, or other Termination of Employment or Service.

(a) Death or Disability. In the event that the Grantee's employment or service is terminated prior to the end of the Vesting Period due to the Grantee's death or Disability, the Restrictions applicable to the Award Units will immediately lapse and terminate, and the shares of Common Stock to be issued in settlement of the Award Units will be issued as soon as reasonably possible.

(b) Termination Due to Retirement.

(i) In the event that the Grantee's employment or other service is terminated prior to the end of the Vesting Period by reason of the Grantee's retirement at or beyond age fifty-five (55) and the Grantee has five (5) or more years of service with the Company prior to such retirement, the Grantee will become vested in a pro rata portion of Award Units based on the number of calendar days elapsed since the most recent anniversary of the Date of Grant as of the date of retirement, divided by the total number of calendar days in the Vesting Period (collectively, the "Pro Rata Award Units"). The remaining unvested Award Units will immediately terminate and be forfeited without notice of any kind.

For example, if the Grantee was granted 1,200 Award Units and retirement occurs 548 calendar days into the Vesting Period, assuming the Vesting Period contains 1,095 calendar days, the Grantee would have (i)  $1,200/3 = 400$  Award Units vested pursuant to Section 2.1, plus (ii)  $1,200 \times (183/1095) = 201$  Pro Rata Award Units. The shares of Common Stock to be issued in settlement of the vested Award Units will be issued as soon as reasonably possible after the Grantee's retirement.

(ii) In the event that the Grantee's employment or other service with the Company and all Subsidiaries is terminated prior to the end of the Vesting Period by reason of the Grantee's retirement prior to age fifty-five (55) or the Grantee has fewer than five (5) years of service with the Company prior to retirement, all rights of the Grantee under the Plan and this Agreement relating to all Award Units with respect to which the Restrictions have not lapsed will immediately terminate and be forfeited without notice of any kind.

(c) Termination for Reasons other than Death, Disability, or Retirement. In the event that the Grantee's employment or other service with the Company and all Subsidiaries is terminated prior to the end of the Vesting Period for any reason other than death, Disability, or retirement as provided above, or if the Grantee is in the employ or service of a Subsidiary and the Subsidiary ceases to be a Subsidiary of the Company (unless the Grantee continues in the employ or service of the Company or another Subsidiary), all rights of the Grantee under this Agreement relating to Award Units with respect to which the Restrictions have not lapsed will immediately terminate and be forfeited without notice of any kind.

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3. Issuance of Shares.

3.1 Timing. Vested Award Units shall be converted to shares of Common Stock on a one-for-one basis, and such shares shall be issued as soon as reasonably possible after the end of the Vesting Period, subject to the provisions set forth above applicable to vesting events that occur prior to the end of the Vesting Period, subject to Section 9.5(b).

3.2 Limitations on Transfer. Award Units will not be assignable or transferable by the Grantee, either voluntarily or involuntarily, and may not be subjected to any lien, directly or indirectly, by operation of law or otherwise. Any attempt to transfer, assign, or encumber the Award Units, other than in accordance with this Agreement and the Plan, will be null and void and will void the Award, and all Award Units for which the Restrictions have not lapsed will be forfeited and immediately returned to the Company.

3.3 Dividends and Other Distributions. The Award Units are being granted with an equal number of dividend equivalents. Accordingly, the Grantee is entitled to receive an additional award unit with a value equal to any dividends or distributions (including, without limitation, any cash dividends, stock dividends or dividends in kind, the proceeds of any stock split, or the proceeds resulting from any changes or exchanges described in Section 6 of this Agreement, all of which are referred to herein collectively as the "Dividend Proceeds") that are paid or payable with respect to one share of Common Stock for each Award Unit, which will be subject to the same rights, restrictions, and performance conditions under this Agreement as the Award Units to which such dividends or distributions relate. The number of additional award units to be received as dividend equivalents for each Award Unit shall be determined by dividing the cash dividend per share by the Fair Market Value of one share of Common Stock on the dividend or distribution payment date. All such additional award units received as dividend equivalents will be subject to the same restrictions and performance conditions as the Award Units to which such Dividend Proceeds relate.

3.4 Fractional Shares. The Grantee acknowledges that the Company will not issue or deliver fractional shares of Common Stock under this Agreement. All fractional shares will be rounded up to the nearest whole share.

4. Rights of Grantee.

4.1 Employment or Service. Nothing in this Agreement will interfere with or limit in any way the right of the Company or any Subsidiary to terminate the employment or service of the Grantee at any time, nor confer upon the Grantee any right to continue in the employment or service with the Company or any Subsidiary at any particular position or rate of pay or for any particular period of time.

4.2 Rights as a Shareholder. The Grantee will have no rights as a shareholder until the Grantee becomes the holder of record of shares of Common Stock issued in settlement of the Award Units. As soon as reasonably possible after the satisfaction of any conditions to the effective issuance of shares of Common Stock in settlement of the Award Units, the shares will be issued by the Company.

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5. Withholding Taxes. The Company is entitled to (i) withhold and deduct from future wages of the Grantee (or from other amounts that may be due and owing to the Grantee from the Company), or to withhold from the shares of Common Stock that would otherwise be determined to be paid to the Company out of Dividend Proceeds, or make other arrangements for the collection of all amounts the Company determines are legally required to satisfy any federal, state, or local withholding and employment-related tax requirements attributable to the receipt of the Award, the receipt of dividends or distributions on Award Units, or the lapse or termination of the Restrictions applicable to Award Units, or (ii) require the Grantee promptly to remit the amount of such withholding to the Company. In the event that the Company is unable to withhold such amounts, for whatever reason, the Grantee agrees to pay to the Company an amount equal to the amount the Company would otherwise be required to withhold under federal, state, or local law.

6. Adjustments. In the event of any reorganization, merger, consolidation, recapitalization, liquidation, reclassification, stock dividend, stock split, combination of shares, rights offering, or divestiture (including a spin-off), or any other change in the corporate structure or shares of the Company, the Committee (or, if the Company is not the surviving corporation in any such transaction, the board of directors of the surviving corporation), in order to prevent dilution or enlargement of the rights of the Grantee, will make appropriate adjustment (which determination will be conclusive) as to the number and kind of securities or other property (including cash) subject to this Award.

7. Subject to Plan. The Award and the Award Units granted pursuant to this Agreement have been granted under the Plan and, except as otherwise expressly provided in this Agreement, are subject to all of the terms and conditions of the Plan. In addition, the Grantee, by execution hereof, acknowledges having received a copy of the Plan and acknowledges that the Company, or a third party vendor designated by the Company, may deliver to the Grantee any documents related to the Grantee's participation in the Plan by electronic means, including through email, the Company's website, and through the website of the third party vendor designated by the Company. The provisions of this Agreement will be interpreted as to be consistent with the Plan, and any ambiguities in this Agreement will be interpreted by reference to the Plan. In the event that any provision of this Agreement is not authorized under the Plan, the terms of the Plan will prevail.

8. Forfeiture, Clawback or Recoupment. This Award is subject to the forfeiture and clawback provisions pursuant to the Plan. Additionally, the Grantee may be subject to the Company's policy regarding clawback and forfeiture of certain compensation, as in effect at such time. In addition to the other rights of the Committee under the Plan, if Grantee is determined by the Committee, acting in its sole discretion, to have violated the Confidentiality Agreement, as defined in Section 1.2, (i) all of Grantee's rights under this Agreement evidencing this Award shall terminate and be forfeited upon the effectiveness of such Committee action, and without notice of any kind, and (ii) the Committee, in its sole discretion, may require Grantee to surrender and return, transfer, or assign to the Company all or any portion of the shares of Common Stock received, or to disgorge all or any profits or any other economic value (however defined by the Committee) made or realized by Grantee or Grantee's affiliate, during the period beginning one (1) year prior to your termination of employment or service with the Company, in connection with this Award, or any shares of Common Stock issued under this Award. This

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Section 8 shall not apply and shall automatically become void *ab initio* following a Change of Control.

9. Miscellaneous.

9.1 Binding Effect. This Agreement will be binding upon the heirs, executors, administrators, and successors of the parties to this Agreement.

9.2 Governing Law. This Agreement and all rights and obligations under this Agreement will be construed in accordance with the Plan and governed by the laws of the State of Minnesota, without regard to conflicts of laws provisions. Any legal proceeding related to this Agreement will be brought in an appropriate Minnesota court, and the parties to this Agreement consent to the exclusive jurisdiction of the court for this purpose.

9.3 Entire Agreement. This Agreement and the Plan set forth the entire agreement and understanding of the parties to this Agreement with respect to the grant and vesting of this Award and the administration of the Plan and supersede all prior agreements, arrangements, plans, and understandings relating to the grant and vesting of this Award and the administration of the Plan.

9.4 Amendment and Waiver. Other than as provided in the Plan, this Agreement may be amended, waived, modified, or canceled only by a written instrument executed by the parties to this Agreement or, in the case of a waiver, by the party waiving compliance.

9.5 Code Section 409A.

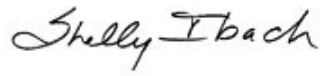
(a) With respect to a Grantee who will not attain age fifty-five (55) and complete five (5) years of service with the Company during the Vesting Period, payments of amounts under this Agreement are intended to be exempt from the requirements of Code section 409A, and this Agreement shall in all respects be administered and construed to give effect to such intent.

(b) With respect to a Grantee who will attain age fifty-five (55) and complete five (5) years of service with the Company during the Restriction Period, payments of amounts under this Agreement are intended to comply with the requirements of Code section 409A, and this Agreement shall in all respects be administered and construed to give effect to such intent. In that regard, Grantee's termination of employment is defined as a "separation from service" under Code section 409A, and any shares issued to a Grantee under Section 3.1 who is a "specified employee," as defined under Code section 409A, will not be issued until the first business day following the six (6) month period commencing on the Grantee's date of "separation from service."

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The parties hereto have executed this Agreement effective the day and year first above written.

SLEEP NUMBER CORPORATION



Shelly Ibach  
President and CEO

By execution of this Agreement, GRANTEE

the Grantee acknowledges having  
received a copy of the Plan.

(Signature)

(Name and Address)

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## FORM OF RESTRICTED STOCK UNIT AWARD AGREEMENT

THIS AGREEMENT is entered into and effective as of \_\_\_\_\_, 20\_\_ (the “Date of Grant”), by and between Sleep Number Corporation (the “Company”) and \_\_\_\_\_ (the “Grantee”).

Unless defined in this Agreement, capitalized terms used in this Agreement shall have the meanings established in the Sleep Number Corporation 2020 Equity Incentive Plan (the “Plan”).

The Company has adopted the Plan, which authorizes the grant of Restricted Stock Unit Awards to Employees, Non-Employee Directors, and Consultants. The Company desires to give the Grantee a proprietary interest in the Company and its Subsidiaries in recognition of the Grantee’s contributions and as an added incentive to advance the interests of the Company and its Subsidiaries by granting to the Grantee a Restricted Stock Unit Award pursuant to the Plan.

Accordingly, the parties agree as follows:

1. Grant of Award Units. The Company hereby grants to the Grantee a Restricted Stock Unit Award (the “Award”) consisting of \_\_\_\_\_ units (the “Award Units”) that will be settled in shares of the Company’s common stock, par value \$0.01 per share (the “Common Stock”), subject to the terms, conditions, and restrictions set forth below and in the Plan. Reference in this Agreement to the Award Units will be deemed to include the Dividend Proceeds (as defined in Section 3.3 of this Agreement) with respect to such Award Units that are retained and held by the Company as provided in Section 3.3 of this Agreement.

2. Grant Restriction.

2.1 Restriction and Forfeiture. The Grantee’s right to the Award Units and the shares of Common Stock issuable under the Award Units will be fully vested at the end of three (3) years from the Date of Grant (the “Vesting Period”), subject to the Grantee remaining in continuous employment or service with the Company or any Subsidiary during the Vesting Period; provided, however, that such employment or service period restrictions (the “Restrictions”) will lapse and terminate prior to end of the Vesting Period as set forth in Section 2.2 below (or as otherwise set forth in the Plan for any circumstance not contemplated by the terms of Section 2.2).

2.2 Death, Disability, or other Termination of Employment or Service.

(a) Death or Disability. In the event that the Grantee’s employment or service is terminated prior to the end of the Vesting Period due to the Grantee’s death or Disability, the Restrictions applicable to the Award Units will immediately lapse and terminate, and the shares of Common Stock to be issued in settlement of the Award Units will be issued as soon as reasonably possible.

(b) Termination Due to Retirement.

(i) In the event that the Grantee’s employment or other service is terminated prior to the end of the Vesting Period by reason of the Grantee’s

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retirement at or beyond age fifty-five (55) and the Grantee has five (5) or more years of service with the Company prior to such retirement, the Grantee will become vested in a pro rata portion of Award Units based on the number of calendar days elapsed since the most recent anniversary of the Date of Grant as of the date of retirement, divided by the total number of calendar days in the Vesting Period (collectively, the "Pro Rata Award Units"). The remaining unvested Award Units will immediately terminate and be forfeited without notice of any kind.

For example, if the Grantee was granted 1,200 Award Units and retirement occurs 548 calendar days into the Vesting Period, assuming the Vesting Period contains 1,095 calendar days, the Grantee would have (i)  $1,200/3 = 400$  Award Units vested pursuant to Section 2.1, plus (ii)  $1,200 \times (183/1095) = 201$  Pro Rata Award Units. The shares of Common Stock to be issued in settlement of the vested Award Units will be issued as soon as reasonably possible after the Grantee's retirement.

(ii) In the event that the Grantee's employment or other service with the Company and all Subsidiaries is terminated prior to the end of the Vesting Period by reason of the Grantee's retirement prior to age fifty-five (55) or the Grantee has fewer than five (5) years of service with the Company prior to retirement, all rights of the Grantee under the Plan and this Agreement relating to all Award Units with respect to which the Restrictions have not lapsed will immediately terminate and be forfeited without notice of any kind.

(c) Termination for Reasons other than Death, Disability, or Retirement. In the event that the Grantee's employment or other service with the Company and all Subsidiaries is terminated prior to the end of the Vesting Period for any reason other than death, Disability, or retirement as provided above, or if the Grantee is in the employ or service of a Subsidiary and the Subsidiary ceases to be a Subsidiary of the Company (unless the Grantee continues in the employ or service of the Company or another Subsidiary), all rights of the Grantee under this Agreement relating to Award Units with respect to which the Restrictions have not lapsed will immediately terminate and be forfeited without notice of any kind.

### 3. Issuance of Shares.

3.1 Timing. Vested Award Units shall be converted to shares of Common Stock on a one-for-one basis, and such shares shall be issued as soon as reasonably possible after the end of the Vesting Period, subject to the provisions set forth above applicable to vesting events that occur prior to the end of the Vesting Period.

3.2 Limitations on Transfer. Award Units will not be assignable or transferable by the Grantee, either voluntarily or involuntarily, and may not be subjected to any lien, directly or indirectly, by operation of law or otherwise. Any attempt to transfer, assign, or encumber the Award Units, other than in accordance with this Agreement and the Plan, will be null and void and will void the Award, and all Award Units for which the Restrictions have not lapsed will be forfeited and immediately returned to the Company.

3.3 Dividends and Other Distributions. The Award Units are being granted with an equal number of dividend equivalents. Accordingly, the Grantee is entitled to receive an additional award unit with a value equal to any dividends or distributions (including, without limitation, any cash dividends, stock dividends or dividends in kind, the proceeds of any stock split, or the proceeds resulting from any changes or exchanges described in Section 6 of this Agreement, all of which are referred to herein collectively as the “Dividend Proceeds”) that are paid or payable with respect to one share of Common Stock for each Award Unit, which will be subject to the same rights, restrictions, and performance conditions under this Agreement as the Award Units to which such dividends or distributions relate. The number of additional award units to be received as dividend equivalents for each Award Unit shall be determined by dividing the cash dividend per share by the Fair Market Value of one share of Common Stock on the dividend or distribution payment date. All such additional award units received as dividend equivalents will be subject to the same restrictions and performance conditions as the Award Units to which such Dividend Proceeds relate.

3.4 Fractional Shares. The Grantee acknowledges that the Company will not issue or deliver fractional shares of Common Stock under this Agreement. All fractional shares will be rounded up to the nearest whole share.

#### 4. Rights of Grantee.

4.1 Employment or Service. Nothing in this Agreement will interfere with or limit in any way the right of the Company or any Subsidiary to terminate the employment or service of the Grantee at any time, nor confer upon the Grantee any right to continue in the employment or service with the Company or any Subsidiary at any particular position or rate of pay or for any particular period of time.

4.2 Rights as a Shareholder. The Grantee will have no rights as a shareholder until the Grantee becomes the holder of record of shares of Common Stock issued in settlement of the Award Units. As soon as reasonably possible after the satisfaction of any conditions to the effective issuance of shares of Common Stock in settlement of the Award Units, the shares will be issued by the Company.

5. Withholding Taxes. The Company is entitled to (i) withhold and deduct from future wages of the Grantee (or from other amounts that may be due and owing to the Grantee from the Company), or to withhold from the shares of Common Stock that would otherwise be determined to be paid to the Company out of Dividend Proceeds, or make other arrangements for the collection of all amounts the Company determines are legally required to satisfy any federal, state, or local withholding and employment-related tax requirements attributable to the receipt of the Award, the receipt of dividends or distributions on Award Units, or the lapse or termination of the Restrictions applicable to Award Units, or (ii) require the Grantee promptly to remit the amount of such withholding to the Company. In the event that the Company is unable to withhold such amounts, for whatever reason, the Grantee agrees to pay to the Company an amount equal to the amount the Company would otherwise be required to withhold under federal, state, or local law.

6. Adjustments. In the event of any reorganization, merger, consolidation, recapitalization, liquidation, reclassification, stock dividend, stock split, combination of shares, rights offering, or

divestiture (including a spin-off), or any other change in the corporate structure or shares of the Company, the Committee (or, if the Company is not the surviving corporation in any such transaction, the board of directors of the surviving corporation), in order to prevent dilution or enlargement of the rights of the Grantee, will make appropriate adjustment (which determination will be conclusive) as to the number and kind of securities or other property (including cash) subject to this Award.

7. Subject to Plan. The Award and the Award Units granted pursuant to this Agreement have been granted under the Plan and, except as otherwise expressly provided in this Agreement, are subject to all of the terms and conditions of the Plan. In addition, the Grantee, by execution hereof, acknowledges having received a copy of the Plan and acknowledges that the Company, or a third party vendor designated by the Company, may deliver to the Grantee any documents related to the Grantee's participation in the Plan by electronic means, including through email, the Company's website, and through the website of the third party vendor designated by the Company. The provisions of this Agreement will be interpreted as to be consistent with the Plan, and any ambiguities in this Agreement will be interpreted by reference to the Plan. In the event that any provision of this Agreement is not authorized under the Plan, the terms of the Plan will prevail.

8. Forfeiture, Clawback or Recoupment. This Award is subject to the forfeiture and clawback provisions pursuant to the Plan. Additionally, the Grantee may be subject to the Company's policy regarding clawback and forfeiture of certain compensation, as in effect at such time. In addition to the other rights of the Committee under the Plan, if Grantee is determined by the Committee, acting in its sole discretion, to have taken any action that would constitute Adverse Action or Cause or that is subject to any other or additional "clawback," forfeiture, or recoupment policy adopted by the Company, either prior to or after the date of this Agreement, or to have violated the Employee Inventions, Confidentiality, Non-Compete and Mutual Arbitration Agreement, as attached hereto, (i) all of Grantee's rights under the Plan and any agreements evidencing an award granted under the Plan, including this Agreement evidencing this Award, then held by Grantee shall terminate and be forfeited upon the effectiveness of such Committee action, and without notice of any kind, and (ii) the Committee, in its sole discretion, may require Grantee to surrender and return, transfer, or assign to the Company all or any portion of the shares of Common Stock received, or to disgorge all or any profits or any other economic value (however defined by the Committee) made or realized by Grantee or Grantee's affiliate, during the period beginning one (1) year prior to your termination of employment or service with the Company, in connection with any awards granted under the Plan, including this Award, or any shares of Common Stock issued upon the exercise or vesting of any awards, including this Award. This Section 8 shall not apply and shall automatically become void *ab initio* following a Change of Control.

9. Miscellaneous.

9.1 Binding Effect. This Agreement will be binding upon the heirs, executors, administrators, and successors of the parties to this Agreement.

9.2 Governing Law. This Agreement and all rights and obligations under this Agreement will be construed in accordance with the Plan and governed by the laws of the State of Minnesota, without regard to conflicts of laws provisions. Any legal proceeding related to this

Agreement will be brought in an appropriate Minnesota court, and the parties to this Agreement consent to the exclusive jurisdiction of the court for this purpose.

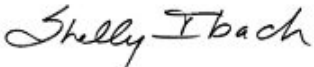
9.3 Entire Agreement. This Agreement and the Plan set forth the entire agreement and understanding of the parties to this Agreement with respect to the grant and vesting of this Award and the administration of the Plan and supersede all prior agreements, arrangements, plans, and understandings relating to the grant and vesting of this Award and the administration of the Plan.

9.4 Amendment and Waiver. Other than as provided in the Plan, this Agreement may be amended, waived, modified, or canceled only by a written instrument executed by the parties to this Agreement or, in the case of a waiver, by the party waiving compliance.

9.5 Code Section 409A. Payments of amounts under this Agreement are intended to be exempt from the requirements of Code section 409A, except for a Grantee who becomes eligible for partial vesting following eligibility for retirement under Section 2(c), in which case payment of amounts under the Agreement are intended, and this Agreement shall in all respects be administered and construed to give effect to such intent. A payment on account of a termination of employment by reason of the Grantee's retirement under Section 2(c) shall only be made if such termination is a "separation from service" under Code section 409A, and if payment is made as a result of such "separation from service" at such time the Grantee is a "specified employee" within the meaning of Code section 409A, then no shares shall be issued prior to the first business day after the earlier of (i) the date that is six months after the Grantee's separation from service, or (ii) the date of the Grantee's death.

The parties hereto have executed this Agreement effective the day and year first above written.

SLEEP NUMBER CORPORATION



Shelly Ibach  
President and CEO

By execution of this Agreement, GRANTEE

the Grantee acknowledges having  
received a copy of the Plan.

(Signature)

(Name and Address)

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**Certification by Chief Executive Officer**

I, Shelly R. Ibach, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Sleep Number Corporation;
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 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 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 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: May 7, 2021

/s/ Shelly R. Ibach

Shelly R. Ibach

Chief Executive Officer

**Certification by Chief Financial Officer**

I, David R. Callen, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Sleep Number Corporation;
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 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 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 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: May 7, 2021

/s/ David R. Callen

David R. Callen

Executive Vice President and Chief Financial Officer

CERTIFICATION PURSUANT TO  
18 U.S.C. §1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Sleep Number Corporation (the “Company”) on Form 10-Q for the period ended April 3, 2021, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned, Shelly R. Ibach, Chief Executive Officer of the Company, solely for the purposes of 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, does hereby certify, to her knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; 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: May 7, 2021

/s/ Shelly R. Ibach

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Shelly R. Ibach

Chief Executive Officer

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

CERTIFICATION PURSUANT TO  
18 U.S.C. §1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Sleep Number Corporation (the “Company”) on Form 10-Q for the period ended April 3, 2021, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned, David R. Callen, Executive Vice President and Chief Financial Officer of the Company, solely for the purposes of 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, does hereby certify, to his knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; 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: May 7, 2021

/s/ David R. Callen

David R. Callen

Executive Vice President and Chief Financial Officer

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.